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TESTIMONY.

CAMDEN COUNTY CIRCUIT COURT.

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JOSEPH SNUFFIN, Adminis-  
trator, &c., of the Estate  
of MICHAEL PALLADINO,  
*Plaintiff,*

vs.

WILLIAM G. McADOO, Direc-  
tor General of Railroads,  
*Defendant.*

Action at Law.

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December Term, 1918. 12-23-'18.

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APPEARANCES:

For the plaintiff, ALBERT S. WOODRUFF, Esq.

For the defendant, BOURGEOIS & COULOMB, Esqs.

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Before LLOYD, J., and a jury.

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THE CASE FOR THE PLAINTIFF.

30

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

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

JOSEPH SNUFFIN, SWORN.

By Mr. Woodruff:

Q. Mr. Snuffin, where do you reside—where do you live?

A. Tansboro.

Q. What is your business?

A. Farmer.

10 Q. You are the father of Margaret Palladino, are you not?

A. Yes, sir.

Q. Did they live with you before his death?

A. Yes, sir.

Q. For how long a time?

A. Her?

Q. No, both of them together.

A. Oh, right after they were married they lived with me, after they were married, both of them.

20 Q. Did both of them live there all the time?

A. Afterward, yes.

The Court: Who is Margaret Palladino?

Mr. Woodruff: She is the widow.

The Witness: He was the husband of my daughter.

30 The Court: He is the father of the wife of the deceased man?

Mr. Woodruff: That is correct.

Q. Where did they get their meals after they were married?

A. At my house in the morning and at noons he

went down home for his dinner and supper and came right over to my place after his supper.

Q. Do you remember the time of his death?

A. Yes, sir, the 20th of August, about half-past four or quarter of five, somewhere along there.

Q. Your daughter was still living with you at that time?

A. Yes.

The Court: August 20th what year?

10

The Witness: 1918.

Q. Now, since that time has she had a child born to her?

A. Yes.

Q. What is the child's name?

A. Now, it has just slipped my mind.

Q. All right, we will prove that by her. Did you, Mr. Snuffin, take out letters of administration so as to bring this suit? 20

The Court: I suppose there is no dispute about that.

Mr. Woodruff: No dispute about that, is there?

Mr. Bourgeois: No.

Mr. Woodruff: All right. I will offer the letters. 30

(Letters of administration offered in evidence and marked Exhibit P1.)

Q. How did Michael treat his wife after they were married, living here with you?

A. Fine as silk. He gave her every dollar he

made except a little spending money, couldn't do any better than that, a fine man.

Q. Do you know what they spent their money for?

(Objected to.)

A. Yes, sir.

10 Mr. Bourgeois: I object to that as not relevant and not within the issue in this case.

(Question repeated.)

The Court: What who spent?

Mr. Woodruff: The deceased and his wife. I will withdraw the question; it is perhaps better.

Q. Mr. Snuffin, how old is your daughter?

20 A. About eighteen.

Q. Has she reached her eighteenth birthday yet?

A. I don't think she has; yes, she has.

Cross-examination.

By Mr. Bourgeois:

Q. When was your daughter married?

30 A. I think it was—I couldn't tell just what month; I think it was June.

Q. Wasn't it July?

A. No, I couldn't tell just what month. She is here to say that herself; I don't know just what month she is married, I couldn't tell.

Q. Well, either June or July of this year, was it?

A. Well, now, I couldn't say; the certificate will tell, of course; I couldn't tell.

Q. Well, don't you know?

A. I couldn't tell; she knows and my wife knows but I couldn't tell; she never told me, or she told me lots of times, but I forget, couldn't tell you just —

Q. You don't know whether it was June or July of 1918 or June or July of 1916, eh?

A. Oh, I know it wasn't that long; it was only a few months.

Q. This last summer, wasn't it?

A. Yes, but I couldn't tell you just how many 10 months.

Q. Well, wasn't it July?

A. It wasn't July, I think it was June.

Q. And you are sure it wasn't July?

A. I am most certain it wasn't, I couldn't say.

Q. Now, how old is this baby you are talking about?

A. I think it is a little past three months, past two months, a little past two months.

Q. When was that born, October?

20

A. Yes, I think it was, yes; I never put them things down in my head.

Q. How long had you known Palladino?

A. About two years.

Q. How long had he worked at the factory?

A. Well, I couldn't tell that.

Q. Well, had it been some months?

A. I think he had worked there the whole time I knew him, the whole two years.

Q. He always used this crossing in going to and 30 from his home?

A. Yes.

Q. Used his motorcycle?

A. Yes, sir.

Q. He did use the motorcycle?

A. He had a motorcycle ever since I knowed him, and I don't know how much longer.

Q. And he would leave the factory and come down and go over this crossing and then go down on the other side of the railroad, would he, to his home?

A. Then he would come back again, yes.

Q. Did he go home for his lunch?

A. Went home for dinner.

Q. Then he would make one trip in the morning up and then back in the morning and get his dinner, then up in the afternoon and back in the afternoon  
10 —that would be four trips over this crossing each day?

A. Yes.

Q. For a period of two or three years?

A. Two years.

---

WALTER REGN, SWORN.

20 By Mr. Woodruff:

Q. Walter, how old are you?

A. Ten.

Q. Where do you live?

A. Atco, New Jersey.

Q. Who do you live with there?

A. My mother.

Q. How near do you live to the station?

A. Not far.

30 Q. On which side of the railroad do you live?

A. If you stand this way I would live on the right-hand side.

Q. You live on the side where the trains come up from Atlantic City?

A. Yes, sir.

Q. On that side of the track?

A. Yes.

Q. Did you know Michael Palladino?

A. No, sir.

Q. You did not know him?

A. No.

Q. Do you know where the broom factory is?

A. Yes.

Q. You play all around there, do you?

A. Yes, sir.

Q. How long have you lived down there at Atco?

A. Lived there all my life. 10

Q. Now, on the day that this Michael was killed on his motorcycle, were you there near the crossing?

A. I wasn't really near it, no, sir, not very near it, no, sir.

Q. You were near the railroad, were you?

A. Yes, sitting right on the bank.

Q. What were you doing there along the railroad?

A. Pasturing my father's horse.

The Court: You mean the bank of the railroad? 20

The Witness: Yes, sir.

Q. You were sitting along the bank?

A. Yes.

Q. On which side of the railroad were you pasturing the horse, on the broom factory side or the side where you live?

A. The broom factory side.

Q. Below the crossing where Mr. Palladino was killed, toward Atlantic City? 30

A. Down toward Atlantic City.

Q. Do you know this bell at the crossing?

A. Yes, sir.

Q. Can you hear that bell as far as where you were pasturing the horse?

A. Yes.

Q. Where you were pasturing the horse, was that as far as your home away from this crossing?

A. A little further.

Q. Can you hear the bell down at your home when it rings?

A. Yes, sir.

Q. Now, what did you see first this day about the things that led up to this accident?

A. What do you mean?

10 Q. When did you first see Mr. Palladino?

A. When he started from the broom factory.

Q. Did you see him when he got on his motorcycle?

A. Saw him when he got on.

Q. And started away?

A. And started away, yes.

Q. Coming down that road he came right down toward you, didn't he?

A. Yes.

20 Q. Now, what happened to him? Speak louder so that the last man over there can hear you.

A. He went right around, and as he looked he was pretty near the railroad, and he saw this train, put out his feet and the motorcycle, the force of it, took him on the railroad.

Q. How far on the railroad did the motorcycle get?

A. Well, I didn't see that, I was too far down, but the handle bars and front wheel got hit.

Q. That was the part of the machine that got hit?

30 A. Yes, sir, the back part wasn't hurt at all.

Q. When did you see the train first? Where was Mr. Palladino when you saw the train first, if you remember?

A. I don't know.

Q. You don't remember just where he was?

A. No.

Q. Well, did you see the train as it came by Atco station?

A. Yes.

Q. Now, when did it first blow the whistle?

A. Well, it was pretty close to the man; it gave two sharp blows.

Q. Is that all the whistles that were blown?

A. Yes, sir.

Q. Just those two?

A. That is all I noticed.

10

Q. And they were right close to the man?

A. Yes.

Q. Did you hear any bell on the locomotive ringing?

A. Didn't notice none.

Q. You were near enough so you could have heard it if it was ringing?

A. Yes, I guess I could have heard it if it was ringing.

Q. The bell at the crossing, did you hear that rung? 20

A. No, sir.

Q. Now, did you see what happened to Mr. Palladino?

A. I didn't see him after his death.

Q. You didn't see him afterward?

A. No.

Q. You went home, did you?

A. Yes.

30

By the Court:

Q. Were you listening for the sounds of the train or the bell at the crossing?

A. I wasn't listening for them, but I didn't hear none, but I could have heard them if they rung.

Q. You could have heard them if they rang?

A. Yes.

Q. How far were you from the crossing, do you know, how far in distance?

A. I couldn't tell you, but I could show you on the picture if they had the house.

Q. Well, you don't know how long the picture is. How long would it take you to walk it?

A. About five minutes.

10 Q. Do you know anything about distances in town here?

A. No, sir.

Q. You don't know what a block is, a square?

A. No, never lived up here.

By Mr. Woodruff:

Q. Were you as far down below the crossing as the broom factory is above it?

20 A. Further.

Q. Further than that?

A. Yes.

Q. Very much further than that?

A. Yes.

The Court: I understood him to say the boy passed him on his wheel.

30 Mr. Woodruff: No, the boy was coming toward him.

The Witness: No, the boy was coming toward me; I was down there toward Atlantic City and the boy came from the broom factory down toward me.

The Court: I don't get it clearly in my mind; suppose you let me see the pictures.

Mr. Woodruff: Suppose we have them marked first; I offer these three pictures with the consent of counsel for the defendant.

(Three photographs offered by plaintiff are marked respectively Exhibits P2, P3 and P4.)

By the Court:

Q. You see this picture,—you know the picture, 10  
don't you?

A. Yes, sir.

Q. Now, where were you standing? Put your finger on there, will you?

A. Well, see, it isn't the picture of the house.

Q. No, here is the factory down here.

A. Yes, I see, here is the crossing right here: I was right down this way (indicating).

Q. Oh, you were away beyond the crossing from the factory? 20

A. Yes.

Q. I see; I thought you were between the crossing and the factory.

A. No.

By Mr. Woodruff:

Q. If this road which passed by the broom factory went right on down instead of coming over the track it would come down past you? 30

A. It would come down past me.

Q. Now, this picture that is marked Exhibit P4, on what part of this road did Michael come with his motorcycle?

A. You see, there is the road right here; there is where they leave the motorcycles, right along there (indicating).

Q. Right alongside of the broom factory?

A. Yes, and you see he started out around here and went on this road, came right on down, went over the crossing, and when he comes down over the crossing he goes down toward Atlantic City and over the bridge.

Q. That is the way that road goes on down, isn't it?

A. Yes, right over the bridge.

10

Cross-examination.

By Mr. Bourgeois:

Q. How old are you, Walter?

A. Ten years old.

Q. You go to school?

A. Yes, sir.

Q. Where at, Atco?

20

A. Atco.

Q. How long had you been out with your father's horse that afternoon, do you remember?

A. Well, I used to pasture him six hours through the day; I used to pasture him sometimes four in the morning and sometimes only two in the afternoon, but this time I pastured him three in the morning and three in the afternoon; I started out three o'clock.

30

Q. And you had been there then nearly two hours, hadn't you?

A. Yes, sir.

Q. Get pretty tired of it, do you?

A. Yes, I used to get tired after I did it a while, but I got used to it.

Q. Kept it up all summer, I suppose, did you?

A. Oh, we didn't have the horse—yes, I did it all summer.

Q. Now, you saw Palladino when he left the broom factory?

A. Yes.

Q. Saw him coming down the road?

A. Yes.

Q. And saw him when he started to turn?

A. Yes.

Q. And saw him when he looked back and put his feet in the ground?

A. Yes.

10

Q. Did he make quite a good deal of dust when he put his feet down on the ground as he went up there?

A. Well, he didn't make much, because there isn't much sand there; it is pretty hard.

Q. Pretty hard, is it?

A. Yes.

Q. Let me see if I can place that. Do you remember the ties that are put along the road leading from the broom factory up to the crossing?

20

A. Yes.

Q. Or down to the crossing, whatever you call it?

A. Yes.

Q. Then do you remember the railing put around those ties where it came right to the crossing there?

A. Yes.

Q. Now, the crossing is right here, isn't it, at these rails?

A. Yes.

Q. Now, come over here and show this jury where you saw him when he got on his motorcycle—right here at the broom factory?

30

A. Yes.

Q. Then he came out here?

A. Yes.

Q. And came right down this road?

A. Yes.

Q. And this is the point, isn't it, where he crossed, where he turned around?

A. Yes.

Q. And then he turned right on around up here to go across?

A. Yes, you see there is where the plank lay on top of one another.

Q. By that you mean this string piece fastened to the top of the ties?

10 A. Yes.

Q. And that is the point right here, isn't it? (Indicating on photograph.)

A. Yes, then he came around here and when he got right here —

Q. Now, how close was he to the track when he stuck his feet down, say, about?

A. He was about right around there (indicating on photograph).

20 Q. Pointing to the nearest side of the ties to the track.

A. Yes.

Q. But he was in the street, of course, the road; he wasn't at the ties? Then he put his feet down and he couldn't stop the motorcycle, as I understand you?

A. No.

30 Q. Now, when the train had gone past, there was one part of that motorcycle on the side of the road where you were, the side of the track where you were —

A. Yes, it was right in this here rail here, sitting right on there (indicating on photograph).

Q. Yes, right on the near rail, and the other part of the motorcycle, that is, the front part of it, was where?

A. The front part was about right in the middle of the track, the front wheel.

Q. Now, Walter, you saw him all the time he was coming up there, didn't you?

A. Yes, sir.

Q. And he never looked around until he got up within about a short distance of the track, when he put his feet down, did he?

A. Yes, when he saw it he put his feet down.

Q. Put his feet down and tried to stop his machine, wasn't that what he was trying to do?

A. That is what he was trying to do.

10

Q. Now, how far were you below the crossing?

A. Well, I can't tell you the distance, but —

Q. Do you know how far it is down to the overhead bridge?

A. Yes, sir.

Q. Were you half way down to the overhead bridge or not that far?

A. I was about half way down.

Q. Just about half way between the crossing and the overhead bridge?

20

A. Yes.

Q. You say that you did not hear the bell ringing, that little bell there at the crossing?

A. No, sir, I didn't hear it.

Q. But it might have been ringing—you were not paying any attention to that, were you?

A. No, sir, I wasn't paying any attention.

Q. Weren't paying any attention to that?

A. Yes.

Q. And you weren't paying any attention to the train blowing the whistle?

30

A. I heard it blow the whistle.

Q. You heard it blow the whistle when it came down near this, when you thought he was going to get hurt?

A. Yes.

Q. But you were not paying any attention when the train came down before that to whether the train blew its whistle or not?

A. No, sir.

Q. And you were not paying any attention to whether the bell was rung on the train?

A. No, I wasn't paying any attention, but I heard the train blow its whistle just before it hit the man.

10 Q. And when was that, just before or at the time he put his feet down—just before, wasn't it, the first one?

A. He just put his feet down as the second whistle blew.

Q. You don't know how far it is from this crossing down to that overhead bridge, do you?

A. No, sir, I couldn't tell.

Q. Have you ever walked down there?

A. Yes, sir, been further than that.

Q. Have you?

20 A. Yes.

Q. Would it take you ten or fifteen minutes to walk down from the crossing, down to that bridge?

A. Well, if I ran it would take me about that long, but if I walked, I guess it would take me about twenty minutes.

Q. Quite a long distance, in other words?

A. Yes.

By Mr. Woodruff:

30 Q. Walter, there is a hard substance in the road just as it leads up to the crossing, isn't there?

A. Yes.

Q. Asphalt or something of that kind?

A. Yes.

Q. How close to that was Mr. Palladino when he put his feet down?

A. He was pretty close.

Q. Wait just a minute; perhaps you can see it on the picture. This picture, Exhibit P2, can you see on that where the asphalt begins?

A. Yes, sir, begins about right around there (indicating on photograph).

Q. Right around here, pointing to the line of the ties nearest to the track?

A. Yes.

Q. It runs up to the nearest rail, does it?

10

A. Yes.

Q. Now, where was it with regard to that stuff that he put his feet down?

A. It was right about there (indicating).

Q. Now, Walter, you saw the engine about when it came by Atco station?

A. Well, I wasn't watching that; I was watching the man.

Q. You were watching the man coming toward this crossing?

20

A. Yes, sir.

By Mr. Bourgeois:

Q. Say, Walter, Mr. Woodruff asked you if there isn't asphalt down there; you know what asphalt is, do you?

A. Why, it is hard stuff; I couldn't tell you what it is; I know it is hard.

Q. Let me ask you, that crossing, isn't it just gravel with oil put on it so as to make it hard?

30

A. I couldn't tell you that.

Q. There isn't any surfacing like there is on some of the streets; it is just a gravel approach and then oil put on to keep the dust down—isn't that what it is?

A. I guess that is right.

By the Court:

Q. Walter, stand up there a minute; you see these buildings up the street there?

A. Yes.

Q. Can you see them, the tops of them?

A. Yes.

Q. Was that anything like the distance you were away from the crossing?

10 A. It is about that far, about from that there brick one.

Q. Which one of the buildings?

A. Right up there, see? There is a brick one and there is two cement ones.

Q. You mean the one there in line with the pole?

A. Yes, sir.

The Court: Gentlemen, can you get any idea what that is?

20 Mr. Woodruff: Here is an engineer. Mr. Remington, can you tell me about what that is?

Mr. Remington: Six hundred and fifty feet, about.

Q. Were you that far away from the crossing when the boy got hurt?

A. I was about that far away, yes.

30 Q. Now, you say you were not paying any attention to the train—you were looking at him?

A. Yes, sir.

Q. Did you know the train was coming at all?

A. Yes, sir, I knew the train was coming.

Q. Well, when did you first notice that?

A. I noticed the train as it was coming, and I was watching this man, you know.

Q. Yes, but when did you first notice the train? Where was that when you noticed it first, about?

A. Between the two crossings; you know there is two, one up town and one down.

Q. Between this crossing and what other one, the one at Atco?

A. Yes, sir.

Q. And how far was that away? Was that as far away from the crossing as you were when you first noticed it?

10

A. Oh, no, not near that far.

Q. How close was it to the crossing?

A. It is pretty close to it; I couldn't tell you how many feet away, but it was pretty close to it.

Q. That is when you first noticed the train then, just before the man was struck?

A. Yes.

Q. Just a moment or so before?

A. Yes.

Q. Now, did you notice anything about any sound from the train before that?

20

A. I heard the sound of it but I did not look at the train; I was looking at this man.

Q. That is, you heard the sound of the train itself?

A. Yes, I heard the sound of it.

Q. Of the train coming?

A. Yes.

Q. And you knew there was a train, of course, coming?

A. Yes.

30

Q. But you didn't hear any bell ring, or any whistle?

A. No, sir, but when it got pretty near to the man it gave two sharp, awful blows.

Q. Now, what about the bell on the crossing?

A. I didn't notice none.

Q. Were you close enough to hear that if it had been ringing with the train coming?

A. I would have heard it, because I can hear it over to our house.

Q. How about it generally—do you generally pay much attention to the bell on the crossing?

A. Well, at first, you know, it is kind of funny to hear it, but I never hear it much more, never pay attention to it.

10 Q. And were you on this day, were you paying any attention to the bell on the crossing?

A. I would have heard it if it rang, though, but I wasn't paying any attention to it.

By Mr. Bourgeois:

Q. Walter, just one question: Was that motorcycle making very much noise, the exhaust of it?

A. Making pretty much noise.

20 Q. Was it going pretty fast?

A. No, it wasn't going fast; he had just started.

Q. But it was making a good bit of noise with the exhaust?

A. Yes.

---

JOHN GRAZIANO, SWORN.

30 By Mr. Woodruff:

Q. How old are you, John?

A. Nineteen.

Q. Where do you live?

A. Atco.

Q. You work at the broom factory?

A. Yes, sir.

Q. Did you work there last August?

A. Yes, last August.

Q. Were you working there the day that Michael Palladino was killed?

A. Yes, sir.

Q. How long had you been working there with him?

A. Well, I had been working with him about three months and I quit in the summer to work on the farm; I rode with him every night.

10

Q. Did you live on down the track in the direction of his home?

A. Yes.

Q. How would you get back and forth from your home to the broom factory?

A. How would I get back?

Q. How would you go back and forth from the broom factory to your home?

A. I would go home with him.

Q. On his motorcycle?

20

A. Yes.

Q. Did it have a back seat?

A. Yes, sir.

Q. Had you ridden up with him that day, the day of this accident in the morning—had you ridden up to the broom factory with him?

A. In the noon hour I did.

Q. He went down to his lunch and came back, did he?

A. Yes.

30

Q. How was the machine working?

A. Working all right.

Q. Did it make a noise or run quietly?

A. Well, it didn't make much noise, when he shut the muffler it didn't make much noise.

Q. Did Michael work there at the broom factory that day?

A. Yes.

Q. What time was it that he left the broom factory?

A. Well, he quit about five minutes of five.

Q. He quit just before the rest of you, did he?

A. Yes.

Q. Did you see him after he went away?

A. I seen him; he asked me to go home with him.

Q. Where were you standing when he asked you  
10 that?

A. Near the window.

Q. Which window in the broom factory?

A. The third window, the window was open.

Q. The third window?

A. Yes.

Q. You were in the third window of the brick building or the frame building?

A. The brick building.

Q. And that window was open, you say?

20 A. Was open.

Q. What was he doing when he was talking to you?

A. He asked me to go home with him, and I told him I was going down to Atco with another fellow.

Q. Then what did he do?

A. Then he started off and got near the post there which shows on there, and I was looking at him and he looked back.

Q. I show you Exhibit P4. Do you see there where he looked back, where he was when he looked back?

30 A. Yes, he was there (indicating).

Q. Now, wait, come around here, take a pencil and show us where he was when he looked back.

(Witness indicated on photograph.)

Q. Right by the first of these ties that stand up on end?

A. Yes.

The Court: Let me see, too, won't you, where he points out?

(Counsel then indicated the point on the photograph to the Court.)

The Court: Let me understand this picture. Was the crossing up here?

Mr. Woodruff: Yes, the crossing is right up here. 10

The Court: And that is the factory?

Mr. Woodruff: That is the factory and here is where he said he looked back.

Q. Are there two switch tracks in front of the broom factory off from the main track?

A. Yes, two of them.

Q. Was there any car standing on those switches that day? 20

A. There was a freight car standing there.

Q. And do you recollect where that freight car was standing?

A. Yes, I can show you where it was standing (indicating on photograph); right on that crossing, the smoke is, right there?

Q. You mean the first switch?

A. The first switch.

Q. On the first switch? 30

A. Yes.

Q. Is that opposite any part of the broom factory?

A. It is right with the broom factory, see, where the smoke is, right there?

Q. Yes.

A. It is about even with it, like that.

Q. Right even with the smoke?

A. About that, where the freight car was standing, right there.

Q. Do you know what the freight car was there for?

A. Yes, it had corn for the broom works in.

Q. How long had it been there, do you know?

A. I don't know, a couple of days, about two days.

Q. After he looked back, did you see him any  
10 more?

A. I didn't see him any more; I went to Joe's machine, a fellow named Joe, talking to him.

Q. When he did look back you were still at the open window, were you?

A. The open window, yes.

Q. From the time you started talking to him up to the time he looked back, had you heard any whistle of any train?

A. Had heard no whistle.

20 Q. Had you heard the crossing bell?

A. No.

Q. From where you were at the open window, could you have heard the whistle of the train if it had blown?

A. Sure, I could have heard it if the window was open.

Q. And from that open window could you have heard the crossing bell if it had been ringing at that time?

30 A. Yes, I could have heard it.

Q. Now, you turned and went toward the other machine, you say?

A. Yes.

Q. Then what next did you notice?

A. I heard two blows, that is when it hit him, you know, and I went out there and looked, and it was Mike got hit.

Q. Did you hear any other whistles except those two blasts?

A. That is all I noticed.

Q. Were they the usual sound of a whistle when it blows for a crossing or were they different?

A. I don't know, just gave two blows, you know.

Q. Well, what made you go out when it gave those two blows?

A. Well, I seen all the rest of them running and I ran, too.

10

Q. Did you hear the train go by?

A. Yes, I heard the train go by.

Q. When it went by the factory were there any whistles blown by the train?

A. I didn't hear no whistles.

Q. Did you hear the bell of the train?

A. Didn't hear no bell either.

Q. And was it after it got by the factory that these two sharp blasts were blown?

A. Yes, sir.

20

Cross-examination.

By Mr. Bourgeois:

Q. John, how long have you worked in the broom factory?

A. I worked about three months with him there.

Q. Yes, but I mean how long since you first went to work there?

30

A. Well, it is about two years.

Q. Did you work all through the winter time?

A. All through the winter; I stayed home in the summer.

Q. What kind of brooms do they make there?

A. Well, they make parlor brooms, Government brooms.

Q. Is that a pretty large building, that broom factory?

A. Yes, a big building.

Q. And it has a lot of shafting overhead, doesn't it, with wheels on it and belts running over those wheels down to the lower part of the building, machines?

A. Pulleys, you mean?

Q. Yes, pulleys.

10 A. Yes, it has pulleys, pulleys and belting.

Q. How many shafts are there along the top of the building, how many rows of shafting?

A. What do you mean, a long shaft?

Q. Yes.

A. Well, there is two of them, one for the sewers and one for the broom makers.

Q. That run down from pulleys on the shafting to pulleys on the different machines?

A. Yes.

20 Q. What kind of machines do they have in there?

A. Broom making machines and sewing machines.

Q. You call them stitching machines, don't you?

A. Call them sewing machines.

Q. Are they what they sew the broom with across the top?

A. Yes.

Q. And they make a lot of noise, do they, clapping?

30 A. I worked on the Baltimore machine; there are two different kinds. There was only one working there that night; you see, I had quit there, looking out of the window, and only one was working there, the ones that make the noise.

Q. Now, that shafting along the top makes noise, too, don't it?

A. What do you mean, that shaft that goes around?

Q. Yes.

A. The long one?

Q. Yes, all of it.

A. That don't make much noise.

Q. It makes some noise, don't it?

A. A little, sure.

Q. Then you have something else there; you have what they call a sword, don't you, for cutting the broom with?

A. To cut the broom? 10

Q. Yes, to cut it off with; don't you have what they call a sword there?

The Court: A knife?

A. Yes, they have a knife, cut it by hand.

Q. Cut it by hand?

A. Yes.

Q. And how many of those stitching machines are there in there? 20

A. Seven.

Q. Now, when those stitching machines are running, you can't hear what is going on, can you, on the outside very well?

A. No.

Q. You have to be right at the window and listen watchfully to hear what is going on on the outside, don't you?

A. I know, but that night there was only two of them — 30

Q. I didn't ask you that. On that particular night, you were not expecting any accident, of course, were you?

A. No.

Q. You didn't think that Palladino was going to get struck?

A. No.

Q. You weren't thinking anything about whether the trains were coming or not coming, were you?

A. Well, I was near the window, see?

Q. I didn't ask you that; I want to know if you were thinking anything about it; you weren't thinking a thing about it, whether the train was coming or not, were you?

A. No, I wasn't thinking anything about it.

Q. And you weren't paying any attention to the  
10 trains, were you?

A. I wasn't paying no attention.

Q. Palladino asked you to go with him, you told him you wouldn't go, he went off and you went on about your own business?

A. I just stood by the window and waited for another fellow.

Q. Without thinking whether the train was coming or not coming, and without listening for bells or whistles of any kind, weren't you?

20 A. Yes.

Q. And it is a fact, isn't it, John, that trains go past that factory time and again and you don't hear them, don't they? Trains go past that broom factory when you are in there and you don't hear them at all?

A. Sometimes I hear them.

Q. And sometimes you don't? It depends on whether you are listening for them, or whether there is a lot of noise in there, don't it?

30 A. Yes, sir.

Q. Now, John, you say there was a freight car on the switch; you said, on the first switch?

A. Yes.

Q. That means the first one that you come to? It is the second one from the southbound track of the railroad, isn't it?

A. The first one right near the broom works.

Q. Yes, but, I mean, that is the furthest one over toward the White Horse Pike?

A. Yes, sir, toward the White Horse Pike.

Q. The furthest one away from the middle of the railroad track?

A. Yes.

Q. Now, that car you say had been there for two days; it remained there for two days afterward, didn't it?

A. I don't know how long it stayed there. 10

Q. Well, don't you remember it was there the next day?

A. It was there the next day, I know; I don't know if it was two or three days.

Q. You don't know whether it was there the day after that or not? You don't recall whether it was there the second day or not?

A. I don't recall whether it was there the second day, but I know it was there the first day after.

Q. You stop work at that factory at five o'clock, 20 don't you?

A. Yes.

Q. And go to work at eight in the morning?

A. Seven.

Q. And work until twelve?

A. Until twelve and start at one.

Q. And work until five?

A. Yes.

Q. Now, I understood you to say that the motorcycle did not make very much noise; was I right in 30 that or did I misunderstand you?

A. That is right.

Q. Well, don't a motorcycle make considerable noise when you start it off?

A. Well, when you open the muffler it makes more noise than when you shut it.

Q. And he was just starting the machine off, wasn't he?

A. Yes.

Q. And when he got opposite the first end or nearest end of this fence, I will call it, then he turned back and you saw no more of him?

A. I didn't see him, any more of him.

Q. And you don't know what noise he was making as he approached this crossing, do you?

10 A. No.

Q. All you know is the noise he was making just as he got on his machine to leave?

A. Yes.

Q. How far is it from the end of that fence where you say he looked back up to the crossing where he turned across, do you know?

A. How far from there?

Q. Yes, is it about two hundred feet?

A. I don't know; it is about from here to that  
20 building.

Q. That building over yonder?

A. Right here, yes.

Q. That is more than two hundred feet, isn't it? That is about four hundred feet, isn't it?

A. I couldn't tell you whether it is four or six.

Q. You mean the building, the brick building here that you see out of this window?

A. Yes.

Q. And after that, you went about your work?  
30 What was your work?

A. Sewing.

Q. Went back to sewing a broom again?

A. Yes.

Q. Then you didn't hear anything more of it, or know anything more of it until the blast from the engine or the whistle?

A. When I heard the whistle, that is the only thing.

Q. Wasn't the locomotive whistle almost directly in front of the broom factory when it first blew, and wasn't that why it attracted your attention, because it was right directly in front of you?

A. When I heard it blow, it was almost on the crossing.

Q. Didn't you hear it blow when it was almost directly in front of the broom factory?

10

A. No, I didn't hear —

Q. You heard two blasts, didn't you?

A. Yes, after I left the window the express went by. When it got almost to the crossing I heard it blow, I seen all of them running and I ran too.

Q. Did you go back to your machine and do any stitching?

A. No, I didn't go back to my machine.

Q. Didn't do anything at all?

A. I had my overcoat on ready to go.

20

Q. Well, what particular need did you have for an overcoat on the twentieth day of August?

A. The 20th of August?

Q. Yes, this happened on the 20th of August. Now, what particular need did you have for an overcoat on that day?

A. I had it on.

Q. Had your overcoat on?

A. Sure.

Q. Well, after you got it on, were you warm enough?

30

A. Sure, I was warm enough, couldn't be cold.

Q. Now, do you think you had an overcoat up there?

A. Sure, I had an overcoat.

Q. And undercoat?

A. No, I didn't have no undercoat; I had a sweater on.

Q. A sweater?

A. Yes.

Q. And shirt?

A. Yes.

Q. Is that all you had, just a shirt and sweater and overcoat?

A. Yes.

10

The Court: When did this happen, August?

Mr. Bourgeois: The 20th of August.

The Court: It was a cold summer, but I didn't think it was that bad.

Q. That overcoat hadn't been sewed on you, had it, so you couldn't get it off?

20 A. Didn't you never see anybody wear an overcoat in summer, the 20th of August?

Q. Let me ask you again, are you sure that you had an overcoat on that day?

A. Sure I had it on, I know I had it on.

Q. And that is what you were doing when they blew the whistle, putting your overcoat on?

A. There is Joe there, he can tell you; I was talking to him.

30 Q. Well, what did you have the window up for if it was the kind of weather that you needed an overcoat?

A. When you work it is warm in there; we had all the windows open.

Q. Warm enough to have the windows open but cold enough to have an overcoat?

A. When you go out in the morning it is a little chilly, isn't it?

Q. Yes.

A. Well, you have to have an overcoat.

Q. That is the way it was on that 20th of August?

A. Yes.

Q. You are quite sure that is the way it was?

A. Yes.

Q. You had the windows open—what did you have the windows open for?

A. Because it is warm in there in the day, you know the way it is in the day; I couldn't have my overcoat on when I was sewing. 10

Q. You had the windows open to keep cool?

A. Sure.

Q. Then you put your overcoat on to keep warm—that is right?

A. Sure, I was going home, had to take it home with me.

Q. Had the overcoat been there since the winter before or had you brought it the same day?

A. No, I brought the overcoat with me in the morning, wore it in the morning. 20

By Mr. Woodruff:

Q. What time did you and Mike come up to the broom factory in the morning to go to work?

A. In the morning? I didn't ride up with him in the morning.

Q. Didn't ride up?

A. No, just came from Tansboro in the morning, just used to come home at night. 30

Q. You wouldn't ride up with him in the morning, but ride with him at night?

A. Going home, he was going toward Dunbarton, I was going toward Tansboro. He would go home, out to his supper, and come back.

Q. There at the factory, how did you work? What kind of clothing in the factory?

A. What kind of clothing?

Q. How much clothing did you have on when you worked in the factory?

A. I just had my sweater.

Q. Sweater and trousers?

A. Yes.

Q. What kind of overcoat was it you wore back and forth from work?

10 A. These short ones you know, just come up about as far as your coat, just like a jacket, but a little longer.

Q. And you didn't wear any other coat?

A. No.

Q. Is that what you wore when you rode back and forth on the machine?

A. Sometimes I did, yes.

Q. What have you got on now?

20 A. A jacket.

Q. That is not an overcoat.

A. No, it is like an overcoat.

Q. The overcoat was different from that, was it?

A. Yes, different.

Q. Heavier?

A. It was an overcoat, only one of them short ones, is all.

Q. A heavy coat that goes on the outside in winter—that is what you mean, is it?

30 A. Yes.

JOHN PASSARELLA, SWORN.

By Mr. Woodruff:

Q. John, where do you live?

A. Why, I live in Dunbarton.

Q. Are you married?

A. Yes.

Q. Where do you work?

A. Atco Broom Works.

Q. Did you work there last August when Michael  
Palladino was killed? 10

A. Yes.

Q. Did you see him when he left for home that evening?

A. No, I saw him when he went by the window as I was working, yes.

Q. Which part of the broom factory were you working, nearer to the crossing than John Graziano?

A. Right near to the track, the first window that is  
in the brick building. 20

Q. The first window in the brick building nearest to the frame building?

A. Yes.

Q. That would be the first window toward the crossing?

A. Toward the crossing.

Q. Now, you saw him when he went by that window, did you?

A. Yes.

Q. Were you working at your machine at the time? 30

A. Why, when he went by, yes.

Q. When he went by, you were?

A. Yes.

Q. Was the train passing at that time?

A. No, sir.

Q. After he went by you didn't see him any more, I suppose?

A. No.

Q. When did you hear the train after that?

A. Why, I heard the train after it hit him at the crossing, that is all I know.

Q. What did you hear there?

A. Why, they blowed so quick, as if somebody was hurt, killed, something like that.

10 Q. How many times did it blow?

A. I don't know, four or five times, I guess.

Q. Do you remember how many times it blew?

A. No, I couldn't tell you.

Q. You don't remember, but you remember that it blew quick?

A. Yes.

Q. Was it the same kind of blow that they would make for an ordinary crossing?

A. No, sir.

20 Q. Now, had you seen the train go by the window?

A. Yes, sir.

Q. Was that after Michael had gone by the window?

A. After he had gone by, yes.

Q. Was it blowing any whistle when it went by the window?

A. No, sir, not at the window.

By the Court:

30 Q. Did you stand at the window facing the railroad?

A. No, I was standing at the machine facing the railroad.

Q. No, but I mean, was there a window facing the railroad where you were?

A. Yes.

- Q. Were you looking out or looking the other way?  
A. Why, I was looking out of the window at the machine, standing in front of the machine.  
Q. Did you see the train when the train went by?  
A. Yes.  
Q. You say it was not blowing or sounding any whistle or bell then?  
A. Not when it hit the shop there, no.  
Q. Not when it passed your shop or factory?  
A. No.

10

By Mr. Woodruff:

- Q. No bell there at that time?  
A. No.  
Q. And you did not hear any whistle before that on that train?  
A. No, sir.  
Q. Now, you have a motorcycle, or did have at that time like Michael's, didn't you?  
A. Yes.  
Q. Had you inspected Michael's machine that day or the day before, looked it over?  
A. Yes, the day before and the same day.  
Q. What condition was it in?  
A. Why, it was in first class condition that day.  
Q. Running quietly?  
A. Yes, sir, that is, when he had his muffler closed. Of course, you open them up when you start and they make a little more noise; you close them after you get going.  
Q. Do you recollect whether or not the muffler was open when he went by the window?  
A. Why, I couldn't say.  
Q. You don't recollect hearing it?  
A. No, sir.

20

30

Cross-examination.

By Mr. Bourgeois:

Q. You don't close your muffler until after your motor heats up, do you, gets warmed up?

A. No, sir, you close your muffler as soon as you get started, throw your clutch in and you close your muffler and you are all right.

10 Q. You don't wait until your motor heats up?

A. Well, you do that on a stand, see?

Q. But if you don't do it on the stand, then as soon as you start out you let it be open, don't you?

A. Then you can't start as you want to.

Q. How quickly can you stop when you are running a motorcycle?

A. I can stop fifty yards, that is going a big gait, about sixty miles.

20 Q. How quickly could you stop if you were going, say, eight miles an hour?

A. I could stop it in ten feet.

Q. And going at ten miles an hour about how many feet, twelve or fifteen?

A. Well, something like that, I guess. I never figured on how long it took me to stop, but something like that.

Q. Now, you were not expecting any accident that afternoon, of course, were you?

A. No, sir.

30 Q. Thought nothing about it?

A. No, sir.

Q. And you were not listening for any train whistles, were you?

A. No, sir.

Q. And you were not listening for any train bell?

A. No.

Q. Just simply attending to your own business?

A. Yes.

Q. And the trains go past your place so frequently, I suppose they sometimes go past and you never notice them at all, don't they?

A. Why, yes, I notice every train that goes by there.

Q. You think you do notice them?

A. Yes.

Q. And it becomes almost second nature to you, 10  
going by there, don't they,—you think nothing of it?

A. I think nothing of them but I see them go by there.

Q. As I understand, with your machine, you stand facing that way?

A. I was facing that way.

Q. What kind of machine were you working on?

A. Baltimore.

Q. And what kind of machine is that—does that  
make much noise or not? 20

A. Well, it makes a little more noise than another machine.

Q. They all make enough, don't they?

A. Well, the other ones don't make as much.

Q. They make so much, don't they, that when you are in there, you can't talk with one another unless you get right close to each other?

A. No, I could talk from here to you, talk while it was going.

Q. You think you could? 30

A. Yes.

HUMBERT DI FALCO, SWORN.

By Mr. Woodruff:

Q. Where do you live, Humbert?

A. Atco.

Q. Did you work at the broom factory at the time Mike was killed?

A. No, sir.

10 Q. What kind of work were you doing?

A. Farming.

Q. And have you done any other kind of work?

A. Automobile repairing.

Q. Were you doing any other work just before or just after the time he was killed?

A. Why, I was repairing an automobile.

Q. Did you see the crossing the day that Mike was killed?

A. Yes, sir.

20 Q. How soon afterward?

A. About five minutes.

Q. Where were you when the accident occurred or when you first heard of it?

A. At the Atco Garage.

Q. That is over at the White Horse Pike, isn't it?

A. Yes.

Q. Then did you go right down to the crossing, immediately?

A. Yes.

30 Q. Was Mike's body still there?

A. Yes, sir.

Q. Did you have any cause to notice whether or not the bell was ringing while you were there?

A. The bell was not ringing when I was there, because the train had gone away.

Q. That train had gone away?

A. Yes.

Q. And while you were still there and the crowd was still there, did another train come along?

A. Yes.

Q. Going in the same direction?

A. Yes.

Q. Toward Atlantic City?

A. Yes.

Q. Did anything happen when that train came along?

A. Why, Mr. Smith nearly got killed. 10

Mr. Bourgeois: I object to that as irrelevant.

The Court: That, of course, is not competent unless you are intending to show something about the bell.

Mr. Woodruff: That is what I am leading up to.

Mr. Bourgeois: He was going on to say something entirely different from that. 20

Q. Did you notice whether or not the bell was ringing at that time when the train came down?

Mr. Bourgeois: I object to that; that is irrelevant because this is not an automatic bell.

The Court: I was going to ask what kind of bell it is. 30

Mr. Bourgeois: This is not an automatic bell, therefore —

Mr. Woodruff: We don't know, if the Court please, at the present time whether it is or not; we presume it is automatic until they prove to the con-

trary. According to Mr. Bourgeois' opening it is a bell that is worked by a watchman in which the human element takes place.

By the Court:

Q. How soon after the first train went by that killed the deceased was it that the next train came on?

10 A. Why, I was there about five after; I was there about five minutes, I guess, something like that.

Q. About ten minutes between the two trains, you mean?

A. Something like that, the next train that followed.

The Court: Well, Mr. Bourgeois, why is it not competent?

20 Mr. Bourgeois: Because, if your Honor please, this is not an automatic bell.

The Court: Well, how do we know?

Mr. Bourgeois: Well, you don't know, but I am objecting to it; before it is admissible they have got to show—the burden is not on us; the burden is on them; I am objecting to this because it is not relevant.

30

The Court: Well, a bell that doesn't work ten minutes after an accident—isn't that some evidence that it didn't work at the time of the accident?

Mr. Bourgeois: No, not unless it is an automatic bell, because many of these bells work by contact, you know, as you come along the rail, on the track;

if that were that kind of bell, then there might be some evidence if it did not work immediately afterward, but this isn't that kind of bell, and if they want to show that, they must show it is that kind of bell, which they have not done, and they can't show it. Just as Mr. Woodruff says, the personal element comes into it. Now, this watchman there might have rung the bell for this train and might not have rung it for another train, so the fact that it did not ring on one occasion is no evidence that it did not ring 10  
on another occasion.

Mr. Woodruff: Mr. Bourgeois opened, if the Court please, by saying that there is an automatic bell some four thousand feet —

Mr. Bourgeois: No, I said the current was turned on by the crossing watchman when the train comes four thousand feet above that crossing, he turns the current on, and it goes on until the train passes over 20  
and then it stops.

Mr. Woodruff: When the train is four thousand feet above the main Atco crossing it makes an automatic contact and rings the bell in the watchman's little box or watchhouse; then if he gets that automatic signal he turns on a signal for the next bell at this lower crossing. Now, he must depend on this other automatic signal.

The Court: Well, is that assented to? Is that the situation? 30

Mr. Woodruff: That is the opening of Mr. Bourgeois.

Mr. Bourgeois: That is as I understand it, but that does not make this situation relevant, if the Court please; you can't get away in this situation at the present time from *res inter alia actae*.

The Court: Why is it not as likely to be the fault of the automatic action as it is the human action?

10 Mr. Bourgeois: Well, if the Court please, the burden is not on us to prove it; they must prove their case; the burden is on them.

The Court: No, but they proved that part of your apparatus went wrong.

Mr. Bourgeois: Well, they haven't proven it.

20 The Court: They do prove it when they establish that this bell did not ring when this accident happened. Now, I am not speaking anything about the nature of the proof on that —

Mr. Bourgeois: I think I understand what your Honor means; do you want me to answer that now?

The Court: No, I want you to listen first. Now, when it is also established that ten minutes after there was a simliar failure, is it not some evidence that there was something wrong with the apparatus?

30 Mr. Bourgeois: Not, if your Honor please, if it depends upon human exertion to ring it. Now, take for instance this situation: Here a train went down —

The Court: Well, there is a presumption, is there not, that every man does his duty?

Mr. Bourgeois: No, your Honor, I think not.

The Court: Isn't there?

Mr. Bourgeois: There is a presumption he will do his duty under certain circumstances.

The Court: Well, isn't there a presumption, if that be so, that he did not get the signal?

Mr. Bourgeois: No, because the presumption has got to be proven—you can't put that as a presumption to this jury; it is not a presumption of fact. Let me show you why: Suppose this train went down, the first train that caused this accident, and the man rang that crossing bell for that train and an accident happened and ten minutes afterward this man says another train goes by, would it be strange if the man in the box failed to ring for the second train with all the excitement that had happened just ten minutes before? Would it be evidence because his bell didn't ring then that the first one hadn't? 10 20

The Court: On the other hand, wouldn't it be the strongest evidence, if he knew an accident had just happened that he would make sure the second one did not arise from the same thing?

Mr. Bourgeois: That might be or might not be, but what I am trying to say to your Honor is this, that they first have to show just what the situation is there. Because the bell did not ring on one occasion afterward is no evidence that it did not ring on the previous occasion where the bell is not an automatic signal. It is partly automatic. 30

The Court. They are trying to show that the bell in the little house did not ring.

Mr. Bourgeois: That is not what they are trying to show.

The Court: Yes, they are trying to draw an inference that that is what happened exactly.

10 Mr. Bourgeois: If the Court please, you can't draw an inference that the bell did not ring when the train had an accident because of the fact that at some other time another bell that gave the signal to the man whose duty it was to ring the bell may not have rung. You are going to go backward. It is going to be argued that because the bell did not ring for the second train, therefore, the bell did not ring for the first train, and therefore, the bell in the little house did not ring because the man did not ring the  
20 second bell. Now, if the Court please, I don't think you can go that far legally.

The Court: I rather supposed it was going to be argued that the first bell did not ring because there was something wrong with the contact, and that the second bell did not ring for the same reason—is that right?

Mr. Woodruff: Certainly.

30 The Court: I think I will admit the evidence, I think the presumption being that human agencies perform their duty until the contrary is shown.

(Exception noted for the defendant.)

The Court: And where it appears that there is a failure so closely connected as to indicate that it may be a part of the system that fails, it is relevant. Note an exception.

(Question repeated.)

Q. This second train, did the bell ring for this second train?

A. No.

Q. Were you very near to the bell at the time the second train came? 10

A. I was standing where the body was.

Q. And how many feet was that from the crossing?

A. I judge about a hundred feet, a hundred and twenty-five feet.

Q. Further on down past the crossing?

A. Yes.

Q. Now, Mr. Di Falco, had you been across that same crossing the day before? 20

A. Two days before that.

Q. What time in the day?

A. About 10.30, around that neighborhood, not exactly, something like that.

Q. Going which direction?

A. Toward Atco, but crossing over that crossing to go toward the broom works.

Q. Just the opposite direction from that which Mike was evidently going?

A. Yes. 30

Q. Did you stop there for a train?

A. Yes, sir.

Q. Did the bell ring for that train?

A. No, sir.

Mr. Bourgeois: Now, if the Court please —

The Court: It is the same question.

Mr. Bourgeois: Two days before?

The Court: It is the same question.

Mr. Bourgeois: The thing I object to is because the witness answers after I object and before the Court has an opportunity to rule.

10 The Court: I think he was pretty speedy, but I think the record will show the objection came after the question was answered.

Mr. Bourgeois: Well, I say that is not relevant, because it is *res inter alia actae*.

The Court: Well, gentlemen, at present my inclination is that anything that goes to show at or about this time a defect in the system that the jury  
20 would in any way be justified in connecting up with the present occurrence would be relevant, and I am not prepared to say that a condition two days before would not be relevant under those circumstances. That being so, I think I ought to admit the question and note an exception, although I do think that you will meet the question as to whether or not the plaintiff is not entitled to have it in on the record.

Mr. Bourgeois: I didn't catch that, if the Court  
30 please.

The Court: On the state of the record, as to the timeliness of the objection, I mean; I think you will find the question was answered, and while the witness was prompt he wasn't any more so than witnesses usually are or very often are.

Q. Now, Mr. Di Falco, that wasn't the day before the accident, but the day before that?

A. Yes, sir.

Q. Now, after the accident did you go to work at or near that crossing?

A. Why, about three or four days after that I worked near that crossing.

Q. And what kind of work were you doing there?

A. Hauling stone.

Q. Do these pictures show where you were working? 10

A. No, sir.

Q. This freight car that stands here by the pole, the post on which the bell is located, for what purpose is that freight car there?

A. Why, stone, we were hauling stone out of there.

Q. You were hauling stone out of that freight car to the White Horse Pike?

A. Yes.

Q. Now, at the time a few days after Mike's death when you went there, you were not working from the freight car? 20

A. No, sir.

Q. Where were you hauling stone from?

A. Hauling stone right close to the crossing there; we have a storage pile there.

Q. And where was the storage pile, which side of the crossing, on the side where the bell is or on the side toward the broom factory?

A. On the side where the bell is.

Q. And below the crossing toward Atlantic City or above it? 30

A. Below.

Q. How close to that crossing is it?

A. About fifty feet.

Q. Now, after you went back there to work, did you observe whether the bell was ringing or not?

Mr. Bourgeois: Wait, hold on; don't answer; I object because it is irrelevant and immaterial.

Mr. Woodruff: This is a few days following the accident, if the Court please, and these men were working right there at the bell.

The Court: Mr. Bourgeois, how long do you think —

10

Mr. Woodruff: I am now going to show when it began to ring again, first that it didn't, then that it began and why it began.

The Court: I will admit it; note an exception.

(Exception noted for the defendant.)

Q. Now, did it ring when you first went back there  
20 to work?

A. No, not when we first went back there to work.

By the Court:

Q. This was how long afterward?

A. About three or four days; about one o'clock that day there was two men came down there to repair it, about one or two o'clock.

30 By Mr. Woodruff:

Q. Now, after it was repaired by those two men, did it ring when the trains came by?

(Objected to as irrelevant and immaterial.)

A. Why, it did and it didn't.

(Objection overruled and exception noted.)

Q. What do you mean by that answer?

A. Sometimes it did and sometimes it didn't, as far as I could notice.

Q. Now, Mr. Di Falco, were you there at the accident when this picture was taken or were you there at the crossing when this picture was taken?

A. I was there at the crossing.

Q. How soon after Mike's death was that picture taken? 10

A. About two days.

Q. Does that show a freight car on the siding?

A. Yes.

Q. The same car that was there the day he was killed?

A. The same car, yes, sir.

Q. Does that show the same condition as when he was killed, on the day he was killed?

A. Yes, sir. 20

Mr. Woodruff: I offer this.

(Said photograph is marked Exhibit P5 for the plaintiff.)

Cross-examination.

By Mr. Bourgeois:

30

Q. You were engaged at the garage on the White Horse Pike, as I understand, where it is intersected by the road leading from Atco west?

A. Yes, sir.

Q. And how far is that garage from the Atco station, is it half a mile?

A. A quarter of a mile.

Q. Isn't it more than a quarter of a mile?

A. No, sir.

Q. And from the Atco station down to the crossing of the accident is something more than a fifth of a mile, practically another quarter of a mile?

A. No, it is not a quarter of a mile.

Q. How far is it?

A. I judge about a fifth of a mile.

Q. Well, then, it is a fifth of a mile and a quarter of a mile—that is practically half a mile, isn't it?

10 A. Yes, sir.

Q. All right; now, you say you were there five minutes after the accident; how do you know when the accident happened?

A. Why, I seen somebody came up with a car after the accident, but somebody telephoned to the garage as soon as it happened.

Q. Well, where did they telephone the garage from?

20 A. I don't know.

Q. And you waited until they came there with the car, didn't you?

A. No, I jumped in another car and drove down there right away after the accident.

Q. How do you know then that somebody came up there with the car?

A. As I was going, I passed this fellow that was coming up to tell us there was an accident there.

Q. Why was he coming up to tell you?

30 A. Because I was a friend of this Michael Palladino, because I had just got through repairing his motorcycle.

By Mr. Woodruff:

Q. Oh, had you overhauled this motorcycle?

A. Yes.

Q. How long before the accident?

A. I judge two or three days.

Q. And after you had overhauled it, did it run quietly?

A. Yes, sir.

By Mr. Bourgeois:

Q. All motorcycles run quietly, don't they?

A. Well, they run quietly if they are not pounding and knocking the exhaust pipe or no muffler on or anything like that.

Q. Run just as quiet as we hear them running along the road?

A. That is according; you are not allowed to run with your muffler open.

By Mr. Woodruff:

Q. Was this a new machine or an old one? 20

A. It was not a new machine; it was '16.

Q. 1916 model?

A. Yes.

---

PETER PASSARELLA, SWORN.

By Mr. Woodruff:

Q. Where do you live, Peter? 30

A. Atco.

Q. Did you work in this garage?

A. No, sir.

Q. With Di Falco?

A. No.

Q. You didn't work there?

A. No.

Q. Where were you working on the day of the accident?

A. Right there at the stone heap, but I wasn't there to see the accident.

Q. You weren't there to see the accident, but that day you were working there at the stone heap?

A. Yes, I was hauling stone from the heap and bringing it to the road.

Q. Where they are making a new White Horse  
10 Pike?

A. Where they are making a new White Horse Pike.

Q. How many days had you been working there at that stone pile?

A. Four or five days.

Q. How close is the stone pile to the crossing where Mike was killed?

A. About fifteen feet.

Q. It is on which side of the crossing, on the side  
20 where the electric bell is or the other side?

A. On the same side.

Q. On the same side as the electric bell?

A. Yes.

Q. Did you notice whether or not the electric bell was ringing on the day of the accident or previous days?

Mr. Bourgeois: I object to any time excepting for  
30 this particular train.

A. That bell never did ring.

The Court: I will overrule the objection; note an exception.

Q. Yes, while you were working there on these days before —

A. Yes, I was crossing that crossing several times, and the bell never did ring when the trains go by.

Q. Was that also true on the morning of the day when the accident actually happened?

A. Yes, sir.

Q. Now, were you working there after the day of of the accident with Di Falco?

A. Yes, sir.

Q. He came there to work with you, did he, after that?

10

A. Yes.

Q. And did the bell ring the next day?

Mr. Bourgeois: I object to that.

The Court: The objection is overruled and an exception noted.

A. The bell did ring the next day.

Q. What happened before it rang, if anything?

A. Why, what did happen, why, they sent two men down there to fix it.

20

Q. Were you there at the stone pile at the time it was fixed?

A. Yes.

Q. You saw them working on it?

A. Yes sir.

Q. Now, had it rung up until the time they did that work?

A. Well, now and then maybe it did ring for a while, then she would go off maybe, several trains would pass by and she wouldn't ring at all.

30

Cross-examination.

By Mr. Bourgeois:

Q. You are a friend of Palladino's too?

A. No, sir, I am no Palladino.

Q. I say, were you a friend of his?

A. No.

Q. An enemy—were you an enemy?

10 A. I wasn't an enemy, but I wasn't a friend of him.

Q. You say the bell rang the next day after the accident?

A. Yes.

Q. About what time of the day?

A. Well, it rings when they put the bell on, but don't when they don't put the bell on, it won't ring.

Q. Oh, then if you put the bell on it rings?

A. Sure.

20 Q. And if you don't put the bell on it don't ring?

A. That is the way that bell is down there.

Q. And that is the way it was all that time, wasn't it? If you put the bell on it rang, didn't it?

A. Well, it would ring sometimes, yes.

Q. If you put the bell on it always rang, didn't it, every time you put it on?

A. Maybe he thought it rang anyhow when he did put it on.

30 Q. I don't care anything about that; I want to know if it did not ring while you were working there—I don't care anything about that—if they turned the current on the bell rang, didn't it?

A. No.

Q. How do you know?

A. I know it because I was working there.

Q. How do you know they put the current on?

A. That was up to the flagman.

Q. I didn't ask you that; I asked you how you know they put the current on?

A. I don't know.

Q. That was up to the flagman, wasn't it?

A. Yes.

Q. All you know, it didn't ring?

A. All I know, it didn't ring.

By Mr. Woodruff:

Q. When do you mean it rang off and on?

10

A. After they fixed it.

---

TONY PALLADINO, SWORN.

By Mr. Woodruff:

Q. Mr. Palladino, you were the father of Michael?

A. Yes, sir.

20

Q. When was his birthday, what month?

A. The 10th of December, the 10th of this month.

Q. The 10th of this month?

A. Yes.

Q. How old would he have been the 10th of this month?

A. Nineteen.

Q. Nineteen?

A. Yes.

30

(No cross-examination.)

MARGARET PALLADINO, SWORN.

By Mr. Woodruff:

Q. How old are you?

A. Eighteen.

Q. You are the widow of Michael Palladino?

A. Yes.

Q. Where do you live now?

10 A. In Tansboro.

Q. You live with your father and mother down there on the farm?

A. Yes.

Q. When were you and Michael married?

A. The second of July.

Q. Of this past year?

A. Yes, sir.

Q. And where did you live after you were married?

20 A. With my father.

Q. And where did Mike live?

A. With us at night.

Q. And how did you arrange about your meals?

A. Why, he had his breakfast at our house, then he went to work, then he ate his dinner down at his home and went back to work and ate his supper at his home, and came over to our house and stayed at night.

Q. And after breakfast he would go to work?

30 A. Yes.

Q. Did he go to work at his regular hour on the morning that he met his death?

A. Yes.

Q. How long had he worked at the broom factory, do you know?

A. Why, he had worked there two or three times, but the last time he had worked there all summer.

Q. Did you work there at one time?

A. Yes, sir.

Q. Is that where you met him?

A. Yes, sir.

Q. After you were married, what did Michael do with his money when he would get it?

A. He gave it to me.

Mr. Bourgeois: I object to that as irrelevant and immaterial.

10

The Court: I do not see the point of the objection.

Mr. Bourgeois: I say it is irrelevant and immaterial; it makes no difference what he does with it.

The Court: Isn't it of some consequence what benefit this is to the next of kin?

Mr. Bourgeois: Yes, what it is in the future, but not in the past.

20

The Court: Can you gauge the future in any way except by the past? Suppose he squandered all his money, wouldn't that be some evidence that they would not get it in the future?

Mr. Bourgeois: I don't think so.

The Court: I think it would; I think the use they got from it in the past is some evidence of what use will be made of it in the future; I don't see otherwise how you would make any headway.

30

(Exception noted for the defendant.)

Q. What would he do with his pay envelope?

A. He gave it to me.

Q. And do you know how much he made?

A. From \$28.00 to \$35.00.

Q. From \$28.00 to \$35.00?

A. Yes.

The Court: Do you know of any ruling that holds to the line of the objection you are making?

Mr. Bourgeois: If the Court please, except the  
10 general rule of all these cases.

The Court: As I understand, they are entitled to have the benefit of whatever amount he makes.

Mr. Bourgeois: Oh, no, they are not entitled to that.

The Court: Not the amount he makes, but to be based on that.

20

Mr. Bourgeois: I don't think that a person is——

The Court: Don't you think it would be important to show what the relations are between a man and his family, as to whether or not there is a likelihood of their deriving a benefit in the future? Suppose these people were estranged entirely, didn't live together, and there simply was a legal relation of husband and wife, and there had been no benefit derived  
30 at all, don't you think you would be entitled to show that circumstance?

Mr. Bourgeois: I am trying to think of a case I tried down in Atlantic County where I took it up on that ground, and I did not succeed, the Court overruled it. It was a case where the father was killed, and I endeavored to show, I thought did show, as

a matter of fact, that the son had never received any benefit from him whatever, and yet the Court sustained the verdict. I cannot remember that case, but I will get it for you and look at it and see what it does say.

The Court: Isn't this a very usual mode of proof on that? It comes in in almost nine cases out of ten that I hear.

10

Mr. Bourgeois: Well, I will try to get the case for you; I can't recall just the name of it now. I remember the facts, remember where the accident happened, but I can't recall the name.

The Court: Did the Court pass upon the question itself?

Mr. Bourgeois: Yes, because I took it up on that question, on the ground of the amount of the damages in the Supreme Court. I will find it for you tonight so we can have it. 20

Q. How did your husband take care of you after you were married?

A. Fine.

Q. When you would get this \$28.00 or \$35.00 out of the envelope, what would you do with that money?

Mr. Bourgeois: I object to that as irrelevant and immaterial. 30

The Court: The objection is overruled. I think it all goes to the same proposition.

A. We were saving it to buy furniture with.

Q. Did you spend any of it from week to week?

A. Yes.

Q. What would you have to spend?

A. For clothing.

Q. Did you buy any clothing during that time, from the time you were married until he was killed?

A. Yes.

Q. Who did you buy clothing for?

A. He bought a suit.

Q. And did you have any other expenses?

A. Yes, sir.

10 Q. What other expenses would you have?

A. Well, different things. I had to buy clothing for myself, different little things.

Q. And did he have any habits that were expensive?

A. No, sir.

Q. Did he smoke?

A. Yes, sir.

Q. And how did he get the money for his smoking?

20 A. He just took a little out of his pay envelope, about a couple of dollars.

Q. He would take a couple of dollars every week for his own use, would he?

A. Yes, sir.

Q. And did you use any of that money for furniture before he was killed?

A. No, we deposited some on furniture, but we had to send it back again on account of his death.

Q. Had you arranged to take a house?

30 A. Yes sir.

Q. And were you to look at it the afternoon he was killed?

(Objected to as irrelevant and immaterial.)

Mr. Woodruff: All right, I will withdraw that.

The Court: We are getting into a speculative situation now.

Q. What was Michael's health?

A. Good.

Q. How long had you known him before you married him?

A. Over two years.

Q. And after you married him was he sick at all?

A. No, sir.

Q. Did he work steady?

A. Yes, sir.

10

Cross-examination.

By Mr. Bourgeois:

Q. Did you put the money you saved in bank?

A. No, sir.

Q. What did you do with it?

A. Kept it.

Q. Kept it?

A. Yes.

Q. What sort of work did Michael do at the factory?

A. He made brooms.

Q. What did you do when you were there?

A. I sorted broom corn.

Q. Sorted it?

A. Yes.

Q. How long had he been making \$28.00 to \$35.00 a week, just during the war?

30

A. Ever since we were married; before we were married.

Q. That is during the war period, I suppose, or didn't it go as far back as the beginning of the war?

A. No, not as I know of; I don't know how much he made before we were married.

JOHN GRAZIANO, recalled.

By Mr. Woodruff:

Q. I show you this picture, Exhibit P5; John, does that show the situation the day that Mike met his death?

A. That there car was there, I know.

Q. The car was there?

10 A. Yes.

Q. Now, in coming out of the broom factory and going down across this crossing on the machine, could you see this train when you came out of the broom factory before you had gotten to the lower side of the freight car?

A. Well, if you got about down here, you can't see it for the freight car, see?

Q. When you get down here—where do you mean by "here" with regard to these posts?

20 A. Right around here by these posts, right around the corner.

Q. When you get to the corner you can't see for the car?

A. No, if that car is there, and there is a curve around there, see?

Q. The curve is where with regard to the Atco Station?

A. There is the station here, and right down just below there is a curve.

30 Q. The curve goes around back of these trees, doesn't it?

A. Yes.

Q. Now, just as you leave the factory, even with that freight car there, is there one place where you can see?

A. Yes, you can see when you are near the freight car there.

Q. Then, when next can you see again?

A. After you get down here you can't see it until you get right near the railroad again.

Q. Then you can't see it until you get right near the railroad?

A. No.

Cross-examination.

By Mr. Bourgeois:

10

Q. Now, John, I think you said in your direct examination that when he looked back he was right beside that first post there?

A. Yes.

Q. Won't you mark it there where he was, with my pencil, where he was when he looked back?

A. Mark it?

Q. Yes, right opposite that post.

A. You see, he was right there; that is where he was, right there.

20

Q. All right, mark it out. That was where he looked back, was it, where that pencil mark is on this Exhibit P5?

A. Yes.

Q. But he was out in the road, was he, or was he right where the pencil mark was? Was he over on the side next to the fence?

A. Yes, he was, the road is all muddy.

Q. He was running alongside here?

A. Yes, that is where he was running.

30

Q. Right over next to the fence or these ties?

A. Yes, right by these ties.

By Mr. Woodruff:

Q. How high were those posts?

A. I don't know how high they are, I never measured.

Q. Were they as high as he was on the bicycle?

A. No, they were lower.

Q. The posts were lower, you mean?

A. Yes, about that high.

By Mr. Bourgeois:

10 Q. About three feet high, weren't they?

A. Yes, about that high.

PLAINTIFF RESTS.

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Mr. Bourgeois: I don't know whether it is worth while for me to make a motion to non-suit or not; I will make it anyway, on the ground of contributory  
20 negligence.

The Court: It will be overruled and an exception noted.

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THE CASE FOR THE DEFENDANT.

ALPHONZO PAUL, sworn.

30 Mr. Bourgeois: If the Court please, the name of the case I was trying to think of was Goldthorpe vs. West Jersey and Seashore.

By Mr. Bourgeois:

Q. Mr. Paul, you live where?

A. 601 North Eighth Street.

Q. Philadelphia?

A. Yes.

Q. What do you do?

A. Well, I was standing down there for about six hours.

Q. No, but what do you do—what is your work?

A. I drive a truck.

Q. Drive a truck for whom?

A. John Betz.

Q. Were you driving a truck on the day of this 10 accident?

A. The accident, you know, was when my machine broke down and I stood there, you know —

Q. Where did your machine break down?

A. On that street, you know, what cuts through, on a little street there, you know.

Q. On the same road?

A. Yes, on the same road the fellow got hit.

Q. You remember when the accident happened, do you remember that an accident happened? 20

A. Yes.

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

A. I was in the middle of the track where that street runs, you know.

Q. Which track were you in the middle of, the one the train was coming on or the other one?

A. No, the other one, right on the side, you know.

Q. How long had you been there at that crossing?

A. Me? 30

Q. Yes.

A. I was there for about nine hours, until about quarter of five, when the express train came, you know.

Q. Why were you there so long?

A. I couldn't get no machine; I had to get a new machine to pull me out.

Q. You had a load of beer there?

A. Yes, I had a big truck.

Q. And you were waiting for another truck to come, is that the idea?

A. Yes.

Q. Where was the other truck coming from?

A. Philadelphia.

The Court: You were not on the track?

10 Mr. Bourgeois: He was on the northbound track when this train came along on the southbound.

By the Court:

Q. And you stayed there all day?

A. Yes, sir, nine hours, I stayed there all day.

Q. And nothing happened to you?

20 A. And this fellow was coming from work about quarter of five when the express train came, you know, and the express train blowed the whistle and the bell was ringing, and this here fellow on the motorcycle, you know, came along, you know, came along, straight along this way, you know, and he comes, hits the train, and the train hits him, you know, took him about as far as that water tank up there, right there by that water tank.

By Mr. Bourgeois:

30 Q. You say the whistle was blown?

A. Yes, the whistle was blown about five times, and they rang the bell; the bell was rung, too, you know.

Q. On the train?

A. Yes, the bell was ringing, too, you know.

By the Court:

Q. What bell do you mean, what bell was ringing?

A. Why, the bell on the car track, you know.

By Mr. Bourgeois:

Q. On that little post, right along by the crossing there?

A. Yes, that was ringing, too, the whistle was 10  
blown and the bell was ringing on the engine, too.

Q. And did this man seem to notice them—did he seem to hear them?

A. No, the machine was making a noise, the motorcycle, you know; he looked down this way, you know, just came there, you know, and hit the train, the first wheel of the motorcycle hit the train, you know, and the train came and hit him, you know, knocked him up in the air, and he flops right on the pavement, that is all. 20

Q. Did you see the man on the motorcycle look at all?

A. What?

Q. Did the man on the motorcycle look back to see the train at all, that you could see?

A. No, looking this way instead of looking down that way, started looking this way, you know.

Q. You say he was looking down at his machine?

A. Yes.

Q. What was he looking down there for, can you 30  
tell?

A. I don't know what he was looking for; he was looking this way at the machine, you know; then he turned his handle bars just around, you know, and the train hit this first wheel, you know.

Q. Well, now, how far down the road or up the

road could you hear the whistle blowing before it came to the crossing?

A. Oh, I had seen the train come down, you know, the whistle was blowing, it came down from the factory, you know, was blowing that whistle and ringing the bell; the bell was ringing too; you could hear it and this fellow was coming down the road, you know, turned around and it swiped him.

Q. And you heard the whistle blown four or five  
10 times, did you?

A. Yes, four or five times it blowed, the engineer blowed it about.

Cross-examination.

By Mr. Woodruff:

Q. Was the whistle blowing when it hit him?

A. The whistle was blowing, sure it was blowing.

20 Q. When it hit him?

A. Sure, it was blowing.

Q. And it began to blow opposite the broom factory?

A. Sure, it started to blow away up at the station; when it was coming up it was blowing, the bell was ringing, too.

Q. Did it blow on the other side of the station?

A. Just this side of the station, right there, you know.

30 Q. On the side toward the crossing where you were?

A. Yes; no, it blowed away down there. I was sitting down on the box.

Q. You were sitting down on the box?

A. I was sitting down, you know, because, you know, the car tracks—I was seeing some Guineas fix the car tracks.

Q. And where was this box?

A. Then I came back again about half-past four or about quarter of five and the express train came; I stood there on the track, you know, I seen the trains come along, you know, heard the whistle was blowing and everything, you know.

Q. You were standing right out in the middle of the other track, were you?

A. Yes, right in the middle of the track.

Q. You were in the middle of which track? 10

A. I was standing right here (indicating on photograph).

Q. Mark an X there where you were standing.

A. And the train was coming this way.

Q. Mark an X here on the track where you were standing.

A. I was standing right there (indicating).

Q. Mark an X there.

A. Right there where that car is.

20

Mr. Woodruff: With your permission, may I make an X there?

Mr. Bourgeois: Yes.

Q. That is where you were standing, was it?

A. Yes, where that car was.

Mr. Woodruff: That is on Exhibit P2.

30

The Witness: Where that car is standing right there.

Q. Was that car there at the time?

A. Sure, that was a coal car.

Q. That was standing there at the time, too, was it?

A. Yes.

Q. Were Italian men in the car unloading stone?

A. I didn't see nobody in the car.

Q. Didn't see any men there?

A. No.

Q. When did you first see this boy on the motorcycle?

A. I seen the motorcycle first when it came out of the broom factory.

10 Q. You could see from there when it came out of the broom factory?

A. Yes.

Q. Were you standing on the track then?

A. Yes.

Q. And you saw him come all the way?

A. The train was coming, coming this way.

Q. Was the train coming then when he came out of the broom factory?

20 A. Yes, the train was coming when he came out of the broom factory.

Q. Did you see him come out of the broom factory and get his motorcycle?

A. No, I didn't see him, just seen him come up with the motorcycle.

Q. With the motorcycle?

A. Yes.

Q. But you did see him when he started with the motorcycle?

30 A. I didn't see him when he started, seen him coming up with the motorcycle.

Q. Where was he when you first saw him with the motorcycle?

A. The first thing I seen him turn around.

Q. You didn't see him until you saw him turn around, is that right?

A. I saw him turn.

Q. You mean you did not see him until he turned to go on the track, across—is that what you mean? You saw him turn around with the motorcycle to go across the track?

A. Yes, the first wheel hit him, you know.

Q. That is what I am trying to find out, when you first saw him.

A. Yes.

Q. How do you know that you saw the train then when he came out of the broom factory?

10

A. I seen this fellow come out, you know, I seen this fellow come on the road, you know, and seen the train afterward, the two was coming together, you know.

By the Court:

Q. You said a moment ago that you saw the train when he came out of the broom factory, did you?

A. No, I didn't see him come out of the broom factory. 20

Q. You didn't see him until he got up near the crossing?

A. No.

By Mr. Woodruff:

Q. Then, when he got near the crossing, the engineer blew his whistle, did he?

A. Yes, blowed the whistle up there, blowed the whistle and bell and everything. 30

Q. Was he blowing the whistle and ringing the bell when he went by the broom factory?

A. Sure he blew the whistle.

Q. All the time?

A. Yes, blew it about five times.

Q. He started to blow it the other side of the Atco crossing, the other side of the main crossing?

A. Yes.

Q. That is where he started to blow it, on the other side?

A. He was coming this way.

Q. Yes, he was coming down, and he started to blow his whistle the other side of Atco Station toward Camden, is that right?

10 A. Yes, he was blowing the whistle all the time he was coming up.

Q. And from the time he started he blew it all the time until he got down to the crossing?

A. Yes.

Q. He didn't stop blowing it?

A. No, he didn't stop; the train was coming right over there.

Q. No, I mean stop his whistle?

20 A. He stopped his whistle when they got at that street there, where this street crosses over.

Q. When he go to where the man was struck, then he stopped?

A. Yes.

Q. Now, what did Palladino do when he came up to the crossing, the boy that got struck—what did he do?

A. I can't understand.

Q. You don't understand that? You saw him coming around those ties, didn't you, these posts?

30 A. Yes, saw him come around that way.

Q. Then when he got right up to the track, what did he do?

A. The train hit him.

Q. Didn't you say he turned his handle bars?

A. No, he was looking this way (indicating).

Q. He didn't turn his handle bars?

A. No, he was looking up that way.

Q. Didn't he do anything with his handle bars?

A. No.

Q. Ran right on into the train?

A. Yes, ran right into the train; he was coming along and just ran into the train.

Q. Was he shaking his handle bars that way?

A. No, just come and turned around ——

Q. Was he shaking his handle bars that way?

A. No, just straight until he turned, and his first wheel hit the train, that is all.

10

Q. He didn't look back toward Atco Station?

A. No, he didn't look back.

Q. Looked down toward Atlantic City?

A. Yes.

Q. So he didn't see you at all?

A. No.

Q. Didn't see you?

A. No, I was the first man who seen it; there was nobody there, you know, on that side.

Q. And you were then right on the next track to him, weren't you?

A. Yes, right on the second track.

Q. How many times have you talked to people about this happening?

A. Oh, this is the first time now.

Q. This is the first time?

A. Yes.

Q. You haven't talked with anybody about it?

A. No.

Q. You haven't talked to the railroad men about it?

A. No.

Q. Haven't talked to any of the railroad men about it?

A. No.

Q. Have you talked to the lawyer about it for the railroad company?

A. No.

Q. How did you come here today—who brought you here today?

A. I got a letter telling me to go to court and I went to court.

Q. A letter telling you to come, but they didn't know what you were going to say—you hadn't told them what you were going to say?

A. I knew what they wanted me to say, what I  
10 was going to speak about.

Q. How did you know the railroad company wanted you?

A. Because I got the paper is all.

Q. Did anybody go to see you?

A. No.

Q. Nobody talked to you about it?

A. No.

Q. You didn't give them any statement?

A. No, sir.

20

By Mr. Bourgeois:

Q. You told me about it this morning, didn't you?

A. Yes.

Q. Then this is not the first time, is it?

A. This is the first time in the court house.

Q. Did you tell anybody anything about it connected with the railroad until you told me this morning?

30 A. I told you about that, you know.

Q. Then I told you we wanted you, didn't I?

A. Yes.

(At this point a recess was taken until Tuesday morning, December 24th, 1918, at ten o'clock A. M.)

Camden, N. J., December 24, 1918.

Trial of the cause resumed at ten o'clock A. M., pursuant to adjournment, in the presence of counsel for the respective parties.

WILLIAM S. LAURIE, JR., SWORN.

By Mr. Bourgeois:

Q. Mr. Laurie, you live where—where do you live? 10

A. I live in Camden.

Q. How long have you lived in Camden?

A. About forty-five years.

Q. You say you lived here forty-five years?

A. Yes, sir.

Q. What is your business or profession?

A. I am a locomotive engineer.

Q. And how long have you been a locomotive engineer? 20

A. Sixteen years.

Q. And before that time, I suppose you were fireman?

A. Yes.

Q. For how many years?

A. Ten years.

Q. Where have you been running as engineer during the past four or five years?

A. Why, in the summertime between Philadelphia and Cape May; in the wintertime between Camden and Salem, Bridgeton, Millville, etc. 30

Q. Have you ever run on any road except the West Jersey & Seashore?

A. On the Philadelphia Division, the P. T. Division, yes, sir.

Q. Now, what were you doing on the 20th of last August?

A. I was running the Cape May express that left Philadelphia at 4.07 and was supposed to arrive at Cape May at 6.10.

Q. And that course, I suppose, was perfectly familiar to you, the road?

A. Yes, sir.

Q. Do you recall if you had an accident on that day?

A. Yes, sir.

10 Q. Will you tell the jury what you saw and just what you know of that accident?

The Court: This was a steam train, I suppose?

The Witness: A steam train; yes, sir.

Q. What did your train consist of?

A. Locomotive and parlor car and six coaches.

Q. And baggage car and tender?

20 A. Yes, baggage car and tender; yes, sir.

Q. Now, tell the jury what you saw of this accident.

A. Well, as you know, there are three crossings passing through Atco, and this train, I judge, was running from sixty to sixty-five miles an hour. Now, we blew the whistle at the north crossing, that is, north of Atco Station, the road crossing signal; we came on down to the main crossing and we blew the road-crossing signal at the main crossing. After going over the main crossing, we blew the

30 road-crossing signal for the other crossing.

Q. That is where the accident happened?

A. Where the accident occurred, and on approaching this crossing I saw a man on a motorcycle running parallel with me, and in an instant it appeared to me he was going to cross the track. I blew the

intermitting sounds, which is an alarm that something is on the track, and I met this fellow right on top of the track.

Q. Now, you saw him from what time—where was he when you first saw him?

A. Why, he was about to make the curve up on the track.

Q. How many times did you blow that whistle between the whistling board there at the main crossing and the crossing where he was struck?

10

A. Well, right after passing the main crossing I blowed the road crossing signal for this crossing, which is two long and two short. I hadn't any more than finished before this obstacle loomed before me and I grabbed the whistle again and gave a succession of short sounds of the whistle; I think I got about five short blasts.

Q. Now, did you have your eye on him all the time, from the time when you first saw him until he was struck?

20

A. Yes.

Q. Did he turn around and look to see if anything was coming?

A. The time that I noticed him look—now, I couldn't say whether he looked before or not, but as he took that curve into the track he turned around, and at this same time his feet struck the ground and the dust began to fly.

Q. How far was he from the first track when you saw him look around and his feet strike the ground and the dust begin to fly?

30

A. I don't think it was over fifteen feet, fifteen or twenty feet, something like that.

Q. How far were you away at that time?

A. Well, I judge, a hundred feet, probably a little more.

Q. And do you know whether your whistle was then blowing?

A. It blowed very close to the crossing; I couldn't say whether it blowed when it hit him or not, but it was very close to him.

Q. It blew up to the time when he could not escape, you could not have helped striking him?

A. Yes, it was impossible.

10 Q. Did his machine continue to run all the time until it was struck?

A. Why, it appeared to me that he stopped when he got up on the rail, he looked up at the locomotive in a distressful manner.

Q. And the machine apparently stopped?

A. Apparently stopped.

Q. Mr. Laurie, who was your fireman that day?

A. Why, a man by the name of Hall.

Q. Do you know whether or not the engine bell was ringing at the time of the accident?

20 A. Yes, sir.

Q. How long had it been ringing?

A. The fireman got up on his box before we reached the first crossing, that is the north crossing to the Atco station, and he remained there and continued ringing the bell throughout all the crossings over the streets through Atco down.

Q. Now, Mr. Laurie, is there any doubt in your mind but that you did blow these whistles you have mentioned?

30 A. Absolutely none; no, sir.

Q. And is there any doubt in your mind but that the fireman rang that bell during all that period?

A. No, sir.

Q. You say you were travelling about sixty or sixty-five miles an hour; is that an unusual or usual speed at that place for you to travel?

A. No, that is the usual speed, yes, sir; we were

about on time at Atco; we passed there about 54; that is our schedule; past Berlin, the station north, at 51.

Q. Now, with your train running sixty or sixty-five miles an hour, that is a train of eight coaches as you had there, including a baggage car, in what distance could you stop?

A. Why, I presume with the equipment that I had between ten and twelve hundred feet.

Q. Was it possible after you saw this man turn his machine and come up on that crossing for you to have stopped that train to avoid the accident? 10

A. No; positively, no.

Cross-examination.

By Mr. Woodruff:

Q. Had you driven that same train the day before? 20

A. Ran that train for four years.

Q. Had you been over the track at any time before that hour on the day of the accident?

A. Yes, sir. On that day?

Q. Yes.

A. No, sir.

Q. How did you come up in the morning?

A. On the northbound track.

Q. The northbound track, but you had come by the station? 30

A. Come by the station.

Q. And drove the engine then?

A. Yes.

Q. Did you notice the day before and on that morning that this freight car was standing by the broom factory?

A. No, I couldn't say that I did.

Q. You didn't notice that?

A. No, sir.

Q. Well, that is a particularly dangerous crossing where this man was killed, isn't it?

A. I couldn't say that it is.

Q. Don't you feel that that is a dangerous crossing there?

A. No, sir, because the road runs parallel with the railroad.

10 Q. When you are on your down trip, you pass through a cut just before you come to the Atco Station, don't you?

A. North of Atco Station.

Q. North of Atco Station?

A. Yes, sir.

Q. There is some elevation there that the train has to pass through?

A. The tracks are depressed, yes, sir.

20 Q. Are the tracks also depressed the other side of what you call the north crossing, is there a cut up by the north crossing?

A. Yes sir.

Q. Where is the whistle post where you blow for the north crossing?

A. Why, about 900 feet north of the crossing.

Q. North of the north crossing?

A. Yes.

Q. Then is there another whistle post for the main crossing?

30 A. Yes.

Q. But there isn't any whistle post for this crossing where this man was killed, is there?

A. That I couldn't say.

Q. Well, it is your duty to look out for whistle posts, isn't it?

A. Yes.

Q. And that is why you blow your whistle, because there is a whistle post that tells you to?

A. We blow the whistle because our rules tell us.

Q. The rules tell you to blow where there is a whistle post?

A. Also at all road crossings at grade.

Q. Where there is a post or not?

A. Yes, as far as my duty is concerned, it wouldn't make any difference about the post.

Q. If you knew the crossing was there it would be your duty to blow, of course? 10

A. Yes.

Q. But there isn't any whistle post, as far as you know, for this crossing?

A. That I couldn't say.

Q. There is a whistle post for the main crossing?

A. Yes.

Q. That is up above the Atco Station, north?

A. Yes.

Q. Do you know how long it would take you to come from the main crossing to this crossing where the boy was killed? 20

A. Well, I couldn't exactly tell you, but I could give you a good idea.

Q. You never timed that before or never timed it since?

A. No, it is such a short distance.

Q. Do you know how far it is in feet?

A. Well, possibly between twelve and thirteen hundred feet. 30

Q. And over that distance you were going approximately 65 miles an hour?

A. Yes, sir; between sixty and sixty-five.

Q. Were you on time when you passed Berlin?

A. Berlin? Yes.

Q. You were on time?

A. Yes.

Q. Were you on time at the Atco Station?

A. Yes.

Q. What is your time there?

A. Fifty-four.

Q. Couldn't you have slowed down for this Atco crossing and then made it up on the other side of Atco?

A. No, sir.

Q. You couldn't do that?

10 A. No, sir.

Q. Your schedule requires you to go across that crossing, these two crossings at sixty-five miles an hour, does it?

A. Yes, sir.

Q. You couldn't make it up before you got there?

A. Before I got where?

Q. Before you got to Atco Station, so as to slow down for these two crossings?

A. No, sir.

20 Q. What had your fireman been doing before he climbed up on the box?

A. Firing the locomotive.

Q. Can you see from where you sit to where the fireman sits?

A. Yes, sir.

Q. You can see through, can you?

A. Yes, sir, we both sit together.

Q. How?

A. We both sit together.

30 Q. Not on the same side of the engine?

A. On opposite sides.

Q. And this engine you can see across all right?

A. Yes, sir.

Q. Now, when was it he climbed up on his seat?

A. Before he reached the north crossing.

Q. Before he reached the north crossing?

A. Yes, sir.

Q. And from there all the way down to the time of the accident he was still in his seat?

A. Yes, sir, ringing the bell.

Q. Weren't your eyes ahead for these crossings?

A. Yes, sir.

Q. Yet, you are sure that he got up on the box at that time?

A. Yes, sir.

Q. You are also sure that the bell was rung?

A. Yes, sir, positively so.

10

Q. Now, I understand you blew for the north crossing?

A. Yes, sir.

Q. You blew for the main crossing?

A. Yes.

Q. And after you got by the main crossing you blew again?

A. Yes.

Q. Two long and a short?

A. Two long and two short.

20

Q. Two long and two short?

A. The regular road crossing.

Q. Then you blew an intermittent signal?

A. An intermittent signal, a succession of short blasts.

Q. Successive short blasts; now, the intermittent signal was not blown until you saw the man, was it?

A. No, sir, not until it appeared to me that he was going across.

Q. And that was right as he made the turn around these ties that were driven down in the edge of the road? 30

A. I don't know just where the ties were.

Q. Well, just as the curve of the road takes up—

A. Yes, it appeared to me that he was going to turn up on the railroad, that is when my attention was drawn, that he was going to cross, attempt to.

Q. You hadn't seen him or he hadn't seen you up to that time, as far as you know?

A. I didn't notice him.

Q. You didn't notice him until then?

A. No, sir.

Q. And as he made the turn he immediately looked up toward you?

A. Yes.

Q. He wasn't looking down toward Atlantic City,  
10 was he?

A. No, just looked around like that.

Q. Looked up toward you?

A. Yes.

Q. And the minute he looked he put his feet down?

A. Right away.

Q. And his feet dragged along the ground as if it would stop the machine?

A. Yes.

Q. Now, the front wheel and handle bars got up  
20 on the first rail, didn't they?

A. The front wheel and handle bars, yes, half his wheel was over the outside rail.

Q. Half his wheel was over the outside rail?

A. Yes.

Q. And that was the part that was struck by the engine?

A. Yes, the wheel was cut in half.

Q. You say he looked up at you just before he was struck?

30 A. Yes.

Q. Did you attempt to apply the brakes at all?

A. I applied the brakes the moment I saw him make that movement toward the rail.

Q. You know Mrs. Heath that works at the station down there, who was in court yesterday?

A. Who?

Q. Mrs. Health.

A. No.

Q. Don't you know the lady that works in the station there, the telegraph operator?

A. No, sir.

Q. Have you talked with her since the accident?

A. I just met her out there, but not about the accident.

Q. Haven't you talked with her since the time of the accident?

A. No, sir; didn't know there was a lady operator there. 10

Q. As a matter of fact just before you struck the man, after you saw him, didn't you put on more power to throw whatever it was off of the road?

A. How do you mean?

Q. Didn't you put on more speed?

A. No.

Q. In order to throw whatever it was that was coming up on the track away so that it wouldn't wreck your train? 20

A. No, the minute I saw this man attempt to turn I shut the engine off and applied the brake.

Q. How far did you go before you brought your train to a stop?

A. About twelve hundred feet, between ten and twelve hundred feet.

Q. Only about ten or twelve hundred feet?

A. Yes.

Q. Did you go as far as from the main crossing to this crossing? 30

A. Not quite, I don't think.

Q. Not quite that far?

A. I don't think so.

Q. So, if you had been able to see the man from the main crossing you would have been able to stop before you reached this crossing?

A. That I couldn't say, whether I could see the man from this crossing.

Q. No, I say, if you could have seen the man when you were at the main crossing, then you would have been able to stop before you came to this crossing where he was struck, in that distance?

A. Well, understand, I didn't see this man at all.

Q. I understand you to say you didn't see —

A. I understand your question to say if I saw this  
10 man twelve hundred feet away that I could stop before I hit him?

Q. Yes.

A. Yes, I will grant you that.

Q. And it is at least twelve hundred feet, as you figure it, between those crossings?

A. Yes; now understand me right; if I see this man twelve hundred feet and know he is going to cross, then I will stop.

20 By the Court:

Q. Were you approaching the crossing from the same direction or the opposite direction?

A. Understand, I was going south.

Q. And he was going south, wasn't he?

A. Yes, and he was crossing over.

Q. Well, he was going south before he turned to  
cross?

A. Yes.

30 Q. In other words, the factory was between you and the crossing?

A. Yes, I didn't know that was a factory; I don't have time to observe what all those buildings are.

Q. No, I suppose not.

By Mr. Woodruff:

Q. Now, as you come around the curve you can't see from your cab down the track, can you, until you reach the main crossing?

A. Now, which curve is this?

Q. The curve just north of the Atco Station.

A. Well, you strike the straight track, you know.

Q. Well, the straight track does not begin until right at the Atco Station, does it?

10

A. Well, some distance above the Atco Station, you know, and particularly—I sit on the right side —

Q. You sit on the right side?

A. And on the short side of the curve, therefore, I could see Atco Station quite a distance north of the station.

Q. I am not speaking of the Atco Station. As you come around through that cut that is north of the Atco Station and which is in a curve, the cut itself, the dirt, the embankment cuts off your view, doesn't it?

20

A. Why, not a great deal, because I sit on the short side of the curve.

Q. I understand you sit on the short side, but you can't see through that dirt, can you, that little hill that is there?

A. You see, I sit up pretty high.

Q. Well, do you sit above that?

A. Some parts of it I do.

30

Q. Some parts of it hide your vision?

A. Very little of it, yes.

Q. Now, as you come to the Atco Station there are some big maple trees there, aren't there, on your right-hand side?

A. In the road crossing, you mean?

Q. Yes, near the main road crossing, between that and the broom factory?

A. Yes, I believe there are.

Q. And in August those trees were full of leaves?

A. Yes.

Q. Now, didn't they obstruct your view down this road by the broom factory?

A. I can't say they did.

10 Q. Do you know whether they did or not, do you remember?

A. You can come over that main crossing and look right down that way for a mile at least before you strike that other curve.

Q. You can look down the railroad?

A. And also see the road crossing.

Q. You can also see the road crossing?

A. Yes.

Q. But can you also see the road that runs along by the broom factory?

20 A. Yes.

Q. You can see that?

A. Yes.

Q. And can you see it when a freight car was there such as was there the day when this boy was struck?

A. I don't know; I didn't notice the freight car being there.

Q. Didn't notice it there at all?

A. No.

Q. And you didn't notice it there the day before?

30 A. No.

Q. And didn't notice it there that morning?

A. No.

Q. Now, there is a little shelter platform of the railroad company to discharge its passengers there at Atco Station on your right-hand side going down, isn't there?

A. Yes.

Q. That obstructs the view of that road at one point, doesn't it?

A. About that quick (snapping his fingers).

Q. Just about that quick?

A. Yes.

Q. But it obstructs some view at that point?

A. About that quick.

Q. But you are sure that you did not see the man until just as he made the turn to go up on the track?

A. No, because I didn't have time. You see so many people walking along, you know, that you wouldn't notice them until they attempt to obstruct your pathway or ——— 10

Q. How many years have you been going by this crossing?

A. I have been going by that crossing for twenty years.

Q. Twenty years; then you knew if anybody came along that road parallel with the track that they would turn and go over the track and go on down toward Atlantic City, didn't you? You knew that was the way the road went? 20

A. I did not know that they would do that, no.

Q. Haven't you had people come along ———

A. I might assume that they would wait until the train went by; I didn't know they would turn. They could go to Atlantic City by going right on down, going up around the other way, you know, and strike that same road.

Q. Now, you say you didn't know it was a factory; you knew the building was there, didn't you, where the broom factory is? 30

A. Yes, I knew there was some building there.

Q. You knew that building there?

A. Yes, I knew there was a building there.

Q. Was your whistle blowing when you went by that broom factory?

A. Well, now, I couldn't say as to that.

Q. You are not sure whether it was blowing then or not?

A. No.

Q. But after that it blew?

A. I couldn't say just at what time it was I blowed the road crossing signal for this crossing; then this man on the motorcycle loomed up and I immediately grabbed the whistle and gave the intermittent blast.

10 Now, I didn't observe just exactly —

Q. These intermittent blasts you gave were within one hundred feet of the man, weren't they?

A. Yes, a hundred or a hundred and twenty-five.

By the Court:

Q. At the speed you were going, how much ground would you cover in the usual crossing whistle, two long and two short?

20 A. Why, between ten and fifteen seconds; that is, two longs and two shorts you mean?

Q. Yes, and how much ground would that cover, did you figure? Do you know about how much territory you cover, how much of your road?

A. Now, I didn't measure anything like that, but I could give you an idea. In ten or fifteen seconds we would possibly run forty to fifty feet—about 140 feet, something like that, 200 feet.

30 Q. Now, leave out the question of time, because that is very uncertain in most of our minds, can you tell us on the ground about how far you would cover?

A. Well, in fifteen seconds you would possibly cover about one-eighth of a mile or a little more.

Q. Well, do you cover 600 feet and over?

A. What?

Q. Do you cover 650 feet?

A. In what?

Q. In the sounding of the ordinary road-crossing whistle, going sixty or sixty-five miles an hour?

A. No, about fifteen seconds.

Q. No, I say, do you cover any distance as much as 650 feet?

A. No, I think not.

Q. How much?

A. I couldn't say.

Q. Can you tell me any distance here, from some point outside?

A. I will say from here to Munger & Long's Department Store.

10

Q. Across the street here?

A. Yes.

Q. Well, that is a block, isn't it?

A. Yes.

Q. What is it, 250 feet, 200 feet?

A. I don't know what the distance would be.

Q. Well, you are about midway of the block now and it is at the other side of the block across the street?

20

A. Yes, I judge about that distance to make that signal.

Q. I see. Well, now, you began blowing this, you said, immediately after you left the main crossing?

A. Yes, sir.

Q. Then your blowing would be ended before you ran the distance of 900 feet from the crossing under that, wouldn't it?

A. Well, you see, this train was moving sixty or sixty-five miles an hour.

30

Q. I understand that.

A. Just as soon as I left the crossing—now, I was possibly several feet beyond that crossing when I began to blow that.

Q. Well, you had three hundred feet to go before

you reached the nine hundred foot point where the whistle must be blown?

A. Yes.

Q. Then you say the bell was rung on the train?

A. Yes, sir.

By Mr. Woodruff:

Q. You say that you were probably some feet beyond the crossing before you started to blow?

A. Yes, after leaving the crossing.

Q. After leaving the main crossing at the station?

A. Yes.

Q. You had gone some distance probably before you started to blow at all?

A. Yes.

Q. Then, while you were blowing for the regular crossing signal that you say you gave for the lower crossing, you took ten or fifteen seconds?

A. Yes.

Q. Then it was still after that that you gave these intermittent signals?

A. Yes.

Q. Before you struck the man?

A. Yes, sir.

Q. You remember that those intermittent signals were two loud blasts?

A. No, sir.

Q. You don't remember?

A. No, five short blasts.

Q. Then you gave five short blasts?

A. Yes.

Q. After this ten or fifteen seconds?

A. Yes.

Q. Before you had struck the man?

A. Yes.

Q. How long did it take you to give those five short blasts?

A. About eight seconds.

By Mr. Bourgeois:

Q. Mr. Laurie, Mr. Woodruff has said to you that a man going down that road paralleling the track and coming to this crossing would have to come over the crossing. Now, is there any reason why he should not go the other way? 10

A. Why, no; that is the objection I took to it, there was another crossing below that, you know.

Q. And that same road that crosses over there runs all the way out to White Horse Pike, doesn't it?

A. Yes, sir.

Q. So a man going down could have turned right and gone out to the White Horse Pike instead of turning left, couldn't he? 20

A. Yes.

Q. And beside that he might have gone straight out down, couldn't he, along the track?

A. Yes.

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ISAAC HALL, SWORN.

By Mr. Bourgeois:

30

Q. Mr. Hall, how old are you?

A. Twenty-seven.

Q. Where do you live?

A. Camden.

Q. Camden?

A. Yes.

Q. How long have you lived in Camden?

A. Four years.

Q. What is your business?

A. Fireman.

Q. Railroad fireman?

A. Yes, sir.

Q. How many years have you been a fireman?

A. Three years.

10 Q. Were you firing the locomotive that Mr. Laurie was running on the 20th of last August?

A. Yes, sir.

Q. How long had you been firing with him?

A. I have been firing off and on for my three years period.

Q. You are familiar with the road that you were then running?

A. Yes, sir.

Q. That was which, from where to where?

A. From Broad Street to Cape May.

20 Q. How long had you been running over that Broad Street-Cape May road?

A. Well, I was firing two days, I think, before that with him; just had come there to be with him.

Q. Now, had you been running over that road previous to that time?

A. Yes.

Q. With whom?

A. Several of the engineers.

30 Q. Were you familiar with the road; that is, with the route?

A. Yes.

Q. Familiar with the signal posts, crossings, etc.?

A. Yes, sir.

Q. On the day of the accident, did you know anything about it?

A. Only at the time that it was—that it happened; that is the only time I knew about it.

Q. Now, do you know wheher or not the locomotive engine whistle was blown as you approached that crossing and before you approached it?

A. Yes, sir.

Q. Where was it blown, to your knowledge?

A. When I passed this bridge I got down to fire my engine, then he blew for the crossing north of Atco Station, and I got up on my box and started to ring my bell, and I continued through Atco. After we crossed the crossing north of the station he blew for the main crossing, and after we crossed the main crossing he blew for this little crossing, which is down where the accident happened, and right after he blew his two longs and two shorts, I seen him grab for his whistle cord again and give his short sounds, which was an alarm that there was somebody on the track, and right away he applied his emergency brakes. Then I discovered that he had hit somebody.

10

Q. Yes, all this time what was happening to that bell?

20

A. The bell was ringing all that time, all the way through the town.

Q. All the way through the town?

A. Yes.

Q. Until after it struck somebody?

A. Until after he had struck somebody; yes, sir.

Q. Now, how far do you think your train ran after you struck this man before it came to a stop?

A. Well, I judge it would be about 1300 feet, at least that.

30

Q. You were going how fast at that time?

A. Between sixty and sixty-five miles an hour.

Q. And that would make you cover about ninety feet in a second, wouldn't it?

A. Yes, sir.

Q. So that with that speed, could you stop shorter than that 1300 feet or shorter than it did stop, for instance?

A. No, sir.

Q. What is the grade there, is it level or is it slightly down grade?

A. Well, there is sort of a little pitch, not much of it, it is not a very steep grade.

Q. But the crown of the hill is back toward Camden further, isn't it?

A. Yes, it is more steep there north of Atco Station than it is where this occurred.

Q. Now, were you traveling on that occasion at an unusually fast speed?

A. No, sir.

Q. Was it just the usual rate?

A. The usual rate, yes.

Q. Is there any doubt about your having rung that bell all the way from that main crossing until after you passed this crossing where that boy was struck?

A. No, sir.

Q. Is there any doubt about the whistle being blown between those points?

A. No, sir.

Cross-examination.

By Mr. Woodruff:

30

Q. What did you tell me your name was?

A. Isaac.

Q. Isaac?

A. Yes.

Q. This was only your second or third day with Mr. Laurie?

A. Yes, sir.

Q. It keeps you pretty busy firing on that train, doesn't it?

A. Well, at times, if you have got a heavy train it does.

Q. Well, you had a pretty heavy train that night, didn't you?

A. Seven cars ain't a heavy train.

Q. You don't call that heavy?

A. No.

Q. And you didn't have much firing to do that 10 night?

A. No, sir, not on all those trains you don't have very much firing, not when you got seven cars.

Q. It doesn't take a great deal of steam to go 65 miles an hour?

A. Yes, 200 pounds, that is all.

Q. And that don't require much firing?

A. No, sir.

Q. So you have lots of time to sit up on your box, do you?

20

A. Yes, sir.

Q. Had you been over this crossing that morning and the day before?

A. Yes, sir, the morning, going to Broad Street, northbound.

Q. Did you notice this freight car standing there?

A. I didn't take notice to that freight car there at all.

Q. Or to any other cars standing there?

A. No, sir, not even that night when I came back, 30 I never took notice to that freight car being there. I looked particularly that night to see what was there and I didn't notice anything wrong there at all that night.

Q. Now, this grade that Mr. Bourgeois speaks of is a grade north of the Atco Station, isn't it?

A. Yes.

Q. It starts practically at the main crossing and goes up around the curve?

A. Yes, sir.

Q. And the reason that there is not a down grade with the track is because the tracks are cut through the hill?

A. Yes, sir.

Q. How high is that dirt bank alongside of your engine?

10 A. Well, that there bank, I imagine, comes about level with our firing deck, I imagine it would be about that high. It is not very deep through there.

Q. And you rode, of course, on the left-hand side of the train, didn't you?

A. Yes.

Q. There is this shelter platform there?

A. Yes.

Q. That would hide the view at one point?

A. Yes, sir.

20 Q. And do you recollect these big maple trees that are there in the summertime with their leaves on?

A. No, never took notice to that.

Q. Never did take notice?

A. No, sir, I never took notice to them.

Q. You hadn't seen this man at all, had you?

A. No, sir, I hadn't seen him at all.

Q. You were not looking at all for a man?

A. No, sir.

30 By Mr. Bourgeois:

Q. Mr. Hall, if the maple trees had interfered at all with your view I suppose you would have noticed them, wouldn't you?

A. Yes, sir.

CHARLES H. VAUGHN, SWORN.

By Mr. Bourgeois:

Q. Mr. Vaughn, you live where?

A. At present I live at Belcoville, New Jersey.

Q. And where is Belcoville?

A. Just on the outskirts of Mays Landing.

Q. And Belcoville means the Bethlehem Steel Company, doesn't it?

10

A. Bethlehem Loading Company.

Q. How long have you worked at Belcoville? Are you working for the government down there?

A. Yes, it is government work; I am working for government agents; I am working for the Bethlehem Loading Company.

Q. What do you work?

A. Yard master.

Q. What does that mean?

A. That means that I have charge of the railroad. 20

Q. And all the trains that come in and out of there?

A. That come in and out of there.

Q. How long have you been with them?

A. Since August 24th of this past year, 1918.

Q. 1918—the present year, you mean?

A. Yes.

Q. Where were you before that?

A. At Atco Station, acting in the capacity of agent for the West Jersey & Seashore.

30

Q. Then you were there on the 21st of August?

A. Yes, sir.

Q. And do you remember an accident that happened there on the 21st of August?

A. Well, I couldn't say whether it was the 20th or 21st, to tell you the truth.

- Q. You remember the accident?  
A. I remember the accident.  
Q. Where were you at that time?  
A. I was in the rear of Atco Station, agent's office, working on my tariff file.  
Q. Do you know whether or not the locomotive engine whistle was blown for the crossing where this boy was killed?  
A. Yes, sir, it was.
- 10 Q. It was?  
A. Yes.  
Q. Where did you hear it blow?  
A. Well, the rear of the train hadn't quite passed my office when the whistle was sounded, two long and two short.  
Q. Now, your office is 1100 feet, I think, from the crossing, isn't it, where he was killed?  
A. Approximately that.  
Q. And these cars are about—I suppose that train  
20 would extend 200 feet, wouldn't it, or more?  
A. Oh, fully that.  
Q. Now, what sort of whistle was blown at that time?  
A. At that time?  
Q. Yes.  
A. There was two long and two short.  
Q. And then after that was there any other whistles blown?  
A. Yes, I heard another whistle.
- 30 Q. And where was the train at the time you heard the other whistle?  
A. Well, I didn't see it, but I judge it was just this side of the crossing where the accident occurred.  
Q. I see; what sort of whistle did you hear blown?  
A. Well, it just sounded to me just like one long whistle, to tell you the truth.

Q. You did not notice any intermission at all?

A. Didn't notice it, no. He came to a stand ——

Q. Do you remember, Mr. Vaughn, whether or not the engine bell was ringing as that train passed you?

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

Q. You don't remember about that?

A. I don't remember it ringing.

Q. After the accident happened—I suppose you knew, of course, that it had happened? 10

A. Sir?

Q. You knew an accident had happened after it happened?

A. Yes, I heard the engineer—it seemed as though it all happened simultaneously; there was a blowing of the whistle, the application of the air and the crash all seemed to come at once, just like that.

Q. Now, after that time, what, if anything, did you do with regard to that bell that is erected at the crossing? 20

A. Well, the first thing I did was to take the watchman's bicycle and ride down to where I supposed was the scene of the accident. I didn't see anyone in view other than a couple of fellows coming out of the broom works, and after I had ridden a few paces I noticed a section man out on the track, and at first I thought that the section men were the ones who had met with the accident, and I inquired of the section foreman, I believe; that is, to the best of my knowledge, I think I stopped, and I asked him if he knew of any accident. He said he heard a noise but he couldn't say. I went on down and I was just about in the act of turning back when I saw a man who later wrote his name as Alphonso Paul, I have it here. 30

Q. That is the man that was on the stand yesterday?

A. Yes, sir, I have his own writing right here in the book. He beckoned for me to come on down, and he just seemed to be dumbfounded for the time, couldn't say anything but point.

Q. He had an impediment in his speech anyway, didn't he?

A. I didn't know that he did; I came to that conclusion yesterday hearing him testify. He pointed down in this ditch and I saw the body. I didn't go  
10 down to examine the body; I said, "What was he riding?" Then he pointed around and I could see the cylinder of a motorcycle. So I started back on my bicycle. No, I don't think I came back until after the train had backed up; I stayed there at the scene of the accident until the conductor, Withrow, came back, and he said, "Vaughn, will you take charge of the body?" I said, "I will." He said, "Have you the witnesses?" and then I questioned this fellow as to whether there was any other wit-  
20 ness and he said, "Nobody saw it but me," because it was my duty to get the witnesses, you see, being a representative of the company, and I said, "You are sure nobody else saw it?" He said, "I didn't see anyone else around here." So I said to Withrow, "Well, I guess this is the only man that saw it or knows anything about it," because at that time I didn't see anybody there, that is, that was around near the crossing. I came on back and informed the superintendent's office of the accident, and he sent  
30 for the coroner, and I guess that is about all.

Q. Now, there was something else, I think, after that; after that had all happened, didn't you go down to that crossing again?

A. Yes, because I understood that Lawyer Knight had instructed Humbert Di Falco to take the body home, and I objected to that strenuously, said that the body was in charge of the railroad's hands un-

til the coroner came there to examine it, so I had it removed to the freight house by the section foreman.

Q. And at that time did you make some tests of the bell?

A. Well, when I first came back to the station I questioned William Collins, the crossing watchman; I said, "Bill, didn't you have that bell on?" He said —

(Objected to.)

10

Q. Don't tell what he said; you questioned him?

A. Yes.

Q. And as a result of that, what did you do?

A. I had him test the bell, had him put the bell on until I went down a sufficient distance and heard it ringing. I satisfied myself the bell was in order and I came back.

Q. Was that before or after the second train had gone down? 20

A. I couldn't say.

Q. But it was that same day?

A. Yes, it was that same day.

Q. And near the time the accident happened?

A. Near the time, yes; it was my first trip back from the accident after I had seen the conductor.

Q. You were there until the 24th of August?

A. Yes.

Q. Up to the time you left had any stone been unloaded from freight cars at or near that crossing? 30

A. Not to the best of my knowledge during the month of August.

Q. I mean, during the month of August or from the middle of July?

A. Not to the best of my knowledge. To tell you the truth, I am not clear on that.

Q. Have you had an opportunity to examine the records?

A. I have.

Q. Are they here in court?

A. I understand they are now complete.

By the Court:

Q. What was the occasion for the bell ringing  
10 when you went back?

A. Just merely to test it.

Q. How could you test it?

A. Have the crossing watchman put it on; he puts  
it on with an electric switch; then I went a sufficient  
distance, I don't know just how far, but you see the  
wind was blowing from the south, and I went a suffi-  
cient distance until I satisfied myself that the gong  
was ringing properly. There is two bells, you see,  
and those bells were ringing, then I came back. If  
20 it had not been, it would have been my business to  
report the bells out of order, you see.

By Mr. Bourgeois:

Q. Mr. Vaughn, I will ask you to examine these  
sheets and tell me if they are the original records  
that are sent in by you pertaining to the freight at  
Atco?

A. Yes, sir, that is our C. I. 32.

30 Q. That has the car number?

A. The car number, initial and location of the  
cars.

Q. Now, they run, I think from July 17th up to  
September, don't they?

A. July 17th, yes; this seems to be the month of  
July.

Q. Now, where are the other two? All right, there are two other bundles; I thought the whole thing was here; you have examined them, have you?

A. No, sir.

Q. You have not?

A. No, sir.

Q. Will you look through them and see whether there was any stone unloaded between the 17th of July—I don't know how far back they run?

A. Does anybody want to witness this? I can 10  
show them here just about how they run.

The Court: I guess they will take your word for it.

Q. Now, Mr. Vaughn, these sheets that I show you, do they contain the reports not only for the Atco Station, but for the other stations along the West Jersey road?

A. Yes, sir, from present indications there are re- 20  
ports here from various stations. July 30th there was no stone.

Q. Just look right through all of them and then tell us whether or not there was any stone delivered then.

The Court: Can't you tell us from your memory, sir?

The Witness: No, I could not.

30

The Court: Then examine them at another time; we won't take the time for this here, Mr. Bourgeois.

Q. Have you examined them this morning—did you examine them?

A. I examined the month of August, from the first

until the 24th of August, that is the time I was there, and there was no stone shown as being received during the month of August.

Q. Now, you are familiar with these records, aren't you?

A. Yes.

Mr. Bourgeois: Are you willing, Mr. Woodruff, that he shall examine after the 24th of August?

10 Mr. Woodruff: Later? Sure.

Mr. Bourgeois: I want to show that the first stone that came in there was on the 29th of August. Now, if you will take those—don't bother about August, that is, up to the 24th, but look in July up to August, then from the 24th to the 29th of August. Now, shall I put another witness on?

20 The Court: Yes, put another witness on while you are doing that.

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WILLIAM MORRISON, SWORN.

By Mr. Bourgeois:

Q. Mr. Morrison, you live where?

A. Camden, New Jersey.

30 Q. And how long have you lived in Camden?

A. About twelve years.

Q. What is your business?

A. My business—I am an electrician and telephone—an inspector on telephone, telegraphs and signal poles.

Q. For the West Jersey & Seashore?

A. Yes.

Q. Were you holding that same position during the month of August, 1918, this past August?

A. Yes, sir.

Q. Are you familiar with the operation of the crossing bell at the crossing just below Atco main station?

A. Yes, sir.

Q. How is that operated?

A. That is operated from a switch in the flagman's shanty. There is a warning bell about four thousand feet away which warns the flagman when there is a train approaching. When that bell rings he is supposed to close the switch on the crossing below Atco.

Q. How frequently, if ever, do you examine those bells to find out if they are in order?

A. Once every week.

Q. When did you examine this bell prior to the 21st day of August?

A. The 8/16th.

Q. The 16th?

A. Yes, sir.

Q. What was its condition at the time you examined it on the 16th of August?

A. It was O. K.

Q. That means it was operating properly?

A. Yes, operating properly.

Q. When did you next inspect that bell?

A. My next inspection was on 8/21.

Q. What was its condition then?

A. I was working properly, O. K.

Q. Did you know that an accident had happened there the day before the time you made this inspection?

A. No, sir, not until I went to Atco.

Q. Then you found out that it had?

A. Yes.

Q. Now, were you unusually careful or not in making the inspection?

A. Yes, sir.

Q. Are you always careful or not in making those inspections?

A. I am always careful in making them to make sure that everything is working properly.

Q. Did there a time come when that bell was not in order?

10 A. Not to the best of my knowledge there didn't.

Q. What about the 24th?

A. The 24th?

Q. Yes; did you inspect it again on the 24th?

A. No, sir, the 21st and 28th; I inspected it one week later.

Q. Now, if a bell is out of order, who sends the men to repair it?

A. Why, it is reported to our office and Mr. Husted's office, the division operator, and we are notified to go look after it.

20 Q. And do you do the repairing?

A. Yes, sir.

Q. Did you either alone or with any other man or men go to that bell and repair it two days after this accident?

A. No, sir.

Q. On the 22nd?

A. No, sir.

30 Q. Was anybody down there to repair that bell on the 22nd of August?

A. Not to the best of my knowledge.

Q. Well, if they had gone there would you have known?

A. Well, I would have known if there had been any trouble on it.

Cross-examination.

By Mr. Woodruff:

Q. When there is trouble with these bells your office is notified, is that right?

A. Yes, sir.

Q. How often does that happen?

A. Well, it doesn't happen so very often; once in a while it will happen.

10

Q. Once in a while these bells will get out of order?

A. Yes, but very seldom the manually operated bells get out of order.

Q. But the automatic bells go out of order, do they?

A. Yes, sir, sometimes.

Q. And they have gone out so much that you have a system of notification when that happens, they send a certain word through a certain channel to your office?

20

A. The office is notified whenever there is one goes out.

Q. Then you go right there, do you, immediately?

A. Just as soon as we can get there.

Q. Now, you make these inspections down this road one week apart, ordinarily?

A. Yes, sir, as nearly as I can do it.

Q. As nearly as you can do it?

A. Yes.

30

Q. Do you have an assistant to go with you to help you?

A. No, sir.

Q. Who throws on the switch for you in a case such as this one?

A. The flagman, I ask the flagman to put the

switch on when I go down to look at my bell and test it.

Q. Were you there alone this time?

A. Yes, sir.

Q. You inspected it alone before the accident?

A. Yes, sir.

Q. And the day following the accident you were there alone?

A. Yes.

10 Q. Now, there is no question in the world but what you were working at that box the day following the accident, is there, opening the box or testing it, or doing something at the box?

A. Yes, the 21st I was there.

Q. What time of day was it?

A. I couldn't tell you exactly what time of day it was.

Q. Wasn't it around noon or one o'clock.

A. I think it was around one o'clock or a little  
20 after.

Q. About one o'clock?

A. Yes.

Q. Why did you go there that time?

A. That was my regular day of inspection of that bell.

Q. Did you have a regular day of the month that you went down?

A. No, sir, a regular day of the week.

Q. A regular day of the week?

30 A. Yes, sir, as near as possible.

Q. Well, was there anything that prevented your going down on your regular day that week?

A. No, sir.

Q. What was your regular day of the week?

A. The regular day of the week was on Tuesday.

Q. On Tuesday?

A. Yes.

- Q. And this 21st was on Tuesday?
- A. Yes, sir.
- Q. And was the 16th also on Tuesday?
- A. I couldn't say about the 16th.
- Q. But you are sure that the 21st was your regular day?
- A. Yes, sir.
- Q. And Tuesday was your regular day?
- A. Yes, sir.
- Q. Why didn't you go there on the day of the accident, the 20th? 10
- A. I wasn't notified.
- Q. You were not notified to go there?
- A. No.
- Q. But you were notified to go there the following day?
- A. No.
- Q. Well, why did you go there the following day?
- A. Because I was working on inspections.
- Q. Well, the 20th was Tuesday; now, you didn't go there on the 20th, why did you miss your regular day? 20
- A. I had probably something else to do.
- Q. Something else to do that day?
- A. Yes.
- Q. The 16th was on Friday; why did you miss your Tuesday that week?
- A. Probably I had something else to do; I don't have a regular day, that is, no scheduled day, but I try to make it so on Mondays I can work on this end, the next day, Tuesday, work Berlin and Atco, as near as I can. 30
- Q. Now, there is an automatic bell that rings in the watchman's house, is there?
- A. Yes, an automatic warning bell.
- Q. That is worked by contact of the train as it goes along over the rails?

A. Yes.

Q. When the train is four thousand feet above the main Atco crossing that is supposed to ring the bell in the watchman's little house?

A. Yes.

Q. And that watchman's house in Atco is right at the main crossing, isn't it?

A. Yes.

10 Q. Now, that is the kind of automatic bell that sometimes gets out of order and you have to be sent for?

A. Sometimes.

Q. Did you examine that bell?

A. Yes.

Q. On these two days?

A. Yes.

Q. That was in perfect working order, of course?

A. Yes, sir, as far as I know, it was.

Q. Have you some doubt about that?

20 A. No, sir.

Q. Do you remember whether you went over it or not that day?

A. Yes.

Q. You went over that one, too, did you?

A. Yes, sir.

Q. On the 16th?

A. Yes, sir.

Q. And you went over it on the 21st?

A. Yes, sir.

30 Q. What did you do to it on the 21st?

A. Went over it and looked over it to see that everything was working properly.

Q. Did you have anybody to go with you then?

A. No, sir.

Q. How did you make the contact up at the upper point when you wanted to hear the bell at the lower point?

A. The only thing we can do is to put it on to find out whether it rang; we can close it ourselves at the upper end and ask the flagman if it rang or you can wait for a train to come over it and try it that way.

Q. Which did you do on the 21st?

A. I think I waited for a train to come over.

Q. Not sure about that?

A. No, sir.

Q. Are you sure you inspected it on the 21st?

A. Yes.

10

Q. And you are sure you had not been sent for to come down there?

A. No, sir.

Q. Now, when you were up to this bell—that is a bell that is up on a pole, isn't it?

A. Yes.

Q. Do you remember the men working there at the stone pile over in the corner of the crossing?

A. No, sir, I don't remember.

Q. Some men there with trucks from the White Horse Pike?

20

A. No, sir, I don't remember whether there were or not.

Q. Don't remember whether they were there or not?

A. No, sir.

Q. But you did go up this pole and open the box?

A. Yes, sir.

Q. Did you have the watchman ring the bell several times there for you?

30

A. Had him put the bell on and ring it.

Q. And after you had been up at the box it rang all right, did it?

A. Yes, it rang all right when I went there.

Q. Now, that bell at this lower crossing depends absolutely for its operation upon whether or not

the watchman gets the signal from the automatic bell, doesn't it?

A. Not necessarily; he can hear the other train approaching.

Q. If he happened to hear it he could throw it on whether the other one worked or not?

A. Yes, sir.

By Mr. Bourgeois:

10

Q. Wait a minute, now, Mr. Morrison: When you inspect these bells, just what do you do?

A. Why, I inspect the battery to see if my battery is proper and my wiring.

Q. How do you inspect your battery?

A. Measure it with an ammeter to see whether it is strong.

Q. That is just a little instrument with two points?

A. Just like a watch, like about the size of a watch.

20 Q. Then, after you have tested your battery, then what is it you do?

A. Look over my wiring to see if my wiring is all proper and no broken wires or anything.

Q. And where are these batteries located?

A. Located in the flagman's shanty at Atco Avenue.

Q. And where is the wiring that you look over?

A. In the office, in his shanty, right in the shanty.

30 Q. Now, what do you do down at the bell, at the crossing?

A. I open the bell and look to see that the contact is all good.

Q. You have to get up on the pole to that little box up there, do you?

A. Yes.

Q. And examine the contacts?

A. Yes, sir.

Q. Then what else?

A. And have the flagman or whoever is attending to it to put it on and try it.

Q. While you are right there?

A. Yes.

Q. Then if it rings that is the end of it, is that right?

A. If it is ringing properly, that is the end of it.

10

CHARLES H. VAUGHN, recalled.

By Mr. Bourgeois:

Q. Mr. Vaughn, have you now examined the reports from the Atco Station between the 17th of July and the 1st of September to find whether any stone was delivered at that point, and, if so, when?

A. No, sir, I have not, I only examined from the 1st to the 31st. I didn't want to interrupt that testimony. 20

Q. The 1st of which?

A. The 1st of August until the 31st of August.

Q. All right, tell me about that.

A. I find that there is no pebbles or no sand delivered between August 1st and August 28th.

Q. Now, what happened on the 28th of August or the 29th?

A. On the 28th of August, according to the records, there was a car of sand and a car of pebbles received. 30

Q. That is what you call stone, isn't it, pebbles?

A. Well, yes; no, they just call them pebbles.

Q. Do they?

A. Yes.

Q. That was received on the 28th?

A. According to the records that was received on the 28th.

Q. And I think you did testify that no stone or pebbles had been delivered there while you were there during that month?

A. No, sir, it had not.

Cross-examination.

10

By Mr. Woodruff:

Q. But these men had a place down there where they kept materials for the pike, didn't they, over by the old glass works?

A. I permitted them to store stone or dump stone, rather, but I guess it was fully a year previous to that, along the old coal trestle. Now, as to whether that stone was there at that time, I couldn't state.

20 Q. They did cart from there frequently, didn't they, from the White Horse Pike back and forth to that place?

A. They have carted from there, but the time and date I could not say.

Q. What was it you were working at at the time this train went by your station?

A. Tariff file; agents' tariff file.

Q. And that was in the back end of the station itself?

30 A. The back end of the station, yes.

Q. Anybody else in there with you?

A. Mrs. Heath.

Q. Mrs. Heath was in there?

A. Yes.

Q. What were her duties?

A. She was telephone and telegraph operator.

Q. Did you have any duty with regard to report-

ing the time that the train passed your station, you, yourself?

A. No, just to see that it was done, that is all.

Q. Just to see that the train passed?

A. And to see that the train was reported.

Q. Someone reports it, don't they?

A. Mrs. Heath, yes; the telegraph or telephone operator reports the train.

Q. How long did you go on working at your file?

A. Oh, I left immediately; I remarked to Mrs. Heath ——— 10

Q. Now, when, with respect to the train?

A. Immediately after I heard the crash.

Q. So that you went to work at your file up until you heard the crash?

A. Oh, yes.

Q. The crash and sharp whistles?

A. And application of the brakes.

Q. And the application of the air were all simultaneous? 20

A. It seemed that way to me; you know it was quite a distance.

Q. And it also seemed to you like one long whistle?

A. It appeared to me like one long whistle from that distance. You see, the door was closed because I was in the back of the office and the windows were open in the front.

Q. You were away from the direct sound?

A. Away from the direct sound. 30

Q. Now, you noticed the rear end of the train going by the station?

A. Well, I didn't just particularly notice the rear end; I noticed that the train passed the station, but in regard ———

Q. You saw some movement of the train by the windows, is that right?

A. Yes, but not with regard to noticing the rear end to see whether the markers were properly displayed and the train was complete.

Q. But you observed the train going by?

A. I observed the train going by.

Q. How many trains go by that station a day?

A. Well, at that time of the year I should judge about sixty.

Q. Do you observe the whistles on every train?

10 A. Well, I couldn't say every train, but as a usual thing I do.

Q. Could you tell me the fact as to whether or not every one of the sixty trains that day blew their whistle for that crossing?

A. That I couldn't say.

Q. You couldn't remember that, could you?

A. I couldn't answer.

Q. You didn't hear the bell ringing on the engine?

A. I did not.

20

By the Court:

Q. Was there anything about the train to attract your attention as it passed the station?

A. No, nothing unusual, the only thing I am little bit interested in locomotion —

Q. I mean, were you giving special heed to it or paying attention to the train as it passed?

A. Yes, I can say I was.

30

By Mr. Bourgeois:

Q. That is your duty, isn't it?

A. Yes.

By the Court:

Q. Just a moment, Mr. Vaughn, what do I understand you to mean about the ringing of the bell?

A. The crossing bell?

Q. Was your position and attention such that you would have heard it if it had been ringing?

A. The crossing bell?

Q. No, the bell on the train.

A. No, if the bell had been ringing the roar of 10  
the train and everything while passing the station,  
I, being in the rear, I don't think I could have heard  
it.

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WILLIAM D. COLLINGS, SWORN.

By Mr. Bourgeois:

Q. Mr. Collings, you live where? 20

A. Atco.

Q. How long have you lived at Atco?

A. Thirteen years.

Q. And what is your work, what do you do?

A. Crossing watchman.

Q. Where?

A. Atco, Main Street.

Q. For the West Jersey & Seashore Railroad?

A. For the West Jersey & Seashore Railroad. 30

Q. How long have you been crossing watchman?

A. At Atco about two years and a half.

Q. What are your duties as crossing watchman?

A. To protect it.

Q. I know, but how—what do you do—what do you have to do there?

A. We have to get out with our stop signs. We

get a warning from the train, you know, about four thousand feet north of Atco, then we put the switch on for the southbound crossing; then we out with our stop signs to protect the crossing.

Q. Now, do you remember the day that Palladino was killed?

A. I do, yes.

Q. Did you know him?

A. I knew him, yes.

10 Q. How long had you known him?

A. Oh, I guess about ten years.

Q. Do you know whether or not you put the switch on to ring that bell at the crossing below the station for the train that killed him?

A. That bell never refused to put on yet.

Q. Did you put it on that particular time—I want that particular time?

A. That particular time, yes.

20 Q. Now, did that little bell in your office ring and notify you that the train was coming?

A. It did.

Q. On that day?

A. On that day.

Q. And how soon after that rang was it that you put on the switch for the other bell, the lower bell?

A. Well, just as soon as I get the warning, right away I get up and throw the switch on.

Q. And is that what you did on this particular day?

30 A. That is what I did this day.

Q. After the accident had happened, did you do anything toward the testing of that bell to see if it was in proper order?

A. Well, I could hear the bell ring myself.

Q. Yes, but did you ring it so that the station agent could hear it?

A. When Mr. Vaughn went down at the other

end there, of course he wanted me to test this, see whether it was ringing or not, see, so he went down and I threw the switch on. She rang, and he said, "O. K."

Q. And could you hear it where you were?

A. I could hear it ring, yes.

Q. The wind was in what direction that day?

A. I couldn't tell, it wouldn't matter much, you could hear it anyway.

Q. Do you know whether or not the whistle of 10 the train was blown?

A. The whistle of the train was blowing.

Q. Where?

A. North of Atco; before I got the bell I heard that.

Q. Then when the train passed over the crossing, did it blow for the lower —

A. It blowed between Main Street, Atco, and the Glass House crossing.

Q. How many times did you hear it blow between 20 those crossings?

A. I heard two short blows anyhow and one long one.

Q. Did you know whether —

A. That is what drawed my attention that something happened.

Q. Do you know whether the bell was ringing as it went past you, do you recall?

A. What, the train's bell, the car bell?

Q. The train bell, yes.

30

A. The car bell was ringing; they ring all the way through town when they are running.

Q. It was ringing that time, was it?

A. Ringing that time.

Q. How soon after this accident happened did you know it?

A. After the accident happened, you say?

Q. Yes, how soon did you know it?

A. Mr. Vaughn drew my attention to it by

Q. Tell me how long it was.

A. Oh, just a minute, I guess.

Q. And at that time did you think to recall if the whistle had blown or the bell had rung?

A. Well, right away I knowed.

Q. That is, you were conscious at that time that  
10 the whistle had blown?

A. Yes, I was watching.

Q. And that the bell was ringing?

A. Yes.

Q. And that your bell was ringing?

A. Yes, I looked out for that.

Cross-examination.

By Mr. Woodruff:

20

Q. Are you watchman there now?

A. I am watchman there now.

Q. What are your hours at the present time?

A. From ten to six.

Q. And you say that lower bell has never refused  
to work?

A. Has never refused on my duty, when I am on  
duty.

Q. Has it ever worked when it should not work?

30

A. Ever worked when it should work?

Q. When it shouldn't.

A. Always worked for me.

Q. Does it ever ring when you don't put the  
switch on?

A. No, if you ain't got the switch on, it ain't going  
to ring.

Q. Were you on duty last Sunday afternoon when it was raining so?

A. I work from ten to six in the morning.

Q. From ten at night?

A. Yes, now I do; that time I was on duty in the day time.

Q. You weren't on duty when Mr. Bourgeois was there last Sunday?

A. No.

Q. So you didn't have anything to do with the 10 bell that time?

A. No.

Q. You didn't go on Sunday until ten o'clock?

A. Ten o'clock at night.

Q. The bell wouldn't ring if you forgot to throw the switch?

A. No.

Q. But you have never forgotten?

A. Never yet.

Q. Always throw that switch before you go out- 20 side?

A. That is what I am paid for and what I look out for.

Q. I suppose the automatic bell never failed, did it?

A. I never knowed that to fail but once, and it didn't stop ringing altogether; it would give you some kind of sound, you knowed there was something coming.

Q. That had happened once, did it?

30

A. That happened once.

Q. Now, on this day you got the bell, did you?

A. We got the bell.

Q. Then you had a signal that you had to go out and hold up and stop people on the main crossing?

A. Yes.

Q. Did you take that out?

A. Took that out with me.

Q. Where is this throw switch for the lower crossing?

A. In the shanty right at the door.

Q. Right at the door?

A. Right at the door.

Q. As you go out?

A. As you go out.

10

By Mr. Bourgeois:

Q. As you come in, too?

A. As you come in and go out, too.

By Mr. Woodruff:

Q. You don't throw it when you come back?

A. Throw it both ways, throw it on and off.

20 Q. Throw it off when you come back?

A. Throw it on when I go out, that is the idea.

Q. You recollect the whistle blew before you got to the main crossing, do you?

A. I certainly do.

Q. And after it passed the crossing, it attracted your attention to the fact that there was an accident because it blew again?

A. It made two short blows, yes, and I knowed there was something wrong.

30 Q. Have you any recollection with regard to the ringing of the bell on the engine?

A. The bell was ringing.

Q. Sure about that?

A. I am sure about that.

Q. Ringing as it passed you?

A. Ringing before it got there; they always ring that bell before they ever cross the crossing.

Q. They always do that?

A. Yes.

Q. And you are pretty sure of that?

A. I am pretty sure of that.

Q. And that is the reason you think it rang that day?

A. I know it rang that day.

Q. Oh, you are positive it rang that day?

A. Yes.

Q. You are pretty sure they ring it all the time, but you are positive it rang that day, is that right? 10

A. I am on the crossing there day in and day out; whenever the train is coming I listen for the whistle or for the bells.

By the Court:

Q. Why is it, Collings, that you say it rang that day? 20

A. Well, because I heard it.

Q. Well, did you hear it that day or are you——

A. I heard it that day.

Q. Or do you mean you think it rang that day——

A. I take notice when the train is approaching that the bells are ringing.

Q. What I am trying to get at is whether or not you noticed it specifically or whether you are believing that it rang because it usually does ring? 30

A. No, I know it rang.

Q. You know it rang that day?

A. Yes.

Q. Are you the man that gets the signal from the automatic action of the train?

A. I am the man that gets the signal.

Q. In your box?

A. Yes.

Q. Then you in turn start the connection which makes the bell ring at this particular crossing where the accident happened?

A. That is it.

By Mr. Woodruff:

Q. Now, you also knew that the crossing bell was ringing that day, did you?

10 A. Yes, the crossing bell was working.

Q. Because you could hear it up at your place?

A. I could hear it at my shanty.

Q. And you and Vaughn tested it afterward?

A. Yes, he tested it right afterward.

Q. Why did you test it if you knew it was ringing?

A. I guess he kind of doubted me that it wasn't working; he didn't tell me he did doubt me, but that is the way he acted.

20 Q. He acted as if he doubted that you had thrown the bell?

A. That it wasn't working, and so he went down and said, "Throw it on." I threw the bell on—"O. K."

Q. He had been down to the place where the man had been killed, hadn't he?

A. Yes.

Q. He had been down there?

A. Yes, he got my bicycle to ride down, yes.

30 Q. Then he came back and that is when he acted as if he doubted you or doubted the bell?

A. Oh, no, that is when he first started down.

Q. Before he went down he doubted either you or the bell, did he?

A. When he first started down, yes; I put it on when he went down, see, he never came back; I put it on when he went down; when he went down and stood there I put the bell on and it was all right.

Q. Then, as I understand it, he didn't go down with your bicycle and then come back and then ask you to test the bell?

A. I guess we tested it out twice that day.

Q. Oh, you tested it twice?

A. I guess we did.

Q. You put on the bell for him as he went down?

A. It was tested out when he went down and tested out again when he came back; tested out twice that day.

10

Q. Now, when he came back and tested it out, he walked down the track toward the bell while you put it on, didn't he?

A. Yes.

Q. He did that—how far did he walk down?

A. Oh, I couldn't tell how far he walked down.

Q. Well, did you see him?

A. I seen him go down, but I didn't take notice how far he went down, but he went down far enough to find out that he could hear the bell ringing.

20

Q. Why did he have to go down if he could hear it at your watchman's house?

A. I don't know why he had to go down; that is up to him, I suppose.

Q. But he did go down anyhow?

A. Yes.

Q. But you say you heard it at the time of this particular accident?

A. Yes.

Q. And you are still working there at the same crossing?

30

A. I am still working at that same crossing.

By Mr. Bourgeois:

Q. There was another train went down after this one, soon after, a half hour, or something like that, wasn't there?

A. Yes, something after five. Going down?

Q. Yes.

A. Yes, something after five.

Q. Did you ring the crossing bell for that train?

A. Yes.

Q. Are you sure of that?

A. I am sure of that.

By the Court:

10

Q. You are what distance from the crossing bell?

A. Down at the other crossing, the small crossing?

Q. Yes.

A. I judge about seven or eight hundred feet;  
I never measured it.

Mr. Bourgeois: Well, it is eleven hundred feet.

20

Q. Does the roar of the train, an express train,  
drown out the bell so that you can't hear it when  
it is between you and the bell?

A. Well, until then, yes.

Q. You can't hear it?

A. No, you couldn't hear it then, no, but before  
she approached the main crossing at Atco you can  
hear the bell; you can hear it right in my shanty.

Q. And how far is the train away when you put  
your signal that rings the bell, or makes the con-  
nection that rings the bell at this crossing?

30

A. Just about four thousand feet.

Q. When the train is four thousand feet away?

A. Yes.

By Mr. Woodruff:

Q. Did you see this second train that came on down  
that day?

A. Yes, it was six o'clock.

Q. It was six o'clock?

A. I was there until six o'clock.

Q. Isn't there one that comes just a little after five?

A. 5.27, or something like that, I think.

Q. How about the 5.27; did you see that come there?

A. Yes.

Q. Do you recollect when it crossed the lower crossing?

10

A. She crossed, I know.

Q. You knew of this accident that had just happened, didn't you?

A. Yes.

Q. Were you looking down there when it crossed the lower crossing?

A. Sure.

Q. You were—did you see a man in a wagon with a horse right at that crossing and a man run and grab the horse's bridle and back the horse off?

20

A. Not that day.

Q. On that second train?

A. No, sir.

Q. You were looking down there?

A. I was looking down.

Q. Had you seen that happen other days?

A. Yes, I had seen that once before, yes, not that day, though.

Q. How about the freight car that was standing there—do you remember that?

30

A. I don't remember the freight car.

Q. Will you say there wasn't any there?

A. I wouldn't say there wasn't none; I wouldn't say there was any there.

By Mr. Bourgeois:

Q. How about stone, were they unloading stone down there that day?

A. That day? I couldn't tell whether they were unloading stone that day or not.

Q. They did soon after that, didn't they, a day or so afterward?

A. I couldn't say.

10

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MARGARET HEATH, SWORN.

By Mr. Bourgeois:

Q. Mrs. Heath, you live where?

A. Haddonfield.

Q. Haddonfield?

A. Yes.

20

Q. How long have you lived in Haddonfield?

A. About four years.

Q. How long have you lived in Camden County?

A. About twenty-one years.

Q. What do you do?

A. Telegraph operator for the Pennsylvania Railroad at present.

Q. And where?

A. At Atco.

30

Q. How long have you been holding that position at Atco?

A. Since the second day of June.

Q. Of this present year?

A. Of this present year, yes, 1918.

Q. Now, what are your duties as telegraph operator?

A. Well, the sending of Western Union messages,

reporting trains and marking down the trains and selling tickets.

Q. Do you recall the day that Palladino was killed?

A. I do.

Q. Do you know the crossing at which he was killed?

A. Yes.

Q. Do you know whether or not the bell, the automatic bell that notifies Collings of the approach of the train rang previous to that train coming along? 10

A. It did.

Q. Did you hear it?

A. Yes, sir; that is the only warning that we have that a train is coming, to get there and get their engine number.

Q. And it is your duty to have your ear open for that train, for that bell?

A. We have to know whether it is a regular train or an extra train, and that is the only way we have of knowing, looking at the engine. 20

By the Court:

Q. Is that a signal that comes into your office, as well as into the box of the——

A. No, it doesn't come into the office, but it rings so that we hear it in the office, and that is our warning, and we jump over to the window then and look to see whether a train is coming or not, or to get the number of the train.

By Mr. Bourgeois: 30

Q. Then it is a signal to you as well as to him, isn't it?

A. Well, maybe; I use it that way.

Q. It is in his office, but it is a signal to both of you?

A. Yes.

Q. Do you know whether or not he put on the switch for the crossing bell below there that afternoon?

A. No, I don't know.

Q. You don't know?

A. No.

Q. Do you know whether or not the engine whistle was blown as the train came along there?

A. The engine whistle was blown, yes.

10 Q. And was it blown after it made the crossing, the main crossing between that and the next crossing, where the accident happened?

A. When it was past the station, partly past the station; when he got over the main cross-over he blew for that crossing south of Atco Station.

Q. Then when he got down near the place where the accident happened did he blow again?

A. He blew a succession of short, sharp blasts.

Q. A succession of them?

20 A. Yes.

Q. Now, of course, I suppose the fact that the accident happened there would impress that on your mind?

A. Most assuredly.

Q. You would instantly think whether or not it was done?

A. That is what I thought, what it was done for, you know.

30 Q. Now, do you recall whether the engine bell was ringing as the train went past you?

A. I do; I was sitting right there at the window. The fireman was in his box and ringing the bell as he passed Atco Station.

Q. And could you tell me or tell this jury how long he continued ringing that bell?

A. No, I couldn't, after he left the station I couldn't tell.

Cross-examination.

By Mr. Woodruff:

Q. And the station is north of the main crossing?

A. North of the main crossing, yes.

Q. How far is the station window near which you sat from the main crossing?

A. I don't think it is any more than the length of this room; it may be a few feet, but that I am 10 not sure.

Q. That is the last you can say with regard to the ringing of the bell, when it passed that window?

A. When it passed the station, yes, sir.

Q. Is that also true of the whistles for the crossing?

A. No, when he passed the main cross-over he blew his whistle for the other crossing.

Q. And still after that the sharp whistles for the accident?

A. Yes, and at the same time he applied his brake and we both jumped, knowing that something had happened. 20

Q. How long had you worked there at that station?

A. Since the second of June.

Q. And some sixty trains go by there a day, don't they?

A. Yes, all of that.

Q. It has gotten to be a matter of common occurrence then for engines to go by and ring the bell or blow the whistle? 30

A. Oh, yes, of course, but that is my duty to know that they do that.

Q. And it was your duty to know that on every train?

A. Yes.

Q. You don't make any record of whether an engine blows a whistle or rings a bell?

A. No.

Q. Then you haven't anything to report with regard to whistles or bells?

A. No.

Q. Why is it your duty then to listen for the bells or the whistle?

A. Because we listen for them and we look for  
10 them because we have to look for our lights and our flags and everything; it is our duty to do that.

Q. Your duty is to look for flags and lights?

A. Yes.

Q. And then report it to Camden?

A. Yes, and we also have to take an examination on the whistles and we have to know what each whistle means.

Q. Of course that is true, but you don't have to report anything about the whistles?

20 A. No.

Q. You don't have to report anything about bells?

A. No.

Q. And it is your duty as soon as a train passes to send a report in to Camden, isn't it?

A. Yes.

Q. With your instrument?

A. Well, we report it by telephone.

Q. By telephone?

A. Yes.

30 Q. And you do that immediately, don't you?

A. Yes.

Q. Do you recollect whether this train was on time or not?

A. It was one minute late.

Q. One minute late at that time?

A. Yes.

Q. How far is the place where you were sitting from this watchman's shanty or house, whatever it is?

A. Well, I say, not much more than the distance of this room; I don't know, it probably might not be quite so far, probably may be a few feet further.

Q. That is right at the crossing, at the street?

A. That is right at the crossing, yes.

Q. The bell that rings is inside of that little house of his?

10

A. Yes.

Q. And you were inside of the station?

A. Yes.

Q. And yet you say you recollect this particular time that this bell rang?

A. I do, because I have to get over there—I was at the ticket window and had to get over there to get the engine number down on the sheet.

Q. Then you were not at the window?

A. Yes, when that bell rings we leave everything else and go to the window.

Q. What had you left?

A. Left my ticket window.

Q. Were you at the ticket window at the time the bell rang?

A. Yes.

Q. You were that day?

A. Yes.

Q. Was any other train due about that time?

A. No.

30

Q. What were you at the ticket window for?

A. We often go over to the ticket window; we have to keep records and accounts over there.

Q. But you weren't selling tickets there?

A. No.

Q. Because there wasn't any train due?

A. No.

Q. How far is the ticket window from the other window?

A. Just a few steps; we have plenty of time because the bell rings when the train is four thousand feet above the station.

Q. And it is a few steps from your chair to the window?

A. Yes.

Q. How many telegraph instruments have you  
10 there?

A. Two—no, one relay and the sounder works.

Q. Do you recollect whether or not there was any messages being received or passing through these instruments?

A. I didn't receive any.

Q. These instruments are clicking rather continuously, aren't they?

A. Yes.

Q. And it is your duty to listen for your signal  
20 for that particular station?

A. Yes, when they call us; we never pay any attention to them when they are working, only when they are calling us.

Q. Only when they are calling you?

A. Yes.

Q. But it is your duty to listen to that call for  
you?

A. Certainly.

Q. It is also your duty to sell tickets and to send  
30 messages and report trains?

A. Yes.

Q. And to watch for the lights and the flags?

A. Yes.

Q. What does Mr. Vaughn do?

A. Mr. Vaughn is agent, he attends to the express and freight and such things as that; he doesn't have

anything to do with the handling of trains or selling tickets.

Q. He doesn't have anything to do with that?

A. No.

Q. It is not his duty to watch for the train or report the train?

A. No.

By Mr. Bourgeois:

Q. Mrs. Heath, when you receive a telegraph call and you are watching for a train do you answer the call or do you let it wait until the train goes past? 10

A. Let it wait or else open the key and say "Minute."

Q. Then, beside, they are not very prompt, are they, in answering those calls always?

A. No, because you couldn't listen to your instrument with the train going by; you usually have to open your key and let them wait until the train goes by.

By Mr. Woodruff: 20

Q. But you don't report them by telegraph, do you?

A. I was saying, sending messages; if others call us for a message we simply open the key and say "A minute" or "Train"—"tr", it doesn't make any difference.

Q. Which way did you report this train?

A. Which way did I report it?

Q. By telegraph or telephone? 30

A. Telephone.

By Mr. Bourgeois:

Q. You report all trains by telephone, don't you?

A. All trains by telephone.

ALBERT MCKINSEY, SWORN.

By Mr. Bourgeois:

Q. Albert, you live where?

A. Atco, New Jersey.

Q. How long have you lived there?

A. Five years.

Q. What do you do?

10 A. Broom maker.

Q. How long have you been broom maker?

A. Well, I have been a broom maker ever since I have been there, off and on.

Q. Where were you working on the 20th of last August, this past August?

A. In the factory.

Q. What is that factory like—what is there on the inside of it?

20 A. It has got a lot of swords and winders and scrapers, saws.

Q. What do you mean by swords?

A. Why, the corn, they bundle, you know, and cut it off, you know, just like a wood saw, you know, only a different type.

Q. Have you any shafting over the ceiling?

A. Yes.

Q. Have any pulleys on the shafting and belts running down?

A. Yes.

30 Q. To run the different machines?

A. Yes.

Q. Do you have any stitchers, broom stitchers?

A. Yes.

Q. How many broom stitchers does it take?

A. You mean stitches in the broom?

Q. Yes.

A. Eight sometimes, and twelve.

Q. No, how many machines?

A. Oh, eight.

Q. When the factory is in operation, what is it like, real nice and quiet?

A. No, makes a lot of noise.

Q. Can you hear each other talk when you are as far away as you and I are, or do you have to get closer?

A. Have to get close.

Q. You have to get close?

10

A. Have to get close, yes.

Q. When you are inside the factory and the factory is in operation, can you hear a train whistle or train bell as it goes along?

A. Not on a far distance you can't.

Cross-examination.

By Mr. Woodruff:

Q. You know this little boy, John Graziano, don't you, that was on the stand yesterday?

20

A. Yes, sir.

Q. And you know John Passarella?

A. Yes.

Q. They both worked there in the broom factory at that time, didn't they?

A. Yes.

Q. And did they work at machines over near the windows toward the track?

30

A. They worked on the sewing machine.

Q. On the sewing machine—the sewing machines are toward the front of the building, aren't they?

A. Yes.

Q. Or the track?

A. Toward the rear.

Q. And you worked back in some other part?

A. This side.

Q. You worked where?

A. This side; you see, the building is parallel with the railroad, so the sewers is near the railroad and the winders are back of the sewers.

Q. You are further in the building than the other two boys that I have spoken about?

A. Yes.

10 Q. If you stood near one of these open windows, you could hear a train blow if it went right by the factory, couldn't you?

A. Yes.

Q. And could hear an engine bell if it was going right by the factory, and if it was ringing?

A. Yes, sir.

By Mr. Bourgeois:

20 Q. You mean you could hear that bell unless you were listening for it?

A. I don't know, I never paid that much attention to it.

Q. They go past there frequently, and you get so you don't listen and don't hear them at all anyway, I presume?

A. No.

Q. Unless something special calls your attention to it?

30 A. Certainly.

GEORGE ASHTON, SWORN.

By Mr. Bourgeois;

Q. Mr. Ashton, you live where?

A. Formerly at Atco; I live at Fisher's Station now, near Chesilhurst.

Q. How long have you lived here in Camden County?

A. Six years. 10

Q. What do you do?

A. Broom making.

Q. Where?

A. Formerly at Atco with Mr. Gardiner.

By the Court:

Q. Are you a native born American?

A. Yes, Indian.

By Mr. Bourgeois: 20

Q. Where were you working in August, this past August?

A. Union Novelty Company, Atco, broom shop.

Q. Working at your trade, broom making?

A. Yes.

Q. How long had you worked there at broom making?

A. Five years. 30

Q. How much could you make a week at broom making last August?

Mr. Woodruff: I object to that; that is immaterial. The records are open if they want them; it is not the best way to prove it, what one man makes.

The Court: I hardly think, Mr. Bourgeois. that this particular inquiry is competent, but I think you are entitled to show what the general wages were. He may be under infirmities —

Mr. Bourgeois: I have an object in view, if your Honor please, that I possibly should disclose, and I expect then the objection will be withdrawn. I propose to show what this man received last August, then show what he received prior to the war, so as  
10 to get some proportion of the increase by reason of the war.

(Question repeated.)

A. Why, it would depend on working conditions; if we got our corn regular and it came out nice to us and we got plenty of it to work with, we could make from \$25.00, \$27.00 to \$30.00 a week.

20 Q. \$25.00 to \$27.00 a week?

A. It would average about \$25.00.

Q. Now, how much did you make a week before the war—you worked at that same factory?

A. \$11.00 to \$12.00.

Q. \$11.00 to \$12.00 a week?

A. Yes.

Q. Mr. Ashton, were you down at the place of the accident on the day that Palladino was killed?

A. About ten minutes after the accident occurred.

30 Q. Do you know whether or not the crossing bell was ringing there that afternoon?

A. It was ringing at the time I was there.

Q. That was when the train came down or when they were testing it out; do you know which?

A. There wasn't no train came down while I was standing there, but the bell was ringing.

Cross-examination.

By Mr. Woodruff:

Q. Where were you standing when you heard the bell?

A. Right near the crossing.

Q. Right near where the fellow was killed?

A. Yes, standing there looking at him.

Q. Did you look around to see why the bell was ringing? 10

A. I did not.

Q. Didn't know whether they were testing it or not?

A. I did not, because I came across there for the past year, never knowed the bell to stop ringing but once, and I guess it wasn't threw on then.

Q. You guess what?

A. I don't think it was threw on then, probably a new man on, and he forgot to throw it and it didn't work that time. I go across there three times a day; every time I go by—the five minutes of one train would be coming when I came back from my lunch, and the bell would be ringing, and the same thing in the morning, fifteen minutes of seven, the bell would be ringing. 20

Q. When you go home at night the whole crowd goes over that crossing?

A. There are very few of them goes over that crossing, not over half a dozen or so.

Q. How long had you known Palladino? 30

A. Not personally, only when he came to the shop this last time, about a month or so.

Q. Did he do the same kind of work that you did?

A. He did.

Q. The same kind of work there in the factory?

A. He did.

Q. You don't know how long he had been working at that trade, do you?

A. I do not.

Q. You don't know whether he made just the money you did?

A. Well, he is a younger man than I am, probably he could make more.

Q. He worked on piece work?

A. Yes.

10 Q. And he made as much—if you worked fast ——

A. The harder you work the more you made.

Q. Were you there when the second train came by?

A. No.

Q. The mail train?

A. No.

Q. You weren't there then?

A. No.

20 Q. You don't know anything about whether the bell rang that time or not?

A. No.

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Mr. Bourgeois: I want to ask Mr. Morrison one question.

WILLIAM MORRISON, recalled.

By Mr. Bourgeois:

30 Q. Can that crossing bell ring if the man in the little shanty fails or doesn't put on the switch?

A. No, sir, it can't.

Q. If the switch is open it can't ring, is that right?

A. Yes, sir. ..

(No cross-examination.)

JOHN FARRELL, SWORN.

By Mr. Bourgeois :

Q. Mr. Farrell, you live where?

A. Fisher, New Jersey.

Q. And how long have you lived there?

A. For the past two months.

Q. What is your business?

A. Chauffeur.

10

Q. Were you in the neighborhood of Atco on the afternoon of August 20th last?

A. Why, I was working; I was employed by the Union Novelty Company at that time.

Q. What company?

A. The Union Novelty Company.

Q. Where was that?

A. Atco, New Jersey.

Q. Were you anywhere near the station at the time a train went past which had the accident with Palladino?

20

A. Why, I was just about to go in the opposite direction up toward the village of Atco, and as I was on my way I heard the whistle blowing from the engine coming down, a sharp whistle, which drew my attention to look around, and I seen other people running and I thought I would do the same, and I found the body of Michael Palladino.

Q. Then you heard the whistle blow as it came down before it struck him?

30

A. Sure.

Q. How far up the track did you hear the whistle blowing?

A. That I can't say; it was near the broom factory.

Q. Near where?

A. Between the crossing of Atco, the village of

Atco, and the crossing where this young man was killed.

Q. I see, between the Atco Station and the other crossing?

A. Yes.

Q. Do you remember whether or not the crossing bell was ringing?

A. Yes, sir, the crossing bell was ringing after I had gotten down to the scene, after I had viewed the scene; the bell was ringing at that time.

10 Q. But you were not of course there before the train went down?

A. No, I was not there; I was in the opposite direction, going up.

Cross-examination.

By Mr. Woodruff:

20 Q. Were you walking along that road that leads from the broom factory up to the main road?

A. Yes.

Q. The road parallel with the main track?

A. Yes.

Q. And the first notice that you took to the thing at all was when these sharp whistles drew your attention to the fact that there was an accident?

A. No, it was one whistle that blew near the broom factory, then the sharp whistles which made me look around.

30 Q. There were two whistles, one followed the other?

A. Yes.

Q. The first one that you heard which drew your attention was at the broom factory?

A. No, it was at the crossing, which drew my attention, because it is usual. I walked out of the broom

factory at that time. When a train is coming I usually hear the whistle, the ordinary crossing whistle, and I never pay any attention to that, but it was the sharp whistles which drew my attention to look around.

Q. That is what I was getting at; it was the sharp whistles at the time Palladino was just about on the track that called your attention to it?

A. I guess so.

Q. Did you come out of the broom factory at the 10 time Palladino did?

A. Well, I think I left just a few minutes ahead of him.

Q. A few minutes before?

A. Yes.

Q. It was practically quitting time, wasn't it?

A. Well, I guess it was about five minutes before quitting time.

Q. And some of the men were already quitting, and you and Palladino were among them? 20

A. Well, I had quit; yes.

Q. And how far had you gotten up toward the main crossing from the broom factory when you heard these sharp whistles?

A. Well, I guess it was about half way between the broom factory and the main crossing.

Q. Did you see Palladino when he started off on his motorcycle?

A. I can't say that I did.

Q. You did not see that? 30

A. No.

Q. I show you this Exhibit P5; does that correctly show the situation at the time that the accident happened?

A. Why, yes, to the best of my knowledge.

Q. You remember the freight car that they were getting broom corn from that day?

A. That I couldn't say.

Q. You don't remember about that?

A. No.

Q. Now, where were you with respect to these big maple trees that show on the picture?

A. Why, I guess I was right near the maple trees.

Q. When you are up there can you see a train coming?

A. Surely.

10 Q. When you are up there?

A. Surely.

Q. Can you see it as you leave the broom factory and go down to this crossing where Palladino was going?

A. If you walk in the same direction the train is coming you can, yes.

Q. If you walk in the same direction the train is coming?

20 A. Sure—I mean if you walk in the opposite direction the train is coming.

Q. Have you ever walked down there when there is a freight car standing as that freight car is standing?

A. Yes, I walked down there; I had occasion to go across this road when I was living in Atco three times a day.

Q. When there is a freight car standing there you can see as you leave the broom factory for a moment between the freight car and the trees, can't you?

30 A. Well, I will tell you, when cars are standing on the siding, why, it does obstruct the view a little; you have to go over near the track to get your view of the train that is coming in the way Palladino was going on down toward Atlantic City; you have to get down near the track before you can see. That is a dangerous crossing, that I will say myself, because I traveled over it three times a day.

By Mr. Bourgeois:

Q. Well, all crossings are dangerous, aren't they?

A. Well, if you don't keep an eye out I should think they are.

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FRANK M. WILLIAMS, SWORN.

10

By Mr. Bourgeois:

Q. Mr. Williams, you live where?

A. At Atco, New Jersey.

Q. What is your business?

A. I am a broom manufacturer by trade.

Q. Where do you work?

A. I work in Camden at the present time.

Q. Where did you work last August?

A. I worked from March 1st until September, that 20  
is, the latter part of September, at Atco, New Jer-  
sey, with the Union Novelty Manufacturing Com-  
pany as foreman.

Q. Do you know what the run of wages for broom  
makers was in that factory in July and August of  
this year?

A. Well, they would average from \$18.00 to \$20.00.

Q. And the highest was how much?

A. Well, there were some probably—we had about  
from eighteen to twenty-two broom makers there 30  
and probably we had four or five that could make  
twenty-five or twenty-six dollars a week at that  
time.

Q. Do you know how the rate of wages in July  
and August of this year compared with the rate of  
wages before the war?

A. Well, all I could go by was the time book; I could take the time books there and look over them. I should say that the average wage there was probably between nine and twelve dollars.

Q. That is, before the war?

A. Yes.

Q. Now, you remember the day of the accident to Palladino?

A. Yes, sir.

10 Q. Did you go down to the accident?

A. Yes, sir.

Q. Were you there when the second train went down?

A. Yes.

Q. Can you tell me whether or not the crossing bell was ringing when the second train went down?

A. It was, yes.

Q. It was ringing?

A. Yes.

20 Q. Now, Mr. Williams, when you are working inside of that factory, can you hear a train blow a whistle or ring a bell unless you are especially directing your attention or listening for it?

A. Well, probably there would be some parts of the shop that probably you could, that is, if you were right at the window.

Q. And listening for it?

A. And listening for it.

30 Q. If you are in there and you are not listening for the whistle or the bell, might it go past and ring and yet you not hear it?

A. Probably there would be twenty-five or thirty trains pass a day and you would never notice it, that is, if you had your attention on the work.

Cross-examination.

By Mr. Woodruff:

Q. How far are the windows of the broom factory from the tracks, do you know?

A. Well, probably fifty feet, that is, in that main building.

Q. Now, if you were standing near those windows looking out at the track you would be able to tell whether or not the engine was blowing its whistle, 10 wouldn't you?

A. Oh, if you were standing at the window, yes; you would, I said.

Q. And see the train go by?

A. Yes.

Q. And you would be able to hear whether the bell on the engine was ringing or not?

A. Yes.

Q. How long had Palladino worked there?

A. Let's see; I believe I put him to work myself 20 in the latter part of July, maybe the last of June or July, probably, I would say, sixty days, thirty or sixty days.

Q. So he didn't work there when they were getting these small wages, did he?

A. No.

Q. He came there when the money got better?

A. Yes.

Q. Have you looked up to see what he was making? 30

A. Yes.

Q. Can you give us his exact wages?

A. Well, his last week's pay that he got there, he drew about \$22.75, I believe it was.

Q. That was the pay which his wife drew after his death?

A. Yes.

Q. That is the envelope that went to her?

A. Yes.

Q. And he was a day or two short that week, wasn't he?

A. He was killed on Tuesday and his time went to Wednesday, one day out.

Q. So there was one day shy?

A. Yes, sir.

Q. What was your position at the broom factory?

10 A. As foreman.

Q. You were foreman?

A. Yes.

Q. Does that picture correctly show the situation the afternoon that Mike was killed?

A. I believe it does, sir.

Q. What was that freight car standing in front of the broom factory for?

20 A. That freight car is on the Philadelphia & Reading; this is the Philadelphia & Reading tracks which runs down here. We unloaded broom corn out of that on Saturday. This is the platform and the Reading tracks that come right around here. Here is the track that goes down from the broom shop; that short spur in there probably would hold two cars.

Q. You don't recollect distinctly about it, is that right?

30 A. Well, from the position of this car, I take it this was on the Philadelphia & Reading, that spur.

Mr. Bourgeois: When was that picture taken?

Mr. Woodruff: The day after the accident.

Q. There was a car there at the time, wasn't there?

A. Yes.

Mr. Woodruff: Mr. Bourgeois, will you have Mr. Vaughn look at his records and see when this car came in?

Mr. Vaughn: It came in on the 20th.

Mr. Woodruff: The car that was standing there had come in on the Pennsylvania, hadn't it?

Mr. Vaughn: Yes, sir, Pennsylvania car. P 10

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Mr. Bourgeois: I offer in evidence a photograph showing this car and also showing an approaching train which was taken on the day following the accident, and ask that it be marked Exhibit D1.

(Said photograph so marked.) 20

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GEORGE C. SMITH, SWORN.

By Mr. Bourgeois:

Q. Mr. Smith, you live where?

A. Pitman, New Jersey.

Q. Pitman?

A. Pitman. 30

Q. How long have you lived in Pitman?

A. Since last August.

Q. What is your business?

A. Civil engineer.

Q. In whose employ?

A. At the present time the Pennsylvania Railroad

Q. How long have you been working for the Pennsylvania Railroad?

A. Since 1905.

Q. You say you work for the Pennsylvania Railroad; do you get a Pennsylvania Railroad check now or do you get a Government check?

A. Get the cash; they pay in cash.

Q. Did you go to Atco and make some measurements for me yesterday?

10 A. Yes, sir.

Q. Will you tell me the distance from the Atco Station crossing there down to the next crossing below the broom factory?

A. You mean from the center of the Atco crossing?

Q. Yes, to the center of the other one.

A. From crossing to crossing?

Q. Crossing to crossing.

A. That is 1,000 feet.

20 Q. What is the distance from the crossing where Palladino was killed, that is, the lower crossing, up to the broom factory?

A. 244, measured on the road.

By Mr. Woodruff:

Q. From where to where?

A. From the crossing where Palladino was killed to the end of the broom factory, the corner of the  
30 broom factory.

By Mr. Bourgeois:

Q. Will you tell me the distance from the first of those ties that are set in the ground down to the crossing, measured along the road?

A. I think that was 178, as I remember it.

Q. I mean the tie that is nearest to Camden?

A. Nearest to Camden, yes.

Q. 178 feet?

A. 178 feet; yes, sir.

Q. Now, I show you Exhibit D1 and P5, which appear to be the same picture taken from very nearly the same point, and ask you what is the distance from the southbound track, that is, the track on which the train was moving that had the collision, to the middle of the road leading parallel with the railroad up 10 past the broom factory?

A. About 31 feet. It is pretty hard to find the center of a road like that.

Q. That is measured at right angles to the railroad?

A. That is measured at right angles to the railroad, yes.

Q. Now, what is the distance from the railroad track around that curve until you come to the middle of the road? 20

A. Around the center of the road?

Q. Yes, I mean from the center of the track at the crossing, at the lower crossing, measured around to the right, up toward the broom factory until you come to the center of the road?

A. Until you come to the road that is paralleling the track?

Q. Yes.

A. Why, it is about 42 feet.

Q. Now, I call your attention to a pencil mark on 30 Exhibit P5 where a witness testified the boy was at the time he looked around, that Palladino was at the time he looked around, and I ask you how far down, or, rather, how far up you could see an approaching train from that point?

A. You ought to see it in the neighborhood of 600 feet there.

Q. That is, from the crossing down?

A. Yes, from the crossing.

Q. How far up the track can you see from a point 42 feet from the crossing measured around that curve, that is, at the very beginning of the curve as you go south, as I understand it?

A. Oh, well, you could easily see the station, which is 1100 feet, 1108 feet to the center of the station.

Q. The station is how far?

10 A. 1108 feet to the center of it.

Q. What is the height of these ties above the ground, approximately?

A. They average about four feet.

Q. So there is nothing to interfere with one's vision?

A. No, sir.

Cross-examination.

20 By Mr. Woodruff:

Q. When did you make these measurements?

A. Yesterday morning.

Q. And these measurements were made when the scene looked like Exhibit P2, weren't they?

A. Yes, possibly that car wasn't there.

Q. There was no freight car on the switch in front of the broom factory?

A. No, there was no freight car there.

30 Q. When the train comes around the curve going in a southerly direction, it goes through a cut, doesn't it?

A. Yes, sir, there is a light cut up north there.

Q. Did you measure that elevation?

A. No, I did not.

Q. So you can't tell us how much that obscures the vision of the train?

A. No, I could not.

Q. Did you measure the size of the shelter platform for passengers which is on the down track?

A. No, I did not.

Q. There is a shelter platform there, isn't there?

A. There is a shelter.

Q. And that obstructs the view to some extent?

A. Slightly, yes, at one point.

Q. Now, when you measured and got this point forty-two feet from the track, did you start with the rail of the track or the center between the rails? 10

A. Started between the rails.

Q. The center between the rails?

A. Yes.

Q. And you measured your arc following the middle of the road?

A. As near as I could, yes.

Q. Making an arc right around until you came to a point opposite those ties?

A. Opposite those ties, yes. 20

Q. How near to the end of the ties, most near to the crossing?

A. I beg pardon.

Q. Where did you stop, at what point with regard —

A. Well, when it looked to me when I was standing in the road, that I had gotten into the parallel road; I had no particular marked point; there is no mark there.

Q. Were you as far down as where the ties were placed? 30

A. Well, right about at the end of these ties there, approximately.

Q. Right about at the corner, say.

A. Yes, pretty near there, slightly above it.

Q. Slightly above it?

A. Yes.

Q. Toward the broom factory?

A. Yes.

Q. And out in the middle of the road?

A. Yes, out in the middle of the road there.

Q. And from that point measuring around in an arc it was forty-two feet to the center of the track?

A. Yes, that is what I got.

Q. How far did you say you could see up the track from that point?

10 A. I say a man ought to be able to see about 600 feet with a car there.

Q. 600 feet with a car there?

A. Yes. Oh, you mean this first point?

Q. Yes.

A. I beg your pardon; you could see up to the station there.

Q. That is, without a freight car being on the —

A. The freight car wasn't there at the time, no.

Q. At the time you made these observations there was no freight car there?

20 A. No, sir.

Q. Did you observe a train coming around through the cut?

A. Yes, one went by while I was down there.

Q. Coming south?

A. Coming south, yes.

Q. And did you notice or not whether you could see it when it came around through the cut?

A. Oh, yes, you could see it swing around behind the shelter there.

30 Q. You could see it behind the shelter as it passed the shelter?

A. Yes, I got a glimpse of it behind the shelter.

Q. That was just a glimpse?

A. Yes, just a glimpse.

Q. So what observation a person would have of the train would be after it passed the shelter?

A. Yes, or near that point if approaching it.

Q. Did you make any observations down there in the summertime when there were leaves on these trees?

A. No, sir, I did not.

By Mr. Bourgeois:

Q. Where is this shelter platform they talk about?

A. It is directly in front of the station. 10

Q. But that is 1100 feet from the crossing?

A. Yes.

By the Court:

Q. How far could one about to cross the track at the point where the deceased man crossed, how far could he see an approaching train from that direction?

A. He could see 1300 or 1400 feet. 20

Q. See the train?

A. See the train, yes; if he was standing on the track or almost to it the shelter would not obstruct his view at all.

Q. Suppose he was back from the track 20 or 30 or 40 feet?

A. At forty feet back he couldn't see hardly past the station.

Q. How far could he see?

A. About 1100 feet.

Q. Suppose he were clear across the road that parallels the track? 30

A. Well, he couldn't see as far then.

Q. How far?

A. Well, if the box car wasn't there he could about see the crossing, the train.

Q. What crossing do you mean?

A. The crossing at the station.

Q. See the train at the Atco crossing?

A. Yes, easy; that is about a thousand feet.

By Mr. Bourgeois:

10 Q. Now, the measurements you gave me, Mr. Smith, I understood were predicated upon the box car being there?

A. Well, when I told you that 600 feet I figured on the box car being there, in my judgment.

Q. And when you told me from the point 42 feet you could see down to the station, you predicated that on the box car being there?

A. At forty-two feet, yes.

Q. Now, if there wasn't any box car there you can see all the way up to the curve, can't you?

20 A. Yes, you can see all the way to the curve where it first swings around the bend.

Mr. Bourgeois: If your Honor please, the question which your Honor asked him about, I call your attention to the fact that the witness who saw this boy said he came down on the side of the road next to the track because the road was muddy.

The Court: Yes, I remember that, but I wanted to see what opportunity of observation there was.

30 By Mr. Woodruff:

Q. Will you please mark the point on Exhibit P5 —

A. I can't tell very well on the photograph, you know.

Q. As nearly as you can.

A. It is about in here; it is not drawn to perspec-

tive or scale; that is about the point where 42 feet came, possibly a little further back than that; that is as near as I can tell on a photograph.

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Mr. Bourgeois: Mr. Woodruff, you admit, don't you, that this photograph was taken?

Mr. Woodruff: Yes, except, Mr. Bourgeois, I 10 want the bottom torn off, if you don't mind.

Mr. Bourgeois: Then I want some testimony to show where it was.

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RAYMOND S. PEDRICK, SWORN.

By Mr. Bourgeois:

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Q. Mr. Pedrick, I show you Exhibit D1 and ask you if you took that picture?

A. Yes.

Q. Where was your camera located at the time you took the picture?

A. 31 feet from the outer rail of the southbound track.

Q. And where was it with relation to this road running along the broom factory and paralleling 30 the railroad?

A. Right in the middle of that road.

Q. Now, from that point how far could you see an approaching train on the southbound track?

A. As far as the Atco Station.

Q. That is a thousand feet, or don't you know?

A. About a thousand feet.

Cross-examination.

By Mr. Woodruff:

Q. You took this picture the day after the accident, did you?

A. Yes, sir.

Q. Now, when you say that you can see a train a thousand feet, you don't mean that you can see the engine that far, do you?

10 A. The front of the train as it comes by Atco Station.

Q. When you took this picture you waited until the train was coming, didn't you?

A. Yes.

Q. And you took it just at the moment when you saw the train first?

A. Yes, at the first I could see the front of the train coming around the station.

20 Q. Now, the engine is coming around past the freight car, isn't it?

A. No, sir, the engine is coming right by the crossing.

Q. Coming right by the crossing?

A. Yes.

By Mr. Bourgeois:

Q. I suppose it took you some seconds to get that picture after you first saw the train, didn't it?

30 A. I had the camera set, and as soon as I saw the train I snapped the picture.

DEFENDANT RESTS.

BOTH SIDES REST.

At this point a recess was taken until Monday morning, December 30th, 1918, at ten o'clock A. M.

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Camden, N. J., December 30, 1918.

Trial of the cause resumed at ten o'clock A. M. on the above date, pursuant to adjournment, in the presence of counsel for the respective parties.

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Mr. Bourgeois: If the Court please, I would like leave to open this case for the purpose of an admission. It is admitted that the witness Di Faleo was a brother-in-law of Michael Palladino.

Mr. Woodruff: And with the consent of Mr. Bourgeois I want to stipulate on the record that the Carlisle tables show that a man at the age of eighteen has an expectancy of life of 42.87.

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Mr. Bourgeois: What has eighteen to do with this case?

Mr. Woodruff: He was nineteen this month; he was only eighteen when he was killed; he had an expectancy of 42.87 and at nineteen of 42.17.

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Mr. Bourgeois: Now, if the Court please, I move for a direction for the defendant, because of contributory negligence of deceased.

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The Court (after argument): Gentlemen, this case is not free from difficulty, but I am inclined to think it is one that I cannot deal with as a question of law. It will rather remain, perhaps, for the disposition of the question on a rule.

Mr. Bourgeois: Will you allow me an exception?

(Exception noted for the defendant.)

The Court: Mr. Bourgeois, is the sixth request intended to meet the constitutional question of the statutes?

Mr. Bourgeois: Oh, no, that is just a question of  
10 contributory negligence.

The Court: Doesn't that take the status dealt with in that request from the Court and submit it to the jury?

Mr. Bourgeois: No, because it leaves the question of view to the jury, whether it was unobstructed or not. That is a question for the jury; they pass on that.

20 The Court: No, but assuming it was obstructed or unobstructed, the statute doesn't make any such difference; it says it is a jury question as to the conduct of the injured person, the traveller.

Mr. Bourgeois: I don't believe it does, if the Court please.

30 (By consent of counsel on both sides a juror named Stanton was excused and the case proceeded with eleven jurors.)

**CHARGE OF THE COURT.**

Lloyd, J.:

Gentlemen: The action in this case is to recover damages for the benefit of the next of kin of the deceased, Michael Palladino, upon the theory that his death was caused by the negligence of the defendant company. There are two preliminary questions which engage your attention in advance of any question of damages. If you reach the question of damages in this case, the law provides that the amount recovered shall be the pecuniary loss sustained by the next of kin, and in this case the wife and child who was born after the death of the husband. The law says, gentlemen, pecuniary damages, pecuniary loss; that means money loss; it means to strip the recovery of all of those elements which enter into some cases in the nature of pain, physical or mental suffering; it eliminates the element of bereavement and sorrow which, of course, is entailed by the untimely taking off of one of our loved ones. At one time there was no right of recovery upon any account in this class of cases, but the Legislature has seen the injustice of the old common law and has modified it to the degree to which I have called your attention. But it is modified, gentlemen, only to that degree and in that manner. So that if you reach the question of damages you will be mindful of the instruction that the Court is giving you as to the law which shall guide you.

Now, gentlemen, in ascertaining what pecuniary loss is sustained the first inquiry that a jury will make will be: What financial benefit was this man at the time of his death to his family, and what was the likely benefit that he would be to them, because

it is for the damages accruing for the untimely death that the law awards payment at the hands of a jury. On the first point it seems that this deceased man was employed in a broom factory at very substantial wages at the time of his death. It seems the wages had advanced during the war period materially over the wages that had been paid prior to the entrance of America into the great war, as indeed in many directions to our knowledge was the

10 case in other employments. There was testimony that it ran up as high as \$30.00 a week; there was testimony that before the war it was around \$12.00 or thereabout. Now, it is incumbent on you gentlemen in that situation to determine what this man's worth was and was likely to be to the family. I suppose you will have no hesitation in saying that these abnormal times when everything is flying at the heights of cost are not a fair test for what is the reasonable value of services. We were living at the

20 time this death happened in abnormal times; fortunately they are now disappearing and it is to be hoped that with the change we will get back to normal conditions in the costs of living and the cost of expenses generally, but the Court cannot tell you, no man can tell you, and you probably won't know just what accrual is to be expected; economists may have a great deal of difficulty in ascertaining what will probably be the wage scale of the years to come. But you are to use your best judgment, gentlemen,

30 and ascertain as best you can what would be the likely earnings of this man. He was approaching nineteen years of age; his wife was about the same age; they had only recently been married. This little child was born of them during the fall, during this past fall. Now, after you have determined, gentlemen, what would be the likely earnings, the next question you would naturally ask yourselves is,

“Well, how much would this family get of that money in the course of the relation which would be presumed to exist?” Well, that depends upon a number of factors. It depends upon how much a man chooses to give his family in a measure, depends upon his continued health, depends upon the continued relationship of the family, depends upon the existence of life itself, depends upon employment and many other factors, perhaps, which will occur to your minds which I have not mentioned, which enter into the affairs of life and make prognostication as to the future a difficult task; but it is a task that the jury must address itself to if it reaches the point of compensation. And then, gentlemen, the goal at which you are to strive is to get a sum of money which shall represent the present money worth of that loss. Now, you see at once that that brings up the fact that a jury’s award now of a capital account is anticipating the income account. Suppose, for illustration, that the wife would derive a benefit of one-third of this man’s income—I am not speaking of it except by way of illustration, not in any way to lead you to such a conclusion, but by illustration—now, that income would run over a period of many years, if the Carlisle tables be accepted as a basis of life, and payments would be in small sums from month to month and year to year, and they would be all in the future except those few that have already passed. Now, you see, you couldn’t add all those together, supposing that that were the situation, that she would get a third, and say, “Now, here she gets a third for so many years of his income”—you couldn’t add all that together, because if you did you would be giving what in common parlance would be the penny and the cake; you would be giving the money and would be giving the use of it at the same time. So that the law requires a jury to appraise

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the present money worth of the loss, taking into consideration all of the elements that I have mentioned, and any other element, the uncertainty of life or uncertainty of relationship, uncertainty of continued payments, and when you have taken them all into account, determine how much the loss of it represents, and that, gentlemen, would be the amount of the jury's verdict if the finding is in favor of the plaintiff.

- 10 Now, gentlemen, there are two questions that you must pass upon and pass upon in favor of the plaintiff before you are permitted to deal with the question of damages at all. The first question is: Was there negligence on this occasion in the operation of this train whereby this man lost his life? It is claimed that there was negligence in the failure to observe the statutory directions by those in charge of the train. It is claimed by the plaintiff that neither a bell on the engine was sounded in accordance  
20 with the statute, nor that a whistle was blown in accordance with the statute. Well, gentlemen, for the protection of the public the Legislature has provided that one of two things must be done in a situation such as was here presented, either that the engine-man shall blow his whistle at intervals beginning nine hundred feet from the crossing and keeping it up until the crossing is passed, or that the bell shall be rung continuously for a like distance. If either of those requirements are observed, then the railroad  
30 company had absolved itself from the duty imposed in that respect.

I don't think, gentlemen, that I will recount the evidence to you upon that subject, because it is considerable upon both sides, as to whether or not the statutory signals were given. I leave it to you to determine whether or not the plaintiff by a fair preponderance of the proofs has established the negli-

gence of the defendant company in those respects, remembering that it must establish them both, that is to say, that there was performance of neither one of them, before negligence can be charged against the defendant, because the statute does not require that they should both be observed, but that either one or the other should.

Now, that brings me to the other question which I have referred to as preliminary to any consideration of damages, and that is as to how you shall regard the action of this deceased man in approaching the crossing. The testimony is, gentlemen, that this was an open crossing, a flat surface crossing with no immediate obstructive elements to the view of one attempting to cross. The deceased was on a motorcycle which he had started at the broom factory two or three hundred feet away. He came up the road in the same direction the train was coming and parallel to the road, and when he reached this crossing he turned and attempted to cross, and as he did so he was struck or he struck the engine and was killed. Now, gentlemen, I don't need to remind you that when one loses his life through his own negligence, either in whole or in part, he has no right to complain of negligence in another, even though that negligence may have existed and may have contributed in causing his death. The law does not measure the responsibilities of people where there is combined fault, combined negligence, in bringing about an injury, but remands them to their status, whatever it may be, without remedy one against the other. Now, I want you to consider most carefully in this case whether this deceased man observed reasonable care in approaching this crossing as to his own safety. If he did not, then he is without remedy in this case and his family would be without remedy.

To ascertain that, gentlemen, it is necessary for the

Court to read to you some more legislation which the Legislature has implanted in our books, enacted into law, and it is this: "Wherever any railroad whose right of way crosses any public street or highway has or shall install any bell designed to protect the traveling public at any crossing, any person or persons approaching any such crossing so protected as aforesaid shall, during such hours as posted notice at such crossing shall specify, be entitled to assume

10 that such warning appliances are in good and proper order and will be duly and properly operated unless a written notice bearing the inscription 'Out of Order' be posted in a conspicuous place at such crossing, whereby such traveler will be warned of any danger in passing over said crossing." Now, gentlemen, that brings you to the consideration of whether this crossing bell was ringing. It was undoubtedly installed; I don't recall any proof of the hours being posted as to which it was to be rung, but

20 at any rate, gentlemen, the bell was there and presumably to be rung. Now, it is alleged upon the side of the plaintiff that the bell did not ring upon this occasion, and in support of that he has called a little boy who was tending his father's horse, and who said that he was a distance of from here to a house in line with the telegraph pole that you saw on the street, that the boy pointed out, and which it was commented at the time by counsel was about six hundred and fifty feet away. There was other

30 testimony, gentlemen, of another witness, Di Falco, I think his name was, of the fact that the bell did not ring on an occasion before and shortly after this accident happened, that some days afterward someone came there and was working on the bell, and then it rang sometimes and sometimes it did not. Against that, gentlemen, is the testimony of a number of witnesses who testified in positive terms that

this bell was rung, that it was ringing on the occasion, that it was ringing afterward, that it was ringing before and that it was not out of order and that there was nothing wrong with it. If this bell had not been there it would be the duty of the Court to say to you that the plaintiff could not recover in this case because the means of observation were so complete that the Court would be obliged to say that anyone who approached that crossing and attempted to cross it without paying any other heed than the deceased admittedly did—or if he did pay heed he walked or ran deliberately in front of an engine with his machine—that in such a situation it would be such palpable negligence that there could be no recovery; but the statute brings into the case, gentlemen, a new element. You will observe that it says that the traveler shall be entitled to assume that the appliance will be duly and properly operated unless notice to the contrary, that it is out of order, is posted. Now, that, gentlemen, brings you to another question. If you conclude that the bell was rung, that is the end of it; there was no question then that the deceased was going right in the face of a plain warning such as the law gave for his protection, and he would not be entitled to recover. It would only be in the event that you found that the bell was not rung that the deceased would be entitled to rely upon its efficacy in warning him. But, gentlemen, that is not necessarily a protection, because one form of notice is not given of the approach of danger; if there were other forms of notice which reasonable prudence would observe, that still imposes the obligation to exercise that care and prudence, and if this bell on the engine or whistle were sounded, you see at once that that gave warning of its own kind, but that, of course, has only to do with the question now that I am dealing with of contribu-

tory negligence. Without negligence on the part of the defendant there is no liability; with negligence on the part of the plaintiff there is no liability.

Now, gentlemen, that covers this case as far as the instructions which the Court will give you, except to say this to you, that negative testimony is always to be received with great caution as against positive testimony, and especially when that negative testimony rests upon no other basis than a little boy  
10 who is 650 feet away tending a horse, whose attention is directed to the train, but who is so far away that he would be quite possibly outside the range of the sound of the bell, where there were conflicting noises of the approaching train, possibly its signals to bar his hearing. You know how often it is in life that things that appear to one mind, one eye, do not appear to another. You can sit there and look at me and think of something else and I won't be heard  
20 at all; I will not be in your vision. So that the ear can be absolutely shut to a conscious observation or conscious recognition of sounds, and for that reason it is that the Courts have held uniformly that negative testimony must be received with caution as establishing affirmatively that sound or observation, things within observation, did not take place. So in this case, this boy, an intelligent little boy, bright, clear in his testimony—does it follow at all that because he did not hear that the bell was sounded it  
30 was not? Might it not have been that he did not hear it because he was too far away with the conflicting sounds? Might it not have been because his mind was not riveted on the bell but rather on the approaching train and the presence of the motorcycle, for he saw them both? Unless, gentlemen, you can find that this crossing bell was not sounded, then, unfortunate as it may be, the deceased has no right to recover in this action. Mr. Bourgeois, some

of these requests I will not charge. If you want them charged I will deal with them, but I think I have probably dealt with the first, second, third, fourth and fifth; the sixth, seventh and eighth I will not charge; the ninth I will affirm.

Mr. Bourgeois: I would rather you would charge them, if you will.

The Court: Well, gentlemen, first: In this action 10  
against the director-general of railroads, the defendant in this cause, for damages sustained by Mr. Snuffin, the plaintiff, because of the death of Michael Palladino at a highway crossing, in which action the negligence of the defendant is based upon the failure of its agents to give the statutory signals of the approach of the train, the burden of proof that such signals were not given is on the plaintiff. I have already told you that in terms, and I suppose I must repeat it, as I am wanted to. 20

2. Against the positive affirmative evidence of a credible witness or witnesses of the ringing of the bell or blowing of the locomotive whistle, there must be something more than the testimony of one or more persons that they did not hear it. It must appear that they were looking, watching or listening for it, and that their attention was directed to the fact. I have already substantially told you that, gentlemen. It is a declaration of our highest Court 30  
in the language of the opinion, as I recall it.

3. Negligence on the part of the defendant cannot be inferred merely from the fact of the happening of the accident, the burden being on the plaintiff to prove that negligence did exist.

4. If Palladino by looking along the railroad could have seen the approaching train in time to avoid being struck, it will be presumed because of the collision that he did not look, or if he looked, that he did not heed what he saw.

5. A zone of danger when applied to a railroad crossing is that distance from the crossing within which a person entering upon such crossing is likely to be injured by an approaching train.

The sixth, seventh and eighth are denied because they deny the protection of the Act of 1909.

9. If the crossing bell was ringing when Palladino approached the crossing and he did not heed the warning of such ringing bell, he was guilty of contributory negligence and plaintiff cannot recover.

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**DEFENDANT'S EXCEPTIONS.**

Mr. Bourgeois: The defendant excepts to the refusal of the Court to charge the sixth, seventh and eighth requests; also to that part of the charge in which the Court said that there was testimony from Di Falco that the bell was not ringing the day before and a day or two afterward, whatever was said there.

30

(Exceptions noted.)

**DEFENDANT'S REQUESTS REFUSED.**

6. If Palladino, when about to enter upon the railroad crossing and when at a point of safety, had an unobstructed view along the track within the zone of danger, he was bound to look for approaching trains with such care as would have made his looking effective, and if he entered upon the track without looking, or with such casual looking only as did not render his looking effective, and did not see an approaching train which could have been seen, and was struck by such train, he was guilty of contributory negligence, and plaintiff cannot recover. 10

7. If Palladino, when one hundred feet or less from the crossing, could have seen the approaching train in time to stop and avoid injury, but failed to look, or looked in such a casual manner as did not render his looking effective, he was guilty of contributory negligence and plaintiff cannot recover. 20

8. If Palladino, when forty-two feet or less from the crossing, could have seen the approaching train in time to stop and avoid injury, but failed to look, or looked in such a casual manner as did not render his looking effective, he was guilty of contributory negligence and plaintiff cannot recover.

## JUDGMENT RECORD.

## CAMDEN COUNTY CIRCUIT COURT.

10 JOSEPH SNUFFIN, Admin-  
 istrator *ad prosequen-*  
*dum* of Michael Palla-  
 dino, deceased,  
*Plaintiff,*  
 vs.  
 WILLIAM G. McADOO, Direc-  
 tor-General of Railroads,  
*Defendant.*

Action at Law.  
 Judgment on Verdict

20 Witness, Frank T. Lloyd, Judge.  
 Albert S. Woodruff, Attorney.  
 F. F. Patterson, Jr., Clerk.

Judgment entered on the thirtieth day of Decem-  
 ber, A. D. nineteen hundred and eighteen.

Damages .....	\$2,000.00
Costs .....	57.58

\$2,057.58

30 Plaintiff, Joseph Snuffin, who resides near Atco,  
 Camden County, New Jersey, administrator *ad pro-*  
*sequendum* of Michael Palladino, deceased, says  
 that:

1. On August 20, 1918, the defendant was direct-  
 ing the operation of the steam railroad, a part of  
 the Pennsylvania system, where the same passed  
 through the town of Atco, Camden County, New Jer-

sey, and at said place maintained double tracks for the passage of through trains, and sidings for the accommodation of freight service, and an electric signalling bell where a public street or road crosses said tracks to the south of the freight station.

2. On the afternoon of August 20, 1918, Michael Palladino, plaintiff's intestate, who was employed at Atco aforesaid, was riding his motorcycle and lawfully attempting to cross said tracks at said crossing. At said time and place defendant had several freight cars on said sidings so as to obstruct the view of said Michael Palladino towards the north, and as he was attempting to cross said tracks said electric bell did not ring warning of an express train which was approaching from the north. Said train was travelling at an excessive rate of speed as it passed through the town of Atco and at said crossing struck said Michael Palladino and his motorcycle, demolishing the latter and killing him.

3. The negligence of which the defendant was guilty and of which plaintiff complains, consisted in the fact that said freight cars were located and permitted to remain on said sidings in such a way as to obstruct the view of persons using said crossing, and that said electric crossing bell was out of order and did not ring and warn of the approach of said train. Also that said train was operated at an excessive and unreasonable rate of speed through said town and over said crossing.

4. Said Michael Palladino left him surviving his widow, Margaret Palladino, to whom was born a child, Alvira Palladino, on October 25th, 1918. Said widow and child are his only surviving next of kin and heirs at law, and each of them have suffered pecuniary loss through his death.

5. Letters of administration *ad prosequendum* of Michael Palladino, deceased, were granted to plaintiff by the Surrogate of the County of Camden, State of New Jersey, on November 11th, 1918.

Plaintiff therefore demands of the defendant the sum of \$20,000 damages as aforesaid, and brings this his suit.

10 The defendant, William G. McAdoo, director-general of railroads, and particularly of the Pennsylvania Railroad, a corporation of the State of Pennsylvania, with offices in the State of New Jersey and elsewhere, says:

1. It admits the matters stated in the first paragraph of the complaint.

20 2. On August 20th, 1918, Michael Palladino was riding his motorcycle and attempted to cross said tracks at said crossing. The other matters stated in the second paragraph of the said complaint are denied.

3. The matters stated in the third paragraph of the complaint are denied.

30 4. The defendant has no knowledge of the matters stated in the fourth paragraph of the complaint and leaves the plaintiff to his proof as he may be advised.

5. The defendant has no knowledge of the matters stated in the fifth paragraph of the complaint and leaves plaintiff to his proof as he may be advised.

*First Ground of Defense.*

There was contributory negligence on the part of the plaintiff's intestate in attempting to cross said tracks without stopping, looking or listening and without taking any care whatsoever for his own safety and in disregarding any and all warnings.

*Second Ground of Defense.*

There was no negligence on the part of the defendant, William G. McAdoo, director-general of railroads, his servants, agents or employees. There was no negligence on the part of the Pennsylvania Railroad, its servants, agents or employees, either in the giving of proper warnings of the approach of a train or otherwise, whatsoever.

10

The plaintiff denies every allegation in the answer.

20

Therefore the sheriff is commanded that he cause to come before the Judge of our Circuit Court at Camden, in the County of Camden, on the thirtieth day of December, 1918, twelve, etc., by whom, etc., who neither, etc., to recognize, etc., because as well, etc., the same day is given to the parties, etc., and the jurors of the jury whereof mention is made also come who to speak the truth of the matter within contained being chosen, tried and sworn upon their oaths say that they find for the plaintiff damages at the sum of two thousand dollars and the Court doth order judgment final in favor of the plaintiff and against the defendant for the sum of two thousand dollars besides costs of suit to be taxed.

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Therefore be it considered that the said plaintiff do recover against the said defendant his damages by the jurors aforesaid in form aforesaid assessed

and also the sum of fifty-seven dollars and fifty-eight cents for his costs and charges by the said Court before the Judge now here adjudged of increase to the said plaintiff and with his assent which said damages, costs and charges in the whole amount to the sum of two thousand and fifty-seven dollars and fifty-eight cents.

And the said defendant in mercy, etc.

Judgment entered and signed this thirtieth day  
10 of December, 1918.

FRANK T. LLOYD,  
*Circuit Judge.*

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STATE OF NEW JERSEY.

(Shield)

County of Camden.

20 I, Francis F. Patterson, Jr., Clerk of the County of Camden, do hereby certify, that the foregoing is a true copy of the record and proceedings with all things touching and concerning the same in the case of Joseph Snuffin, administrator ad prosequendum of Michael Palladino, deceased, vs. William G. McAdoo, Director General of Railroads, filed December 30, 1918, and recorded in the Clerk's Office of the County of Camden, in Book K of Circuit Court Judgments, page 92, &c.

30

In Testimony Whereof, I have hereunto set my hand and affixed my official seal,  
(Seal) at Camden, this seventh day of February,  
A. D. 1919.

F. F. Patterson, Jr.,  
Clerk.

**NOTICE AND GROUNDS OF APPEAL.**

**CAMDEN COUNTY CIRCUIT COURT.**

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JOSEPH SNUFFIN, Adminis-  
trator, &c.,  
*Plaintiff-Respondent,*  
vs.  
WILLIAM G. MCADOO, Direc-  
tor-General of Rail-  
roads,  
*Defendant-Appellant.*

Action at Law. 10  
Notice of  
Appeal.

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*To Albert S. Woodruff, Esq., attorney of the above-  
named plaintiff-respondent.* 20

Take notice, that the defendant hereby appeals from the judgment and every part thereof, entered in the above-stated cause, from the Camden County Circuit Court to the Court of Errors and Appeals, for the following reasons:

Because the Court refused to direct a verdict for the defendant for the reason that deceased was guilty of contributory negligence in riding his motorcycle upon the crossing immediately in front of defendant's oncoming train. 30

Dated February 6, 1919.

BOURGEOIS & COULOMB,  
*Attorneys of Defendant-Appellant.*

## STATE OF NEW JERSEY.

(Shield)

County of Camden.

I, Francis F. Patterson, Jr., Clerk of the County of Camden, do hereby certify, that the foregoing is a true copy of Notice of Appeal in the case of Joseph Snuffin, administrator ad prosequendum of Michael Palladino, deceased, vs. William G. McAdoo, Director General of Railroads, filed February 7, 1919, in the Clerk's Office of the County of Camden.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal,  
(Seal) at Camden, this seventh day of February, A. D. 1919.

F. F. Patterson, Jr.,  
Clerk.

20

30

**NEW JERSEY COURT OF ERRORS AND  
APPEALS**

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JOSEPH SNUFFIN, Administrator, &c.,  
*Plaintiff-Appellee,*

vs.

WILLIAM G. McADOO, Director General of Railroads,  
*Defendant-Appellant.*

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**BRIEF OF APPELLEE**

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**STATEMENT OF FACTS.**

Michael Palladino was struck and killed by a southbound Philadelphia-Cape May express train at a grade crossing at Atco, New Jersey, on August 20th, 1918. Deceased was employed at a broom factory which faces on a road running to the west and parallel with the railroad right of way and extending from the main road where it crosses the tracks at the Atco station southwardly to a point where it turns sharply to the east crossing the tracks. This latter point is what is known as the lower crossing, and was the point where the accident occurred. From a point just north of the lower crossing a siding runs in an arc into the property of the broom works. On this siding a freight car, of the box car type, had been placed by the Railroad Company, and was standing at the time of the accident. At about five o'clock in the afternoon Palladino left his work

in the factory and mounted his motorcycle to go to his home in the direction of Atlantic City. As he started he was between the broom factory and the freight car. At this point he turned and looked up the tracks in the direction from which the train came which later caused his death. The railroad to the north of the Atco station curved to the east and passed through a cut, the earth embankment opposite and above the Atco station and a passenger shelter opposite the station, obscured Palladino's view. Large trees between the factory and the main crossing in full foliage were further obstructions. The freight car obstructed his view of the track southwardly from a point just north of the broom factory. As he rode to the south the freight car closed the space through which he had looked and he did not again have a view of the track to the north until he neared the lower crossing. The engineer saw Palladino as the engine passed the freight car. He testified that his engine was then distant one hundred feet from the lower crossing and Palladino fifteen feet distant from the track at that crossing. Palladino observed the train at the same moment and was seen to put his feet to the ground in an endeavor to stop. The train was moving at sixty to sixty-five miles per hour and only one second elapsed between the time of the collision and the moment the engineer had observed Palladino and Palladino observed the engine.

At the lower crossing was an electric crossing bell operated by a flagman stationed at the main crossing one thousand feet distant. At the Atco station was a watchman's bell operated by automatic contact of the train when about four thousand feet to the north. When this bell rang it was the duty of the flagman to throw a switch to ring the bell at the

lower crossing. It was testified that this bell was out of order and was not ringing as Palladino approached the crossing, that it did not ring when another train approached shortly thereafter, and that it was not ringing properly until repaired on the following day. It was also testified that neither was the engine bell rung nor the whistle blown, as required by statute.

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TESTIMONY.

JOHN GRAZIANO, page 22, line 15:

“Q. You were in the third window of the brick building or the frame building?

A. The brick building.

Q. And that window was open, you say?

A. Was open.

Q. What was he doing when he was talking to you?

A. He asked me to go home with him, and I told him I was going down to Atco with another fellow.

Q. Then what did he do?

A. Then he started off and got near the post there which shows on there, and I was looking at him and he looked back.

Q. I show you Exhibit P4. Do you see there where he looked back, where he was when he looked back?

A. Yes, he was there (indicating).

Q. Now, wait, come around here, take a pencil and show us where he was when he looked back.

(Witness indicated on photograph.)

Q. Right by the first of these ties that stand up on end?

Yes.

At page 23, line 17:

“Q. Are there two switch tracks in front of the broom factory off from the main track?

A. Yes, two of them.

Q. Was there any car standing on those switches that day?

A. There was a freight car standing there.”

At line 32:

“Q. Is that opposite any part of the broom factory?

A. It is right with the broom factory, see, where the smoke is, right there?

Yes.

A. It is about even with it, like that.”

And at line 4, page 24:

“Q. Do you know what the freight car was there for?

A. Yes, it had corn for the broom works in.

Q. How long had it been there, do you know?

A. I don't know, a couple of days, about two days.”

At line 11, page 64:

“Q. Now, in coming out of the broom factory and going down across this crossing on the machine, could you see this train when you came out of the broom factory before you had gotten to the lower side of the freight car?

A. Well, if you got about down here, you can't see it for the freight car, see?

Q. When you get down here—where do you mean by 'here' with regard to these posts?

A. Right around here by these posts, right around the corner.

Q. When you get to the corner you can't see for the car?

A. No, if that car is there, and there is a curve around there, see?

Q. The curve is where with regard to the Atco station?

A. There is the station here, and right down just below there is a curve.

Q. The curve goes around back of these trees, doesn't it?

A. Yes.

Q. Now, just as you leave the factory, even with that freight car there, is there one place where you can see?

A. Yes, you can see when you are near the freight car there.

Q. Then, when next can you see again?

A. After you get down here you can't see it until you get right near the railroad again.

Q. Then you can't see it until you get right near the railroad?

A. No."

WILLIAM S. LAURIE, JR. (engineer), at page 79, line 4:

"Q. Now, you saw him from what time—where was he when you first saw him?

A. Why, he was about to make the curve up on the track."

And page 85, line 33:

"Q. Well, just as the curve of the road takes up —

A. Yes, it appeared to me that he was going to turn up on the railroad, that is when my atten-

tion was drawn, that he was going to cross, attempt to.

Q. You hadn't seen him or he hadn't seen you up to that time, as far as you know?

A. I didn't notice him.

Q. You didn't notice him until then?

A. No, sir.

Q. And as he made the turn he immediately looked up toward you?

A. Yes.

Q. He wasn't looking down toward Atlantic City, was he?

A. No, just looked around like that.

Q. Looked up toward you?

A. Yes.

Q. And the minute he looked he put his feet down.

A. Right away.

Q. And his feet dragged along the ground as if it would stop the machine?

A. Yes."

Page 83, line 31:

"Q. And over that distance you were going approximately 65 miles an hour?

A. Yes, sir; between sixty and sixty-five."

WALTER REGN, at page 8, line 16:

"Q. Coming down that road he came right down toward you, didn't he?

A. Yes.

Q. Now, what happened to him? Speak louder so that the last man over there can hear you.

A. He went right around, and as he looked he was pretty near the railroad, and he saw this train, put out his feet and the motorcycle, the force of it, took him on the railroad.

Q. How far on the railroad did the motorcycle get?

A. Well, I didn't see that, I was too far down, but the handle bars and front wheel got hit."

JOHN FARRELL (defendant's witness), page 150, line 27:

"Q. When there is a freight car standing there you can see as you leave the broom factory for a moment between the freight car and the trees, can't you?

A. Well, I will tell you, when cars are standing on the siding, why, it does obstruct the view a little; you have to go over near the track to get your view of the train that is coming in the way Palladino was going on down toward Atlantic City; you have to get down near the track before you can see. That is a dangerous crossing, that I will say myself, because I traveled over it three times a day."

(A photograph taken the day following the accident and introduced in evidence clearly showed obstructions to view, and approximate distances.)

As to the crossing bell and statutory signals:

At page 43, line 23:

"Mr. Woodruff: When the train is four thousand feet above the main Atco crossing it makes an automatic contact and rings the bell in the watchman's little box or watchhouse; then if he gets that automatic signal he turns on a signal for the next bell at this lower crossing. Now, he must depend on this other automatic signal.

The Court: Well, is that assented to? Is that the situation?

Mr. Woodruff: That is the opening of Mr. Bourgeois.

Mr. Bourgeois: That is as I understand it, but that does not make this situation relevant, if the Court please; you can't get away in this situation at the present time from *res inter alia actae*."

WALTER REGN, at page 7, line 26:

"Q. On which side of the railroad were you pasturing the horse, on the broom factory side or the side where you live?

A. The broom factory side.

Q. Below the crossing where Mr. Palladino was killed, toward Atlantic City?

A. Down toward Atlantic City.

Q. Do you know this bell at the crossing?

A. Yes, sir.

Q. Can you hear that bell as far as where you were pasturing the horse?

A. Yes.

Q. Where you were pasturing the horse, was that as far as your home away from this crossing?

A. A little further.

Q. Can you hear the bell down at your home when it rings?

A. Yes, sir."

At line 1, page 9:

"Q. Well, did you see the train as it came by Atco station?

A. Yes.

Q. Now, when did it first blow the whistle?

A. Well, it was pretty close to the man; it gave two sharp blows.

Q. Is that all the whistles that were blown?

A. Yes, sir.

Q. Just those two?

A. That is all I noticed.

Q. And they were right close to the man?

A. Yes.

Q. Did you hear any bell on the locomotive ringing?

A. Didn't notice none.

Q. You were near enough so you could have heard it if it was ringing?

A. Yes, I guess I could have heard it if it was ringing.

Q. The bell at the crossing, did you hear that rung?

A. No, sir."

At page 18, line 32:

"Q. Did you know the train was coming at all?

Q. Well, when did you first notice that?

A. Yes, sir, I knew the train was coming.

A. I noticed the train as it was coming, and I was watching this man, you know.

Q. Yes, but when did you first notice the train? Where was that when you noticed it first, about?

A. Between the two crossings; you know there is two, one up town and one down.

Q. Between this crossing and what other one, the one at Atco?

A. Yes, sir.

Q. And how far was that away? Was that as far away from the crossing as you were when you first noticed it?

A. Oh, no, not near that far.

Q. How close was it to the crossing?

A. It was pretty close to it; I couldn't tell you how many feet away, but it was pretty close to it.

Q. That is when you first noticed the train then, just before the man was struck?

A. Yes.

Q. Just a moment or so before?

A. Yes.

Q. Now, did you notice anything about any sound from the train before that?

A. I heard the sound of it, but I did not look at the train; I was looking at this man.

Q. That is, you heard the sound of the train itself?

A. Yes, I heard the sound of it.

Q. Of the train coming?

A. Yes.

Q. And you knew there was a train, of course, coming?

A. Yes.

Q. But you didn't hear any bell ring, or any whistle?

A. No, sir, but when it got pretty near to the man it gave two sharp, awful blows.

Q. Now, what about the bell on the crossing?

A. I didn't notice none.

Q. Were you close enough to hear that if it had been ringing with the train coming?

A. I would have heard it, because I can hear it over to our house.

Q. How about it generally—do you generally pay much attention to the bell on the crossing?

A. Well, at first, you know, it is kind of funny to hear it, but I never hear it much more, never pay attention to it.

Q. And were you on this day, were you paying any attention to the bell on the crossing?

A. I would have heard it if it rang, though, but I wasn't paying any attention to it."

JOHN GRAZIANO, page 24, line 12:

"Q. When he did look back you were still at the open window, were you?

A. The open window, yes.

Q. From the time you started talking to him up to the time he looked back, had you heard any whistle of any train?

A. Had heard no whistle.

Q. Had you heard the crossing bell?

A. No.

Q. From where you were at the open window, could you have heard the whistle of the train if it had blown?

A. Sure, I could have heard it if the window was open.

Q. And from that open window could you have heard the crossing bell if it had been ringing at that time?

A. Yes, I could have heard it.

Q. Now, you turned and went toward the other machine, you say?

A. Yes.

Q. Then what next did you notice?

A. I heard two blows, that is when it hit him, you know, and I went out there and looked, and it was Mike got hit.

Q. Did you hear any other whistles except those two blasts?

A. That is all I noticed."

Page 25, line 11:

"Q. Did you hear the train go by?

A. Yes, I heard the train go by.

Q. When it went by the factory were there any whistles blown by the train?

A. I didn't hear no whistles.

Q. Did you hear the bell of the train?

A. Didn't hear no bell either.

Q. And was it after it got by the factory that these two sharp blasts were blown?

A. Yes, sir."

Page 31, line 3:

"Q. Wasn't the locomotive whistle almost directly in front of the broom factory when it first blew, and wasn't that why it attracted your attention, because it was right directly in front of you?

A. When I heard it blow, it was almost on the crossing.

Q. Didn't you hear it blow when it was almost directly in front of the broom factory?

A. No, I didn't hear —

Q. You heard two blasts, didn't you?

A. Yes, after I left the window the express went by. When it got almost to the crossing I heard it blow, I seen all of them running and I ran too.

Q. Did you go back to your machine and do any stitching?

A. No, I didn't go back to my machine."

JOHN PASSARELLA, page 36, line 20:

"Q. Now, had you seen the train go by the window?

A. Yes, sir.

Q. Was that after Michael had gone by the window?

A. After he had gone by, yes.

Q. Was it blowing any whistle when it went by the window?

A. No, sir, not at the window.

By the Court:

Q. Did you stand at the window facing the railroad?

A. No, I was standing at the machine facing the railroad.

Q. No, but I mean, was there a window facing the railroad where you were?

A. Yes.

Q. Were you looking out or looking the other way?

A. Why, I was looking out of the window at the machine, standing in front of the machine.

Q. Did you see the train when the train went by?

A. Yes.

Q. You say it was not blowing or sounding any whistle or bell then?

A. Not when it hit the shop there, no.

Q. Not when it passed your shop or factory?

A. No.

By Mr. Woodruff:

Q. No bell there at that time?

A. No.

Q. And you did not hear any whistle before that on that train?

A. No, sir."

HUMBERT DI FALCO, page 41, line 1:

"Q. And while you were still there and the crowd was still there, did another train come along?

A. Yes.

Q. Going in the same direction?

A. Yes.

Q. Toward Atlantic City?

A. Yes.

Q. Did anything happen when that train came along?

A. Why, Mr. Smith nearly got killed."

WILLIAM MORRISON (defendant's electrician), page 111, line 5:

"Q. When there is trouble with these bells your office is notified, is that right?

A. Yes, sir.

Q. How often does that happen?

A. Well, it doesn't happen so very often; once in a while it will happen.

Q. Once in a while these bells will get out of order?

A. Yes, but very seldom the manually operated bells get out of order.

Q. But the automatic bells go out of order, do they?

A. Yes, sir, sometimes."

At page 112, line 10:

"Q. Now, there is no question in the world but what you were working at that box the day following the accident, is there, opening the box or testing it, or doing something at the box?

A. Yes, the 21st I was there.

Q. What time of day was it?

A. I couldn't tell you exactly what time of day it was.

Q. Wasn't it around noon or one o'clock?

A. I think it was around one o'clock or a little after."

From crossing to crossing was a distance of one thousand feet. The broom factory was two hundred and forty-four feet north of the lower crossing. In order to comply with the statute the engine bell or whistle must have been sounded beginning not more than one hundred feet south of the upper crossing and continuing on past the broom factory to the lower crossing. This is vitally important because of the testimony of John Graziano and John Passarella, who were at windows in the broom factory, and observed the train pass and although they heard the blasts of the whistle sounded as the accident occurred, did not hear bell or whistle sounded as the engine was passing the factory. Walter Regn observed both the motorcycle and the train approaching the crossing, and testified that from the time the train passed the upper crossing until it reached the lower crossing no signals were given, except the sharp blasts of the whistle as the accident occurred. Charles H. Vaughn, defendant's station agent, testified that a crossing whistle was blown as the train passed the station, eleven hundred feet distant from the lower crossing, and that there was no other whistle until the whistles given at the moment of the accident. He did not remember the bell on the engine being rung. William D. Collings, defendant's flagman at the upper crossing, testified that the whistle was blowing for the upper crossing as it passed over it, and that it did not blow again until just as the accident occurred. John Farrell, one of defendant's witnesses, was walking from the broom factory towards the station, parallel with the tracks, and testified that the whistle was blown at the upper crossing as he came out of the broom factory, and then again only as the accident occurred. The unavoidable conclusion of all the tes-

timony is that a signal on the engine was sounded for the upper crossing, and no signal was thereafter given from the engine until the two sharp blasts given a moment before or as the accident actually occurred.

#### EVIDENCE AS TO CROSSING BELL.

Both Humbert DeFalco and Peter Passarello testified that the crossing bell did not ring on other occasions when it should have rung shortly before and shortly after the accident. Appellant maintains that by reason of the fact that the bell was operated through the throwing of a switch by a flagman that this testimony was not evidence that the bell did not ring upon the occasion of the accident. But this contention ignores the fact that the flagman was dependent for his notice to operate the bell upon another automatic electric system which may have been out of order, and ignores the fact that even though the switch itself was closed by the flagman a defect may have been present in the wiring or the bell which interfered with its ringing.

#### NEGATIVE—POSITIVE TESTIMONY.

Appellant maintains that the Court should have determined as a matter of law that the crossing bell was ringing, basing this contention upon an argument that the testimony as to the bell not ringing was negative and the testimony as to its ringing positive.

“So long as the witnesses who say they did not hear the bell were in a position where it may reasonably be considered they would have heard it if it had been rung, the point cannot be removed from the domain of the jury.”

- Danskin vs. P. R. R. Co.*, 83 L. 522; 83 Atl. 1006;  
*Wilson vs. Central R. R. of N. J.*, 88 L. 342;  
96 Atl. 79;  
*McLean vs. Erie R. R. Co.*, 69 L. 57; 54 Atl. 238; 70 L. 337, 57 Atl. 1132;  
*Railroad Co. vs. Shelton*, 55 L. 342, 26 Atl. 937.

And the facts in the present case are not as in the cases cited by the appellant. In this case not only were the witnesses who gave what the appellant characterizes as negative testimony, in a position to hear and attracted to the occurrence then happening, but defendant's witnesses, whose testimony is termed positive, were in every instance challenged by conflict in their testimony, by facts undisputed in the case, or the testimony of other witnesses of defendant.

#### TESTIMONY.

Walter Regn a witness for the plaintiff, was along the railroad embankment to the south of the lower crossing. His testimony was that he looked north, saw Palladino mount his motorcycle and ride toward him, and the train pass the Atco station, and also come toward him. His attention was therefore particularly directed to a possible coming together of the motorcycle and the train, for he knew Palladino and knew that he customarily crossed the tracks at the lower crossing to go on toward Atlantic City.

John Graziano stood at an open window of the broom factory a short distance from the southbound track, after bidding farewell to Palladino. The train passed very close to, and immediately in front of

him, and although he could have heard the crossing bell or the engine whistle or bell, if they had been sounded, he heard none.

John Passarella saw Palladino leave and a moment later the train as it passed. He was facing an open window and was very near to the track. Although he could have heard signals had they been sounded, he testified that he heard neither signal from the engine or the crossing bell.

Defendant insisted that both the bell was rung and the whistle sounded on the engine from the time it crossed the upper crossing until it reached the lower crossing where the accident occurred, and that the crossing bell was in order and was ringing. The positive testimony which appellant claims should so have outweighed the testimony of plaintiff's witnesses as to have made it a matter of law that all the signals were given, instead of one of fact for the jury, was all challenged by fact or other testimony produced on the part of the defendant.

Alphonso Paul, defendant's first witness, it was evident at the trial and is almost as evident from the printed record, was weak-minded. He testified with machine-like precision as to the sounding of all three signals, but he testified that he stood in the center of the crossing Palladino was attempting to use and in the middle of the northbound main track and watched the accident occur. He also testified that he had stood in the middle of that track for nine hours, and the station agent testified that sixty trains a day pass through Atco. He testified that Palladino did not look toward the approaching train, although the engineer testified absolutely to the contrary. He testified that the whistle was blown five times, although at least three other witnesses of the defendant testified that there were only two sharp blasts

of the whistle, and those at the moment of the collision.

William S. Laurie, Jr., defendant's engineer, testified that the train whistle was blown north of Atco station, blown at the main crossing, a road crossing signal below the main crossing, and five sharp blasts at the moment of the accident. According to his subsequent testimony it was not only impossible for him to blow all of these signals in the small space of time his train took to cover the distance, but he was contradicted as to the number of his signals by at least three other witnesses of defendant.

Charles H. Vaughn, defendant's station agent, testified that a crossing whistle was blown as the engine passed over the upper crossing; that no other whistles were sounded until a sharp blast at the moment of the accident. He did not remember a bell ringing on the engine. That after the accident he tested the crossing bell and it worked properly. The test was made with the assistance of the flagman and his testimony was in conflict with the testimony of that employee. He testified that one test was made and that he walked down the tracks some distance to a point where he could hear the crossing bell.

William D. Collings, the flagman, testified first that one test of the crossing bell was made following the accident, then that two tests were made, again that he had heard the crossing bell ringing before the accident, and then subsequently that when the bell was tested Mr. Vaughn walked down the track some distance to hear it. His testimony was in conflict with the engineer's because he testified that after the signal whistle for the main crossing, where he was stationed, no other whistles were blown until the blasts at the moment of the accident.

The testimony of Margaret Heath, defendant's

telegraph operator, as to engine signals was similar to that of the engineer and fireman and in contradiction to three other of defendant's witnesses.

John Farrell, one of defendant's witnesses, testified that a whistle was blown for the upper crossing as the train passed over it and that there were no other whistles until at the moment of the accident.

William Morrison, defendant's electrician, testified that the crossing bell was in order; that it was his duty to make regular weekly examinations of the electric bells; that such examination should have been made on the day of the accident but was not made on that day. That on the day following he inspected the crossing bell and worked at the bell-box and although he testified that the two bells were in order on that day, he admitted that bells of the type of both of those bells did get out of order and that that was the reason for his weekly visits of inspection.

#### CONTRIBUTORY NEGLIGENCE.

Appellant maintains that deceased must be found to have been contributorily negligent as a matter of law. To argue this appellant first ignores absolutely the existence of the box-car and other obstructions to view; then presumes the Court must find, as a matter of law, that the crossing bell was in order and ringing. The first cannot be ignored and the second is a jury question. Appellant also avoids discussion of the proposition that plaintiff was compelled, riding as he was on a motorcycle, to place himself in danger before he could see beyond defendant's box-car. According to the testimony of one witness, produced by the defendant, deceased could see the Atco station when forty-two feet from

the crossing looking in line with the nearest corner of the freight car. Even at this distance deceased had less than three seconds in which to act after his danger was discovered, but the fact was undisputed that the engineer as he passed the freight car first saw Palladino when he was fifteen feet distant from the nearest rail and when the engine was one hundred feet from that point, and that Palladino observed the engine at precisely the same moment. Appellant, to add to his argument, incorrectly states that the tracks were four feet above the roadway. This is not only untrue, as the photographs show, but there was no testimony to that effect.

And the testimony must be here construed in the light most favorable to the plaintiff.

*Goodwin vs. Central R. R. of N. J.*, 64 Atl. 134; 73 L. 576.

The question as to the ringing of the crossing bell being a jury question, the Court could not say that deceased was guilty of contributory negligence.

*Crossing Act of 1919*, P. L. p. 137.

And deceased cannot be said to have been contributorily negligent as a matter of law under the particular circumstances surrounding the happening of this accident.

*Goodenough vs. P. R. R.*, 55 L. 596;

*Kingsley vs. D. L. & W.*, 81 L. 536, 80 Atl. 327;

*McCool vs. W. J. & S. S. R. R.*, 81 L. 479; 81 Atl. 111;

*Danskin vs. P. R. Co.*, 83 Atl. 1006;

*Napodensky vs. W. J. & S. S. R. R. Co.*, 85 L. 336; 88 Atl. 1033.

In the case of *Wilson vs. Central R. R. of N. J.*, 88 L. 342, 96 Atl. 79, deceased was driving an automobile and had a more favorable view than that which appellant claims deceased had in the present case. The train also was running more slowly and it was held "a jury question whether the decedent under all the circumstances then present exercised reasonable care to avoid the collision."

*Materka vs. Erie R. R.*, 101 Atl. 69.

It is therefore respectfully submitted that the judgment of the Court below should be sustained.

ALBERT S. WOODRUFF,  
*Attorney of Plaintiff-Appellee.*

## New Jersey Court of Errors and Appeals

Joseph Snuffin, Admr. &c.,  
Plaintiff,  
Respondent,  
vs.  
William G. McAdoo, Director  
General of Railroads,  
Defendant-Appellant, } On Appeal.

### APPELLANT'S BRIEF.

#### STATEMENT OF FACTS.

This action was brought to recover damages from the Director General because of the death of Michael Palladino, which occurred at a grade crossing at Atco in the County of Camden, on the 20th day of August, 1918.

The physical situation at the locality was as follows: The Railroad Company's tracks, which were the tracks of the old Camden & Atlantic Railroad Company, at this point ran about Northwest and Southeast. Along the track on the Southwest side was a road abutting and paralleling the Railroad Company's right of way. This road extended down to the crossing and there terminated on that side of the Railroad right of way. There was a right angle crossing over the railroad track, which track was elevated about two feet above the level of the aforesaid road. On the Southwesterly side of the road and about 240 feet Northwesterly of the crossing there was a broom factory in operation. At the crossing there was installed a crossing bell, and approximately 1000 feet Northwesterly from the crossing in question was another

right angles crossing, and 100 feet beyond this crossing, or approximately 1100 feet from the crossing in question, was the Atco Station. The bell at the crossing in question was operated by a flagman stationed at the Atco Station crossing 950 feet away. Above the Atco Station there was in operation an electric bell which was operated automatically by the train passing over the track. This latter bell commenced to ring when the train was 4,000 feet Northerly of Atco Station and 5,000 feet Northerly of the crossing in question. When the automatic bell commenced to ring it was the signal for the flagman to turn on the switch to ring the bell at the crossing in question.

On the day in question, about five minutes of five in the afternoon, Palladino mounted a motorcycle at the broom factory, where he had been working, and proceeded Southeasterly in a path along the side of the road nearest to the railroad right of way, towards the crossing.

One witness testified that at a point 177 feet distant from the railroad crossing, Palladino looked back over his shoulder in the direction from which a Cape May Express train, running from 60 to 63 miles an hour, was approaching.

Another witness testified that he saw Palladino when he left the broom factory, and watched him as he rode down the road and turned to go upon the crossing, and that Palladino never looked back until he was at the end of the railroad ties nearest to the railroad tracks, when he looked and saw the oncoming train, and put both feet on the ground to stop his motorcycle. These ties were placed in the ground to form sort of a fence or guard at the road intersection, and the end of those ties was about 15 feet distant from the nearest track on which the oncoming train was running.

The engineman testified that he saw Palladino when Palladino commenced to make the turn at the crossing, which was shown by measurements to have been 42 feet from the track, but that Palladino did not look in the direction of the oncoming train until he was about 15 feet distant from the track, when he looked up, put both feet on the ground and endeavored to stop the motorcycle.

Another witness testified that he was standing at the railroad crossing, saw Palladino come along the road with his head down as though he were looking at something about the front wheel of his machine; that he made no observations that he could see at all.

One witness, who was inside the broom factory, testified that he did not hear the crossing bell ring, but was not listening for it. He also testified that a number of stitching machines and other machinery in the broom factory were in operation.

Another witness, also inside the broom factory, testified that he did not hear the crossing bell ring, but that he was not paying any attention to it.

Another witness, who was located 650 feet Southeasterly of the crossing, the wind on that day blowing in the opposite direction from him, testified that he did not hear the crossing bell ring, but that he was not paying any attention to it, and that when he first moved there he used to hear the bells pretty much all the time but afterwards he did not notice them so much. He was a boy about ten years of age.

The man who was standing at the crossing when the accident occurred was the driver of one of John F. Betz beer wagons, whose motor had broken down early in the day and had been obliged to wait there for assistance to be sent to him from Phila-

delphia. His testimony was that in all he was there about nine hours. This accident to his truck happened near this crossing, and he testified that he spent the time at the crossing and along the railroad track. As this train was approaching from the Northwest and Palladino was approaching from along the roadway, he stood between the rails of the Northbound track looking Northwest. The crossing bell was located in the Northerly corner of the intersection of the railroad and public road. This witness testified that the crossing bell was ringing; that he knew it was ringing and was positive of it.

The flagman testified that he received the signal of the approaching train by the bell ringing in his office, and he immediately threw the switch for the crossing bell, and while the train was far up the track he could hear and did hear the bell at the crossing in question ring.

An engineer testified that the distance from the point where one witness testified that Palladino looked back to the crossing was 178 feet; that the distance from the Southbound track on which the train was running to the middle of the used portion of the road paralleling it was 31 feet; that the distance from the centre of the first track measured around the curve towards the broom factory until you reach the beginning of the curve was 42 feet; that the distance up the track one could see from the point where the witness testified that Palladino first looked, which was indicated on a photograph marked Exhibit P5, was 600 feet; that from the point at the beginning of the curve, which was 42 feet from the track, one could see to the station which was 1108 feet; that the tracks were approximately 4 feet above the abut-

ting ground, with nothing to interfere with one's vision.

The engineman testified that when approaching this crossing, he blew the road crossing signals for the crossing in question just after passing the main crossing, which was 950 feet Northwesterly of the crossing in question; that he hadn't more than finished with those signals than an object loomed up, and he grabbed the whistle and gave a succession of short sounds of the whistle, either four or five in number, and these continued until the engine had practically struck the deceased; that before they reached the first crossing, which was a crossing just Northwesterly of the Atco Station, the fireman climbed upon his box and commenced ringing the bell, and continued to ring it all the way through Atco and until after they had crossed the crossing in question.

The fireman gave like testimony.

Mr. Vaughn, who then was working for the Bethlehem Steel Company, but who had been agent at Atco at the time the accident happened, testified that the whistle was blown for the crossing in question, and states that it was blown when the rear part of the train had not yet quite passed the station, and afterwards when the train was further down the track he heard another whistle.

Mr. Collings, the crossing watchman, testified in addition to his testimony about the crossing bell, that the locomotive whistle was blown as they passed the crossing at the station, and that the bell of the engine was ringing.

Margaret Heath, who was an employee at the station, and whose duty it was to report the passing trains, testified that when the signal bell began to ring, that is when the train was 4,000 feet distant from the station, she left the ticket window

where she was standing and went to the opposite window to watch the train pass the station, it being her duty to report it; that the whistle was blown as the train crossed over the crossing at the station, and afterwards a succession of short blasts were blown, and that the fireman was in his box ringing his bell as the train passed the Atco station.

Albert McKinsey, an employee at the broom factory, testified that when you are inside the factory and it is in operation, you cannot hear the train whistle or the train bell if far distant because of the noise in the factory.

Mr. Vaughn testified that shortly after the accident had occurred, he personally had tested the crossing bell by walking down towards the lower crossing and having the flagman throw the switch; that it was working properly.

George Ashton testified that he was at the place of the accident about ten minutes after it occurred when no train was coming, and that the crossing bell was ringing. This was undoubtedly when it was being tested out for the agent.

John Farrell testified that after he got to the body, a few minutes after the accident happened, the crossing bell was ringing.

William Morrison, an electrician in charge of the bells over this portion of the division, testified that this crossing bell in question was operated from a switch in the flagman's shanty, and in the shanty there was a warning bell about four feet away which warned the flagman when the train was approaching, and when the warning bell rings he is supposed to close the switch of the crossing below Atco; that the warning bell rings when the train is 4,000 feet distant; that inspections are made of the bells once a week; that he examined the bell in question on the 16th day of August and

it was in proper condition; that he next examined it on the 21st day of August and found it in proper condition; that at the time he examined the bell on the 21st day of August he did not know that an accident had happened.

At the close of the testimony a motion was made for the direction of a verdict for defendant on the ground that under the testimony the court, as a matter of law, should find that the crossing bell was ringing as the deceased approached the crossing; that if the court found as a matter of law that the crossing bell was ringing, then the Crossing Act of 1909, having been complied with, furnished no barrier to the administering of the law as it had been administered previous to the enactment of that Crossing Act. In other words, the Crossing Act of 1909 having been complied with, the court was free to deal with the question of direction without considering the inhibitions of that act in cases where the act was not complied with; that the deceased by reason of the unobstructed view he had of the approaching train, his failure to look before entering upon the crossing and when he was in a place of safety, and the giving of the signals by the railroad to warn him of danger, charged him conclusively as a matter of law with having contributed to his death, and therefore a verdict should be directed for the defendant.

#### TESTIMONY.

“Walter Regn, a witness produced by the plaintiff, testified that he was ten years old, and further testified on page 7, line 10, as follows:

Q. Now, on the day that this Michael was killed on his motorcycle, were you there near the crossing?

## Brief for Appellant.

A. I wasn't really near it, no, sir, not very near it, no sir.

Q. You were near the railroad weren't you?

A. Yes, sitting right on the bank.

At page 18, line 1 he testified:

Q. Walter, stand up there a minute. You see those buildings up the street there?

A. Yes.

Q. Can you see them, the tops of them?

A. Yes.

Q. Was that anything like the distance you were away from the crossing?

A. It is about that far, about there, that there brick one.

THE COURT: Gentlemen, can you get an idea what that is?

Mr. Woodruff: Here is an engineer. Mr. Remington, can you tell me about what that is:

Mr. Remington: Six hundred and fifty feet, about.

Q. Were you that far away from the crossing when the boy got hurt?

A. I was about that far away, yes.

Q. Now, you say you were not paying any attention to the train; you were looking at him?

A. Yes, sir.

Q. Did you know the train was coming at all?

A. Yes, sir, I knew the train was coming.

Q. Well, when did you first notice that?

A. I noticed the train as it was coming; I was watching this man, you know.

At page 19, line 34:

Q. Now what about the bell on the crossing?

A. I didn't notice none.

Page 20, line 1:

Q. Were you close enough to hear that if it had been ringing, with the train coming?

A. I would have heard it because I can hear it over to our house.

Q. How about it generally, do you generally pay much attention to the bell on the crossing?

A. Well, at first, you know, it is kind of funny to hear it, but I never hear it much more, never pay attention to it.

Q. And were you on this day, were you paying any attention to the bell on the crossing?

A. I would have heard it if it rung, though, but I wasn't paying any attention to it.

Q. Walter, just one question. Was the motorcycle making very much noise, the exhaust of it?

A. Making pretty much noise.

Page 13, line 1:

Q. Now you saw Palladino when he left the broom factory?

A. Yes.

Q. Saw him coming down the road?

A. Yes.

Q. Saw him when he started to turn?

A. Yes.

Q. Saw him when he looked up and put his feet in the ground?

A. Yes.

**Brief for Appellant.**

Q. Did he make quite a good deal of dust when he put his feet on the ground as he went up there?

A. Well, he didn't make much because there isn't much sand there, it is pretty hard.

Q. Let me see if I can place that. Do you remember the ties that are put along the road leading to the broom factory up to the crossing?

A. Yes.

Q. Or down to the crossing, whatever you call it?

A. Yes.

Q. Then do you remember the railing put around those ties where it comes right to the crossing there?

A. Yes.

On page 14, line 15:

Q. Now, how close was he to the track when he stuck his feet down, say about?

A. He was about around there, (indicating on photograph).

Q. Pointing to the nearest side of the ties to the track?

A. Yes.

Q. But he was in the street, of course, the road; he wasn't at the ties. Then he put his feet down and he couldn't stop the motorcycle, as I understand you?

A. No.

Page 15, line 1:

Q. Now, Walter, you saw him all the time he was coming up there, didn't you?

A. Yes, sir.

Q. He never looked around until he got up within a short distance of the track when he put his feet down, did he?

A. Yes, when he saw it, he put his feet down.

Q. Put his feet down and tried to stop his machine, wasn't that what he was trying to do?

A. Yes, what he was trying to do.

Line 20:

Q. You say you didn't hear the bell ringing, that little bell there at the crossing?

A. No, sir, I didn't hear it.

Q. But it might have been ringing. You were not paying any attention to it were you?

A. No, sir, I wasn't paying any attention.

Q. Weren't paying any attention to that?

A. Yes.

Q. And you weren't paying any attention to the train blowing the whistle?

A. I heard it blow the whistle.

Q. You heard it blow the whistle when it came down near this, when you thought he was going to be hit?

A. Yes.

Q. But you were not paying any attention when the train was coming down before that to whether the train blew its whistle or not?

A. No.

Q. And you were not paying any attention to whether the bell was ringing on the train?

A. No, I wasn't paying any attention but

**Brief for Appellant.**

I heard the train blow its whistle just before it hit the man.

Q. And when was that, just before or at the time he put his feet down? Just before, wasn't it, the first one?

A. He just put his feet down as the second whistle blew."

JOHN GRAZIANA, a witness for plaintiff, at page 20, line 35, testified as follows

Q. You work at the broom factory?

A. Yes.

Page 21, line 1:

Q. Did you work there last August?

A. Yes, last August.

Q. Were you working there the day Michael Palladino was killed?

A. Yes.

Line 33:

Q. Did it (the motorcycle) make a noise or run quietly?

A. Well it didn't make much noise. When he shut the muffler, it didn't make much noise.

Page 22, line 10:

Q. Where were you standing when he asked you that?

A. Near the window.

Q. Which window in the broom factory?

A. The third window; the window was open.

Line 25:

Q. Then what did he do?

A. Then he started off and got near the post there which shows on there, and I was looking at him and he looked back.

Q. I show you Exhibit P4. Do you see there where he looked back, where he was when he looked back?

A. Yes, he was there. (Indicating).

Q. Right by the first of these ties that stands up on end?

A. Yes, sir.

Page 24, line 15:

Q. From the time you started talking to him up to the time he looked back, had you heard any whistle of the train?

A. Had heard none.

Q. Had you heard the crossing bell?

A. No.

Q. From where you were at the open window, could you have heard the whistle of the train if it had blown?

A. Sure, I could have heard it if the window was open.

Q. And from that open window could you have heard the crossing bell if it had been ringing at that time?

A. Yes, I could have heard it.

Q. Now, you turned and went towards the other machine, you say?

A. Yes.

Q. And what next did you notice?

A. I heard two blows, that is when it hit him, you know, and I went out there and looked and it was Mike got hit.

## Brief for Appellant.

Q. Did you hear any other whistle except those two blasts?

A. That is all I noticed.

Q. Were they the usual sound of a whistle when it blows for the crossing or were they different?

A. I don't know, just gave two blows, you know.

Page 26:

Q. Is that a pretty large building, that broom factory?

A. Yes, a big building.

Q. And it has a lot of shafting overhead, doesn't it, with wheels on it and belts running over these wheels down to the lower part of the building, machines?

A. Pulleys, you mean?

Q. Yes, pulleys.

A. Yes, it has pulleys and belting.

Line 15:

A. Well, there is two of them, one for the sewers and one for the broom makers.

Q. That run down from the pulleys on the shafting to pulleys on the different machines?

A. Yes.

Line 28:

Q. And they make a lot of noise, do they, clapping?

A. I worked on the Baltimore machine. There are two different kinds. There was only one working there that night; you see I

had quit there looking out the window and only one was working there, the ones that make the noise.

Page 27, line 30:

Q. I didn't ask you that. On that particular night you were not expecting any accident, of course, were you?

A. No.

Q. You didn't think that Palladino was going to get struck?

A. No.

Q. You weren't thinking anything about whether trains were coming or not, were you?

A. No, I wasn't thinking anything about it.

Q. And you weren't paying any attention to the trains, were you?

A. I wasn't paying any attention. I just stood by the window and waited for another fellow.

Q. Without thinking whether the trains was coming or not coming, without listening for bells or whistles of any kind, weren't you?

A. Yes.

Q. And it is a fact, isn't it, John, that trains go past that factory time and again and you don't hear them, don't they? Trains go pass that broom factory when you are in there and you don't hear them at all?

A. Sometimes I hear them.

Q. And sometimes you don't. It depends upon whether you are listening for them or whether there is a lot of noise in there, doesn't it?

A. Yes, sir".

## Brief for Appellant.

JOHN PASSARELLA, a witness for plaintiff, on page 35, line 10, testified as follows:

“Q. Did you work there (Atco Broom Works) last August when Michael Palladino was killed?

A. Yes.

Q. Did you see him when he left for home that evening?

A. No, I saw him when he went by the window as I was working, yes.

Page 36, line 5:

Q. When did you hear the train after that?

A. Why, I heard the train after it hit him at the crossing, that is all I know.

Q. What did you hear there?

A. Why, they blowed so quick, as if somebody was hurt, killed or something like that?

Q. How many times did it blow?

A. I don't know, four or five times, I guess.

Q. Do you remember how many times it blew?

A. No, I couldn't tell you.

Line 20:

Q. Had you seen the train go by the window?

A. Yes, sir.

Q. Was that after Michael had gone by the window?

A. After he had gone by, yes.

Q. Was it blowing any whistle when it went by the window?

A. No, sir, not at the window.

Page 38, line 28:

Q. Now, you were not expecting any accident that afternoon, of course, were you?

A. No, sir.

Q. Thought nothing about it?

A. No, sir.

Q. And you were not listening for any train whistles, were you?

A. No, sir.

Q. You were not listening for any train bell?

A. No.

Q. Just simply attending to your business?

A. Yes.

Page 39, line 13:

Q. What kind of a machine were you working on?

A. Baltimore.

Q. And what kind of a machine is that; does it make much noise or not?

A. Well, it makes a little more noise than the other machine.

Q. They all make enough, don't they?

A. Well, the other doesn't make so much."

HUMBERT DeFALCO, a witness for plaintiff, on page 47, over objection testified:

## Brief for Appellant.

“Q. This second train, did the bell ring for this second train?

A. No.

Q. Were you very near to the bell at the time the second train came?

A. I was standing where the body was.

Q. And how many feet was that from the crossing?

A. I judge about one hundred feet, one hundred and twenty-five feet.

Line 30:

Q. Did you stop there for a train?

A. Yes, sir.

Q. Did the bell ring for that train?

A. No, sir.”

PETER PASSARELLA, a witness for plaintiff, on page 56, line 1, testified:

“Q. You say the bell rang the next day after the accident?

A. Yes.

Q. About what time of day?

A. Well, it rings when they put the bell on but don't when they don't put the bell on, it won't ring.

Q. But then if you put the bell on it rings?

A. Sure.

Q. If you don't put the bell on, it don't ring?

A. That is the way the bell is down there.

Q. And that is the way it was all the time, wasn't it? If you put the bell on, it rang, didn't it?

A. Well, it would ring sometimes, yes.

Q. If you put the bell on it always rang, everytime you put it on, didn't it?

A. Maybe he thought it rang, anyhow, when he did put it on."

ALPHONSO PAUL, defendant's witness, testified, page 67, line 6:

Q. No, but what do you do—what is your work?

A. I drive a truck.

Q. Drive a truck for whom?

A. John Betz.

Q. Were you driving a truck on the day of this accident?

A. The accident, you know, was when my machine broke down and I stood there, you know—

Q. Where did your machine break down?

A. On that street, you know, what cuts through on a little street there, you know.

Q. On the same road?

A. Yes, on the same road the fellow got hit.

Q. Do you remember when the accident happened? Do you remember that an accident happened?

A. Yes.

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

A. I was in the middle of the track where that street runs, you know.

Q. Which track were you in the middle of, the one the train was coming on or the other one?

A. No, the other one, right on the side, you know.

## Brief for Appellant.

Q. How long had you been there at that crossing?

A. Me?

Q. Yes.

A. I was there for about nine hours, until quarter to five when the express train come, you know.

Q. Why were you there so long?

A. I couldn't get no machine; I had to get a new machine to pull me out.

Page 68:

Q. You had a load of beer there?

A. Yes, a big truck.

Q. And you were waiting for another truck to come, is that the idea?

A. Yes.

Q. Where was the other truck coming from?

A. Philadelphia."

BY THE COURT:

"Q. And you stayed there all day?

A. Yes, sir, nine hours, I stayed there all day.

Q. And nothing happened to you?

A. And this fellow was coming from work about quarter of five when the express train come, you know, and the express train blowed the whistle and the bell was ringing, and this here fellow on the motorcycle, you know, come along, you know, come along, straight along this way, you know, and he comes, hits the train and the train hits him, you know,

took him about as far as that water tank up there, right there by that water tank."

MR. BOURGEOIS:

"Q. You say the whistle was blown?

A. Yes, the whistle was blown about five times, and they rang the bell; the bell was rung too, you know.

Q. On the train?

A. Yes, the bell was ringing too, you know."

BY THE COURT: (Page 69).

Q. What bell do you mean, what bell was ringing?

A. The bell on the car track, you know."

BY MR. BOURGEOIS:

"Q. On that little post right along by the crossing there?

A. That was ringing, too, the whistle was blown and the bell was ringing on the engine, too.

Q. And did this man seem to notice them, did he seem to hear them?

A. No, the machine was making a noise, the motorcycle, you know. He looked down this way, you know, just came there, you know, and hit the train. The first wheel of the motorcycle hit the train, you know, and the train come and hit him, you know, knock-

ed him up in the air and he flops right on the payment; that is all.

Q. Did you see the man on the motorcycle look at all?

A. What?

Q. Did you see the man on the motorcycle look back to see the train at all, that you could see?

A. No looking this way instead of looking down that way. Started looking this way, you know.

Q. You say he was looking down at his machine?

A. Yes.

Q. What was he looking down there for, can you tell?

A. I don't know what he was looking for. He was looking this way at the machine, you know; then he turned his handle bars just around, you know, and the train hit his first wheel, you know.

Q. Well, how far down the road or up the road could you hear the whistle blowing before it came to the crossing?

A. Oh, I had seen the train coming down, you know, the whistle was blowing; it come down from the factory, you know, was blowing that whistle and ringing the bell, the bell was ringing too, you could hear it, and this fellow was coming down the road, you know, turned around and it swiped him.

Q. And you heard the whistle blown four or five times, did you?

A. Yes, four or five times it blowed, the engineer blowed it about.

Q. Was the whistle blowing when it hit him?

A. The whistle was blowing, sure it was blowing.

Q. When it hit him?

A. Sure it was blowing.

Q. And it began to blow outside the broom factory?

A. Sure, it started to blow way up at the station, and when it was coming up it was blowing, the bell was ringing, too.

Q. Did it blow on the other side of the station?

A. Just this side of the station, right there, you know.

Q. On the side towards the crossing where you were?

A. Yes; no, it blowed away down there. I was sitting down on the box.

Page 71, line 10:

Q. You were in the middle of which track?

A. I was standing right here. (Indicating on photograph).

Q. Mark an X on the track where you were standing.

A. I was standing right here. (Indicating).

Mr. Woofruff: With your permission, may I make an X here?

Mr. Bourgeois: Yes.

Mr. Woofruff: That is on Exhibit P2".

WILLIAM D. COLLINGS, defendant's witness, flagman of the Railroad Company, at page 121, line 32, testified:

## Brief for Appellant.

“Q. What are your duties as crossing watchman?

A. To protect it.

Q. I know, but how; what do you do; what do you have to do there?

A. We have to go out with our stop signs. We get a warning from the train, you know, about four feet north of Atco, then we out the switch on for the Southbound crossing, then we out with our stop signs to protect the crossing.

Page 122, line 5:

Q. Do you remember the day that Palladino was killed?

A. I do.

Line 12:

Q. Do you know whether or not you put the switch on to ring that bell at the crossing below the station for the train that killed Palladino?

A. The bell never refused to put on yet.

Q. Did you put it on that particular time? I want to know that particular time.

A. That particular time, yes.

Q. Now, did that little bell in your office ring and notify you that the train was coming?

A. It did.

Q. On that day?

A. On that day.

Q. And how soon after that rang was it that you put on the switch for the other bell, the lower bell?

A. Well, just as soon as I get the warning, right away I get up and throw the switch on.

Q. And is that what you did on this particular day.

A. Yes, what I did this day.

Q. After the accident had happened, did you do anything towards the testing of that bell to see if it was in proper order?

A. Well, I could hear the bell ring myself.

Q. Yes, but did you ring it so that the station agent could hear it?

A. When Mr. Vaughn went down at the other end there, of course he wanted me to test this to see whether it was ringing or not, see, so he went down and I threw the switch on. It rang and he said O. K.

Q. And could you hear it where you were?

A. I could hear it ring, yes.

Page 123, line 26:

Q. Do you know whether the bell was ringing as it passed you, do you recall?

A. What, the train bell, the car bell?

Q. The train bell, yes.

A. The car bell was ringing; they ring all the way through town when they are running.

Q. It was ringing that time, was it?

A. Ringing that time."

WILLIAM LAURIE, the engineman, a witness for the defendant, testified, page 78, line 8:

## Brief for Appellant.

“Q. Do you recall if you had an accident on that day?

A. Yes, sir.

Line 16:

Q. What did the train consist of?

A. Locomotive, parlor car and six coaches.

Line 21:

Q. Now, tell the jury what you saw of this accident.

A. Well, as you know, there are three crossings passing through Atco, and this train, I judge, was running about sixty to sixty-five miles an hour. Now, we blew the whistle at the North crossing, that is North of Atco Station, the road crossing signal. We came on down to the main crossing, and we blowed the road crossing signal at the main crossing. After going over the main crossing we blowed the road crossing signal for the other crossing.

Q. That is where the accident happened?

A. Where the accident occurred. And on approaching this crossing I saw a man on a motorcycle running parallel with me, and in an instant it appeared to me he was going to cross the tracks. I blew intermitting sounds, which is an alarm that something is on the track, and I met this fellow right on top of the track.

Q. Now, you saw him there what time; where was he when you first saw him?

A. He was about to make the curve up on the track.

Q. How many times did you blow that

whistle between the whistle board there at the main crossing and the crossing where he was struck?

A. Well, right after passing the main crossing, I blowed the road crossing signal for this crossing, which is two long and two short blasts. I hadn't any more than finished before this obstacle loomed before me, and I grabbed the whistle again and gave a succession of short sounds of the whistle. I think I gave about five short blasts.

Q. Now, did you have your eye on him all the time from the time when you first saw him until he was struck?

A. Yes.

Q. Did he turn around and look to see if anything was coming?

A. All the time that I noticed he looked— Now, I couldn't say whether he looked before that or not, but as he took that curve onto the track, he turned around and at the same time his feet struck the ground and the dust began to fly.

Q. How far was he from the first track when you saw him look around and his feet struck the ground and the dust began to fly?

A. I don't think he was over fifteen feet, fifteen or twenty feet, something like that.

Q. How far were you away at that time?

A. Well, I judge one hundred feet, probably a little more.

Page 80, line 18:

Q. Do you know whether or not the engine bell was ringing at the time of the accident?

## Brief for Appellant.

A. Yes, sir.

Q. How long had it been ringing?

A. The fireman got up on his box before we reached the first crossing, that is the North crossing to the Atco Station, and he remained there and continued ringing the bell throughout all the crossings over the streets of Atco down.

Q. Now, Mr. Laurie, is there any doubt in your mind but that you did blow this whistle that you have mentioned?

A. Absolutely none, no, sir.

Q. And is there any doubt in your mind but that the fireman rang that bell during that period?

A. No.

Q. You say you were traveling about sixty to sixty-five miles an hour? Is that an unusual or usual speed at that place for you to travel?

A. No, that is the usual speed, yes, sir. We were about on time at Atco, we passed there about fifty-four, that is our schedule; passed Berlin, the station north, at fifty-one".

ISSAC HALL, the fireman, defendant's witness, testified, page 96, line 33, as follows:

"Q. On the day of the accident, did you know anything about it?

A. Only at the time when it was—that it happened. That is the only time I knew about it.

Q. Now, do you know whether or not the locomotive engine whistle was blown as you

approached that crossing and before you approached it?

A. Yes, sir.

Q. Where was it blown, to your knowledge?

A. When I passed this bridge I got down to fire my engine, then he blew for the crossing north of Atco station, and I got up on my box and started to ring my bell, and I continued through Atco. After we crossed the crossing North of the station, he blew for the main crossing, and after we crossed the main crossing he blew for this little crossing which is down where the accident happened, and right after he blew his two long and two shorts I seen him grab his whistle cord again, and give his short sounds, which was an alarm that there was somebody on the track, and right away he applied his emergency brakes, then I discovered that he had hit somebody.

Q. Yes, and all this time what was happening to that bell?

A. That bell was ringing all that time, all the way through the town.

Q. All the way through the town.

A. Yes.

Q. Until after it struck somebody?

A. Until after it had struck somebody, yes."

CHARLES VAUGHN, defendant's witness, a former station agent, at page 102, line 8, testified:

"Q. Do you know whether or not the locomotive engine whistle was blown for the crossing where this boy was killed?

## Brief for Appellant.

A. Yes, sir, it was.

Q. It was?

A. Yes.

Q. Where did you hear it blow?

A. Well, the rear of the train hadn't quite passed my office when the whistle sounded, two long and two short.

Q. Now, your office is 1100 feet, I think, from the crossing where he was killed?

A. Approximately that.

Line 18:

Q. And then after that was there any other whistles blown?

A. Yes, I heard another whistle.

Q. And where was the train at the time you heard the other whistle?

A. Well, I didn't see it but I judge it was just this side of the crossing where the accident occurred.

Q. I see. What sort of a whistle did you hear blown?

A. Well, it just sounded to me like one long whistle, to tell you the truth.

Page 105, line 5:

Q. And at that time did you make some test of the bell?

A. Well, when I first came back to the station I questioned William Collins, the crossing watchman.

Q. Don't tell what he said. You questioned him?

A. Yes.

Q. And as a result of that, what did you do?

A. I had him test the bell; had him put

the bell on till I went down a sufficient distance and heard it ring. I satisfied myself the bell was in order and I came back.

Q. Was that before or after the second train had gone down?

A. I couldn't say.

Q. But was it that same day?

A. Yes, it was the same day.

Q. And near the time the accident happened?

A. Near the time, yes. It was my first trip back from the accident after I had seen the conductor.

MARGARET HEATH, a witness for defendant an employee at the station, at page 133, line 8, testified:

“Q. Do you know whether or not the bell, the automatic bell, that notifies Collins of the approach of the train rang previous to that train coming along?

A. I did.

Q. Did you hear it?

A. Yes, sir, that is the only warning that we have that a train is coming to go there and get their engine number.

Q. And it is your duty to have your ear open for that train, for that bell?

A. We have to know whether it is a regular train or an extra train, and that is the only way we have of knowing, looking at the engine.”

BY THE COURT:

Q. Is that a signal that comes into your office as well as into the box of the—

## Brief for Appellant.

A. No, it doesn't come into the office but it rings so that we hear it in the office and that is our warning and we jump over to the window then and look to see whether a train is coming or not, or to get the number of the train."

BY MR. BOURGEOIS:

"Q. Then it is a signal to you as well as to him, isn't it?

A. Well, maybe, I use it that way.

Q. It is in his office but it is a signal to both of you?

A. Yes.

Page 134, line 8:

Q. Do you know whether or not the engine whistle was blown as the train came along there?

A. The engine whistle was blown, yes.

Q. And was it blown after it made the crossing, the main crossing, between that and the next crossing where the accident happened?

A. When it was past the station, partly past the station; when it got over the main cross-over he blew for the crossing south of Atco station.

Q. Then when he got down near the place where the accident happened, did he blow again?

A. He blew a succession of short, sharp blasts.

Q. A succession of them?

A. Yes.

Q. Now, of course, I suppose the fact that the accident happened there would impress that on your mind?

A. Most assuredly.

Q. You would instantly think whether or not it was done?

A. That is what I thought, what it was done for, you know.

Q. Now, do you recall whether the engine bell was ringing as the train went past you?

A. I do. I was sitting right there at the window. The fireman was in his box ringing the bell as he passed Atco station".

ALBERT McKINSEY, defendant's witness, at page 140 testified:

"Q. What do you do?

A. Broom maker.

Page 141, line 3:

Q. When the factory is in operation, what is it like, real nice and quiet?

A. No, makes a lot of noise.

Q. Can you hear each other talk when you are as far away as you and I are, or do you have to get closer?

A. Have to get close.

Q. When you are inside the factory and the factory is in operation, can you hear a train whistle or train bell as it goes along?

A. Not on a far distance, you can't.

Page 142, line 20:

## Brief for Appellant.

Q. You mean you couldn't hear that bell unless you were listening for it?

A. I don't know. I never paid that much attention to it.

Q. They go past there frequently and you get so you don't listen and don't hear them all anyway, I presume?

A. No.

Q. Unless something special calls your attention to it?

A. Certainly".

GEORGE ASHTON, defendant's witness, at page 144, line 26, testified:

"Q. Mr. Ashton, were you down at the place of the accident on the day that Palladino was killed?

A. About ten minutes after the accident occurred.

Q. Do you know whether or not the crossing bell was ringing there that afternoon?

A. It was ringing at the time I was there.

Q. That was when the train came down or when they were testing it out, do you know which?

A. There wasn't no train come down while I was standing there but the bell was ringing.

Page 145, line 12:

Q. Didn't know whether they were testing it or not?

A. I didn't because I come across there for the past year; never knowed the bell to stop

ringing but once and I guess it wasn't threw on then.

Q. You guess what?

A. I don't think it was threw on then, probably a new man on and he forgot to throw it, and it didn't work that time. I go across there three times a day; everytime I go by the five minutes of one train would be coming when I come back from my lunch and the bell would be ringing, and the same in the morning, fifteen minutes of seven the bell would be ringing".

JOHN FARRELL, defendant's witness, at page 147, line 30, testified:

"Q. Then you heard the whistle blow as it came down; before it struck him?

A. Sure.

Q. How far up the track did you hear the whistle blowing?

A. That, I can't say; it was near the broom factory.

Q. Near where?

A. Between the crossing at Atco, the village of Atco, and the crossing where this young man was killed.

Q. Do you remember whether or not the crossing bell was ringing?

A. Yes, sir, the crossing bell was ringing after I gotten down to the scene, after I had viewed the scene the bell was ringing at that time".

FRANK M. WILLIAMS, defendant's witness,

foreman at Union Novelty Manufacturing Company but an employee at the Atco factory on the 20th day of August, testified at page 152, line 8, as follows:

“Q. Now, you remember the day of the accident to Palladino?

A. Yes, sir.

Q. Did you go down to the accident?

A. Yes, sir.

Q. Were you there when the second train went down?

A. Yes, sir.

Q. Can you tell me whether or not the crossing bell was ringing when the train went down?

A. It was, yes.

Q. It was ringing?

A. Yes.

Q. Now, Mr. Williams, when you are working inside that factory can you hear a train blow a whistle or ring a bell unless you are especially directing your attention or listening for it?

A. Well, probably there would be some parts of the shop that probably you could, that is if you were right at the window.

Q. And listening for it?

A. And listening for it.

Q. If you are in there and you are not listening for the whistle or the bell, might it go past and ring and yet you not hear it?

A. Probably there would be twenty-five or thirty trains pass a day and you would never notice, that is if you had your attention on your work.”

WILLIAM MORRISON, defendant's witness, testified that he was an inspector of telephone, telegraph and signal poles, and on page 109, line 5, testified as follows:

"Q. Are you familiar with the crossing bell at the crossing just below Atco main station?

A. Yes.

Q. How is it operated?

A. That is operated from a switch in the flagman's shanty. There is a warning bell about four thousand feet away which warns the flagman when there is a train approaching. When that bell rings he is supposed to close the switch on the crossing below Atco.

Line 18:

Q. When did you examine this bell prior to the 21st day of August?

A. 8/16th.

Q. What was its condition at the time you examined it on the 16th of August?

A. It was O. K.

Q. When did you next inspect that bell?

A. My next inspection was on 8/21st.

Q. What was its condition then?

A. It was working properly, O. K.

Q. Did you know that the accident had happened there the day before the time you made this inspection?

A. No, sir, not until I went to Atco.

On page 146, line 30 he testified:

Q. Can that crossing bell ring if the man

in the little shanty fails or doesn't put on the switch?

A. No, sir, it can't.

Q. If the switch is open it can't ring, is that right?

A. Yes, sir".

GEORGE C. SMITH, defendant's witness, an engineer, testified at page 156, line 10 as follows:

Q. Will you tell me the distance from Atco station crossing there down to the next crossing below the broom factory?

A. That is one thousand feet.

Line 20:

Q. What is the distance from the crossing where Palladino was killed, that is the lower crossing, up to the broom factory?

A. Two hundred forty-four feet measured on the road.

Q. Will you tell me the distance from the first of those ties that are set in the ground down to the crossing, measured along the road?

A. I think that was one hundred seventy-eight feet, as I remember it.

Q. I mean the tie that is nearest to Camden.

A. Nearest to Camden.

Q. Now, I show you Exhibit D1 and P5, which appear to be the same picture taken from very nearly the same point, and ask you what is the distance from the southbound track, that is the track on which the train was

moving that had the collision, to the middle of the road running parallel with the railroad up past the broom factory?

A. About thirty-one feet. It is pretty hard to find the center of a road like that.

Q. Now what is the distance from the railroad track around that curve until you come to the middle of the road?

A. Around the center of the road?

Q. Yes. I mean from the center of the track at the crossing, at the lower crossing, measured around to the right up toward the broom factory until you come to the center of the road.

A. Until you come to the center of the road that is paralleling the track?

Q. Yes.

A. Why, it is about forty-two feet.

Q. Now, I call your attention to a pencil mark on Exhibit P5, where a witness testified the boy was at the time he looked around, that Palladino was at the time he looked around, and I ask you how far down or rather how far up you could see an approaching train from that point?

A. You ought to see it in the neighborhood of six hundred feet there.

Q. That is from the crossing?

A. That is from the crossing.

Q. How far up the track can you see from a point forty-two feet from the crossing measured around that curve, that is at the very beginning of the curve, as you go South, as I understand it?

A. Oh, well, you could easily see the station which is 1100 feet, 1108 feet to the center of the station.

**Brief for Appellant.**

Q. What is the height of these ties above the ground, approximately?

A. They average four feet.

Q. So there is nothing to interfere with one's vision?

A. No, sir''.

**LAW.**

The testimony of Humbert DeFalco and Peter Passarella that the crossing bell did not ring on other occasions mentioned by them is not evidence that the bell did not ring upon the occasion in question, as the ringing of the bell was manipulated by hand switch from the flagman's station at the main crossing.

**Bullock v. State, 63 L. 557-574.**

**State v. Newman, 73 L. 202-205.**

**Chelly v. Brunswick Traction Co., 65 L. 639.**

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The testimony of Walter Regn, John Graziano and John Passarella that they did not hear the crossing bell ring, none of them having their attention directed to it or having the ringing of it in their mind, and the Regn boy being 650 feet away from the crossing, and the other two being inside the broom factory, with its incident noise, 244 feet away from the crossing, did not create a conflict of evidence justifying a submission of the question to the jury as one of fact against the positive testimony of Alphonzo Paul, who stood almost directly beneath the crossing bell, and who testified posi-

tively that it did ring and was ringing as the decedent approached the crossing.

**Holmes v. Pennsylvania Railroad, 74 L. 469.**

**Eissing v. Erie Railroad, 73 L. 343.**

**Weiss v. Central Railroad, 76 L. 349.**

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This situation brings us to the consideration of the Crossing Act of 1919, P. L. p. 137, the title of which is as follows: "An Act with reference to the degree of care necessary to be used by travelers over railroad crossings protected by flagmen or safety appliances, or both." which provides:

"Wherever any railroad whose right of way crosses any public street or highway, has or shall install any safety gates, bell or other device designed to protect the traveling public at any crossing or has placed at such crossing a flagman, any person or persons approaching any such crossing so protected as aforesaid shall, during such hours as posted notice at such crossing shall specify, be entitled to assume that such safety gate or other warning appliances are in good and proper order, and will be duly and properly operated unless a written notice bearing the inscription "out of order" be posted in a conspicuous place at such crossing or that the said flagman will guard said crossing with sufficient care whereby such traveler or travelers will be warned of any danger in passing over said crossing, and in any action brought for injuries to person or property, or for death caused at any crossing protected as aforesaid,

no plaintiff shall be barred of the action because of his failure of the person injured or killed to stop, look and listen before passing over said crossing”.

The language of this act is not so clear as might be desired, but it is contended that the meaning of the Legislature is clear that the intent was and is to relieve the traveler from the burden of contributory negligence in those cases where the railroad company has established a bell or other safety device, and where such device is out of order at the time the injury occurs and no notice has been posted to the public showing a state of non-repair. That the Legislature did not intend to abrogate the defence of contributory negligence in every case is evidenced by the language of the act providing for the posting of notice by the railroad company when such device is out of order. The intent of the act clearly is to relieve the railroad company of liability in those cases where a crossing bell has been installed and is kept in good operating order, and also in those cases where the crossing bell has been installed and where being temporarily out of operating repair, notice is posted that it is out of order.

This construction seems to comport with what the Chancellor had in mind in **Brown v. Erie Railroad Company**, 87 L. 487-494, wherein he cited the case of **Wolcott v. New York & Long Branch Railroad Co.**, as indicating what the Legislature intended by the Crossing Act of 1909, page 137, in which case the Supreme Court held that when a railroad company assumes to protect a highway crossing by a flagman, it is responsible for injuries received at that crossing which have resulted solely from the negligence of such flagman.

Applying the same rule to this Act of 1909, it would be that when a railroad company had erected a crossing bell under the provisions of the Act of 1909, it would be responsible for injuries resulting directly from the negligence in the operation or non-operation of said bell. To hold otherwise would result in protection to the railroad company only when the devise was out of order and the notice published. That such was not the intention, of course is clear, and on this point the Chancellor in the case of **Brown v. Erie Railroad**, at page 495, said:

“To sustain such a view would in effect be to hold that a railroad company by failure, willful or otherwise, to observe the spirit of the act and regard as a mandate that which is not enjoined in terms but arises from the clearest implication, namely, that it shall post such notice at the given crossing, could defeat the beneficent purposes of the act.”

In the case at hand the crossing bell was operated; the locomotive whistle was blown; the bell of the locomotive engine was rung; and the crossing was well known to the decedent. All these facts were elements charging him with the duty to look and listen.

At a point 42 feet distant from the railroad track he had a view of 1100 feet. When the decedent was 42 feet distant, if he were traveling 8 miles an hour and the locomotive train was traveling 60 miles an hour, the train would have been 315 feet distant from the crossing, traveling on a roadbed embankment averaging 4 feet above the level of the surrounding ground. The evidence is clear that he made no observations until he was within 15 feet

of the railroad track, at which time the train was within 100 feet distant of the crossing, traveling 60 miles an hour. That his failure to make the observations required in law contributed to the injury, there can be no doubt. It is stated he turned his head when he was 178 feet distant from the crossing, at which time the railroad train traveling at 60 miles an hour was 1350 feet away from the crossing. That an observation made at such place and not thereafter would be unavailing, is too clear for argument.

It is therefore insisted that the decedent was guilty of contributory negligence.

**Blaker v. New Jersey Midland R. R. Co.**  
30 N. J. Eq. 240.

**Palys v. Receiver of Erie R. R.,** 30 Eq. 604.

**Pennsylvania R. R. v. Righter,** 42 L. 180.

**Berry v. Pennsylvania R. R.,** 48 L. 141.

**Hamilton v. D. L. & W. R. R.,** 50 L. 263..

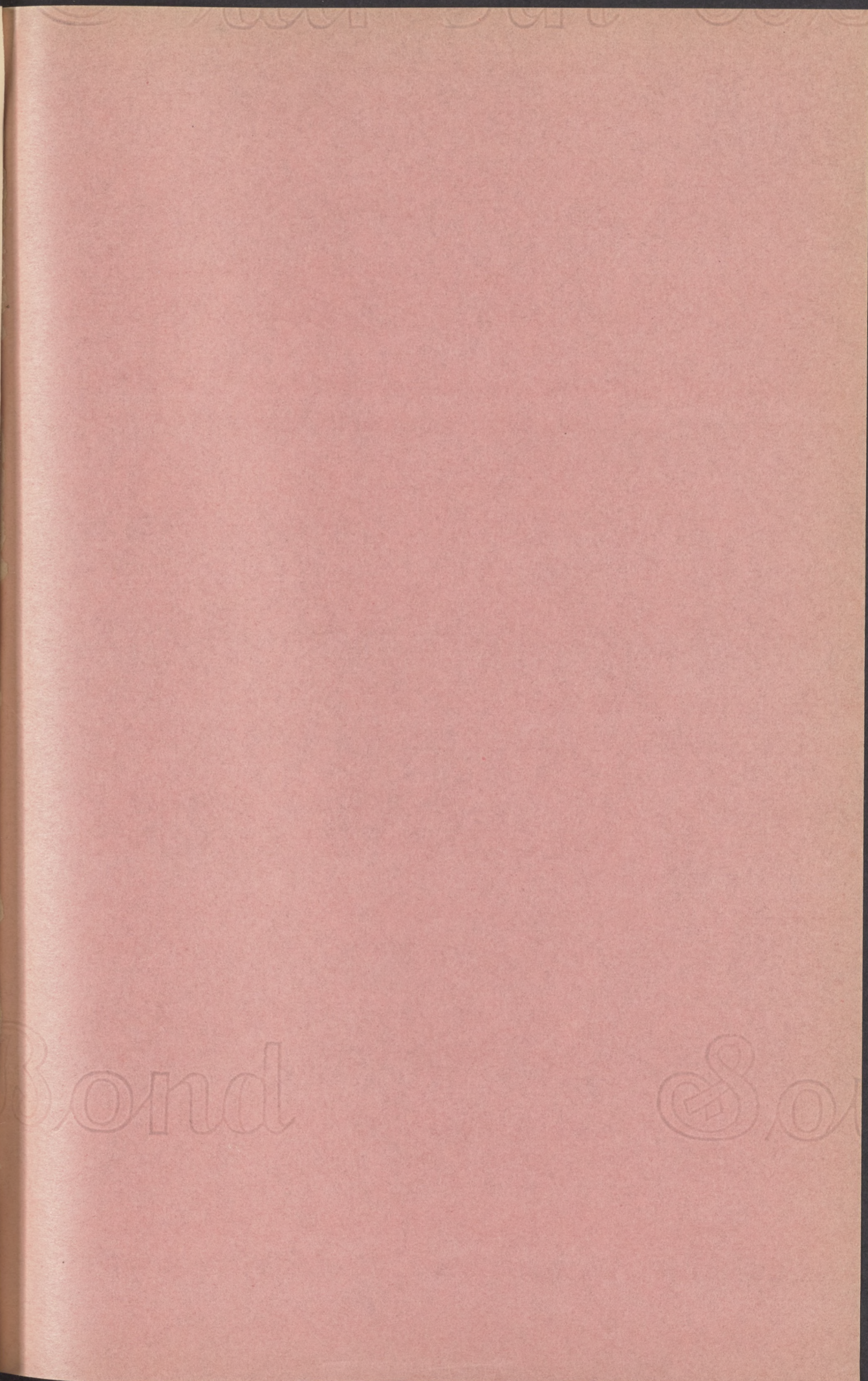
**D. L. & W. R. R. v. Heffernan,** 57 L. 149.

**Swanson v. Central R. R.,** 63 L. 605.

**Dotty v. Atlantic City R. R.,** 64 L. 710.

It is therefore respectfully submitted that the judgment in this cause should be reversed.

**BOURGEOIS & COULOMB,**  
Attorneys of Defendant-Appellant.



Bond

& Son

of the radius of track, at which time the train was within 100 feet distant of the crossing, traveling 60 miles an hour. That his failure to make the observations required by law attributed to the injury, there can be no doubt. It is stated he turned his head when he was 175 feet distant from the crossing, at which time the railroad train traveling at 60 miles an hour was 150 feet away from the crossing. That an observation made at such place and not thereafter would be unavailing, is no clear law argument.

It is therefore insisted that the decedent was guilty of contributory negligence.

*Baker v. New Jersey Midland R. R. Co.*  
30 N. J. Eq. 205.

*Falys v. Supervisors of Erie R. R.*, 30 Eq. 504.

*Pennsylvania R. R. v. Richter*, 32 L. 130.

*Berry v. Pennsylvania R. R.*, 33 L. 141.

*Hambour v. D. L. & W. R. R.*, 50 L. 263.

*D. L. & W. R. R. v. Hoffman*, 57 L. 149.

*Swanson v. Central R. R.*, 63 L. 605.

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