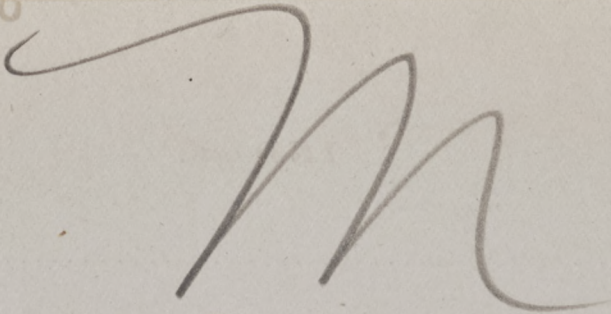


NOV. 1, 1910



New Jersey Court of Errors and Appeals.

THOMAS J. MOLONEY, Administrator ad prosequendum of the Estate of Aaron F. Burtt, deceased,
Plaintiff in Error,

vs.

PUBLIC SERVICE RAILWAY COMPANY,
Defendant in Error.

On Appeal from
Essex Circuit Court.

ON BRIEFS

State of the Case

HOWE & DAVIS,

Attorneys for Plaintiff.

LEFFERTS S. HOFFMAN,

Attorney for Defendant.

New Jersey State Library

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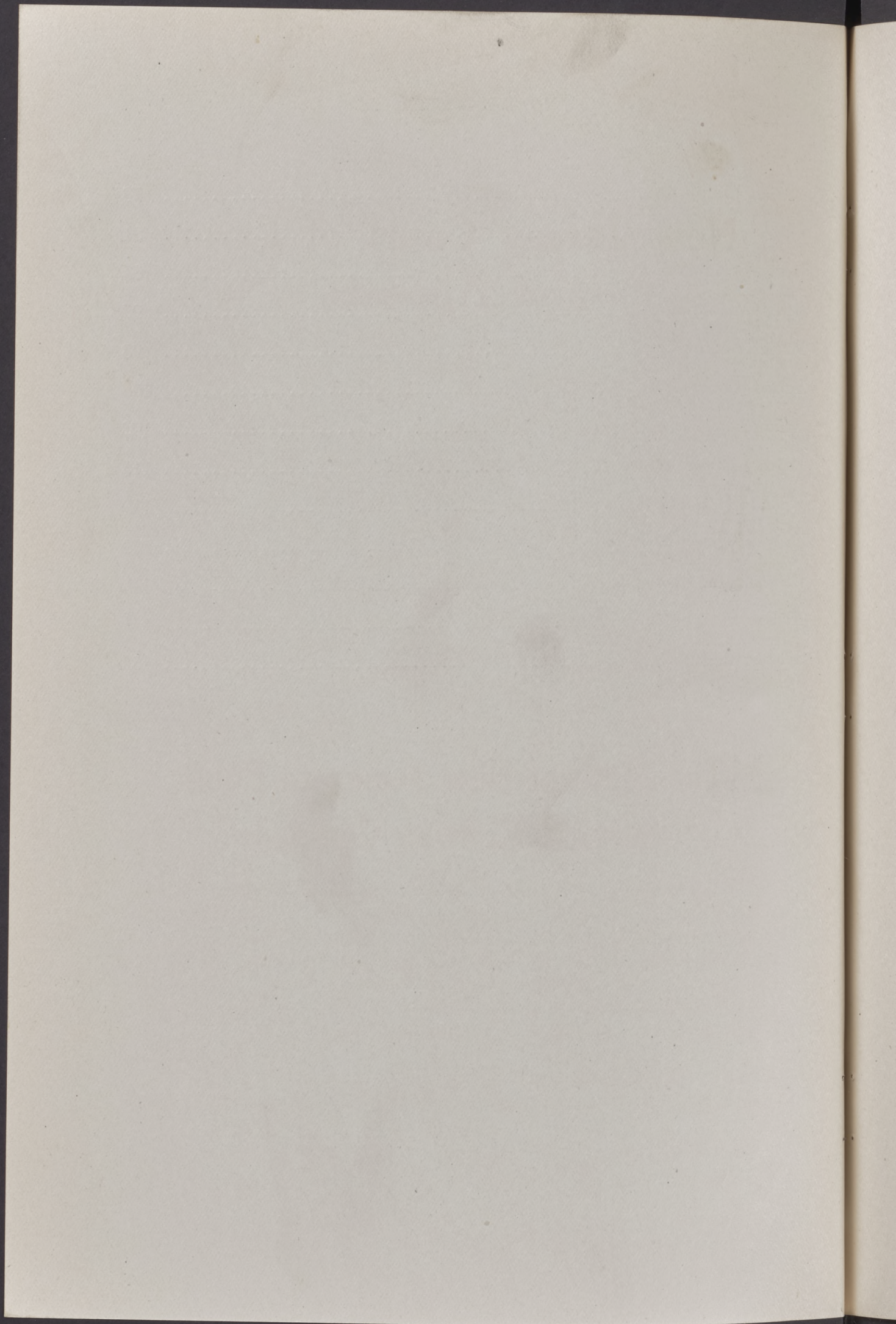
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New Jersey Court of Errors and Appeals.

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THOMAS J. MOLONEY, Administrator ad prose-
quendum of the Estate of Aaron F. Burt, deceased,
Plaintiff in Error,

15

vs.

On Appeal from
Essex Circuit Court.

PUBLIC SERVICE RAILWAY COMPANY,

20

Defendant in Error.

25

The State of New Jersey to Public Service Railway Company

30

You are Summoned to answer the annexed complaint of THOMAS J. MOLONEY, Administrator ad prosequendum of the Estate of Aaron F. Burt, deceased, in an action at law in the Essex County Circuit Court. And take notice that unless you file your answer to said complaint with the Clerk of the said Essex Circuit Court, at Newark, within twenty days, after the service upon you of this writ, and the annexed complaint, the plaintiff may proceed in the suit, and judgment may be entered against you.

35

40

WITNESS, FREDERIC ADAMS, Judge of the said Circuit Court at Newark, this Fourth day of October, Nineteen Hundred and Seventeen.

HOWE & DAVIS, Attorneys

JOS McDONOUGH, Clerk.

45

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Essex County Circuit Court

5	THOMAS J. MOLONEY, Administrator ad prosequendum of the Estate of Aaron F. Burtt, deceased, <div style="text-align: right;">Plaintiff,</div>	}	Action at Law. Complaint.
	vs.		
10	PUBLIC SERVICE RAILWAY COMPANY, <div style="text-align: right;">Defendant</div>		

PLAINTIFF, Thomas J. Moloney, Administrator ad prosequendum of the Estate of Aaron F. Burtt, deceased, residing at 36 Ridge Street, in the City of Orange, Essex County, New Jersey, says that:

1. The defendant is now and was at the times hereinafter mentioned a corporation of the State of New Jersey, with its principal office at the City of Newark, in the County of Essex and State of New Jersey.

2. The defendant on July 5, 1917, operated a street railway over and along a public highway known as Main Street, in the City of Orange, in said County and State.

3. The intestate of the plaintiff while lawfully in and upon the said public highway was killed by a trolley car operated by the defendant company, by reason of the negligence of the said defendant company.

4. The negligence of the said defendant company consisted of operating its said trolley car at said time and place, along and upon the said public highway, at an excessively high rate of speed, thereby losing proper control thereof, and failing to give proper warning of its approach to the deceased, by sounding a gong or otherwise, and in operating the said trolley car without having the same under proper control, whereby the said trolley car was driven into the plaintiff's intestate and he was killed.

5. The plaintiff is the Administrator ad prosequendum of the Estate of the said Aaron F. Burtt, deceased, and letters of Administration have been issued to him by the Surrogate of the County of Essex, which letters he here and now brings into court.

6. The plaintiff's intestate left him surviving, Susan E. Burtt, his widow, and the following named next of kin:

Aaron F. Burtt, Jr., son,
 Cecelia Moloney, daughter,
 Mable Ford, daughter,
 Susan Flynn, daughter,
 Gertrude Finn, daughter,
 Robert Burtt, son,
 Florence Burtt, daughter.

7. Plaintiff's action against the said defendant was commenced within twenty-four calendar months from the date of the decease of the said Aaron F. Burtt.

8. The plaintiff demands \$100,000.00 damages.

HOWE & DAVIS,
 Attorneys for Plaintiff.

Essex County Circuit Court 5

THOMAS J. MOLONEY, Administrator ad prosequendum of the Estate of Aaron F. Burt, deceased, <div style="text-align: right;">Plaintiff,</div>	}	Action at Law.	
vs.			
PUBLIC SERVICE RAILWAY COMPANY, <div style="text-align: right;">Defendant</div>	}	Answer.	10
			15

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

1. It admits the first and second paragraphs of the complaint. 20
2. It denies the third and fourth paragraphs of the complaint.
3. As to the fifth and sixth paragraphs of the complaint it has no knowledge or information thereof sufficient to form a belief.
4. It admits the seventh paragraph of the complaint.
5. It submits that the eighth paragraph of the complaint does not require an answer. 25

FIRST DEFENSE.

1. It avers that the negligence of the plaintiff's decedent contributed to the happening of the said alleged accident. 30

SECOND DEFENSE.

2. It avers that the negligence of the plaintiff's decedent contributed to the happening of the said alleged accident, in that he entered the pathway of the approaching car, when said car was so near as to endanger his safety. 35

LEFFERTS S. HOFFMAN,
40
 Attorney of Defendant.

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Essex County Circuit Court

10

THOMAS J. MOLONEY, Administrator ad prosequendum of the Estate of Aaron F. Burtt, deceased,
Plaintiff,

vs.

15

PUBLIC SERVICE RAILWAY COMPANY,
Defendant

Action at Law.
Reply.

20 Plaintiff, residing at the City of Orange, in the County of Essex and State of New Jersey, replying to defendant's answer, says:

1. Plaintiff denies the truth of the allegations set out in the first defense and second defense of the defendant's answer.

25

HOWE & DAVIS,
Attorneys of Plaintiff.

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Essex Circuit Court

Wednesday, April 17, 1918.

THOMAS J. MOLONEY, Administrator ad prosequendum of the Estate of Aaron F. Burt, deceased, vs. PUBLIC SERVICE RAILWAY COMPANY.	}	Action at Law.	5 10
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Before Hon. Frederic Adams, J., and a Jury:

For plaintiff appear Messrs. Howe & Davis, by Thomas A. Davis, Esq. 15

For defendant appears Howard MacSherry, Esq.

[A jury is called and sworn.] 20

[A map produced by plaintiff is placed upon the wall.]

Mr. Davis opens for plaintiff.

Mr. MacSherry opens for defendant. 25

Mr. Davis. I understand that counsel admits that the death of Mr. Burt was due to injuries received in this collision at that time?

Mr. MacSherry. Yes, I admit that. 30

Mr. Davis. Also that the defendant company was operating the trolley-car at that time.

Mr. MacSherry. Yes, I admit that. 35

Mr. Davis. I think your answer admits the appointment of the administrator ad prosequendum.

Mr. MacSherry. I think it does. 40

Mr. Davis. If not, I can offer it in evidence. I offer in evidence letters of administration ad prosequendum issued by the Surrogate of Essex County on October 4, 1917, to the plaintiff, Thomas J. Moloney.

[The paper referred to is marked Ex. Pl.] 45

BENJAMIN H. WILLIAMS, sworn in behalf of plaintiff.
Direct examination by Mr. Davis.

Q. Mr. Williams, are you a surveyor? A. Yes, sir. 50

Q. And you are located in Orange, are you? A. Yes, sir.

Q. Did you make the map to scale back of you on the bulletin board?
A. I did.

Q. Did you make it from actual measurements? A. I did.

5 Q. Now, what does it show? A. It shows the location as existing on the ground of the vicinity of Main Street, Canfield Street and Brook Alley.

Q. Will you just take the pointer, Mr. Williams? How is Main Street indicated on the map? A. (Indicating on map.) Main Street is indicated as existing between the outer black lines.

10 Q. And is it labelled "Main Street"? A. It is.

Q. Are the trolley tracks on Main Street indicated on the map? A. They are.

Q. In what manner? A. They are indicated by heavy red lines (indicating).

15 Q. How many lines? A. Four lines.

Q. These upper two lines indicate the westbound track, do they? A. They do.

Q. And the two lower red lines the eastbound track? A. They do.

20 Q. And the heavy dark lines on both sides of the street, do they indicate the sidewalks? A. The heavy dark lines indicate the outer boundary of the sidewalk, or the curb-line (indicating).

Q. The curb-line? A. Yes, sir.

Q. And inside of those lines, that darkened space, does that indicate the sidewalk (indicating)? A. That does; yes, sir.

25 Q. Is Canfield Street shown on the map? A. It is (indicating).

Q. And that comes into Main Street on what side of Main Street? A. On the north side.

Q. At the point indicated on the map? A. Yes, sir.

Q. And is Canfield Street labelled "Canfield Street"? A. It is.

30 Q. Pierson, or Brook, Alley, is that also shown on the map? A. It is (indicating).

Q. And that enters Main Street on what side of Main Street? A. On the south side of Main Street.

Q. At the point indicated? A. Yes, sir.

35 Q. [By the Court.] What is your scale? A. The scale is 1 inch to 8 feet.

Q. [By Mr. Davis.] On the lower side of the map you show also an alley. What is the name of it? A. That is called Center, or Pierson, Alley; it is
40 known by both names.

Q. And the properties that front on the south side of Main Street, do those properties all run through to the north side of that Pierson Alley? A. They do.

Q. Now, how wide is Brook Alley at the point where it reaches Main
45 Street, Mr. Williams? A. It is a uniform width, the same width as here, 22½ feet wide (indicating).

Q. Is it so indicated on the map? A. It is.

Q. How far is it from the south side curb of Main street to the southernmost trolley track on Main Street at Brook Alley? A. That is 17 feet 7
50 inches from the curb-line to the nearest rail.

Q. Is that indicated on the map? A. Yes, sir.

Q. And from the north side of Main Street to the most northerly rail what is the distance? A. That is 15 feet 8 inches.

Q. And that is also indicated, is it? A. Yes, sir. 5

Q. I am speaking now of that particular point, each side of the alley. A. Yes, sir.

Q. And the distance from the southernmost rail to the northernmost rail is what? A. 14 feet 4 inches.

Q. Up at Canfield Street, will you give the same distances that you have just given now, from the curb to the rails and between the rails? A. The distance from the southerly curb-line to the most southerly rail is 18 feet; the distance between the two extreme rails is 14 feet 4 inches; the distance from the most northerly rail to the northerly curblines of Main Street is 19 feet 10 inches. 10

Q. What is the width of the sidewalk of Main Street at Brook Alley? A. At Brook Alley the sidewalk is 8 feet 4 inches wide. 15

Q. And what is the distance from the west side of Brook Alley to the easterly side of Canfield Street extended to the south side of Main Street?

A. If you will allow me to extend this with a rule, I can scale it and tell you. 20

Q. All right. A. (Measuring on map.) The distance from the east side of Canfield Street prolonged to the southerly line of Main Street, taking the intersection, to the west side of Brook Alley is 123 feet.

Q. Do you know the undertaking establishment of Aaron F. Burt, just where it is located on Main Street? A. Why, I am not sure about it, but it is about here, I should say (indicating). 25

Q. Well, if you are not sure, I will not ask you to testify. It is one of those properties that you have marked there on the map on the south side of Main Street, is it not? A. Yes, sir.

Q. What is the frontage of the property on the south side of Main Street next east of the property directly opposite to Canfield Street? A. This one here, you mean (indicating)? 30

Q. Yes. A. 35 feet.

Q. Will you just give us the frontages of each of the properties from that going to the alley? A. The first one to the east is 15 feet; the next one is 17 feet; the next one is 20 feet 6 inches; the corner, and last lot, is 31 feet 6 inches. 35

Q. And they are all so indicated on the map, are they? A. Yes, sir.

Q. The distance from Main Street, the south side, to the north side of Center, or Pierson, Alley, is how great? A. That is 130 feet. 40

Q. It is so indicated on the map? A. Yes, sir.

Q. And the distance from the east end of Pierson Alley to the property that I have referred to, being the next east of the last westerly property, is what on Pierson Alley? A. That is 35 feet.

Q. No. The distance from Brook Alley along Pierson Alley to that point is what? A. 84 feet. 45

Q. So indicated on the map? A. Yes, sir; by the various frontages.

Q. What is the distance from the east side of Brook Alley to the point of intersection with South Main Street? That is 33 feet 1½ inches.

Q. That is the inside line, the property line, is it not? A. Yes, sir. 50

Q. Now, what is the curb-line? A. (Measuring on map.) The curb-line is 40 feet.

Q. Will you just mark it there? A. (Witness marks on map.)

5 Q. And the distance from that angle marking the intersection of Main Street with South Main Street to the property on the south side of South Main Street, just east of the angle, is what? A. To here (indicating)?

Q. Yes. A. 22 feet 11¼ inches along the property line.

10 Q. And along the curb-line? A. (Measuring on map.) And it is 14 feet along the curb line to the property line extended to the curb.

Q. Please mark it "14 feet." A. (Witness marks on map.)

Mr. Davis. I offer the map in evidence.

By the Court.

Q. You have shown no buildings? A. No, sir.

15 Q. What buildings are there on the south side of Main Street west of Brook Alley? A. Why, there are various buildings; in fact, it is a solid block all through there; the buildings all adjoin to each other.

Q. They form a solid block? A. Practically so, as I remember; yes, sir.

20 Q. And coming out to what point in front? A. Well, as I remember, coming very close to Main Street, probably within a foot or two of the line of the street.

Q. The line of the sidewalk, you mean? A. The line of the street, what we call the line of the street; it is also the line of the sidewalk, too.

Q. The south side of the line of the sidewalk? A. Yes, sir.

25 Q. How high is the building on the corner of the alley? A. I couldn't say exactly; as I remember, it is a building probably three stories in height.

Q. A brick building? A. Yes, sir.

Q. How does Main Street run to the west beyond the point where you show it? A. How does it run?

30 Q. Yes, what is its course? A. It runs a westerly course right up to—

Q. On that same line? A. Yes, sir.

Q. How is the grade on Main Street? A. It is a downgrade running to the east.

Q. To what point? A. To a point about here (indicating on map).

35 Q. To a point a little east of Brook Alley? A. Yes, sir; right about in there.

Q. Do you know about how much of a grade it is? A. No, I do not; I should say it is about one and a half or two per cent.; something like that.

Q. Ascending toward the west? A. Yes, sir.

40 Cross-Examination by Mr. MacSherry.

Q. There are buildings on both corners of Pierson Alley and Main Street, are there not? A. Yes, sir.

45 Q. They completely shut off the view of a man driving out of Pierson Alley until he gets to the building line of those buildings, do they not? A. Yes, sir.

Q. One is a three-story building and the other is a two-story building? A. I am not prepared to say that. I did not take any particular notice of the height of the buildings; I wasn't ordered to do so.

Re-Direct Examination by Mr. Davis.

50 Q. Mr. Williams, are there brick buildings coming out to the sidewalk

lines at the corners of all streets or the majority of streets that intersect Main Street? A. Yes, sir; in the business section.

Q. And this is in the business section, is it not? A. Yes, sir.

[The map identified by witness is marked Ex. P2.]

5

FRED C. SHANN, sworn in behalf of plaintiff.

Direct Examination by Mr. Davis.

10

Q. Mr. Shann, are you a resident of Orange? A. East Orange.

Q. You do business in Orange, do you? A. Yes, sir.

Q. What is your business? A. Publisher.

Q. A newspaper publisher? A. Newspaper.

Q. How long have you been residing in Orange, or East Orange? A. 15
About twenty-five years.

Q. And did you know in his lifetime Aaron F. Burtt? A. Yes, sir.

Q. How long did you know him? A. About that number of years.

Q. Were you in the neighborhood of Main and Canfield Streets on the evening of July 5, 1917? A. Yes, sir.

20

Q. Was there anything that occurred there at the time that attracted your attention? A. There was.

Q. What was it? A. Well, it was the report of a collision.

Q. Where were you, Mr. Shann, at the time you heard this report? A. I was on the north side of Main Street, in a hotel.

25

Q. About how far from Canfield Street? A. I should say about 75 feet or 100 feet from Canfield Street.

Q. East of Canfield Street? A. East of Canfield Street.

Q. And with regard to this alley, Pierson Alley or Brook Alley, where was this hotel that you were in? A. Well, it was almost opposite.

30

Q. The name of it is what? A. The National.

Q. And what was it you heard that attracted your attention? A. Well, it was a sort of a grinding crash.

Q. And what did you do? A. I ran out to see what the trouble was.

Q. Just say what you saw when you came out. A. Well, we saw the trolley-car, the eastbound trolley-car, standing still, but I couldn't see anything the trouble. I went around the end, and as I did, of course, we saw the automobile wedged in.

35

By the Court.

40

Q. Which end of it? A. The front end.

Q. And what did you see there? A. The automobile on the south side of the trolley.

45

By Mr. Davis.

Q. You said "the automobile wedged in." Will you please explain what you mean by that? A. Well, it was up against the trolley.

Q. The automobile and the trolley-car at the time you saw them, at the

50

time you arrived there, how close were they one to the other, when you say the automobile was wedged in? A. Well, the front part of the automobile was evidently up against the steps.

Q. Of the trolley-car? A. Yes.

5 Q. And what side of the trolley-car did you find the automobile on? A. On the south side.

Q. Then, looking towards Newark, that would be the righthand side of the trolley-car, would it? Is that right? A. Yes, sir.

10 Q. And what steps were they that you found the automobile in contact with, what steps of the trolley-car, the front or back, Mr. Shann? A. I didn't notice.

Q. I mean was it the front steps of the— A. Oh, the front steps.

Q. Of the car? A. Yes.

Q. When I say "the car," I mean the trolley-car. A. Yes.

15 Q. They were both stationary at the time, were they? A. Standing still.

Q. And just about where were they—that is, at what point did you find the automobile and trolley-car in contact with each other? A. I didn't take notice; I know it was right nearly in front of the place.

20 Q. [By the Court.] In front of what? A. In front of the hotel, probably a few feet east of the entrance of the hotel.

Q. [By Mr. Davis.] And did you see anyone in the automobile that you knew? A. Only Mr. Burtt.

Q. You saw him there? A. Yes.

25 Q. And what position was he in? A. Well, his head was over against the wind-shield, which was broken.

Q. Was he sitting, in a sitting position, leaning over? A. About half-sitting.

Q. [By the Court.] He was still in the automobile? A. Yes, sir.

30 Q. [By Mr. Davis.] And what side of the automobile, the left or right side, was in contact with the trolley-car? A. The left.

Q. The left side? A. Yes.

Q. And about how near to the front or back of the automobile, Mr. Shann, was this point of contact? A. I didn't notice.

35 Q. Did you notice whether it was toward the front mudguard or the rear mudguard? A. No.

Q. What did you do, Mr. Shann? A. Well, I lifted him out of his position, his head in the glass, and then someone came up, and we lifted him out and carried him to his place of business.

40 Q. That was about how far away from where you took him out of the automobile? A. I should say about 75 feet, in that neighborhood.

Q. It was on the south side of Main Street, his place of business, in the neighborhood of Canfield Street, was it? A. Yes.

Q. Did you bring him inside? A. Yes, sir.

Q. And did you stay there any length of time? A. Yes.

45 Q. How long did he stay there? A. Who?

Q. Mr. Burtt. A. Probably twenty minutes, for the ambulance to arrive.

Q. And the ambulance came, did it? A. Yes, sir.

Q. And was he taken away in the ambulance? A. Yes.

50 Q. Do you recall who helped you with him up to the store, or up to his office? A. No, I do not. Some of the gentlemen volunteered to help him.

Q. And when you got him there did you notice if he was injured in any way? A. Oh, yes.

Q. What part of his body did you notice as being injured? A. I didn't notice his body, but he was bleeding on the head.

Q. Whereabouts on the head, Mr. Shann, the front part or back part? 5
A. I think it was over the eyes.

Q. And was he conscious at that time? A. No.

Q. Was he conscious at the time you took him out of the automobile?
A. I don't think he was; he didn't say anything.

Q. And when you got him to his office where did you place him? A. In 10
a tete, in his parlor.

Q. In a reclining position? A. Well, we had to hold him up.

Q. And did he at any time before he was taken away by the ambulance
regain consciousness? A. No, sir.

Q. Did you see him at any time after that? A. No, sir; at his funeral 15
only.

Q. You attended his funeral and you saw his body before he was buried?
A. Yes, sir.

Q. That was how long after? A. Three days, I think.

Cross-Examination by Mr. MacSherry. 20

Q. Mr. Shann, on which side of Main Street is the National Hotel? A.
The north side.

Q. And is it opposite Pierson Alley? A. Not exactly; probably 5 feet
to the east of the north of Pierson Alley, opposite.

Q. You used the expression that you heard a grinding sound. What did 25
you mean by that, like the grinding of trolley brakes? A. Yes, it was a grind
and a crash. You see, the doors were closed, and we didn't—

Q. But it was such a grinding as you hear sometimes when cars are being
suddenly stopped, the grinding of the brakes, the application of the brakes?
Do you think that would be a fair illustration of the noise that you heard? 30
A. Yes.

Q. And when you looked out you found the trolley-car at a standstill
about opposite the hotel? A. About opposite.

Q. And that is virtually opposite Pierson's Alley, or about 5 feet to the
side of it? A. Yes. 35

Q. Now, I want to show you a picture and ask you if you can see the
National Hotel on that picture (photograph shown to witness)? I might say
that this is Pierson's alley down here. Do you recognize that building? A.
Where those awnings are in there, the end building where the awnings are
shown, and I think part of that other building is included in it. 40

Q. [By the Court.] You say that that is the hotel? A. Yes, sir. There
are two buildings.

Mr. MacSherry. I shall offer this picture. I shall show it to your 45
Honor (photograph shown to the Court).

Q. Would you mind putting an "N" above the building, Mr. Shann? A.
You see, this is part of the building and this is the wing that comes in here;
that is also used. It is not really part of it. 50

Q. Make an arrow there. A. (Witness marks on photograph.)
Re-Direct Examination by Mr. Davis.

Q. Mr. Shann, the crash that you heard, how would you express it, as to how loud it was? A. Well, we were probably 35 feet or 40 feet away from it,
5 and it was sort of a—well, it isn't like a contact where heavy things come together; it was a light vehicle and a heavy vehicle, and it was a sort of crash, a grind, followed by the breaking of glass. Of course, that was quite prominent.

Q. You heard it distinctly? A. Yes, sir.

10 Q. And whereabouts was the rear end of the trolley-car, when you came out of the hotel, with regard to Pierson's Alley? A. I don't know that; I couldn't answer, because I didn't pay any attention to that.

Re-Cross-Examination by Mr. MacSherry.

Q. Mr. Shann, this was in July; it was warm weather, was it not? A.
15 Yes.

Q. You say the hotel door was closed? A. Well, the screen door was closed, and there was a side entrance to the restaurant, which was always closed.

Q. What do you mean by "a screen door"? A. Well, the usual screen
20 door was on—the doors in from the café—and the other side was the restaurant.

Q. Were there screens to the window? There was nothing there to keep out sound very much? A. There wasn't screens in the window.

Q. But there was nothing there on the door to keep out sound, was there?
25 A. I should not think so.

Q. You could hear almost as well in the hotel as you could out on the sidewalk, don't you think? A. If I had been near the door, but I was about 30 feet from the door.

Q. Well, in any event, it was in July, and there was a screen door? A.
30 Yes sir.

Q. And the windows were not closed, were they? A. These were large plate glass windows.

Q. Were they closed? A. Yes, sir.

Q. Did they not have screens in them? A. Not in the windows.
35 Further Direct Examination by Mr. Davis.

Q. Were you in the front or back part of the hotel, Mr. Shann? A. I was in the rear part of the café.

Q. About 30 feet from the front door? A. About 30 feet.

Further Cross-Examination by Mr. MacSherry.

40 Q. Outside of this screen door, what else was there that let in the air? A. Really, I don't know; I suppose they have ventilators over the top.

Q. Were there any other doors? A. Not in that part of the building; the other doors were through the passageway to the east.

Q. How many windows in the place? A. If I remember right, there is
45 one large window.

By the Court.

Q. What was the front hotel room nearest the street? A. That was the
50 café.

Q. Then you were in the rear part of the apartment, or room— A. Adjoining the restaurant.

Q. —which was in the front of the building? A. Yes, sir.

Q. You said that someone came and that you two helped Mr. Burtt out of the automobile. Do you remember who it was that came? A. I do not, 5 your Honor.

Q. Do you recall on which side of the automobile Mr. Burtt was when you reached him? A. When I first saw him?

Q. When you first saw him? A. The wheel was here and he was lying off this side (indicating). 10

Q. He was lying on the right? A. On the right side.

Q. Of the steering wheel? A. On the right side of the street from the steering wheel.

Q. Was the steering wheel on the right or lefthand side? A. I think it was on the lefthand side, a lefthand steering wheel; I won't be sure about that; 15 I didn't notice.

Q. Did you notice the automobile sufficiently to tell us something about its character? A. No, sir.

Q. Or size? A. I didn't stop at all.

Q. You do not even know whether there was more than one seat in it? 20 A. I didn't notice that at all.

JOHN H. BRADSHAW sworn in behalf of plaintiff.

Direct Examination by Mr. Davis. 25

Q. Doctor, are you a practising physician in the State of New Jersey? A. Yes, sir.

Q. And your office is in the City of Orange, is it? A. 27 High Street, 30 Orange.

Q. How long have you been practising medicine? A. Thirty-three years.

Q. And how long in Orange? A. Thirty-three years.

Q. Were you acquainted with Aaron F. Burtt in his lifetime? A. For twenty years. 35

Q. And on the 5th of July, 1917, were you called to examine him or attend him in any way? A. I was called to Orange Memorial Hospital, where I found him.

Q. What time was it, about, do you remember, Doctor? A. About between six and eight; I don't remember exactly. 40

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

Q. And where did you find Mr. Burtt in the hospital? A. He was in what they call the accident room, where injured people are brought first.

Q. In what position did you find him? A. I found him lying on the table in an unconscious condition. 45

Q. And did you examine him to ascertain if he was injured? A. I did.

Q. And what did you find, Doctor? A. I found that he had received a head injury.

Q. Of what character? A. A blow, a contused, a fractured skull.

Q. Where did you find on his head the indications of this injury? A. The 50

top of his head was fractured; when you pressed upon it you felt it crackle like a bag of marbles, showing that the bones were badly smashed in.

Q. Did you find any injury in the front of his head? A. Over one eye.

Q. What was the character of that injury? A. Why, from a blow, a con-
5 tusion.

Q. Was the skull fractured there? A. The skull was fractured there, too.

Q. And in the back of his head did you find any injury? A. He had what we call a fracture of the base of the skull.

Q. When you examined him, Doctor, did you come to any conclusion as
10 to how serious the injuries were? A. I considered him a dying man.

Q. How soon after your examination did he die? A. Within an hour.

Q. You say you have known Mr. Burttt for about twenty years? A. About twenty years.

Q. And in that time covered by your knowledge and acquaintance with
15 him what did you consider his physical condition, his condition of health? A. That he was an unusually strong, healthy individual.

Q. Can you describe him physically, Doctor, in a general way? A. He was a man, I should think, about 5 feet 10 or 11, and weighed about, I should think, a little short of 200 pounds, and he looked ten years younger than his
20 age.

Q. And so far as appearances went, was he a man that took care of himself or abused himself? A. His habits were remarkably good.

Cross-Examination by Mr. MacSherry.

Q. Did you live very near him, Doctor? A. About quarter of a mile or
25 an eighth of a mile.

Q. And had you attended him for any sickness at all? A. I never attended Mr. Burttt in his life, never knew him to be sick.

Q. Did you attend his family? A. I attended his family.

30 WILLIAM J. BRADLEY sworn in behalf of plaintiff.

Direct Examination by Mr. Davis.

Q. Mr. Bradley, your occupation is what? A. Ambulance driver.

Q. And you live in Orange, do you? A. Yes, sir.
35

Q. What ambulance are you connected with as driver? A. The Record ambulance.

Q. That is located in Orange, is it? A. In Orange.

Q. In what hospital? A. The Orange Memorial.

Q. Were you called to the Burttt undertaking place last July? A. I was.
40

Q. And did you find Mr. Burttt there? A. I did.

Q. What did you do? A. Well, I went in and looked at him, and went out again and brought in a stretcher, and, with assistance, laid him on the stretcher and brought him to the hospital.

Q. What hospital was it? A. Orange Memorial.
45

Q. Where was it you found him, Mr. Bradley? A. In his office.

Q. On Main Street? A. Yes, sir.

Q. And at the time you found him there was he conscious or unconscious? A. He was unconscious.

50 Cross-Examination waived.

GEORGE L. HARRISON sworn in behalf of plaintiff.

Direct Examination by Mr. Davis.

Q. Mr. Harrison, your business is what? A. Photographer. 5

Q. And you are located where? A. 289 Main Street, Orange.

Q. How long have you been a photographer? A. About twenty-six years.

Q. In business for yourself? A. Yes, sir.

Q. All of that time? A. All of that time. 10

Q. Did you take photographs of an automobile in the rear of the Burt undertaking establishment? A. I did.

Q. When did you take them, Mr. Harrison? A. I took it in the rear of Burt's undertaking shop.

Q. Do you remember when? A. I don't know exactly the date, but it was after the accident. 15

Q. I show you three photographs and ask you if you took those photographs (photographs shown to witness)? A. Yes, sir.

Q. And you took them where? A. They were taken in the alley back there. 20

Q. Were all of the photographs taken at the same time? A. All taken at the same time.

Q. And you have the plates, have you? A. Yes, sir (producing plates).

Cross-Examination by Mr. MacSherry. 25

Q. Who developed them? A. I did.

Q. When? A. In my own place, 289 Main Street.

Q. I ask you when? A. When?

Q. Yes. A. Right after I made the pictures. 30

Q. Well, when did you make the pictures? A. Well, I don't know exactly the date that I made them.

Q. What month?

The Court. Cannot you approximate? 35

Q. What month? A. It was made in July.

Q. What part of July? A. The latter part.

Mr. Davis. I should like to have the photographs and the plates marked for identification at the present time, if your Honor please. 40

(The plates referred to are marked respectively P3 for identification, P4 for identification, and P5 for identification.)

Mr. Davis. I shall ask that the picture representing the left side of the automobile be marked first. 45

(The photograph referred to is marked P6 for identification.)

Mr. Davis. The photograph showing the front of an automobile. 50

(The photograph referred to is marked P7 for identification.)

Mr. Davis. The photograph showing the front and side of an automobile.

5

(The photograph referred to is marked P8 for identification.)

Re-Direct Examination by Mr. Davis.

10 Q. Mr. Harrison, I show you the plate which is marked P5 for identification, and ask you what photograph that corresponds with? A. The side view, the left side.

Mr. Davis. That would correspond with P6 for identification.

15

Q. I show you the plate marked P4 for identification, and ask you what photograph that corresponds with? A. It shows the front and left side.

Mr. Davis. That corresponds with P8 for identification.

20

Q. And the plate P3 shows the front view of the automobile, does it?
A. The front view.

Mr. Davis. That corresponds with P7 for identification.

JOHN W. FARRELL, sworn in behalf of plaintiff.

25

Direct Examination by Mr. Davis.

Q. Mr. Farrell, you live where? A. In Orange.

Q. And your business is what? A. Motion picture manufacturing.

30

Q. Connected with what concern? A. Thomas A. Edison.

Q. How long have you been connected with Edison's? A. Eleven years.

Q. Were you in the vicinity of Canfield Street and Main Street at the time of this accident, on July 5, 1917? A. Yes, sir.

Q. Where were you? A. I was in the National Hotel, on Main Street.

35

Q. That is about opposite the alley? A. Brook's Alley, yes, sir.

Q. And what attracted your attention, if anything, first? A. Why, some very loud noise, a loud report. I didn't know what it was, in fact, until I went out to see.

40

Q. What part of the hotel were you in when you heard this crash? A. I was in the restaurant.

Q. And about how far from the sidewalk on the north side of the street is the restaurant? A. From the front of the building?

Q. From the front of the building. A. I should judge 30 or 35 feet.

45

Q. When you heard this noise and went out what did you find? A. I saw a trolley-car stopped on the downtown track, as I call it, opposite—well, I should say a little distance last of the alley.

Q. Where was the rear part of the trolley-car with regard to the alley?
A. I wouldn't be perfectly sure, but, according to my recollection, there was so much noise and excitement—I should say about opposite the alley, the rear
50 part of the car.

Q. When you came out what did you find with regard to the automobile?
 A. Well, there was quite a crowd running around. When we got around the car, then we saw the automobile the other side, at the front part of the trolley-car.

Q. What was the position of the automobile with regard to the trolley-car, Mr. Farrell? A. Why, they seemed to be very close, quite close together. 5

Q. And what part of each was close to the other? A. Why, the righthand front part of the car was abreast of the lefthand side of the automobile.

Q. With regard to the steps of the trolley-car, where was the automobile?
 A. That is the point I referred to, at the steps. 10

Q. At the front steps? A. The front righthand part of the car, where the steps are.

Q. With regard to the back mudguard of the automobile, where was the point of contact? A. I wouldn't be sure about that; it seemed almost midway, I should say; a little past the front, if anything. 15

Q. What side of the automobile was towards the trolley-car, the left or right? A. The lefthand side.

Q. Just what was the position that the automobile occupied in the roadway with regard to the trolley tracks? A. Well, most of the automobile was off the trolley track; there might have been a small portion of the front end of the automobile on the tracks; I am not sure about that. 20

By the Court.

Q. Let us understand what tracks you have in mind. You say most of the automobile— A. The downtown track. 25

Q. That is the track on which cars go to Newark? A. Yes, sir.

Q. You say most of the automobiles— A. Most of the automobile was between that track and the sidewalk.

Q. That is, the south sidewalk? A. The south sidewalk. 30

Q. Most of the automobile was between the eastbound track and the south sidewalk? A. Yes, sir.

Q. On Main Street? A. Yes, sir.

By Mr. Davis. 35

Q. Was there any part of the automobile on the trolley track that you recall? A. That I am not sure about.

Q. And with regard of the position of the automobile in the roadway, was it parallel with the trolley-car or was it at an angle from the trolley-car? A. I think it was at a slight angle, not much. 40

Q. When you got there did you find any one in the automobile? A. Mr. Burtt.

Q. Do you know Mr. Shann? A. I know Mr. Shann, yes, sir.

Q. Did you notice if Mr. Shann was there? A. I noticed Mr. Shann help him out of the car. 45

Q. And did you stay there or go up to Mr. Burtt's office? A. I went to Mr. Burtt's office, and, if I remember, Mr. Shann seated him in some sort of a chair and held him there, and I rushed back across the street to the hotel and telephoned for the ambulance.

Q. And you waited there until the ambulance came, I presume? A. I did. 50

Q. Can you describe the kind of report that you heard, Mr. Farrell, that attracted your attention while you were in the restaurant? A. Well, I don't know just how you would describe it. It was a loud report, not just exactly like an explosion; it was very loud indeed.

5 Cross-Examination by Mr. MacSherry.

Q. What door did you go out of? A. The main entrance door. Of the hotel, you mean?

Q. Yes. A. Yes.

Q. That is the door that was there? A. That was the screen door.

10 Q. Any windows in that hotel? A. The front of the building consists of a screen door on one end and a pair of cellar doors on the other, with a double plate glass window between the two.

Q. Where do they get any air? A. They might have ventilators above those large plate glass windows.

15 Q. That you do not know? A. No.

Q. When you got outside you saw the trolley-car virtually right in front of you? A. That is what I saw.

WILLIAM F. NAHR sworn in behalf of plaintiff.

20

Direct Examination by Mr. Davis.

Q. Mr. Nahr, where do you reside? A. 50 Mt. Pleasant Avenue, West Orange.

25 Q. How long have you lived in West Orange? A. About fourteen years.

Q. And your business is what? A. With the Edison interests, at West Orange.

Q. What position do you hold? A. Division manager.

30 Q. Were you on Main Street anywhere in the vicinity of Canfield Street, in Orange, on the evening of July 5th last, last year? A. You refer to the accident?

Q. Yes. A. Yes, sir; I was.

Q. Whereabouts were you? A. In front of Mr. Einson's delicatessen store.

35 Q. Is that on the north or south side of Main Street? A. I would say it was on the north side of Main Street.

Q. Well, is it on the righthand or lefthand side— A. The righthand side going towards Newark, you might say.

Q. That is the south side, then. A. I beg pardon.

40 Q. And about how far from Canfield Street is that store, Mr. Nahr? A. I judge it was about 25 or 30 feet.

Q. Do you know where Mr. Burt's office was? A. Yes, sir.

Q. How far from Mr. Burt's office was the delicatessen store? A. Right next door.

45 Q. In the direction of Newark or the direction of West Orange? A. The direction of West Orange.

By the Court.

50 Q. When you speak of that being 25 or 30 feet from Canfield Street, you do not mean that Canfield Street crosses Main Street? A. No, sir; I do not.

Q. You mean from the prolongation of Canfield Street, if it was prolonged? A. Yes, sir.

By Mr. Davis.

Q. What were you doing there, Mr. Nahr? Were you alone? A. Mrs. Nahr and her mother were in the store, purchasing eatables for supper. 5

Q. Were you in an automobile or standing there? A. Why, I was in my car.

Q. And your car was pointed in what direction? A. Facing Newark. 10

Q. Well, were you on the righthand side or lefthand side? A. The lefthand side; that is, behind the steering wheel.

Q. What kind of a car was your car, Mr. Nahr? A. A Moon six.

Q. Two-seated or one-seated? A. A five-passenger car.

Q. Were you in the front seat or back seat? A. The front seat. 15

Q. Did you see this trolley-car that struck Mr. Burtt's car? A. I did.

Q. Before the accident? A. I did.

Q. And what can you say about the speed the car was going at?

Mr. MacSherry. Where did he see it? 20

Q. Where did you see it, Mr. Nahr? A. Just above Canfield Street, coming from the Day Street crosstown line.

By the Court.

Q. Coming from that direction? A. Yes, sir. 25

Q. You saw it above Canfield Street? A. Yes, sir.

By Mr. Davis.

Q. How far above Canfield Street was it when you first saw it? A. Midway between Canfield and Center. I was facing that position for the purpose of looking out for my mother-in-law, who was coming across from the vegetable store on the other side of the street. 30

Q. And what attracted your attention to the car, if anything? What was there about the car that caused you to notice it? A. The noise of the car at first; that is, it appeared to have, what you might say, a flat wheel. 35

Mr. MacSherry. I ask that that be stricken out, if your Honor please.

Mr. Davis. I suppose that the noise made by a flat wheel is so well known that the witness might properly describe the kind of a noise that he heard in that way. 40

The Court. He does not say that it had a flat wheel, but that it appeared to have one. 45

Mr. MacSherry. Yes, sir. That I object to.

The Court. I shall let it stand.

Defendant's counsel prays an exception to this ruling of the Court. Exception noted on ground of appeal. 50

Q. When you saw the car first about how far west of Canfield Street was it, Mr. Nahr? A. Well, that would be pretty hard to answer.

Q. (By the Court.) Well, you say it was about midway between Canfield
5 and Center Streets? A. Yes, sir; about midway between. I am not acquainted with the distance.

Q. (By Mr. Davis.) It was midway between Canfield and Center Streets, you say? A. Yes, sir.

10 Q. And Center Street is how many blocks west of Canfield Street? A. One block.

Q. Is it what might be termed a short block or a long block? A. Canfield to Center, I would say, was a short block.

Q. Did you continue to observe the car from the time you saw it first
15 until it got opposite your automobile? A. I can't say that I did continue to observe it. Looking that direction, I was attracted by the noise of the car; I can't recall whether my eyes followed the car or not.

Q. Did you notice as the car got to you the speed that it was going at?
A. I did; yes, sir. The car was going at—in fact, I remarked to my daughter,
20 who was in the seat—

Objected to.

Q. No, never mind your daughter. A. Yes, sir; I should say the car was
25 going at the rate of about thirty miles an hour.

Q. What did you next hear or see, Mr. Nahr, after the car passed the automobile? A. I saw the impact between the car and the automobile driven by Mr. Burt.

Q. And at the time you noticed this trolley-car going past your own car,
30 your own automobile was about how far from this place where the collision took place? A. I should say a hundred feet.

Q. From the time that the trolley-car passed your automobile to the time that the trolley-car collided with Mr. Burt's automobile, did the trolley-car stop at all until that time? A. I couldn't answer that.

35 Q. And what did you do then, Mr. Nahr? A. I stayed in my car, and I immediately started my car from where I had been standing. I knew there was an accident, and I heard the remark that Mr. Burt had been hit, and, knowing that the ambulance probably would come there, I turned my car around to the opposite side of the street, so as not to interfere with the ambulance's course.
40

Q. Now, when the trolley and the automobile collided did you hear the noise made by the collision? A. I did.

Q. What occurred to the automobile when the trolley-car struck it? A. As I saw it, it was a broadside collision; that is, the trolley-car coming and
45 hitting the automobile sort of broadside; and then I heard the breaking of the glass mostly.

Q. You did not go down to the point of collision, did you? A. I did not; no, sir.

Q. Mr. Nahr, your car was headed towards Pierson's Alley, was it not?
A. Well, yes, facing Newark.

Q. And you were in the front seat? A. Yes, sir.

Q. Your car was headed in the direction in which the trolley-car was headed? A. Yes, sir. 5

Q. So, if you saw the trolley-car before it got to Canfield Street, you must have been looking behind you? A. I might remark that I was sitting sideways, watching for my mother-in-law to come across the street, which would naturally give me vision partly up Main Street. 10

Q. You were on the side of the automobile nearest to the curb? A. No. I beg your pardon. I was nearest the trolley track; it was a lefthand drive.

Q. Were you on the righthand side of Main Street, looking towards Pierson's Alley, or to the lefthand side? A. Well, I was to the——

Q. Were you on the south side or north side of Main Street? A. I can't say the compass part of the street; I was on the side of the automobile facing the nearest car track to the south side of Main Street. I am not sure about the compass—— 15

Q. Were you near the trolley track upon which the car was coming? A. Yes, sir; sitting on that side of my car. 20

Q. Well, did that trolley-car stop at Canfield Street? A. No, sir.

Q. Did it stop before it reached Canfield Street? A. From my point of view; no, sir.

Q. Did it stop after it left Canfield Street and before it struck the auto? A. I couldn't say. 25

Q. Nor do you know whether it diminished its speed, because you did not see it, did you? A. I did not.

Q. Then it does not matter how fast that trolley-car was going half-way up the block between Canfield Street and Center Street, you do not know if it diminished its speed after it left Canfield Street or not, so far as your personal observation goes? A. No, I can't say. 30

Q. You do not know whether it diminished its speed as it crossed Canfield Street, do you? A. What the motorman was doing I don't know.

Q. Nor what the car was doing? Isn't that so, Mr. Nahr? A. Yes, sir.

Q. In other words, you cannot tell us anything about the speed of the car as it crossed Canfield Street or the speed of the car after it crossed Canfield Street up to the time of the collision? A. No, sir. 35

Q. Can you? A. No, sir.

Q. Have you a pretty good idea of speed, Mr. Nahr? A. I think I have.

Q. Have you any idea how many feet a second a trolley-car travels that is going at thirty miles an hour? A. I have never figured it out. 40

Q. Well, what do you think? A. That is a hard question to answer. The remark as to thirty miles an hour for the length of an hour is quite different from thirty miles an hour for a second.

Q. You would be surprised if you were told that a trolley-car going thirty miles an hour covers 44 feet in a second, would you not? (No response.) 45

Q. Well, your very silence indicates—— A. I nodded my head. I beg your pardon.

Q. That surprises you, does it? A. It is very surprising; yes, sir.

Q. Then you do not think that this trolley-car was going 44 feet a 50

second, do you? A. Well, what I said was thirty miles an hour; I don't know how many feet in a second it went.

Q. Well, that was coming up that block? A. Coming in my direction; yes, sir.

5 Q. Now, where was the automobile of Mr. Burt when you first saw it?
A. My first view of the machine was when the car hit it.

Q. Then you did not see it until the collision took place? A. I did not.

Q. At that time which direction was it headed? A. At that time it was
10 in a collision; it was a broadside collision; the car was facing almost across the
street.

Q. The trolley-car facing— A. Newark.

Q. And the automobile facing— A. Almost at right angles.

Q. Did you hear any horn blown from the automobile? A. I don't re-
member.

15

Re-Direct Examination by Mr. Davis.

Q. Did you hear any gong from the trolley-car? A. I don't recall.

Q. Mr. Nahr, when the trolley-car went by your automobile at a point
20 opposite Canfield Street what do you say as to how fast it was going?

Mr. MacSherry. He has not said that he saw it then.

Mr. Davis. I understood that he had.

25

Witness. I did; yes, sir.

Q. Did you? A. Yes, sir; I did.

Q. What do you say as to how fast it was going then? A. In my opin-
30 ion, the car was going at the rate of about thirty miles per hour.

Re-Cross-Examination by Mr. MacSherry.

Q. Did you not tell me towards the end of the cross-examination that
35 you could not tell the speed of that car passing Canfield Street? A. No, I was
almost opposite Canfield Street.

Q. Well, didn't you say so? A. I don't recall it.

(The stenographer reads from the record as follows: "Question: In
40 other words, you cannot tell us anything about the speed of the car as it
crossed Canfield Street or the speed of the car after it passed Canfield
Street up to the time of the collision? Answer. No, sir. Question.
Can you? Answer. No, sir.")

By the Court.

45 Q. Mr. Nahr, you say the car sounded as though it had a flat wheel? A.
That is, a rumbling or thumping noise.

Q. I was going to ask you if you could describe it in some way. It is not
easy to describe a noise, perhaps, but if you could in some way describe the
noise that you heard which you regarded as similar to the noise made by a flat
50 wheel, I wish you would do so. A. Well, I might say, if your Honor will

permit me, that the revolution of a wheel having a flat spot, so to speak, would repeat slowly, whereas at an increased rate of speed it would make an increased thumping noise, a rapid thumping noise.

Q. You are acquainted with the audible effect of a flat wheel? You are familiar with the noise produced by a flat wheel? A. Yes, sir. 5

Q. Does it make it on a car moving slowly as well as a car moving rapidly? A. It does, but on a slow moving car it doesn't sound so rapidly as it does on a fast moving car.

Q. It doesn't come so fast? A. It doesn't come so fast. 10

By Mr. MacSherry.

Q. Irrespective of any gong or bell on that car, you could hear that car that evening how far away by reason of that flat wheel? A. The distance I was sitting, probably, turning around, I had a good view of the car coming from Main and Canfield Streets. 15

Q. Well, how far is that? A. I couldn't tell the feet.

Q. Well, about? A. A hundred feet.

Q. Oh, it is more than that. A. 75 or 100 feet.

Q. Oh, it is more than that, is it not? A. I say I am not sure about the feet; that is my view of it. 20

Q. Well, was it as far away as the length of this room? A. Yes, sir.

Q. Twice the length of this room? A. No, sir.

Q. Well, you could hear the car coming, anyhow, could you not? A. Yes, sir. 25

Q. That distance away? A. Yes, sir.

Further Direct Examination by Mr. Davis.

Q. This series of knocking sounds that led you to believe that the car had a flat wheel, was the noise repeated rapidly or slowly? A. Rapidly. 30

BENJAMIN COHN sworn in behalf of plaintiff. 30

Direct Examination by Mr. Davis.

Q. Mr. Cohn, where do you live? A. Orange.

Q. And where do you work? A. Public Service. 35

Q. Whereabouts? A. Public Service Gas & Electric Company, in Orange.

Q. Were you in the vicinity of Main Street and Pierson's Alley at the time of this Burt accident? A. I was right across the street in a candy store, Monteverdi's candy store. 40

Q. Do you know where the National Hotel is? A. Yes, sir.

Q. How many doors from the National Hotel is Monteverdi's? A. Two; there is a barbershop and Monteverdi's.

Q. And it is going towards Newark, is it not? A. Towards Newark.

Q. This was in the evening, after your supper? A. I think it was about supertime. 45

Q. What first attracted your attention, Mr. Cohn? A. Well, I heard a crash; it sounded like crashing glass.

Q. (By the Court.) What? A. I heard a sound of crashing glass and other noise going with it, but I mostly heard crashing glass. 50

Q. (By Mr. Davis.) Was it a loud noise or otherwise? A. Why, it was a very loud sound.

Q. What did you do when you heard the sound, Mr. Cohn? A. I turned around quickly and I saw the result of the collision.

5 Q. What did you see when you turned around quickly? A. I saw the automobile and the trolley both facing towards Newark and both—one right about abreast of the other.

Q. Were they moving when you saw them or were they stopped? A. 10 They were just at the point of stopping.

Q. And when they did stop where was the front part of the trolley-car? A. In what respect?

Q. With respect to South Main Street or with respect to the alley, anything that you please. Where was the front part of the trolley-car when the 15 trolley-car came to a stop? A. It was in the vicinity of the alley; I couldn't say whether it was on the Newark side of the alley or the west side of the alley; I couldn't say exactly.

Q. Where was the rear part of the trolley-car with regard to the alley when the trolley-car came to a stop? A. I believe the rear end of the car, or 20 the trolley, was a trifle west of the alley.

Q. And where was the automobile? A. The automobile was on the south side of the street, facing—with the front of the automobile facing north.

Q. Did you come over to the scene of the accident? A. Yes, sir.

Q. And when you got there what was the position of the automobile and 25 the trolley-car with regard to each other? A. Why, they were in close contact.

Q. The automobile was on the south side of the trolley-car, was it? A. On the south side of the trolley-car.

Q. Near what part of the trolley-car was the automobile? A. Near the 30 motorman.

Q. Near the front part? A. Yes, sir.

Q. The front steps, was it? A. Right close to the front step.

Q. Was any part of the automobile left on the track, on the trolley track, when they came to a stop? A. Do you mean breakage or—

35 Q. No. Was the front part or any part of the automobile resting on the track? A. I don't believe it was.

Q. So far as you recall, it was all off on the roadway? A. The way I remember, they were both parallel, with both facing Newark and I think the radiator was about even with the front of the car—the radiator of the auto- 40 mobile.

Q. When you say "the front of the car," do you mean the front dashboard of the car? A. That trolley?

Q. Yes, the trolley-car. A. The very front of the motorman's box.

Q. Did you come from Monteverdi's over to where the trolley-car and the 45 auto were? A. I was the first one at the scene of the accident.

Q. And when you got there what did you do? A. I looked inside of the automobile, and I saw Mr. Burt there, unconscious, or on the verge of unconsciousness, and I ran right into this place and called up the ambulance.

Q. When you got there did you get onto the automobile at all? A. I 50 jumped on the step.

Q. And what position did you find Mr. Burt in? A. He was in back of the steering wheel, and I think his body was reclining in the seat.

Q. Towards his left or his right side, or towards the front or back, was he reclining? A. I don't understand.

Q. In what direction was he reclining? A. Oh, front and backwards; he was facing to Newark. 5

Q. Was his body leaning to one side or the other? A. I couldn't say exactly about that.

Q. Was it resting on the steering wheel or against the back of the seat, so far as you remember? A. I am pretty positive that he was in this position as I am now (illustrating). 10

Q. Just as you are now, sitting quite erect? A. He was prostrate, with his head forward, and, as I remember, he was with his head about in the position I am; he was about in the position I am now (illustrating).

Q. You went and summoned the ambulance? A. Yes, sir. 15

Cross-Examination by Mr. MacSherry.

Q. Do you know where the National Hotel is? A. Yes, sir.

Q. Was your candy shop on the same side as the National Hotel? A. The same side of Main Street; yes, sir. 20

Q. And you were in the candy shop? A. Yes, sir.

Q. How near was the candy shop to the National Hotel? A. There is only a small store, about 20 feet, between, I think, 16 or 20 feet.

Q. I understood you to say that when the trolley-car and the automobile came to a stop the rear end of the car was about at the west side of the alley? A. The rear end of the trolley? 25

Q. Yes. A. As I remember it.

Q. Then it just about blocked the alley, did it not—the trolley-car? A. Yes, that is the way I remember it. 30

Mr. MacSherry. Well, that is all I asked you.

By the Court.

Q. I understood you to say that you believed that the rear part of the trolley when it stopped was a trifle west of the alley. Now, which way was it; did the trolley-car block the alley or did it clear the alley? A. Well, the rear part could be a trifle west and still block the alley. 35

Q. In that case it would block the alley? A. It would; yes, sir. 40

LESLIE J. ROWLEY sworn in behalf of plaintiff.

Direct Examination by Mr. Davis.

Q. Mr. Rowley, where do you live? A. Kenilworth Place, Orange. 45

Q. What is your business? A. I am with the Atlantic & Pacific Tea Company.

Q. Are you in charge of a store of theirs? A. Yes, sir.

Q. What was your business last July, 1917? A. The same thing. 50

Q. And what store were you in charge of at that time? A. 23 Washington Street, West Orange.

Q. Where is that? A. Corner of Washington and Watchung Avenue.

Q. That is in West Orange? A. Yes, sir.

5 Q. Is that the same store that you have charge of now? A. Yes, sir.

Q. How old are you, Mr. Rowley? A. Twenty-three.

Q. Are you married or single? A. Single.

Q. Kenilworth Place is in Orange, is it? A. Yes, sir.

10 Q. In what part of Orange? A. It is one block this side of Harrison Street; it is parallel with Harrison.

Q. That is, it is down in the East Orange section, is it? A. Yes, sir.

Q. Do you recall the evening of this automobile accident? A. Yes, sir.

Q. Were you a passenger on the car that caused the accident? A. Yes, sir.

15 Q. What sort of a car was it? A. Why, if I remember right, it was a car-house car. I got on it at the Swamp line.

Q. It was a car-house car? A. Yes, sir.

Q. Was it an open or closed car? A. An open car.

20 Q. Was it one of the larger type or one of the smaller type of cars? A. If I remember, I think it was one of the older type of cars.

Q. (By the Court.) When you say it was a car-house car, what do you mean, that that was the terminus? A. That was the terminus.

25 Q. (By Mr. Davis.) What car-house was that? A. Fourteenth Street, I suppose.

Q. East Orange? A. Yes, sir.

Q. (By the Court.) About half-way to Newark? A. About half-way; yes, sir.

30 Q. (By Mr. Davis.) You got on where, Mr. Rowley? A. At the Swamp line.

Q. And the Swamp line is where? A. It is where the Montrose car goes to South Orange.

Q. Well, is it at the dividing line between Orange and West Orange? A. I couldn't say that.

35 Q. (By the Court.) Well, it is near St. Mark's Church, is it not? A. Yes, near High Street.

Q. (By Mr. Davis.) And it is on Main Street, is it? A. Yes, sir.

Q. When you got on this trolley-car about how many passengers were on it? A. Why, a very few; three or four, I should imagine.

40 Q. Did the car proceed in an easterly direction, towards Newark? A. Towards Newark.

Q. Do you know where Day Street, Orange, is? A. Yes, sir.

Q. Is there a trolley intersection there at Day Street, Orange? A. There is.

45 Q. And the intersection is of what two lines of cars? A. Bloomfield and Newark.

Q. About how far from the place where you got on, at the Swamp line, is Day Street, Orange? A. Why, I should judge about half a mile.

Q. Is that a regular stopping place for all cars? A. The Swamp line?

50 Q. No, at Day Street. A. I believe they all stop there, as a rule.

Q. And from Day Street, Orange, to the point where the collision occurred is about how many blocks? A. Why, I think about three.

Q. Do you know what the first block east of Day Street is? A. Center.

Q. And then the next block is what? A. Canfield.

By the Court.

Q. Center Street crosses Main, does it not? A. Yes, sir.

Q. And Canfield does not? A. It does not; yes, sir.

By Mr. Davis.

Q. What part of the trolley-car that you were on did you occupy, Mr. Rowley? A. I think I was in the rear seat.

Q. On the left or right side of the car, or in the center? A. I was on the right, next to the grating, or guard.

Q. Well, in the direction that you were going would that be on the right or the left? A. The left.

Q. Then you were on the inside? A. The inside.

Q. Of the car? A. Yes, sir.

Q. Do you remember how many stops the car made from the Swamp line to Day Street? A. I couldn't say.

Q. And do you remember from the time the car left Day Street until this accident occurred how many stops it made? A. I don't think any.

Q. When it left Day Street how many passengers were on board, if you remember? A. Well, I couldn't give the exact number, but there were very few, to my knowledge.

Q. And as you proceeded from Day Street to where the accident occurred, how were you impressed, if at all, with the speed the car was going at?

Objected to.

Question withdrawn.

Q. Did you take any notice of the speed that the car was going at? A. Well, it was going at a pretty good rate; I couldn't say that.

Q. And do you know how long it took you to go from the Swamp line down to where the accident occurred? A. Not over five minutes or six, at the least, I don't think.

Q. And from the Day Street crossing down to the point of the accident did you notice whether it was downhill or on the level? A. From Day down to where the accident occurred is down part of the way—in fact, all the way.

Q. What attracted your attention to the accident, if anything, Mr. Rowley? A. Why, the sudden stop was the first thing I noticed.

Q. Did you hear any crash? A. I heard the crash of the glass and other noise.

Q. And what did you do? A. I didn't get off the car; I moved over to the front side and watched, that is all; I didn't get off at all after.

Q. And what did you see as you moved over and watched? A. Why, I saw this car of Mr. Burt's with the front end of it about parallel with the trolley, at a little of an angle.

Q. And how near to the front or to the rear of the trolley-car did you see the automobile? A. I should imagine it was about 5 feet away, from where I noticed.

Q. That is, the rear of the automobile was about 5 feet from you? A. The front.

Q. From where you were sitting how far was the automobile away? A. From where I was sitting?

5 Q. Yes. A. Why, I should imagine about 20 feet.

Q. Was that the rear of the automobile that was that far away or the front of it? A. The rear.

Q. And what position in the street did this automobile occupy at that time? A. It was at sort of an angle; it was about three-quarters facing
10 Newark.

Q. And the other direction was what? A. It was towards the opposite side of Main Street.

Q. Towards the south or north side of Main Street? A. The south side.

Q. Are you acquainted with this alley that the automobile came out of?
15 A. Yes, sir.

Q. With regard to the alley, how far east or west of the alley was the automobile at the time it came to a stop, or you came to a stop? A. Why, I should imagine about 10 feet the other side, towards Newark.

Q. Towards Newark? A. Yes, sir.

20 By the Court.

Q. What do you say was 10 feet the other side?

Mr. MacSherry. The automobile.

25 What do you say was 10 feet the other side, towards Newark? A. The automobile.

Q. What part of it? A. The whole thing.

By Mr. Davis.

Q. Does that 10 feet relate to the back of the automobile or the front?
30 A. Why, the back, I should say, if I remember right.

Q. Did you see Mr. Burt's car before it was struck at all? A. No, I did not.

Q. Was there anything that attracted your attention to the accident other than the crash when they came together? A. Well, of course, I got up
35 and I saw Mr. Burt in the car. Of course, I didn't know who it was.

Q. You did not see the automobile on the track before the crash came?
A. No, I did not; I was reading a paper at the time, and all I heard was the crash.

40 Cross-Examination by Mr. MacSherry.

Q. You were in the rear part of the car? A. Yes, sir.

Q. An open car? A. Yes, sir; an open car.

Q. And not on the running-board side, but the other side? A. Yes, sir.

Q. Now, the Swamp line comes up through Day Street to Main, does it
45 not? A. No.

Mr. Davis. Oh, no.

The Court. That is the crosstown line; the Swamp line is further
50 west.

Q. Well, how far is it from Day Street to Center Street; a short block, is it not? A. A short block.

Q. Well, how short? A. Well, I imagine it is longer than this room.

Q. Well, then, from Center Street to Canfield Street is short, too, is it not? A. From Center to Canfield? 5

Q. Yes. A. Well, they are both short blocks.

Q. Both short blocks? A. Yes.

Q. And this accident occurred at Pierson's Alley? A. Yes, sir.

Q. And you say the car from Day Street to Pierson's Alley took about five or six minutes? A. I didn't say from there; I said from the Swamp line. 10

Q. How far is that? A. Well, I don't know the exact distance; it must be seven or eight blocks from Day Street.

Q. About half a mile? A. I don't think it is half a mile.

Q. Pretty near, is it not? A. Well, I couldn't say the exact distance.

Q. Well, the car took five or six minutes to travel that distance, whatever it was? A. I believe so. 15

Q. Is that right? A. I believe so.

Q. As the car went along did you hear a noise as though it had a flat wheel? A. I don't recollect it.

Q. Nothing attracted your attention to that, eh? (No response.) 20

Q. Are you sure whether it made any stops or not? A. I don't think it stopped between Day Street and the accident, but I think it did between the Swamp line and Day Street.

Q. You do not remember anything about gongs or bells? A. No, I do not. 25

Q. You do not know whether they were rung or not? A. I couldn't say.

Q. And before that accident you did not hear any warning from the automobile, did you? A. No.

Q. You did not see the automobile before it was struck? A. Well, I was reading a paper at the time. 30

Q. What paper was it, if I may ask? A. I think it was the Journal, if I remember right.

Q. The New York Journal? A. Yes, sir.

Q. Pictures or sporting page? A. Pictures.

Q. Now, when this trolley-car came to a stop after the collision, I understood you to say that the automobile was about 5 feet in front of it; is that right? A. Not in front; to one side. The distance between the automobile and the car, I should imagine, was about 5 feet. Whether it was moved before I looked I couldn't say. 35

Q. Then the rear of the trolley-car must have extended across Pierson's alley? A. I think the car was by Pierson's Alley; yes, sir. 40

Q. (By the Court.) What day of the week was that? A. Well, I don't remember. It was after the 4th of July, I know.

The Court. Well, we can get it by the almanac. 45

GEORGE J. TAYLOR sworn in behalf of plaintiff.

Direct Examination by Mr. Davis.

Q. Mr. Taylor, do you live in Orange? A. Yes, sir. 50

Q. How long have you lived there? A. About eight years, nine years.

Q. And your business is what? A. With Edison & Company. Thomas
A. Edison & Company.

5 Q. Do you recall the evening of this accident, Mr. Taylor? A. July 5th?

Q. Yes. Do you remember it? A. Yes, sir.

Q. Do you remember what kind of an evening it was, whether it was
bright or raining, or what? A. Warm and bright.

Q. Raining? A. Warm and bright.

10 Q. Were you at that time on Main Street in the vicinity of Canfield
Street? A. Yes, sir.

Q. Where were you, Mr. Taylor? A. In Mr. John J. Cowen's place of
business.

Q. A café? A. Yes, sir.

15 Q. Were you inside? A. Yes, sir.

Q. How close to the front were you? A. Well, about three-quarters
down the bar.

Q. What first attracted your attention to the accident? A. Well, I
passed a remark that—

20

Objected to.

The Court. No.

25 Q. What first attracted your attention to the situation there? A. The
noise.

Q. What? A. Excess noise.

Q. Yes. A. Quick moving of the trolley-car.

Q. Did you see the trolley-car go by? A. I did.

30 Q. What would you say as to the speed of the trolley-car, Mr. Taylor?
A. I am no judge of speed.

Q. Well, was it slow or fast, or what? A. It was going very fast.

By the Court.

Q. Where did you say you were?

35

Mr. MacSherry. Inside of a café.

Q. Which café? A. John J. Cowen's.

Q. The National Hotel? A. No, sir; across the street.

40 By Mr. Davis.

Q. Where is Cowen's café? A. Why, I should judge it was about three
doors from Pierson Alley.

Q. Three doors from Pierson Alley? A. Yes, sir; the second house.

45 Q. Is it on the same side of the street that Pierson's Alley is on? A. Yes,
sir.

Q. The south side of Main Street? A. Yes, sir.

Q. And do you know Mr. Burt's place? A. Yes, sir.

Q. How far from Mr. Burt's place is the café? Three doors.

50 Q. Then it is about half-way between the alley and Mr. Burt? A. Yes,
sir; just about.

By the Court.

Q. Let me ask you before I forget it: How did you happen to notice this car passing the café before the accident? A. I looked out when I heard the noise of it going by.

Q. What noise? A. The noise of the car.

5

Q. Tell us what noise you heard. A. Well, it was a noise that any car would probably make when it was going at an excess rate of speed, sort of a rumble.

Q. Well, it was a noise that attracted your attention? A. Yes, sir.

10

By Mr. Davis.

Q. When you looked out and saw the trolley-car did you notice the rate of speed it was going at? A. Yes, sir; it was——

The Court. He has already said it was going very fast.

Q. What did you hear next, if anything? A. I heard the crash of a lot of glass.

15

Q. What did you do then, Mr. Taylor? A. I ran to the door and stayed there.

Q. And what did you see? A. I didn't go down as far as the accident.

Q. From where you were standing in the doorway could you see down to the point of the accident? A. There were so many people there, it is pretty hard to answer the question.

20

Q. Did you see the trolley-car stopped? A. The trolley-car was stopped when I went out there.

Q. Did you see the automobile? A. There was so many people around it, I only saw the top of it.

25

Q. Now, was it an open car? A. Yes, sir; the automobile was open.

Q. I meant the automobile. What do you say about the trolley-car, was it open or closed? A. Closed.

Q. (By Mr. MacSherry.) Closed, you say? A. Yes, sir.

30

By the Court.

Q. What do you mean by a closed car? A. Not a summer car; it was the winter car that they use; it was a winter car, all inclosed with a vestibule.

Q. The entrance at the end? A. Yes, sir; the end only.

Q. It was not an open car? A. No, sir.

35

By Mr. Davis.

Q. What was the type of this car? A. The type.

Q. Yes. What kind of a closed car was it? Was it one of the large type or one of the small type? A. One of the 2600, which, I guess, is the larger type.

40

By the Court.

Q. Small or large? A. Large type, if I remember correctly.

Q. A large type? A. Yes sir, if I remember correctly.

Q. Having a conductor on the rear end and a motorman on the front end? A. Yes, sir.

45

By Mr. Davis.

Q. Mr. Taylor, was there anything unusual about the rate of speed the car was going? A. That is what drew my attention to it, the noise of the speed coming down the hill there.

50

Cross-Examination by Mr. MacSherry.

- Q. Now, this was in Johnny Cowen's café, was it not? A. Yes, sir.
- Q. How is Johnny? A. Fine.
- 5 Q. And how long had you been in there? A. Why, about three minutes, at the most.
- Q. How far away from the front? A. Three-quarters down.
- Q. How far is that? A. 20 feet.
- Q. And what kind of a door did he have there? A. Open.
- 10 Q. Was the door open entirely? A. Swinging doors.
- Q. Two swinging doors? A. Yes, sir.
- Q. And so when you got inside the doors were closed? A. Well, the swinging doors close themselves. Still, it is an open door.
- Q. They close as soon as you get in, do they not? A. Yes, sir.
- 15 Q. So in order to look out you have to open them? A. You can see over the top of them.
- Q. You cannot see much of a trolley-car over the top of them, can you? A. Quite a little as it is going by.
- Q. If it was going at such a terrific rate of speed it did not take very long to pass by the door, did it? A. I only saw the tail of it.
- 20 Q. That is what I thought, but I haven't got to that yet. You finished the tale before I started it. But you did hear the noise from the car? A. Oh, yes.
- Q. Anybody could hear that car going along, could they not, because of the noise? A. Certainly.
- 25 Q. You did not need a gong or a bell from the car to make you know that a trolley-car was coming along, did you? A. No, sir.
- Q. 30 feet back inside of a building? A. No, sir.
- Q. So that, hearing the noise, you turned around, and over the top of two swinging doors you saw the tail end of a trolley-car disappearing; is that right? A. I did.
- 30 Q. Now, I do not mean to be offensive. Was that before or after you had ordered the drink? A. Before.
- Q. Before? A. Before.
- 35 Q. And you were expecting the drink? A. I was.
- Q. And looking at the tail end of the trolley-car passing by, from that you got the idea of the trolley-car's speed? A. I got the idea of the trolley-car's speed from the noise of it going by.
- Q. You do not know whether that trolley-car had stopped at Canfield Street or not? A. I couldn't say.
- 40 Q. Nor at Center Street? A. I couldn't say; I was inside.
- Q. Are you sure it was a closed car? A. Yes, sir.
- Q. Were you in court when Mr. Rowley, a passenger, testified that it was an open car? A. No, sir—oh, yes, I was, too. I beg your pardon. Yes, 45 sir; this gentleman ahead of me.
- Q. You do not agree with the man that was a passenger on the car himself, do you? A. Not if he said it was an open car, I don't agree with him.
- Q. Well, do you think you could tell by seeing the tail end passing by over the swinging doors whether it was an open or closed car? A. I saw that 50 afterwards.

Q. Is that café on the same side as the National Hotel? A. No, sir.

Q. Then it is the same side as the alley? A. Yes, sir.

Q. How far from the alley? A. Two doors or three doors—two houses.

Q. East or west? A. West.

Re-Direct Examination by Mr. Davis.

Q. Mr. Taylor, how quickly after you saw the car pass Cowen's did you hear the noise of the crash? A. It was very sudden.

MARY F. DARCY sworn in behalf of plaintiff.

Direct Examination by Mr. Davis.

Q. Mrs. Darcy, you live where? A. In Orange.

Q. On Main Street, is it? A. On Main Street; yes, sir.

Q. What number? A. 336.

Q. With regard to Mr. Burt's office, where is that number? A. 334.

Q. Is it in the same building? A. In the same building.

Q. Do you remember the night of this accident? A. Yes, sir.

Q. Where were you at the time, Mrs. Darcy? A. Between Center and Canfield, on Main.

Q. And what first attracted your attention to the matter? A. The car, the speed of the car as it passed. I was going in the same direction as the car.

Q. And you were attracted to the car by what? A. By the speed.

Q. What do you say about the speed, how fast was it going? A. I haven't any idea, but I know it was going excessively.

Q. And what did you next hear? Did you hear the crash? A. I didn't hear the crash.

Q. You were between Center and Canfield Streets? A. Center and Canfield Streets. The next thing that attracted my attention was the crowd running, and then I was not surprised to think that it hit—

Objected to.

Q. Never mind that. From the place that you saw the car first to Pierson's Alley did the car stop at all until it got to the alley? A. I didn't notice.

Q. And you are familiar with the block between Canfield and Center Streets, are you? A. Yes, sir.

Q. And you say you were about in the center of the block? A. About in the center.

Q. (By the Court.) On which side of the street? A. On the south side of Main Street.

Q. (By Mr. Davis.) And you were proceeding in the same direction the car was going? A. Yes, sir.

Q. Can you say whether the car was an open or closed. A. I didn't pay any attention to that.

Cross Examination by Mr. MacSherry.

Q. Well, madam, if you did not pay any attention as to whether it was a closed or open car, how can you tell that it was going fast? A. I couldn't help but notice that.

Q. What kind of a noise did it make? A. Well, I don't know anything about the noise; it was the speed that attracted my attention.

Q. Well, you did not follow the car as it went down towards Canfield street, did you? A. Yes, sir.

5 Q. Well, if you did, why don't you know whether it stopped or not? A. I did not notice it.

Q. You did not notice whether the car stopped at Canfield street or not, did you? A. No, sir.

10 Q. Nor do you know whether it diminished its speed from the time you saw it up to the point of the collision, do you? A. No, sir.

Q. But there was sufficient noise from that car alone to attract your attention so to know that a car was going? A. Yes, sir.

15 Q. Were the lights lit in the street? A. No, sir; it was twenty-five minutes to seven when I left the corner of Center street, at the corner of Center and Main.

Q. Were you walking or riding? A. Walking.

Q. Walking which way, towards Canfield street or away from it? A. Towards Canfield on Main.

20 Q. And were the lights lit in the car? A. I didn't pay any attention to that.

Q. I did not ask you that. A. Well, I didn't look. I wasn't in the car.

Q. I want to see what kind of an observation you made. Can you tell us whether the lights were lit in the car or not? A. No, Sir.

25 Q. Can you tell us whether the headlight was lit on the car? A. No, sir; the car was going the same direction that I was.

Q. I am not talking about direction; I am talking about lights. You cannot tell us, can you? A. No, sir.

30 At one o'clock, P. M., the court takes a recess of one hour.

AFTER RECESS

GEORGE B. HOPPING sworn in behalf of plaintiff.

35 Direct Examination by Mr. Davis.

Q. Mr. Hopping, your business is what? A. Shoe clerk.

Q. In what store? A. R. McGowan's, Orange, New Jersey.

Q. Is that on Main street, Orange? A. Yes, sir.

40 Q. And with relation to the National Hotel, about how many doors from the National Hotel is it? A. The fifth door.

Q. East? A. Yes, sir.

Q. And is it on the north or south side of Main street? A. North.

Q. Do you recall the Burtt accident at the alley? A. I do.

45 Q. Where were you, Mr. Hopping, at the time it occurred? A. Standing in the doorway of the store.

Q. What was there that first attracted your attention to the fact that there was an accident? A. The cracking of glass, the breaking of glass.

50 Q. And what did you do then? A. I was looking down the street, and I looked up, and I seen the car, the trolley car, push the automobile about the last eight feet.

Q. And you saw the two come to a stop, did you? A. Yes, sir.

Q. What did you do then, Mr. Hopping? A. Stayed right where I was.

Q. Did you observe about where the front part of the trolley car was when it came to a stop? A. It was almost opposite the occupant of the automobile.

5

Q. And with relation to the junction of South Main street and Main street, where was the front part of the trolley car? A. Almost a direct line from the junction, opposite the iron trolley pole.

Q. Is there an iron trolley-pole at the junction? A. Yes, sir.

Q. Do you know where the Singer Sewing Machine store is? A. I certainly do.

10

Q. Where is that? A. Right on the line there, next door to the Willow Hall, as it is called.

Q. And with relation to the Singer Sewing Machine store, where did the front part of the trolley-car stop? A. Just about on the line.

15

Q. Which line, the line towards Newark or the line towards Orange? A. That way, I mean, on the line of the two buildings, where the two buildings come together.

By the Court.

20

Q. What buildings have you in your mind? A. The old Willow Hall and the Singer Sewing Machine place.

Q. Do you know that map? Did you ever see it? A. Yes, sir; right in there, right on that point (indicating).

25

Q. Just take the pointer and point out the two buildings. A. Right there the buildings come together (indicating).

Q. Where the line of the street angles? A. Yes, sir.

Q. You say opposite that? A. Yes, sir.

Q. Now, point out what you mean by "opposite that." A. Well, a direct line up on the trolley track was where the front end of the car stopped.

30

By Mr. Davis.

Q. And with regard to that front end of the trolley-car where was the automobile? A. The left front wheel was over the most southern trolley track.

35

Q. And in contact with the right side of the trolley or the left side? A. The right side.

Q. I think you have said—if you have not, I will ask you the question—that you were standing in the front door. Was that on the north side or south side of Main street? A. On the north.

40

Q. On the north side? A. Yes, sir.

Cross Examination by Mr. MacSherry.

45

Q. And it being on the north side of the street, Mr. Hopping, it was how far away from the National Hotel? A. In feet, you mean?

Q. Yes. A. I should judge about 103 feet, as near as I can remember the property as it lays.

50

Q. Now, there is just one building between this alley and South Main street, is there not? A. Yes, sir.

Q. You did not see this trolley-car until you heard the crash? A. I didn't see it hit; no, sir.

5 Q. How is that? A. Because I was looking towards Newark, and I didn't have eyes in the back of my head.

Q. Well, are you trying to be funny? A. No, sir.

Q. Well, why did you use the expression that you did not have eyes in the back of your head? Don't you suppose I know that? Objected to. A.
10 Yes, sir.

Q. Don't you suppose the jury knows that?

Mr. Davis. I object to this colloquy, if your Honor please.

Q. Don't you know that the jury knows that you have not eyes in the back of your head? A. Yes, sir.

15 Q. You appreciate the seriousness of this case, do you not? A. Yes, sir.

Q. Mr. Burtt was a friend of yours, was he not? A. Yes, sir; I have known him for about thirty-four years.

Q. You have known him pretty intimately for about thirty-four years? A. Yes, sir.

20 Q. And you are anxious, so far as possible, to help those who are prosecuting this case, are you not? A. Yes, sir.

Q. And you have talked it over with them before you came on the stand? A. Not necessarily; no, sir.

Q. Well, not necessarily, but have you not? A. No, sir.

25 Q. It was not necessary, but you have talked to somebody have you not? (No response.)

Q. Well, have you not? A. Some of the lawyers, you mean, or something?

Q. Anybody. A. I might have talked with someone that night on the
30 street, yes.

Q. Who else? A. Well, I don't know who else; that is all.

Q. You talked to Judge Davis? A. Well, I have in the room, this noon.

Q. Well, you ought to be proud of that. Why do you hesitate over that?

Mr. Davis. He did not hesitate, if your Honor please.

35 Witness. I did not hesitate.

Q. Have you talked to Mr. Moloney here, this gentleman (indicating)? A. No, sir.

Q. Do you know him? A. Yes, sir.

Q. Have you talked with the children of Mr. Burtt, any of them? A.
40 No, not on the case; no sir; I have waited on them in the line of business.

Q. And you have never said a word about their father being killed? A. Well, I don't know whether I have or not.

Q. Well, don't you know that you have? A. I might have said that "You lost your father," or something like that.

45 Q. Well, then, why not admit it? A. Well, I do admit it.

Q. But you do not admit it until after you are questioned several times, do you? A. No.

Q. Well, why not? A. Well, I don't know just how to answer you, I suppose.

50 Q. Well, never mind me; you do not want to please me particularly. Did

you hear the trolley-car pass your place? A. It didn't pass the place; it hadn't got to it yet.

Q. Did not the trolley-car have to pass your door before it struck the auto? A. Oh, no; I worked this side of where the auto was struck.

Q. What do you mean by "this side"? A. East of where it was struck. 5

Q. Well, did you not hear it thundering down the street at a high rate of speed? A. No, I was talking to someone; I wasn't thinking about the trolley at all.

Q. Making a loud noise, as if it had a flat wheel; didn't you hear that? A. I might have heard it, because they all make a loud noise when they go by us there. 10

Q. Well, did you not hear that loud noise? A. I might have.

Q. Well, did you? A. No, because I was talking to somebody else.

Q. That answers it. Did you hear the automobile coming? A. No, sir.

Q. You did not hear anything at all until you heard the crash? A. No, 15
sir.

Q. What makes you say that you saw the automobile being pushed the last eight feet, if you did not see it? How do you know that it was pushed?

A. Because I looked around as soon as the crash came and I had time to see it. 20

Q. Have you been in court this morning when all these witnesses said the end of the trolley-car stood across that alley?

Mr. Davis. I object. That is not so; all the witnesses do not say and have not said anything of the sort.

Mr. MacSherry. Well, a majority of them. 25

Mr. Davis. Nor a majority.

The Court. Anyway, it is a recitation of testimony.

Q. Do you mean to say that the rear end of this trolley-car did not extend across that alley to the west side? A. I don't say, because I wasn't over on that end. 30

Q. Do you know whether any part of that trolley-car extended over the alley? A. Across the middle of the alley or all the way across, do you mean?

Q. Did any part of the trolley-car block any part of the alley? A. Yes, sir.

Q. How much? A. I should judge eight feet. 35

Q. Eight feet. A. Yes, sir.

Q. And where do you say the front of it was? A. In front of the restaurant in that old building there.

Q. Well, where is that on the map? A. Right about there (indicating).

The Court. Indicating a point on the east of the alley and near the place where the line of the street angles, in line with the sidewalk. 40

Witness. Right about there.

Q. Have you any idea of the length of that car? A. Forty feet, I should think.

Q. Do you know where the collision took place, what part of the street? 45

The Court. That is, where they first came together.

A. I didn't see it, but I know about where it is; yes, sir.

Q. Well, how do you know, if you did not see it?

Mr. Davis. He said he knows where it is; there is no question about that. 50

Q. If you did not see where it took place, how do you know? A. I know it, but I didn't see it.

Q. Well, because somebody told you? A. No, I heard it.

Q. Where did you hear it from? A. From where It was standing in the
5 doorway.

Q. How would that tell you where it actually happened? A. It happened when he came out of the alley.

Q. What part of the alley? A. From the south side.

Q. How do you know? A. It only comes out one way.

10 Q. But how can you tell the Court and jury the place in the street where the automobile was first struck? A. I don't think I understand what you mean me to —

Mr. Davis. He has not attempted to say that at all—the place in the
15 street where the automobile was struck.

[Question read.]

The Court. The question is not whether he saw it, but whether he knows where it was. He said he knows where it was, but he did not see it. Now the
20 question is as to how he knows.

Mr. Davis. That was not the question, I think.

[Question read.]

25 Mr. MacSherry. If you did not see it?

The Court. That is the same thing, is it not?

Witness. I can tell you only by the sound; that is all I know.

30 Q. That is the way you tell it, is it? A. Yes.

HARRY BERKOWITZ sworn in behalf of plaintiff.

Direct Examination by Mr. Davis.

35 Q. Mr. Berkowitz, are you in business in Orange? A. Yes, sir.

Q. What is your business? A. Tailor.

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

Q. Where do you live? A. I live on Park street.

Q. In Orange? A. Yes, sir.

40 Q. Whereabouts is your place of business? A. My place of business is on Main street, 340 Main, next to Burt's office, the second door.

Q. Are you east or west of Burt's office? A. I am east.

Q. And you say the second door? A. Yes.

45 Q. What kind of a store is between you and Mr. Burt's office. A. Deli-catessen.

Q. Do you know the name of the party? A. Yes, sir.

Q. What is it? A. Mr. Einson.

Q. Do you recall the evening of this accident, Mr. Berkowitz. A. Yes.

50 Q. It took place about what time do you know? A. Around a little after seven.

Q. Were you on Main street in the vicinity of the accident at the time it happened? A. Yes, I was just coming from home, from supper.

Q. What side of the street were you on on Main street? A. I was on the south side.

Q. What direction were you coming? A. Coming to the west. 5

Q. And how near to Pierson's alley were you? A. Well, when I came from the park side, from the east side, I just crossed over to the alley. Then I saw Burttt coming out of the alley, from the inside, in his automobile, and we let him pass, and he passed us, and I started to go up.

Q. You say "we let him pass." Whom do you mean? A. Why, we was 10
three together, three colored fellows and I.

Q. Where were standing as Mr. Burttt passed out of the alley? A. I was standing on this side, on the east side.

Q. On the east side? A. Yes, sir.

Q. [By the Court.] The east side of what? A. On the east side of the 15
alley.

Q. [By Mr. Davis.] And the south side of Main street? A. And the south side of Main street.

Q. Do you know where Willow Hall is? A. Yes, sir.

Q. Where is it? A. It is on the south side. 20

Q. Is it on the corner of Main street and the alley? A. On the corner of Main street and the alley.

Q. And is it on the east corner of the alley? A. It is on the east corner of the alley.

Q. How many stores are there in Willow Hall? A. There are two stores 25
on the front and one store on the South Main street side.

Q. The store in Willow Hall on the corner of the alley, what kind of a store is that? A. A picture store.

Q. And where were you standing? A. Right by the side of the picture 30
store.

Q. Then you say that you waited until Mr. Burttt passed in his automobile? A. Yes, sir.

Q. And did you wait until the whole car passed by? A. Yes, sir.

Objected to as leading.

Objection sustained. 35

Mr. Davis. Then the answer will be stricken out?

The Court. Yes.

[Question withdrawn.]

Q. And what did you do then, Mr. Berkowitz, after Mr. Burttt passed you 40
in his automobile? A. Well, I started to go on to my store.

Q. What direction was that? A. To the west.

Q. To the west? A. Yes, sir.

Q. In going from where you were standing in front of the picture store at the time Mr. Burttt passed you in his automobile towards your own 45
store you have to cross the alley? A. Crossed the alley.

Q. And these other two men that were standing there with you, you say, were two colored men. A. Yes, sir.

Q. What direction did they go after Mr. Burttt passed? A. They went the same direction as I did. 50

Q. Now, how far had you gone before your attention was attracted to anything? A. Well, I was only maybe a couple of steps over the alley.

Q. Had you crossed over the alley? A. Crossed over the alley.

Q. And how many steps beyond the alley had you gotten? A. Well,
5 maybe a couple of feet or so.

Q. And what happened then, or what attracted your attention when you got to a point a few steps beyond the alley? A. Well, then there was a hit from the trolley-car to the automobile, coming quick around, and I saw that a car was swinging around the automobile and pulling him maybe from
10 10 to 15 feet.

Q. This trolley-car that you say struck the automobile, from what direction did it come? A. From the west side.

Q. Going towards Newark? A. Going towards Newark.

Q. And did you observe it at all before it struck the automobile? A.
15 No.

Q. What did you do then, when you saw the collision?

Mr. MacSherry. He did not see the collision.

Q. Did you see the collision? A. No, I didn't see it right when she —

Q. Very well, then, that will do. What did you do then, when you heard
20 the crash? A. Then I run over to take Mr. Burtt out of the car; so two fellows—before I came there two fellows was there and took him out before me.

Q. When you waited at the corner of that alley for Mr. Burtt to pass you what direction was he going, was he going towards Main street or from
25 Main street? A. He was going towards north, crossing over Main street.

Q. Do you remember what sort of an automobile it was? A. It was a Chalmers six.

Q. How many passengers? A. Seven.

Q. What type of car was it, Mr. Berkowitz? A. What type

30 Q. I mean was it open or closed car? A. Open.

Q. And was it a righthand or lefthand drive. A. A lefthand drive.

Q. Was anyone in the car other than Mr. Burtt at the time? A. Only Mr. Burtt.

35 Cross Examination by Mr. MacSherry.

Q. How long had you known Mr. Burtt? A. Over seventeen years.

Q. I want to show you a picture, Mr. Berkowitz, D1 for identification on the part of the defendant [photograph shown to witness]. Do you recognize
40 Willow Hall there? A. Yes.

Q. Alongside of the alley? A. Yes.

Q. That is the building that you mean you stood in front of? A. That is the building where I was.

Q. And, as I understand it, you came out of this alley yourself? A. No.

45 Q. This alley is as wide as the street, anyhow, is it not? A. Not quite.

Q. Almost? A. Not almost, neither; maybe around 15 feet.

Q. Well, it is frequented a good deal, is it not? A. Well, it is free, all right.

Q. Don't you know that this alley is 22 feet 6 inches wide? A. Well,
50 I can't say for sure; I never measured it.

Q. Well, that is according to the map. A. That is up to the measurer, if he did measure it.

Q. Well, it is a pretty wide alley, anyhow, is it not? A. It is wide enough.

Q. Now, won't you answer my question? You think I am trying to catch you. A. Well, I don't know. 5

Q. I would not do that. You live up there and I do not, and I want to know what it is. Well, that being so, you stood on the corner in front of Willow Hall? A. Yes, sir.

Q. And you saw Mr. Burt come out of that alley onto Main street? A. Yes, sir. 10

Q. In an automobile? A. Yes, sir.

Q. Now, which way was he headed the last time you saw him before he was hit? A. I didn't see him; I saw him only when he passed me on the alley. 15

Q. Which way was he headed then? A. He was headed on the north side.

Q. Was he headed toward Main street? A. Right across Main street.

Q. Had he reached Main street? A. That is what I can't say; I didn't see him then. 20

Q. Well, where was he when you last saw him? A. He passed me and he was going over on the street.

Q. Where were you? A. I was facing to the west.

Q. Were you in the alley or on Main street? A. I wasn't in the alley.

Q. Anyway, he passed you on the corner at Willow Hall on Main street? A. Yes, sir. 25

Q. And you went immediately across the street? A. Yes, sir.

Q. And had taken two steps? A. Yes, sir.

Q. When you heard a crash, and he was hit by the car; isn't that so. A. Yes sir. 30

By the Court.

Q. Mr. Berkowitz, can you give us the names of these two colored men? A. Well, I can't; I don't know their names.

The Court. That answers the question. 35

Q. [By Mr. Davis.] Are they here, Mr. Berkowitz? A. Well, I guess one is dead by that time, and one must be here; I don't know if he is here or not.

The Court. Will the colored gentlemen in the back of the room stand up. [Three colored men arise.] 40

Q. [By the Court.] Do you recognize him? A. Well, I think the lighter colored one was.

Q. There are three gentlemen standing up. Do you think that the gentleman who stands nearest to the electric light is one of them? A. Yes, sir; I think so. 45

Q. Do you identify either of the others? A. No.

Q. When Mr. Burt passed you how fast was he going? A. He was going very slow.

Q. Do you know that alley? A. Yes, sir.

Q. You have been up and down it? A. Yes. 50

Q. Can you tell us how the grade on the alley is? A. The grade on the alley—there is no pavement there.

Q. No pavement? A. No.

Q. How is the grade? A. Do you mean how low it is?

5 Q. I mean this: In coming toward Main street are you on the dead level or do you go up or down? A. No, it is all on the level; it was at that time; the alley and the street was all on the level.

10 EDWARD DAVIS sworn in behalf of plaintiff.

Direct Examination by Mr. Davis.

Q. Mr. Davis, where do you live? A. 57 Parrow street, Orange.

15 Q. What is your business? A. Driver for Colt's Express.

Q. How long have you been with Colt's Express? A. About a year.

Q. How long have you lived in Orange? A. About three years.

Q. Were you near the scene of this accident at the time it happened? A. Yes, sir.

20 Q. Where were you, Mr. Davis? A. Right on the corner of the alley, about 5 feet away from the alley.

Q. What side of the alley were you on, were you on the side towards Newark or the side towards Orange? A. The side towards Newark.

Q. And what street were you on? A. Main street.

25 Q. Where had you come from, Mr. Davis? A. I was coming from home.

Q. And you were going in what direction? A. West.

Q. On the south side of Main street? A. On the south side of Main street.

30 Q. Who was with you? A. Me and three more colored fellows was together.

Q. What are their names? A. One is named Eddy Revis, and one is named Venable—of course, I don't know his first name—and the other one was Douglas Daniels, but he is dead.

Q. Are Mr. Revis and Mr. Venable here? A. Yes, sir.

35 Q. Did you see Mr. Burttt before the accident happened? A. Yes, sir.

Q. Where was he? Where did you see him? A. Sitting in his car, just coming out of the alley.

Q. Did he pass you by the in the car? A. Yes, sir.

Q. As you stood there? A. Yes, he passed us by and waved his hand.

40 The Court. Which hand?

Q. What way was he driving, as to speed? A. How fast he was going, do you mean?

Q. Yes. A. Well, I judge about as fast a man could walk.

45 Q. And he was going out in what direction? A. He was coming out towards Main street.

Q. Out from the alley? A. Out from the alley, yes.

Q. And the car was pointed towards what direction? A. Towards Newark.

Q. North? A. Coming towards Newark the car was.

50 Q. I do not mean the trolley-car, Mr. Davis; I mean Mr. Burttt's auto-

mobile, I should have said. A. It was facing right out Main street, towards the north of Main street.

Q. How long did you wait there at the corner? A. Well, until after he had passed.

Q. When you say "he had passed," do you mean also the automobile had passed? A. Yes. 5

Q. Did you wait until the automobile had passed? A. Yes, all the automobile had passed by, too.

Q. And then after the automobile had gone by what did you do? A. Well, we looked around and started on up the walk again. 10

Q. Which way did you start, Mr. Davis? A. Right up towards west.

Q. And did these other gentlemen start with you? A. Yes, sir; we was all together.

Q. How far did you go before anything happened? A. We hadn't stepped over the curb of Pierson alley. 15

Q. Just state what you saw. A. Well, as we was looking up the street, of course, the trolley was coming, and I had made a remark, I said— Objected to.

Q. Never mind what you said. A. Well, the car was coming fast, just as we stepped off the curb the crash came, and I turned right around and ran to the car, to Mr. Burt's automobile. I was the first one that put a hand on it. Douglas Daniels, he ran and called for the ambulance. By that time a couple more fellows had got there and was helping take him out of the car. 20

Q. Do you know where Canfield street is? A. Yes, sir.

Q. When you first saw the trolley-car where was it with relation to Canfield street? A. It wasn't quite to Canfield street, I should judge about 10 or 15 feet away from Canfield street. 25

Q. Does that mean west of Canfield street or east of Canfield street? A. West of Canfield street.

Q. When you saw this trolley-car about 10 feet west of Canfield street had Mr. Burt passed out of the alley or had he not? A. He was just past the curb, the Main street curb, the front; his whole hind wheels wasn't past yet, though. 30

Q. Had the automobile passed you when you saw the trolley-car up about 10 feet beyond Canfield street? A. Yes, sir. 35

Q. Did you see the trolley-car, then, all the way from a point 10 feet beyond Canfield street until it struck the automobile? A. Yes, sir.

Q. And how fast was it going? A. Well, I couldn't exactly say, but I know it was going fast.

Q. Did you see Mr. Burt do anything as the trolley-car approached? A. Yes, sir; it seemed to me he tried to turn the wheel back around to the curb, to the south side of Main street; it seemed before he could get it around the car had run into him. 40

Q. When the trolley-car struck him what did it do to his automobile? A. Well, it just turned him right around, throwed him right around back to the curb, pushed him up. 45

Q. What direction did it throw the automobile? A. Well, facing Newark.

Q. Did you know Mr. Burt by sight, Mr. Davis? A. Yes, sir.

Q. Before the trolley-car reached him, Mr. Davis, did you see Mr. Burt 50

make any motion at all? A. No, no motion, no more than waved at Douglas Daniels, because he used to work for him.

Q. That is, as he was passing out? A. Yes, sir.

Q. [By the Court.] Which hand did he wave? A. I couldn't say exactly
5 now; I don't remember.

Cross Examination by Mr. MacSherry.

Q. How long had you know Mr. Burttt? A. I had known him about a month or so, I got acquainted with him.

Q. Now, do you remember Mr. Burttt's automobile when the front wheels
10 reached the first rail of the track upon which the car was coming? A. Do I remember when the first wheels hit the track?

Q. Yes. A. I wouldn't say exactly.

Q. Well, now, don't you remember? You saw the automobile. A. I
15 saw the automobile, but I don't just remember when the first wheels hit the track.

Q. Can you tell us when that automobile reached the track how far the trolley-car was away? A. Well, I should judge about ten feet away from Canfield street.

Q. You do not mean that, do you, because you have already said as he
20 came out of the alley—A. As he came out of the alley; he had passed us when he came out of the alley.

Q. Listen to me. You have already sworn that as that automobile was passing out of the alley into Main street that the trolley-car then was up
25 above Canfield street.

Mr. Davis. That is not so. I ask that the record be referred to.

[The stenographer reads from the record as follows: "Q. When you first saw the trolley-car where was it with relation to Canfield street?

A. It wasn't quite to Canfield street, I should judge about 10 or 15
30 feet away from Canfield street. Q. Does that mean west of Canfield street or east of Canfield street? A. West of Canfield street.

Q. When you saw this trolley-car about 10 feet west of Canfield street had Mr. Burttt passed out of the alley or had he not? A. He
35 was just past the curb, the Main street curb, the front; his whole hind wheels wasn't past yet, though."]

Q. Now, that being so, how is it that you say now that when the car reached the track, or when the automobile reached the track, that the trolley-car was above Canfield street?

40 Objected to as misstating the evidence.

[The stenographer reads from the record as follows: "Q. Can you tell us when that automobile reached the track how far the trolley-car was away? A. Well, I should say about 10 feet away from Canfield street."
45 field street."]

Q. What do you mean by "10 feet away from Canfield street"? A. 10 feet away, west of Canfield street.

Q. It had not reached Canfield street yet, then, had it? A. It hadn't
50 reached Canfield street yet.

Q. The same place it was when he came out of the alley? A. No, it wasn't the same place.

Q. Have you not said so virtually? A. When he got out of the alley; no, sir; he had just passed the Main street curb; he would be on the track then—

5

By the Court.

Q. No. The question is where the trolley-car was at a certain time. You have said that it was 10 feet west of Canfield street at the time when the automobile was getting out of the alley. A. It had just passed the Main street curb.

10

Q. The rear wheels hadn't quite cleared the curb? A. No, it was about 6 inches away from the curb.

Q. The trolley-car then was 10 feet west of Canfield street? A. Yes, sir.

Q. Now, you were asked afterwards where the trolley-car was when the automobile reached the track, and you said it was 10 feet west of Canfield street. Now, the question is, was the trolley-car at that point, 10 feet west of Canfield street, both when the automobile was coming out of the alley and when it reached the track? A. When it reached the track, the automobile reached the track complete, the trolley-car was at Canfield street, or past Canfield street.

15

20

The Court. Well, that is not the way that you answered the question.

By Mr. MacSherry.

25

Q. Is it not a fact that when this automobile driven by Mr. Burt reached the track the trolley-car was then but 20 feet away? A. 20 feet away from where, from Canfield street?

Q. Never mind Canfield street.

Mr. Davis. Well, he is asking. I think he has got a right to ask. He wants to know 20 feet away from what?

30

Q. [By the Court.] Well, it is not for us to tell you; it is for you to tell us, if you can, where the trolley was when the automobile reached the track. Where do you say it was? A. I should say it was just in Canfield street, from Canfield street up.

35

Q. [By Mr. MacSherry.] Do you remember a man by the name of Winthrop B. Ingalls calling to see you in reference to what you knew about this case after it happened? A. I remember one man coming to see me.

Q. Did he wear glasses? A. I just can't remember what he wore now.

Q. He came to see you the day after the accident, did he not? A. Something like that.

40

Q. And you made him a statement? A. I made a statement; yes, sir.

Q. And he wrote out that statement? A. Yes, sir.

Q. And you read it? A. I read it?

Q. Yes. A. No, sir; I did not.

45

Q. You signed it? A. I did not sign it; no, sir; not to my remembrance.

Q. You write, do you not? A. Yes, sir.

Q. Your name is Edward Davis? A. Yes, sir.

Q. Well, I am showing you a paper, Mr. Davis [paper shown to witness]. Is that your signature? A. Yes, sir; this is mine.

50

Q. Well, you did sign it, did you not? A. Yes, sir; I remember now; I can tell my writing.

Q. Now, there is another one, too [paper shown to witness]. You signed that, did you not? A. Yes, sir.

5 Q. Then when you said that you did not sign it you were mistaken? A. I was.

Q. Well, he made out the statement as you gave it to him, and he read it to you before you signed it, did he not? A. I don't know whether he read it or not.

10 Q. Did you read it? A. No, sir.

Q. Well, you would not sign a paper that a strange man told you to sign, would you? A. Well, he was writing down what I was telling him.

Q. Did you tell him how the accident happened? A. Yes, sir.

15 Q. Did you tell him that when the front wheels of the auto got on the car track that the car was then about 20 feet away? A. About 20 feet away?

Q. Yes. Just look at it, will you? Did you? A. About 20 feet away.

Q. Yes, about 20 feet away. A. Yes, sir; I believe I did.

Q. And you signed it? A. I signed it; there is my name down there.

20 Q. Did you tell him that the car hit the auto a little forward of the middle on the left side and stopped within 10 feet? A. Stopped within 10 feet?

Q. Yes. A. Yes, sir.

25 [The papers identified by witness are marked respectively D2 and D2-A for identification.]

EDWARD REVIS sworn in behalf of plaintiff.

Direct Examination by Mr. Davis.

30 Q. Mr. Revis, were you with Mr. Davis at the time of this accident? A. Yes, sir.

Q. Who else was with you? A. A fellow by the name of Dug Daniels.

Q. He is dead, is he not? A. Yes, sir.

35 Q. Was there any one else with you at the time? A. Yes, sir; and another fellow by the name of Venable, but I don't know the last part of his name.

Q. Is he here now? A. Yes, sir.

Q. Did you know Mr. Burt? A. Yes, sir.

40 Q. Did you see him coming out of the alley? A. Yes, sir.

Q. Where were you at the time, Mr. Revis? A. I was standing on the corner of the alley there, in front of the picture store, I guess about 5 feet from the alley.

Q. And were you standing with these other two men? A. Yes, sir.

45 Q. How rapidly or how slowly did Mr. Burt drive out of the alley? A. Well, he came out pretty slow, about as slow as a man walks, something like that.

50 Q. What direction did he drive as he went out of the alley, what way was his car pointed? A. Pointed right towards the car track, coming out of the alley.

Q. Was it pointed towards the other side of Main street or up or down the street? A. East; he was turning towards east.

Q. That is, towards Newark? A. Yes, sir.

Q. And after his car passed you by what did you do? A. I started across the street, across the alley. 5

Q. You started to walk, or how? A. Walking; yes, sir.

Q. Did these other men go along with you? A. Yes, sir.

Q. Was there anything that occurred there then to attract your attention? A. Nothing but the trolley-car, that is all. 10

Q. Just state to the Court and jury what you saw. Did you see the trolley-car? A. Yes, sir.

Q. Where was the trolley-car when you first saw it? A. Well, when I first seen it, I guess, it was a little the other side of his place of business; I couldn't say how far. 15

Q. Whose place of business? A. Mr. Burt's.

Q. Do you know where Mr. Burt's place of business is? A. Yes, sir.

Q. How far did you walk from the picture store? A. We reached across the alley before the accident came.

Q. How far did you get across the alley when the accident happened? A. I guess I was just stepping up on the curb on the other side of the alley. 20

Q. What side would you call that? A. The west side.

Q. And where were you when you first saw the trolley-car? A. I was on the east side of the alley.

Q. Where was Mr. Burt's automobile when you first saw the trolley-car? A. Well, when I first seen the trolley-car he was just about half over the sidewalk, when I first seen it. 25

Q. And the trolley-car at that time, you say, was about in front of his place? A. Yes, sir; it might have been a little further up; I couldn't say.

The Court. A little the other side. 30

Q. A little the other side of what?

The Court. Burt's place?

Witness. Yes, sir.

Q. Do you know where Canfield street is? A. Yes, sir.

Q. With regard to Canfield street, about where was the trolley-car at that time? A. I couldn't say. Canfield street don't run across Main street. 35

Q. No, it only runs to the north side. A. Yes, sir.

Q. Can you say whether this was an open or closed car, Mr. Revis? A. This was a closed car.

The Court. You refer to the trolley-car? 40

Mr. Davis. I mean the trolley, not the auto, the car; that is the trolley-car; I will call it the trolley-car.

Q. [By the Court.] What do you say it was? A. A closed car.

Q. [By Mr. Davis.] Did you see the collision or did you hear the crash only? A. Well I seen the trolley-car when it hit the automobile. 45

Q. You did? A. Yes.

Q. Now, when the trolley hit the automobile what did it do to the automobile? A. It just knocked the front end; it didn't hit the back end, just the front end, when the front wheel was getting over the first rail, I guess.

Cross Examination by Mr. MacSherry. 50

Q. Mr. Revis, you were standing in front of Willow Hall, were you? A. Sir?

Q. Were you standing in front of that building they call Willow Hall?

A. I couldn't say what they call it; the picture store; that is all I know; I
5 don't know the name of it.

Q. Well, it has been testified to on two occasions here as being on the corner of this alley and Main street. A. Yes, sir. I couldn't say.

Q. And that is the alley that Mr. Burtt drove out of? A. Yes, sir.

10 Q. And when he was coming out of that alley and his car was about in the middle of the sidewalk, then it was that you saw the trolley-car coming along about near his place of business? A. Yes, sir.

Q. Now, that is right, is it not? A. Yes, sir. It might have been a little above his place; I couldn't say, because I couldn't —

15 Q. What direction did he take? Did he go straight across the trolley tracks? A. No, sir; he didn't cross the tracks.

Q. He got to the tracks. A. Yes, sir.

Q. Well, by the time he got to the track the trolley-car must have been very close to him, was it not? A. Yes, sir.

20 Q. How close? A. Well, I couldn't say how close it was.

Q. Well, about how far do you think? A. I couldn't say.

Q. Well, from where you are sitting, looking towards me? A. I couldn't say how close it was.

Q. Well, it was very close, was it not? A. Yes, sir.

25 Q. And when he got to the trolley track and this trolley-car was very close to him, then his car stopped, did it not? A. After it hit him it stopped.

Q. No, before that didn't the automobile stop on the track? A. I didn't see it stop, only after it was hit we ran to get him; I can't say—

30 Q. Did they not both get to that point on the trolley track about at the same time? A. Well, they couldn't get there at the same time, because he hit him on the side, on the side of the running-board.

Q. He hit him on the front of the automobile, did he not? A. No, sir. Didn't you say so? A. No, sir.

35 Q. Have you not just said that he hit the front wheel just getting over the first rail? A. No, sir; I said he hit the running-board.

Q. Well, the front part of it; isn't that so? A. I said the running-board.

Q. Well, whether it was the running-board or the wheel, have you not said that he hit the front part of the car as he was getting over the first rail? A. Yes, sir.

40 Q. That is so, is it not? A. Yes, sir.

Q. That is true, is it not? A. Yes, sir; the running-board.

Q. All right, the running-board. And the trolley-car stopped within about 6 feet, did it not? A. About 6 feet?

Q. Yes. A. Do you mean before he hit it or—

45 Q. No, after. A. I couldn't say.

Q. Why not? A. Because I couldn't say.

Q. Do you remember a man coming to see you the day after this accident? A. Yes, sir.

Q. And do you remember giving him a statement? A. Yes, sir.

50 Q. Did you tell him that you were with Douglas Daniels and Edward

Davis and a colored man from Llewellyn Park at the time of this accident?
A. Yes, sir.

Q. Where did this conversation take place, by the day? A. What do you mean, where he met me at?

Q. Yes. A. It was at my home. 5

Q. In whose presence? A. My wife's

Q. Did you tell this man that you were all walking west on the south side of Main street? A. Yes, sir.

Q. And just as you were about to cross Pierson's alley an auto came out very slowly? A. Yes, sir. 10

Q. And Daniels raised his hat to the driver? A. Yes, sir.

Q. Who responded by saying, "Hello, boys"? A. Yes, sir.

Q. Looking towards you, or you boys? A. I didn't say he looked towards us.

Q. You did not say that he looked toward you? A. No. 15

Q. Did you tell him that you did not notice whether any horn was sounded or not? A. I told him I didn't hear no horn.

Q. Did you tell him that the machine continued right straight across, and for some reason stopped with the front wheels on the track? Did you tell him that? A. He stopped the car—the auto— 20

Q. Did you tell this man that, for some reason, the auto stopped with its front wheels on the track? A. No, sir.

Q. And did you tell him that the car struck the auto on the left front wheel and shoved the auto ahead about 5 or 6 feet, when the car stopped? A. No, sir; I didn't tell him that. He wanted me to tell him that, and I couldn't 25 tell how far it shoved it.

Q. I am showing you a paper [paper shown to witness]. Is that your signature? A. Yes, sir.

Q. And I am showing you another paper [paper shown to witness]. Is that your signature? A. Yes, sir; that is my name, all right. 30

Q. Well, you signed this voluntarily, did you not. A. Yes, sir; but I didn't read it.

Q. Nobody coaxed you to do it, did he? A. He did; he asked me to sign.

Q. You do not let a strange man come in and coax you to sign a paper, do you? A. Of course, I didn't read it. 35

Q. Did he read it to you? A. Yes, he did.

[The papers identified by witness are marked respectively D3 and D3-A for identification.] 40

Q. Why can't you tell us how close or how far away the trolley-car was when Mr. Burtt, driving that automobile, reached the first rail of that track, and you looking at it? Why can't you tell us that? A. Because I wasn't looking for no accident.

Q. What is that? A. I wasn't looking to see no accident. 45

Q. Is that the only reason? [No response.]

Q. Now, you know, do you not?

Mr. Davis. Know what?

Q. You know where that trolley-car was when his front wheels reached the track, do you not? A. I know where it struck him. 50

Q. No, I am not talking about striking. Do you mean to say you do not know where the trolley-car was when the automobile reached the first rail of that track? A. No, sir; because I didn't watch it all the way down.

Q. Oh, I thought you did. A. I did not.

5 Q. I thought you said that you first saw that trolley-car just near Mr. Burt's business place. A. I did.

Q. And saw it come down and strike the automobile? A. I didn't say I saw it come down and strike it.

10 Q. You did not say that you saw it strike it? A. I didn't say I saw it come down and strike it.

Q. Do you think it came from the clouds? A. Sir?

Q. You do not think it left the track, do you? A. No, sir.

Q. Now, you say that automobile got struck by the trolley-car? A. Yes, sir.

15 Q. And before it was struck by the trolley-car you saw it go on the track, did you not? A. Yes, sir; but it was away from the automobile then; it wasn't up close to the automobile then.

Q. What wasn't up? A. The car.

Q. How far away was it? A. It was up the other side of his place there.

20 Q. Well, have you not already said that when the automobile passed out on Main street, then it was that the trolley-car was up above his place? A. That is what I mean, the trolley-car.

Q. That is what I mean, too. How close had the trolley-car got when the automobile got on the track? A. It came down to make a meet.

25 Q. It came down to make a meet? A. Yes, sir.

Redirect Examination by Mr. Davis.

Q. What part of the automobile was on the sidewalk when you saw the trolley-car up by Mr. Burt's place? A. Well, the front wheels was just
30 crossing where you walk on, that is all.

Q. The statement that Mr. MacSherry showed you, is that in your handwriting or is it in the handwriting of this man that called on you? [Defendant's counsel hands paper to plaintiff's counsel.]

35 Q. These two sheets, will you look and see whether they are all written out in your handwriting or in the handwriting of the man that called on you [D3 and D3-A for identification shown to witness]? I mean the whole thing, not the signature, this writing here [indicating]? A. No, sir.

Q. Is that yours? A. No, sir; I can't write that well.

40 Q. Now, you say that this man who called on you coaxed you to say five or six feet? A. Yes, sir.

Q. What do you mean by that? A. He said, "Come on and give me some idea of how far it was." I said, "I couldn't tell you."

Q. Who mentioned the 5 or 6 feet? A. He mentioned it: "Couldn't you say it was about 5 or 6 feet?" I said, "No, I could not."

45 Q. And then he did the writing, did he, he wrote down whatever was there? A. Yes, sir.

Q. Do you remember how long after the accident it was that this gentleman called on you? A. I couldn't say exactly; it was pretty soon after the accident.

50 Q. Did you receive a subpoena from the trolley company to come here

today? A. Yes, sir; I guess it is from the trolley; I received one last night.
 Recross Examination by Mr. MacSherry.

Q. Well, how far do you say the car did move after it struck the automobile? A. Well, I couldn't say how far it did move.

Q. Well, from where you are sitting, how far did it move do you think? 5
 A. I couldn't say. If I didn't know, I couldn't say how far it was.

Q. You have no idea at all? A. No, sir; not with the car running, I couldn't tell.

HENRY VENABLE sworn in behalf of plaintiff. 10

Direct Examination by Mr. Davis.

Q. Mr. Venable, where do you live? A. Orange.

Q. And your occupation it what? A. What? 15

Q. What do you work at? A. I work in Hamburg place now.

Q. Where were you working last July? A. Llewellyn Park.

Q. What doing? A. Butler work.

Q. Were you with Mr. Revis and Mr. Davis, these last two men, walking on Main street at the time of this accident? A. Yes, sir. 20

Q. Whereabouts were you, Mr. Venable? A. We was going up Main street, west, toward West Orange.

Q. And you know where the alley is, do you not, near Willow Hall? A. Yes, I know.

Q. Did you see Mr. Burttt come out of the alley? A. Yes, sir. 25

Q. Did you know Mr. Burttt? A. No, I didn't know him.

Q. Where were you as Mr. Burttt drove his car out of the alley onto Main street? A. Well, I hadn't got across the alley at the time he came out.

Q. Where were you standing as he drove his car out of the alley onto Main street? A. Well, I was behind the other two gentlemen, and they stopped for him to come out of the alley, and so I stopped, too. 30

Q. You stopped, too? A. Yes, sir.

Q. About how far from the line of the alley did you stand as he drove his car out onto Main street? A. From the line— 35

Q. About how many feet from the alley were you standing as he drove his car out? A. I guess I was about a yard, something like that, from the alley.

Q. And you say you were standing behind these other two men? A. Yes, I was behind them, close to them. 40

Q. After Mr. Burttt's car went across the crosswalk there at the corner of the alley what did you do? A. I passed on across the alley.

Q. Did you cross over the whole width of the alley before anything happened? A. Yes, I crossed over the alley.

Q. And how far beyond the west side of the alley did you get before anything happened? A. Oh, a couple of feet, I guess, something like that. 45

Q. And what then attracted your attention, if anything, when you got over a couple of feet beyond the west side of the alley? A. Well, the car stopped; that is what attracted my attention.

Q. Which car? A. The automobile. 50

Q. The automobile? A. Yes, sir.

Q. And where did it stop, Mr. Venable? A. If I don't make no mistake, I think the front wheels was over the first rail of the car track.

5 Q. Then it stopped still, did it not? A. Yes, sir.

Q. And then what next did you hear or see? A. Well, the next I see was the street car.

Q. Now, when you noticed the automobile stop still, where did you notice the street car? A. What did you say then?

10 Q. When you noticed the automobile stop still, as you say, where was it that you noticed the street car? A. Well, I was going that direction, anyway, and I just happened to look up the street and I see the trolley-car coming down.

15 Q. Where was the trolley-car, how far up the street was it, as you looked up and saw it there? A. Well, I don't really know how far it was; I suppose it was about 20 or 25 feet, something like that, from the alley. I just guess at it; I don't know.

20 Q. Do you know where Mr. Burt's store is? A. No, sir—well, I know where it is since the accident happened; I didn't know nothing about it before then.

Q. And do you know where Canfield Street is? A. No, I don't really know where it is.

25 Q. Well, do you know where the first street is along Main Street from the alley, going west from the alley, on the other side of the street? Do you know that street? A. I know where Day Street is and Center Street.

Q. Well, you know where Mr. Burt's office is, do you not? You know now where it is? A. Yes.

30 Q. And with regard to Mr. Burt's office, or store, there on Main Street, whereabouts was the trolley-car when you looked up the street and saw it?

35 Mr. MacSherry. I object to that if your Honor please. This witness has already stated, and it is his witness, that when the automobile went on the track the trolley-car was then from 20 to 25 feet away, and I do not think that counsel ought to be permitted to call the witness's attention to some object that is 75 to 100 feet away, in an endeavor, evidently, to correct that testimony.

40 The Court. The witness's testimony is very vague. After saying that the auto stopped on the track, he says, "The next I saw was the street car. I don't really know how far the trolley-car was away; 20 or 25 feet, I suppose. I don't know where Canfield Street is." Now, if the witness, by having his attention directed to any phase of the case, can reach a more definite conclusion than he has so far given, I think counsel may make the effort to do so, if he can do it without leading.

45 Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

50 [Question read.]

Mr. MacSherry. I object to that again because the witness has not stated that he knew where Mr. Burt's store was.

Mr. Davis. I think he has. 5

The Court. The question is open to another criticism, I think. It assumes that from that point the car would be up the street.

Mr. Davis. I did not mean that, of course. 10

The Court. I do not think the witness has stated that. "Up," of course, means west.

[Question read.] 15

Mr. Davis. Your Honor thinks that that is objectionable on the ground that it may be looking up the street from Burt's office, beyond Burt's office?

The Court. Well, that was my first impression about the question. 20

Mr. Davis. Well, I shall reframe it, if you think it is susceptible of that interpretation. I did not mean it so.

The Court. I shall sustain the objection to the question in its present form. 25

Mr. Davis. All right.

Q. From where you were standing and looked up the street, as you say, at the approaching trolley-car, where was that trolley-car when you first saw it with regard to the office, or store, of Mr. Burt? 30

Mr. MacSherry. I still object to it, because he has not stated that he knew where Burt's store is. 35

Mr. Davis. He said that he knew where it was.

Mr. MacSherry. I do not recollect it. Perhaps I am in error about it. 40

Q. Do you know where Burt's store was? A. I just found out where it was since the accident; I didn't know before.

The Court. I think the witness said that he did not know where it was at that time, but he knows now. 45

Mr. MacSherry. All right.

The Court. You may answer the question.

Q. [Question read as follows: "From where you were standing and 50

looked up the street, as you say, at the approaching trolley-car, where was that trolley-car when you first saw it with regard to the office, or store, of Mr. Burt?"] A. I didn't say I was standing towards his building, because I didn't know where that place was; I didn't know nothing about Mr. Burt's
 5 at all until this accident happened; I didn't know there was a man by that name. All I can say, the trolley-car, I know it was east of Day street, but so far as Campbell Street, or whatever the name of it is, I don't know whether it was this side or the other side. I don't know much about those streets up there.

10

Cross-Examination by Mr. MacSherry.

Q. What is your idea of 20 or 25 feet from where you are sitting?

15

The Court. Pick out something in the room here that you think is 25 feet away from you.

A. Well, I guess that it would take about half of the building, or a little more, I suppose, something like that.

20

Q. And is that the distance that the trolley-car was when this automobile stopped on the first rail of the track? A. I just guessed at that; I don't know; I just said I imagine it was about 20 or 25 feet.

Q. What caused the automobile to stop on the first rail of the track, do you know? A. I don't know; I don't know whether he stopped or the motor
 25 stopped, or what was the trouble.

THEODORE GAMBERT sworn in behalf of plaintiff.

Direct Examination by Mr. Davis.

30

Q. Mr. Gambert, you live in Orange, do you? A. Yes, sir.

Q. And you have lived there how long? A. Two years; that is, where I am at the present time.

Q. How long have you lived in Orange all together? A. Ten years.

35

Q. Where do you live? Where have you lived for the last two years?
 A. For the last two years, 350 Main Street.

Q. What side of the street is that on, the north or south side of Main Street? A. On the south side.

Q. You know where this Pierson's Alley is, do you not? A. Yes, sir;
 40 that is right where I live.

Q. Do you live on the corner of Pierson's Alley? A. Right on the corner; yes, sir.

Q. What floor do you live on? A. The third floor.

Q. And the building that you live in, is it on the west corner of Pierson's
 45 Alley or the east corner? A. The west.

Q. That is a brick building, is it not? A. Mr. O'Rourke's.

Q. It is a brick building? A. A brick building.

Q. Do you remember the evening that this accident happened? A. I believe it was July, but what night it was, I don't know.

50

Q. Well, you remember the night of the accident? A. Yes, sir.

Q. Where were you at the time? A. On the porch.

Q. Where is that porch, Mr. Gambert? A. Whereabouts is it?

Q. Yes, whereabouts is it on the building? A. It is on the southeast corner of the building.

Q. [By the Court.] What floor? A. The third floor. 5

Q. [By Mr. Davis.] Is that in the back— A. Yes, sir.

Q. —or in the front of the building? From your porch have you got any way of seeing Main Street? A. Yes, sir.

Q. How can you see Main Street from your porch? A. All I have got to do is to look right along the side of the building. 10

Q. Does the porch run along the easterly side of the building? A. Right even with the building, with the brick.

Q. Does it run along the back of the building or the side of the building? A. The side.

Q. Is the porch on the front half of the side of the building or the rear half? A. Well, it is partitioned, on account of the stairs coming up. It is a double building. 15

Q. What I mean is this: Does the porch run along the side of the building towards the front of the building? A. It runs to the side and then comes along the back; it is shut off. 20

Q. What I mean is this: You say the porch is on the side of the building? A. The southeast corner; yes, sir.

Q. Now, does the porch run along the side of the building towards the front of the building, on Main Street, or towards the rear of the building? A. It runs right against the front, towards the kitchen, and then it comes back. 25

Q. Well, does it run all the way up to the front of the building? A. No, sir.

Q. How far from the front of the building does it stop? A. About 40 feet, I think, the width of the rooms.

Q. Do you occupy the whole third floor? A. The whole third floor on the one side; yes, sir. 30

Q. What first attracted your attention, if anything, to this accident, Mr. Gambert? A. When I see Mr. Burt pull out of the stable; that is the first thing.

Q. Now, what did you see? A. Well, he pulled out of the yard there from the barn; he came through, and he came pretty lively; he put on his speed coming out of the barn, and when he got to the side of the house where I was he cut off his speed. When he got out on the track he turned to his left to go up, and then the trolley came and hit him. 35

By the Court. 40

Q. To go up what? A. Going up.

Q. Up what? A. On the track.

Q. You spoke about up. Up what? A. Up Main Street.

Q. You say that he turned to go up Main Street? A. He turned to go up Main Street, on the track. 45

Q. He turned? A. Yes, sir; to go up.

By Mr. Davis.

Q. Mr. Gambert, do you understand this map back of you? A. Yes, sir. 50

Q. Will you take the pointer and indicate where Mr. Burt took the automobile from and drove from? A. [Indicating on map.] I live here. He came around this corner here; he was about here; that is where his stable is; that is where his property is.

5

The Court. Show us where he started from.

Q. Where did he start from? A. He started from that old factory. You know where the old hat factory is?

10

Q. Just point where he started from. A. [Indicating on map.] He has got a stable there; that is, a garage, where he had his car; he pulled out of there and started out there; he came around here and went up this way, and he got out, and he got out to here, and he started to turn here, and that is where he was hit, about around his front wheels on the crosswalk and his hind wheels was right across the gutter. It shoved it about 20 feet or 25 feet.

15

By the Court.

Q. Do you understand the map? A. Yes, sir.

Q. Do you see those red lines [indicating]? A. Yes, sir; the car track.

Q. [Indicating.] This is Main Street, and that is the other part of Main Street, on the other side of the track. A. Yes, sir.

20

By Mr. Davis.

Q. Did you come down from your house then or did you stay up there? A. I stayed upstairs; I walked through to the front and looked out of the front window.

25

Q. And when you walked to the front of the house and looked out of the front window what did you see? A. All I seen, two gentlemen taking Mr. Burt out of the automobile and brought him on the sidewalk, and another gentleman got in back—I don't know who they were, only one man was on this chair this morning; that is all I know; I don't know his name—and they took him up to his place of business.

30

Q. Was this car an open or closed car, Mr. Gambert? A. A closed car.

Q. A closed car? A. Yes, sir.

Q. Had you frequently seen Mr. Burt's automobile before? A. Yes, sir.

Q. What kind of an automobile was it? A. A big, black one; I don't know the name of it.

35

Q. How many passengers? A. I think it could hold seven.

Q. Was it an open or closed car? A. It was an open car.

Q. When you looked out of the front window onto Main Street did you notice where the trolley-car was stopped? A. After he hit him the car stopped; yes, sir.

40

Q. Where was the automobile as you looked out of the window? A. Laying off on this side from the gutter, from the alley—that is, the hind wheels—and the front wheels on the crosswalk there.

Q. How far from the alley was the automobile lying? A. About 20 feet that the car pushed it.

45

Q. Which way from the alley was it lying, towards the east or west? A. Towards the east.

Q. Do you know where South Main Street comes into Main Street? A. Yes, sir.

Q. How far from the angle there where South Main Street and Main

50

Street meet was the front part of the automobile as you looked out of the window and saw it? A. Well, I figure on about 30 feet; that is, from the crosswalk that is on the side of the Willow Hall building, from that curbstone.

Q. What is 30 feet, what do you say is 30 feet? A. Well, that would be about ten yards. 5

Q. Well, I want to know from you if you can tell us how far from the angle there where Main Street and South Main Street meet was the front part of the automobile when you looked out of the window and saw it? A. The front part of the automobile was on the crosswalk, before you strike the corner. 10

Q. Will you take the pointer and show us just where that is, Mr. Gambert? A. [Indicating on map.] The crosswalk is across here, right across, that hotel across the street. The front wheels was right about here.

The Court. Indicating a point on the south line of Main Street about the cipher in the figure "40," and the line of the crosswalk running from that point northerly across Main Street. 15

Q. And about where was the front part of the trolley-car as you looked down and saw it? A. About 10 feet away from the automobile then, from the running-board. 20

Q. Ten feet which way, Mr. Gambert? A. Towards the west.

Q. Towards— A. Towards Pierson's Alley.

Q. Towards Pierson's Alley? A. Yes, sir.

Q. And how far from the trolley track was the automobile? A. Well, the front part of the automobile was on the track. 25

Q. And the trolley-car then was how far away from the front part of the automobile that was on the trolley track? A. Well, I would say the front part of the automobile to the trolley-car—it was off this way; the automobile was this way and the trolley-car was here [indicating] I couldn't measure it; I didn't expect to come in this business. I would figure about 15— 30

Q. When you looked out of the window and saw the trolley-car and the automobile were they touching each other?

Objected to as leading. 35

Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court. 40

Exception noted as ground of appeal.

Q. When you looked out of the window and saw the trolley-car and the automobile were they touching each other or were they apart from each other? A. Apart. 45

Q. And about how far apart from each other were they? A. Well, on the south side, that was nearest to the car, that would be about 10 feet.

Q. And how far apart was the front part of the trolley-car from that part of the automobile that was on the track? A. Well, that is something that I couldn't tell you. I should say about 15 or 20 feet; that is, on the north side. 50

Q. And do you say that the front of the trolley-car was 15 or 20 feet more towards the alley than the part of the automobile that was on the trolley track? A. Yes, sir.

Cross-Examination by Mr. MacSherry.

5 Q. I am showing you a picture, which is marked D1 for identification, and ask you if the house that you live in is in that picture [shown to witness]? That is your house, is it not? A. Yes, sir.

Q. There seems to be something alongside on the third floor on the alley side, that you have reference to? A. That is just the alley; that is the last
10 window there, and then you get down along the alley.

Q. Well, from the place that you saw this accident, you could not see a trolley-car until it got to the alley, could you? A. I couldn't see the trolley coming down; I didn't see it until she hit the automobile.

Q. Well, when he went out of the alley, when he got out of the alley on
15 Main Street, he made a turn first to the left and then to the right, did he not? A. Yes, he started to swing his wheel there; I suppose he got bewildered and turned the wheel.

Mr. Davis. I ask that that be stricken out, if your Honor please.
20 The Court. Strike it out. Tell us what you saw, not what you think or suppose.

Witness. Well, what I saw, he started to go up; when he came
25 out of the alley he turned to his left, and then before the car hit him I seen his hand go this way [illustrating]. I don't know whether he turned the wheel or what he done. That is what I seen.

Q. Which direction did he take the second time? A. Down to the right, to the east.

Q. He was hit as soon as he got to the track, was he not? A. Yes, sir.
30 Re-Direct Examination by Mr. Davis.

Q. Did his automobile keep moving or did it stop, Mr. Gambert, so far as you could see? A. As far as I could see, he was moving.

35 CHARLES E. DEATS sworn in behalf of plaintiff.

Direct Examination by Mr. Davis.

Q. Where do you live, Mr. Deats? A. 21 Oakwood Avenue.

Q. In Orange? A. Yes, sir.

40 Q. How long have you lived in Orange? A. Fully five years.

Q. Where did you live before that? How long have you lived in Essex County? A. All the time in Essex County.

Q. What is your business? A. Coaching.

Q. Where are you employed? A. I am employed by Mrs. Jenkins, in
45 Llewellyn Park, at present.

Q. Llewellyn Park, West Orange? A. Yes, sir.

Q. Were you in the vicinity of Main Street and Canfield Street at the time of this accident? A. Yes, sir.

Q. Where were you, Mr. Deats? A. I was on the south side of Main
50 Street.

Q. Whereabouts? A. About 25, 40 feet, maybe, from the alley, about opposite Mr. Cowen's, going home.

Q. Just about opposite Cowen's café? A. About that.

Q. Were you standing or walking? A. I was walking.

Q. What direction were you walking? A. South-east, I should think, 5

Q. And what first attracted your attention to the accident? What did you see first? A. Well, really, I couldn't say, more than I really saw the auto and car, you might as well say, coming together at the same time.

Q. What first attracted your attention? Did you see the trolley-car first, before you saw the accident? A. No, I saw both about the same time. 10

Q. Did you see the trolley-car going down Main Street before it reached the point of the accident? A. I couldn't very well, because they were too close together.

Q. Then what did you do, Mr. Deats? A. I made a rush for the car, that was all; that is, for the auto. 15

Q. What kind of a car was this, an open or closed car? A. A closed car.

Q. A closed car? A. Yes, sir.

Q. Are you sure it was closed? A. It was what is called a box car.

Q. Well, was it a summer or a winter car? A. A winter car.

Q. What happened to the automobile when the collision took place? A. 20
The two came together.

Q. What happened to the automobile? A. Why, it kind of struck a glancing blow and shoved it over maybe 8 or 10 feet, something like that.

Q. It shoved it over in what direction? A. South.

Q. I beg your pardon! A. South, it shoved it south. 25

Q. South? A. I should think so, because it shoved it back towards the alley.

Q. Did you go down to where the accident had happened? A. Yes, sir.

Q. And when the automobile stopped right after it was struck by the trolley-car, just describe where it was lying on the street. A. The car? 30

Q. The automobile. A. Well, it was kind of a zigzag way, across, a little bit below the alley.

Q. Was any part of it on the trolley track? A. Not after it was struck; no, sir.

Q. It was all clear of the trolley track, was it? A. Yes, sir. 35

Q. But you say it was lying sort of diagonally on the street? A. Yes, sir; the rear of it was more towards the alley.

Q. And was the rear of it more towards the curb than the front part? A. Well, it was pretty nearly even, I guess.

Q. Pretty nearly straight? A. Yes, sir. 40

Q. And where was the front part of the trolley-car with relation to the front part of the automobile? A. Do you mean the distance between them?

Q. Yes. A. Well, I should say maybe 3 or 4 feet.

Q. That is, the trolley-car was 3 or 4 feet away from the automobile? A. Something like that. 45

Q. And the front part of the trolley-car, was it ahead of the front part of the automobile or behind it? A. I think the fender and the trolley step was about equal.

Q. When you saw this accident did you come down immediately to where it happened? A. Yes, sir. 50

Q. And when you got there were the trolley and the automobile touching each other or were they apart from each other? A. They were separated.
Cross-Examination by Mr. MacSherry.

5 Q. Do you remember whether you heard any trolley gongs or bells about that time? A. I didn't pay no attention.

Q. Can you tell us when Burttt came out of the alleyway and got to the track how close the trolley-car was to him? A. I couldn't tell you exactly; no, sir; because they both seemed to come together almost at the same time.

10 MARGARET K. CROSS sworn in behalf of plaintiff.

Direct Examination by Mr. Davis.

15 Q. Miss Cross, you live where? A. Orange, 40 Chapman Street.

Q. That is in Orange? A. Yes, sir.

Q. Are you married or single? A. Single.

Q. Were you in the vicinity of Main and Canfield Streets the night of this accident? A. Yes, sir.

20 Q. Whereabouts were you? A. I was on the south side of Pierson's Alley—the west side.

Q. The west side of Pierson's Alley? A. Yes, sir.

Q. Were you on Pierson's Alley or on Main Street? A. I was waiting for Mr. Burttt's car to pass me.

25 Q. Did you notice these colored men waiting there, too? A. No, I did not.

Q. What direction were you going, Miss Cross? A. I was going east on Main, South Main.

30 Q. Then after Mr. Burttt's car passed you what did you do? A. I proceeded down Main Street, easterly.

Q. How far had you gotten going east on Main Street before anything attracted your attention? A. It didn't seem to be only a few steps; just about crossed the alleyway.

Q. Do you know where the picture store is? A. Yes, sir.

35 Q. With relation to the picture store where were you when something attracted your attention? A. Just about the center of it.

Q. About the center of the picture store? A. Yes, sir.

Q. Is that opposite the front door of the picture store? A. Just about.

40 Q. What was it that attracted your attention then? A. The noise of the collision.

Q. Did you look around then? A. I did.

Q. And what did you see? A. I didn't see the car when it hit the automobile; I just noticed the automobile kind of being pushed forward about 5 or 6 feet.

45 Q. Where did the automobile stop after it was pushed, Miss Cross? A. Almost directly opposite to where I was standing.

Q. What part of the automobile stopped about directly opposite to where you were standing? A. Well, it seemed to be about the back part of it.

50 Q. In what direction was the rest of the automobile pointing? A. Well, it wasn't exactly straight; it was just a little turned.

Q. Turned in what direction? A. The front of the automobile towards the car.

Q. Towards the trolley-car? A. Yes, sir.

Q. And about where did the front part of the trolley-car stand? A. Well, as near as I can recall, almost to the center of the automobile. 5

Q. You were there and saw Mr. Burt taken out, were you? A. Well, I waited just a few minutes and then I went on.

Cross-Examination by Mr. MacSherry. 10

Q. Miss Cross, I did not get where you were standing when you heard this crash—or walking. A. I had just got across the alleyway, about near—right in front of the picture store.

The Court. Going east. 15

Mr. MacSherry. Yes.

Q. When the car stopped, the auto then was about opposite you? A. When it stopped, yes, probably a little ahead. 20

Q. And how far were you from the corner of the alley? A. Well, it was only a few feet away from the alley where I was standing.

Q. Were the auto and the trolley-car together or was the auto a little ahead of the trolley-car? A. Well, there wasn't much difference; I couldn't say. 25

Q. Well, in any event, you were just 2 or 3 feet from the alley, and the auto then was opposite you after the collision? A. Yes, sir.

Q. That is right, is it not? A. As near as I can remember.
By the Court.

Q. I did not understand, Miss Cross, whether you waited for the auto to come out of the alley? A. Yes, I was standing and waiting for the automobile to pass me, and it just— 30

Q. And when it came out you went on? A. Yes, sir.

JOHN H. McMAHON sworn in behalf of plaintiff. 35

Direct Examination by Mr. Davis.

Q. Mr. McMahan, your business is what? A. Awning business.

Q. You are employed by whom? A. By the Orange Awning Company. 40

Q. In Orange? A. Yes, sir.

Q. Do you live in Orange? A. Yes, sir.

Q. Were you near the scene of this accident at the time of the accident?

A. I was looking out of my window.

Q. Where was that? A. 339 Main Street. 45

Q. Where is that? A. Almost directly opposite the alley.

Q. On the north side of the alley? A. Yes, sir.

Q. Do you know where the National Hotel is? A. Yes, sir.

Q. How far from the National Hotel is 339? A. About 50 feet going towards Newark. 50

Q. Then that would be in the direction of McGowan's shoe store, would it? A. Yes, sir.

Q. Did you see the trolley-car before it struck the automobile? A. Yes, sir.

5 Q. How far up Main Street was the trolley-car when you first saw it?

Objected to.

[Question withdrawn.]

10

Q. Where was the trolley-car, then, when you first saw it before the accident? A. It was between Center and Canfield Street, coming down.

Q. And what, if anything, attracted your attention to the trolley-car? A. First, the speed of the car.

15 Q. And what next? A. Well, when Mr. Burtt got struck, coming out of the alley, I knew he couldn't avoid the accident, with the speed of the car.

Mr. MacSherry. I move that that go out.

20

Mr. Davis. I shall consent.

The Court. Strike it out. We do not want any opinions, just what you saw.

25 Q. Did you see Mr. Burtt coming out of the alley? A. Yes, sir.

Q. How did he come out of the alley with regard to speed? A. Very slow.

Q. And when his automobile got into Main Street where was the trolley-car, if you know? A. Almost on top of him.

30 Q. And how rapidly was it going, if it all? A. Which, the car or the automobile?

Q. The trolley-car. A. Well, I should judge about twenty-five or thirty miles an hour.

35 Q. And what did you see happen, Mr. McMahon. A. The car jammed into the automobile.

Q. What part of the automobile was struck by the trolley-car? A. Why, the side that was north——

Q. What part of the side? A. It was between the front and the rear part.

40 Q. Do you refer to the front and rear mudguard when you say "the front and rear part"? A. I mean between both.

Q. That is, the striking was between both? A. Yes, sir.

Q. And when the trolley-car struck the automobile what happened to the automobile? A. Well, the automobile was stalled in the track.

Q. It was stalled before it was struck? A. No, sir.

45 Q. Oh, it was stalled after? A. Yes, sir.

Q. And how far was it driven by the——

Objected to.

50

Mr. Davis. I shall withdraw the word "driven."

60-61

Exhibit D1.





Exhibit P 6.

Exhibit P 6.



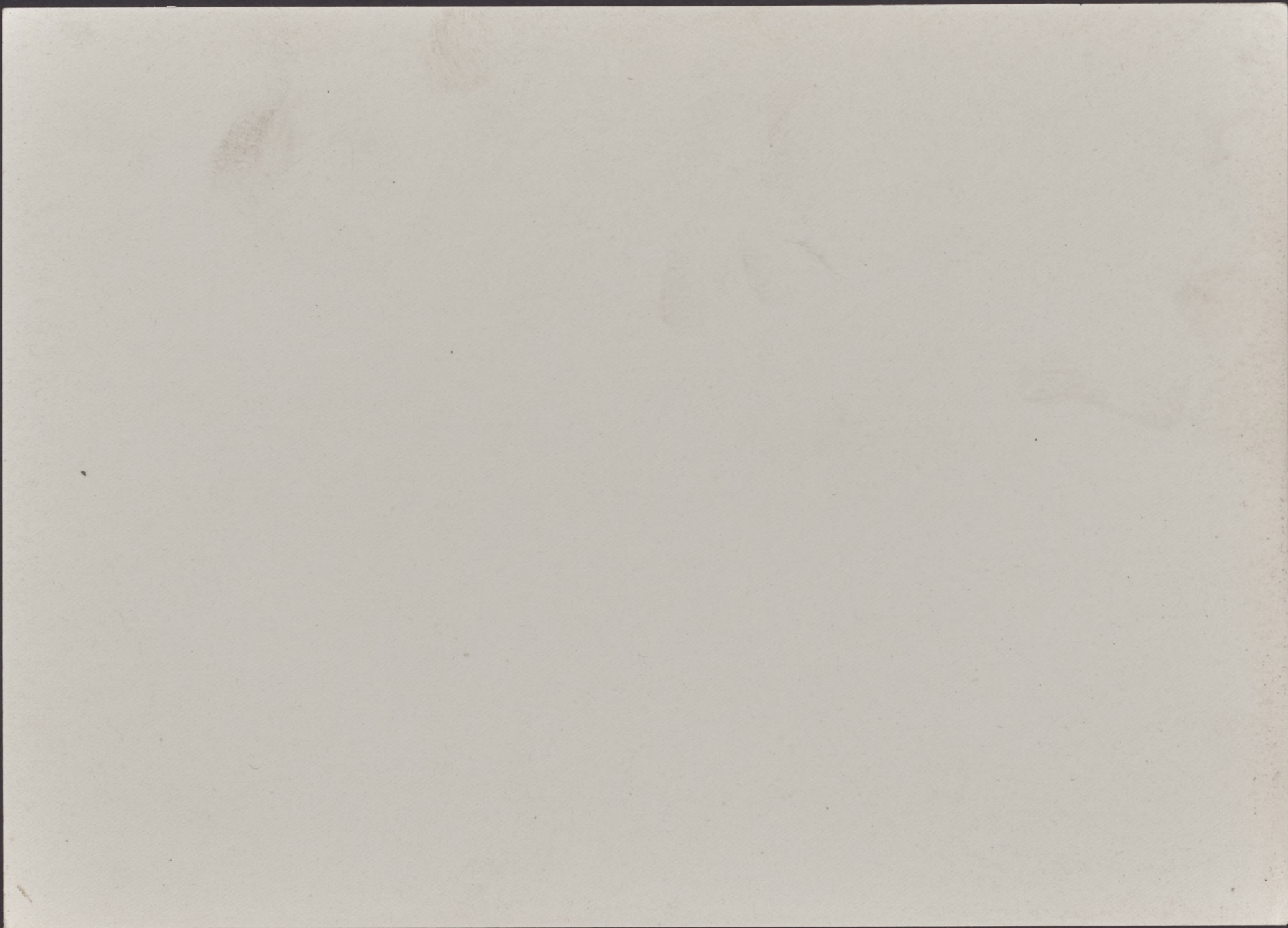
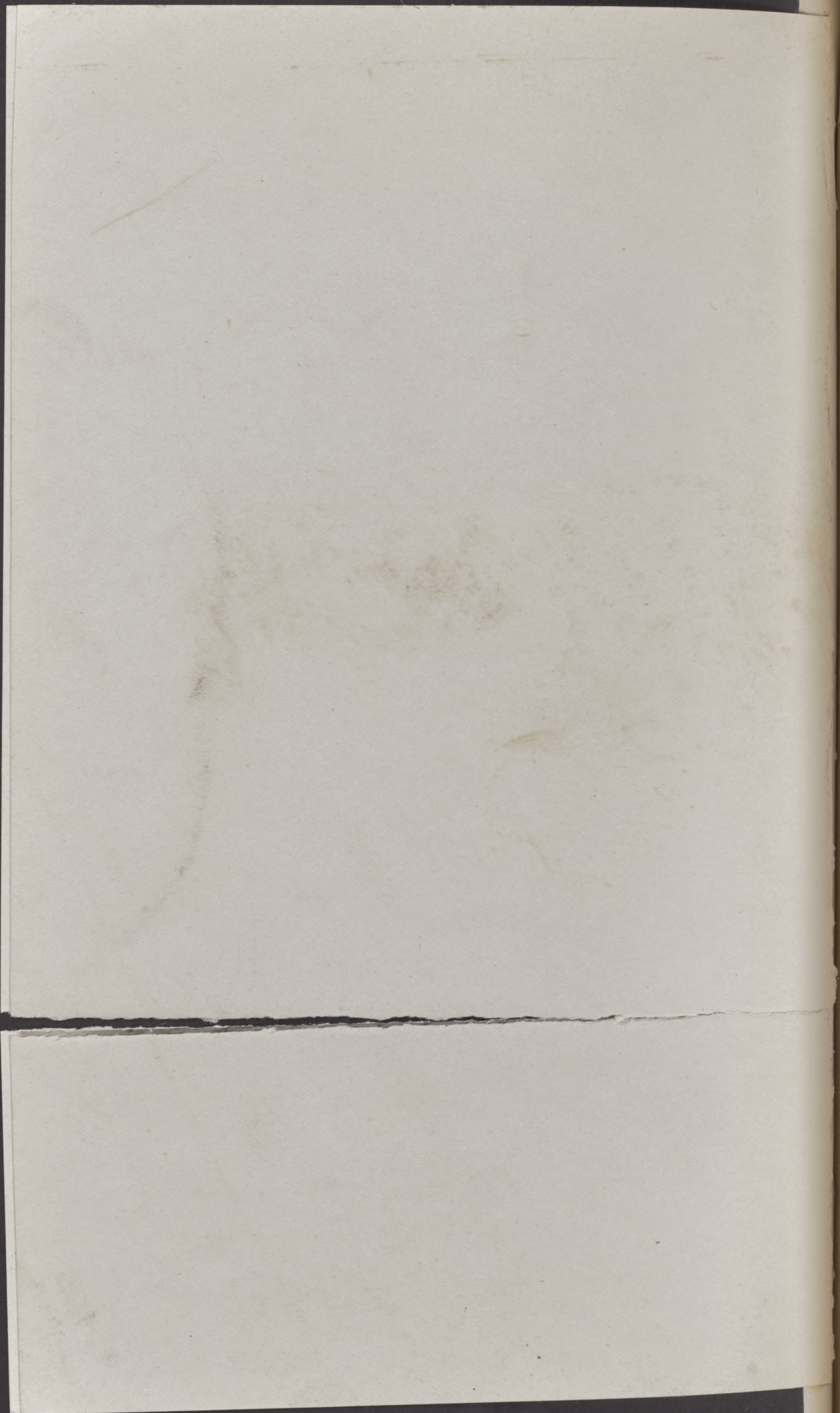


Exhibit P8.







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Q. What happened to the automobile then, Mr. McMahon, after the trolley-car struck it? A. Well, it was pushed between the Singer Sewing Machine Company and the picture store.

Q. The Singer Sewing Machine Company's store is where? A. There is a picture store on the corner, a restaurant, and as you go south on Main Street opposite is the Singer Sewing Machine Company. 5

Q. Does the Singer Sewing Machine Company face on South Main Street or Main Street? A. No, it faces on South Main.

Q. How near the Singer Sewing Machine Company did the automobile stop after it was struck by the trolley-car? A. It stalled right there on the track; it didn't go anywhere near the Singer Sewing Machine Company; it went there by hand power. 10

Q. After it was struck by the trolley-car how far did it go? A. It went about 10 or 15 feet.

Q. Did you see the position it was in after it came to a stop after being struck? A. Yes, sir. 15

Q. Just describe the position it was in after it was struck. A. It was facing towards Newark, half-way on the track.

Q. What way was it pointed? A. Towards Newark.

Q. What half was on the track? A. Well, it was about equally on the downtown track. 20

Q. Which half, the front half or back half? A. It was cat-a-cornered when it was struck, that direction [indicating]; the front wheels was facing towards Newark and the car was in between the two mud-guards—

By the Court. 25

Q. Where were the hind wheels? A. Almost over the track. It was a pretty long car.

Q. What do you mean by "over the track"? A. Well, between the two tracks.

Q. Between the two tracks? A. Yes, sir. I don't mean the four rails; I mean the two rails that operate the downtown car. 30

Q. Do you know the difference between a rail and a track? A. Yes, sir.

Q. You know there are two tracks? A. Yes, sir.

Q. Now, when this automobile came to a standstill after the accident where were the two front wheels? A. The two front wheels were facing Newark. 35

Q. Where were they on the street? A. They were on the middle of the track.

Q. What track? A. The downtown track.

Q. In the middle of the track? A. It wasn't exactly in the middle; the car was about equally divided between the two tracks. 40

Q. And where were the hind wheels? A. Over towards the south.

Q. Were they clear of the eastbound track? A. Why, no.

Q. Were they entirely in the space between the tracks? A. They blocked the track completely. 45

Q. Now answer my question. Were the hind wheels entirely in the space between the two tracks? A. Yes, sir.

Q. They were there? A. Yes, sir.

Q. And the front wheels were both in the eastbound track? A. No, sir.

Q. Where were they? A. Well there is a westbound track and an east- 50

bound track. The car was cat-a-cornered between the two, about equally divided between the two rails.

Q. Now, you have muddled it all up again. Where were the front wheels, were they on either track? A. No, sir; they weren't; they were a little bit
5 over the track.

Q. Over which track? A. The eastbound track.

Q. Which way over, north or south? A. North.

Q. The front wheels were, then, in the space between the two tracks,
10 were they? A. Yes, sir.

Q. Where were the hind wheels? A. Back of that again; a little bit—almost on the track.

Q. Then all four wheels were in the space between the two tracks? A. Well, no, not exactly.

15 Q. Well, exactly where were they? A. The car was equally divided between the two tracks.

Q. I do not care about the body of the car; I want to know where the wheels were. A. The wheels were across the tracks.

Q. Which track? A. The trolley track.

20 Q. There are two tracks. Yes, sir.

Q. Which tracks are you talking about? There is an eastbound track and a westbound track? A. Eastbound track.

Q. Now, how many of those four wheels are on the eastbound track? A. Why, the four of them.

25 Q. All of them? A. Very near; yes, sir.

Q. None of them were between the two tracks? A. Well, no, I couldn't say they were between the two tracks; no sir. It was a pretty large car and it took up the whole space of the track.

Q. And you finally conclude that the four wheels were all on the east-
30 bound track, do you? A. Yes, sir.

Cross-Examination by Mr. MacSherry.

Q. What window were you in? A. Right up there in the front room.

Q. What were you doing there? A. Reading the paper. I had to lay my paper down to go to my supper. It was a pretty warm night, and I was look-
35 ing up Main Street.

Q. Were you reading the paper? A. Not at that time; no, sir.

Q. Were you eating your supper? A. No, sir.

Q. Did you hear the trolley-car coming? A. Yes, sir; it made a racket.

Q. So that anybody could hear it? A. If they had ears; yes, sir.

40 Q. Because it made a noise as it came along the track? A. Yes, sir.

Q. You first saw the trolley-car up between Center Street and— A. Center and Canfield.

Q. Did you follow it all the way down? A. By looking up the avenue; yes, sir.

45 Q. Why? A. I had occasion to look up the avenue where the trolley-car was, and the first thing you know I saw Mr. Burt coming out of the alley.

Q. You could not see him in the alley until he got beyond the house line, could you? A. Yes, I can see him directly up through the alley.

Q. When he reached Main Street the trolley-car was right on top of him,
50 was it not? A. Very nearly; yes, sir.

Q. Then he had to drive a distance between the curblin and the track, about 17 feet, did he not? A. He didn't have a chance to.

Q. He did not get struck before he got to the track, did he? A. No, sir.

Q. Well, didn't he have a chance to drive to the track, then? A. What do you mean, to drive off the track? 5

Q. Drive on the track. Why did he not have a chance to drive to the track? A. He didn't get time to.

Q. Why didn't he? The trolley-car did not hit him on the street, did it? A. Well, it hit him on the track; the man didn't have time to get out of the way. 10

Q. Just compose yourself and answer my question. See if I am quoting you right. You have said that when Mr. Burt in an automobile got to Main Street you understand that the trolley-car was right on top of him? A. Yes, sir.

Q. What do you mean by that? A. When he got on the track. 15

Q. He was not on the track yet, was he? A. No, sir; not quite.

Q. Now, you just wait a minute. When he got to Main Street, to the curblin, where was the trolley-car then? A. It was about 10 feet away.

Q. It was then about 10 feet away? A. Yes, sir.

Q. And notwithstanding that he got to the curblin of that street when the trolley-car was only 10 feet away from him, he drove onto the trolley track and was struck by the car; isn't that so? A. Well, he didn't have time— 20

Q. Isn't that so? Yes or no. Is that so or not? A. I don't understand your question. 25

Q. Well, I will make you understand, courteously, if I can. You have said that when Mr. Burt came out of this alley [indicating on map], and got to this curblin that the trolley-car was right on top of him, or about 10 feet away; is that right? A. Yes, sir.

Q. Now, you do not want to change that, do you? A. No, sir. 30

Q. You are going to stand by that? A. Yes, sir.

Q. Now, he had to drive on over this curblin onto that track, did he not [indicating]? A. Yes, sir.

Q. And that is what he did, did he not? A. Yes, sir. 35

ADJOURNED until to-morrow, Thursday, April 18, 1918, at ten o'clock A. M.

SECOND DAY

Thursday, April 18, 1918. 40

Met pursuant to adjournment.

Present, counsel as before stated.

The Court. I should think very well, after we get the evidence in, of sending the jury to look at the spot where this accident occurred. It would be useful. 45

Mr. MacSherry. I think it would be. 50

Mr. Davis. Yes, sir.

5 Mr. MacSherry. The map is a very good map, and we have a very good map, but I do not think that either of them conveys the situation as well as a jury view would.

10 The Court. The function of a view is to help the jury to understand the testimony, not to furnish independent material for their own judgment. There is sometimes a view before the testimony comes in, sometimes after it comes in, and sometimes while it is going along; it is a matter of convenience; but the thing to be kept in mind all along is that the function of it is to make distinct and clear the evidence on both sides.

15 BENJAMIN H. WILLIAMS recalled in behalf of plaintiff.

Direct Examination by Mr. Davis.

20 Q. Mr. Williams, you were on the stand yesterday, and you are a surveyor, are you? A. Yes, sir.

Q. At my request, did you this morning make certain other measurements in connection with the case? A. I did.

Q. Have you indicated them on a memorandum [paper shown to witness]? A. Yes, sir.

25 Q. Will you please state the width of the crosswalk across the alley at Main street? A. The width?

Q. The width of it. A. The width of the crosswalk is 4 feet 6 inches.

Q. [By the Court.] The width of the crosswalk across the alley, do you say? A. Yes, sir.

30 Q. 4 feet 6 inches? A. Yes, sir.

Q. [By Mr. Davis.] From the outside edge of the crosswalk to the most southerly rail of the trolley track is how far? A. 22 feet 7 inches.

35 Q. And from the east curb of the alley to the middle of the door of the picture store, which is the store at the corner of the alley, the east corner of the alley, is how far? A. To the nearest door?

Q. To the middle of the door of the picture store; that is the corner store. A. That is 12 feet 6 inches from the curblin of the alley.

Q. That is, the east curblin of the alley? A. The east curblin of the alley.

40 Q. [By the Court.] 12 feet 6 inches? A. Yes, sir.

Q. [By Mr. Davis.] From the east curblin of the alley to the middle of the door leading to the restaurant which is next to the picture store is how far? A. 32 feet 6 inches.

45 The Court. What point in the east curb line of the alley?

Mr. Davis. The east curb of the alley.

The Court. But that extends along the alley.

50 Mr. Davis. I mean measuring along the Main street sidewalk.

Witness. Yes, sir; along the front of the building.

Mr. MacSherry. Do you mean the restaurant in the Willow Hall building?

5

Mr. Davis. Yes.

The Court. That would be the southerly curb of Main street, would it not?

10

Mr. Davis. No, sir; the easterly curb of the alley.

Q. Are these measurements taken from the end of the crosswalk over the alley? A. Yes, sir; the crosswalk runs out to the east curb.

15

Mr. Davis. I understand these measurements are from the east end of the crosswalk, which is the curb of the alley, first to the middle of the front door of the picture store, and then to the middle of the front door of the restaurant next door to the picture store.

[Former question and answer read as follows: Q. From the east curb-line of the alley to the middle of the door leading to the restaurant which is next to the picture store is how far? A. 32 feet 6 inches."]

20

By the Court.

25

Q. What point in the east curb of the alley? A. It is measured from the edge of the crosswalk directly in front of the building in which the picture store is located.

Q. Then you are measuring from the outside edge of the crosswalk? A. Yes, sir. 30

Q. The northerly edge of the crosswalk, are you? A. Yes, sir.

Q. To what point? A. To a point in the middle line of the doorway.

Q. Of what building? A. Well, the building on the east side of the alley. 35

Q. You mean the picture store? A. The picture store and the restaurant; there is two doors there.

Q. The picture store and restaurant? A. Yes, sir. The picture store is the nearest to the alley and the restaurant is adjoining to the east, further east in the same building. 40

Q. Are you measuring to the picture store or to the restaurant? A. Both; the first one was 12 feet 6 inches to the middle doorway of the picture store.

Q. That you gave us a while ago? A. Yes, sir.

Q. Now, what is this measurement? A. This measurement is from the east curbline to the center of the doorway leading to the restaurant. 45

Q. How far do you say that is? A. 32 feet 6 inches.

Q. The center of the doorway leading to the restaurant is 20 feet further east than the middle of the door of the picture store, is that it? A. That is correct. 50

Q. [By Mr. Davis.] And the distance from the east curb of the alley to the trolley pole next east of the alley on the south side of Main street is how far? A. 40 feet 6 inches.

5 Q. [By the Court.] That is, measuring from the same point? A. Yes, sir.

Q. That is, to the trolley pole. Can you find the trolley pole on the map? A. No, sir; it isn't down there.

Q. Indicate where it is. A. It is right at that point there [indicating].

10 Q. Where the angle— A. Where the angle in the curb line is.

Q. How far do you say that is? A. 40 feet 6 inches from the east curb-line of the alley.

By Mr. Davis.

15 Q. And the distance from the middle line of Day street to the middle line of Center street along the south side of Main street is how much? A. 387 feet 7 inches.

The Court. That is to the middle of Center street?

20 Mr. Davis. Yes, sir.

The Court. From Day to Center?

25 Mr. Davis. Yes, sir.

Witness. Yes, sir.

The Court. On the south side of Main street?

30 Mr. Davis. On the south side of Main street.

The Court. Did you take the next measurement of the next block?

Mr. Davis. Yes, sir; we have that.

35 Q. From the middle of Center street easterly to the middle of Canfield street is how much? A. 398 feet 2 inches.

By the Court.

Q. From Center to Canfield? A. Yes, sir.

40 Q. Also on the south side of Main street? A. Yes, sir.

Q. That is, you measure to the center line of Canfield street prolonged across Main street? A. Yes, sir.

By Mr. Davis.

45 Q. How wide is Canfield street? A. Canfield street is 42 feet 8 inches in width.

Q. Is that from property line to property line? A. Yes, sir.
By the Court.

Q. Did you take any measurements on the next block, the block between Park street and Canfield street? A. No, sir; I did not.

50 Q. What is the distance between the northerly, or outer edge of the cross-

walk over the alley to the outer, or northerly, face of the southerly curb on Main street? A. [Measuring on map.] Pardon me! What is the distance—

Mr. Davis. You say it is 22 feet 7 inches to the alley from the point that the Court has asked about. 5

Witness. That would be 52 feet 7 inches from the northerly edge of the crosswalk to the southerly face of the curb on the north side of Main street. 10

Mr. Davis. That is not what the Court asked.

Q. Are you not mistaken about that?

Mr. Davis. No, he says the northerly curblin Your Honor asked, as I understand it, from the face of the southerly curb to the outer edge of this crosswalk [indicating.] 15

Q. That crosswalk [indicating]. How far is it from there to that line, the line of the curb of Main street, and the south side, not on the north side? A. 5 feet. 20

Q. That is, the crosswalk is 5 feet inside of the curb? A. Yes, sir; 5 feet inside.

The Court. Perhaps I did not ask my question correctly. 25

Cross Examination by Mr. MacSherry.

Q. Have you put the crosswalk down on your map? A. No, it isn't on the map.

Q. [By Mr. Davis.] Will you indicate it on the map in pencil, Mr. Williams? A. [Witness sketches it on map.] 30

By the Court.

Q. Can you tell us how the line of the buildings on the east and west sides of the alleys compare with this black line, which indicates, I suppose, the property line [indicating]? A. I can't say just where they are, but I know they are back from the line. 35

Q. Back from the property line? A. Yes, sir; they set back.

Q. You cannot tell us how far? A. No, sir; I don't know exactly how far they are; I didn't take any measurements as to that.

Q. Are there any projections in the way of windows or anything of that kind on either side from the wall? A. There is sort of a storm door here and here— 40

The Court. Referring to the building on the east.

Mr. Davis. Willow Hall. 45

Witness. As I remember, there is sort of a little projection here at the entrance on this building.

Q. On the west? A. On the west. 50

AARON F. BURTT sworn in behalf of plaintiff.

Direct Examination by Mr. Davis.

- 5 Q. Mr. Burtt, are you the son of Aaron F. Burtt, deceased? A. Yes, sir.
 Q. How old are you? A. Thirty-six.
 Q. And are you married or single? A. Married.
 Q. Is your mother living? A. Yes, sir.
 Q. And what is her name? A. Susan E. Burtt.
 10 Q. What sons and daughters did your father leave at the time of his death? A. One son.
 Q. Yourself? A. Robert.
 Q. Besides you, Robert? A. Yes, sir; and six daughters.
 Q. Their names are what? A. Mrs. Thomas J. Moloney—
 Q. Just give their own names. Her name is Cecelia, is it? A. Cecelia.
 15 Q. [By the Court.] You mean one son besides yourself? A. Yes, sir.
 Q. [By Mr. MacSherry.] That is Robert, is it. A. Yes.
 Q. [By Mr. Davis.] Robert, and then, you say, Cecelia Moloney? A. Yes, sir.
 Q. And who else? A. Susie Flynn, Gertrude Finn, Mabel Ford, Agnes McCloskey and Florence Burtt.
 20 Q. What of the children are single? A. Florence.
 Q. Is Robert married? A. No, he is single, too.
 Q. Then Robert and Florence are single? A. Yes, sir.
 Q. And all of the other children are married, are they? A. Yes, sir.
 25 Q. What of the children are under age, any? A. Florence is eighteen.
 Q. Is Robert over twenty-one. A. Yes, sir.
 Q. And all the others over twenty-one. A. Yes, sir.
 Q. And your mother, the widow of Aaron F. Burtt, deceased, is she living? A. Yes, sir.
 30 Q. Who lives at home with your mother, if anybody? A. Florence and Mrs. Finn and her husband and children.
 Q. Where do they live? A. 92 Essex avenue.
 Q. In Orange? A. Yes, sir.
 Q. Was that the home of your father during his lifetime? A. Yes, sir.
 35 Q. For how many years? A. Twenty-five.
 Q. Now, Mr. Burtt, coming to this alley for a moment. How long have you been familiar with the alley? A. About twenty years.
 Q. And what number Main street is the place of business? A. 334.
 Q. Does it run through to the alley? A. Yes, sir.
 40 Q. What else is on the alley in the way of business affairs besides your own place? A. There is three coal yards in the alley, and then there is other businesses on Main street that use the alley.
 Q. That is, that back up to the alley? A. Yes, sir; all the property goes back to the alley.
 By the Court.
 45 Q. When you speak of the alley do you refer to that portion of the alley which is parallel with Main street? A. Yes, sir.
 Q. There is a rightangle turn in the alley? A. Yes, sir.
 By Mr. Davis.
 50 Q. Now, the alley is divided into two branches, is it? A. Yes, sir; the

alley comes in from Main street about 125 feet, I guess, and then turns up parallel with Main street, running west.

Q. That is, it turns west? A. Yes, sir.

Q. And the other branch goes which way? A. It goes down the alley; it goes straight back to the railroad. 5

Q. In extension of the line from Main street, is it? A. Yes, sir.

Q. And it goes from there to the Morris & Essex Railroad? A. Yes, sir.

Q. Are all the buildings that front on Main street and which run back to the alley business buildings? A. Yes, sir; and dwellings; flats, upstairs. 10

Q. Well, on the first floor? A. On the first floor.

Q. Is the first floor devoted exclusively to business? A. Yes, sir.

Q. At what point are deliveries made to those stores? A. In the rear.

Q. That is, on the alley? A. Yes, sir.

Q. Do any of the stores have delivery wagons of their own, or automobiles? A. Only one, Einson's, next door to our place, but they deliver from the front. 15

Q. How many horses and rigs were used in connection with your father's business? A. Twenty-five horses and about twenty-two rigs.

By the Court. 20

Q. Twenty-five horses? A. Yes, sir.

Q. And twenty-two— A. Rigs of different kinds.

By Mr. Davis. 25

Q. Where was the stable? A. In back of the office.

Q. Fronting on the alley? A. Yes, sir.

Q. Was the stable on one side of the alley or on both sides? A. Both sides; we had two stables. 30

Q. Where was the automobile kept? A. Across the alley from the main stable, which was in back of the office.

Q. Was that on the south or north side of the alley? A. That was on the south side of the alley.

Q. What kind of an automobile was it? A. It was a Chalmers Master six. 35

Q. What model, what year, do you know? A. 1914, I believe.

Q. Do you know the length of this automobile over all when the top was down? A. 15 feet 6 inches.

Q. And do you know what it weighed? A. About two ton. 40

Q. And it was a lefthand drive or a righthand drive? A. A lefthand drive.

Q. [By the Court.] Do you know what the wheel base was? A. No; I don't know the wheel base; I never measured that.

Q. [By Mr. Davis.] What was the condition of the roadway of the alley as to improvements? A. The roadway was always in very poor condition. 45

Q. Was it a dirt road or was it an improved road? A. Yes, sir; it was a macadam road once, but I guess there is three or four inches of dirt on it now, and it is pretty rough. 50

Q. Well, with relation to last summer, how does the present condition compare to the condition last summer? A. About the same; it was pretty rough; and coming out of the alley, the crosswalk was three or four inches above the roadway itself, as it is now.

5 Q. The crosswalk across where? A. Across Main street—across the alley.

Q. You say the crosswalk was three or four inches above the alley? A. Yes, sir; there is a jounce there, or a bump.

10 Q. And as you went from the crosswalk at Main street on into the Main street roadway, how was the gutter at that place formed at that time? A. There was a stone block pavement there, which was depressed for the gutter.

15 Q. Was the depression there then greater than it is today? A. Yes, there is wood blocks there now; there was stone blocks there then.
By the Court.

Q. What part of the alley is that? A. The gutter.

Q. The Main street gutter? A. Yes, sir.

20 Q. I do not quite understand. The gutter which crosses the alley? A. Yes, sir.

Q. The gutter on Main street which crosses the alley? A. Yes, sir.

Q. Was— A. Stone.

Q. It was stone then? A. Yes, sir.

25 Q. And wooden blocks now? A. Yes, sir; it has been fixed up.
By Mr. Davis.

Q. Has the character of the Main street pavement been changed since last summer? A. Yes, it is wood block now; it was macadam then.

Q. Have the trolley tracks been relaid since that time? A. Yes, the road has been fixed up.

30 Q. What kind of a business did your father carry on? A. Undertaking and coach stables.

Q. Do you know how long he carried it on in Orange? A. Thirty-five years or more.

35 Q. Were you connected with it for any length of time? O. Yes, about eighteen years.

Q. Under what name was the business carried on for the last few years? A. Aaron F. Burt & Son.

Q. You were not a partner, were you? A. It was my name.

40 Q. Well, were you paid a salary or did you get a share of the profits? A. A salary.

[The witness stands aside for the present.]

THOMAS J. MOLONEY sworn in behalf of plaintiff.

45 Direct Examination by Mr. Davis.

Q. Mr. Moloney, you are the plaintiff in this case, are you? A. Yes, sir.

Q. And the administrator for the purposes of this suit? A. Yes, sir.

50 Q. You are a son-in-law of Mr. Burt, are you? A. Yes, sir.

Q. How long ago was it since you married his daughter? A. Nearly fifteen years ago.

Q. What is your business? A. I am in the brokerage business.

Q. How long have you been in that business? A. About fourteen years.

Q. Are you in business for yourself or employed by somebody? A. I am employed by another firm. 5

Q. In New York? A. Yes.

[Witness withdrawn.]

10

AARON F. BURTT recalled in behalf of plaintiff.

Redirect Examination by Mr. Davis.

Q. The rents that you speak of, Mr. Burtt, out of which the taxes were paid, were they rents of your mother's property? A. Yes, sir. 15

Q. Just one point that I overlooked in the direct examination. I show you three photographs which have been marked for identification [photographs shown to witness]. What do they represent? A. Why, the automobile. 20

Q. What automobile? A. The automobile that my father was killed in.

Q. Are they three views of that same automobile? A. Yes, sir.

Q. And do you recognize that automobile as your father's? A. Yes, sir.

Q. Were you present when those pictures were taken? A. Yes, sir.

Q. [By the Court.] When were they taken? A. They were taken, I believe, about three months after the accident, before we sold the car. 25

Q. [By Mr. Davis.] And from the time of the accident down to the time the pictures were taken where was the car kept? A. In the garage, locked up.

Q. Whereabouts? A. In the alley, on Pierson's alley.

Q. Was it taken out at all or any change made in it? A. No, sir; never any change made in it. 30

Q. Was there any change made or any fixing done to the car from the day of the accident until the day that these pictures were taken? A. No, sir.

Mr. Davis. I expect to offer the pictures in evidence [handing photographs to defendant's counsel]. 35

Mr. MacSherry. I do not know what the object of offering them is. I do not understand that the complaint charges injury to the car. 40

Mr. Davis. No, it does not, but I think the car itself is evidential. I offer in evidence the three photographs which were marked for identification yesterday. 45

Q. [By Mr. MacSherry.] Are you prepared to say, Mr. Burtt, that the car was in the same condition when the photographs were taken as it was immediately after the accident? A. Yes, sir.

Mr. MacSherry. I do not object to them. 50

[The photographs referred to are marked respectively Ex. P6, Ex. P7 and Ex. P8.]

5 Mr. Davis. I think I shall offer the plates in evidence also, as long as they have been marked for identification. They are P3, P4 and P5 for identification.

The Court. They may be marked as exhibits.

10 [The plates referred to are marked respectively Ex. P3, Ex. P4 and Ex. P5.]

By the Court.

15 Q. Mr. Burt, I think you—you or some other witness—told us something about this car; that you did not know what the wheel base was, but that the length over all was about 15 feet; is that right? A. Yes, sir; 15 feet 6 inches.

20 Q. Can you tell us how long the car was in front of the driver's seat? A. No, sir; I cannot.

Q. Refreshing your recollection by these photographs, what is the farthest forward, the wheel or something else [photographs shown to witness]. A. The wheel.

Q. The wheel comes first? A. Yes, sir.

25 Q. But you do not know how much of the car was in front of the driver as he sat in his seat? A. No, sir; I don't know; I never measured it. I should say 3 feet or 4 feet.

Q. You say 3 or 4 feet? A. 3 feet 6 inches, maybe.

30 Q. Does the measurement of 15 feet over all take in the hood which projects over the back there? A. Yes, sir.

Q. Well, assuming the length to be 15 feet over all, you can make some sort of measurement by the eye of the front part. A. You mean from the front seat—I thought you meant from the wind-shield to the front of the car.

35 Q. Well, take it that way, if you like. A. I should say it would be 4 feet from the wind-shield to the front tire.

Q. And then the driver sits back— A. He sits back a couple of feet, I should say.

40 BENJAMIN J. COHRS sworn in behalf of plaintiff.

Direct Examination by Mr. Davis.

Q. Mr. Cohrs, are you a resident of Orange? A. I am.

45 Q. What is your occupation? A. Fireman of the City of Orange.

Q. How long have you been a fireman? A. Ten years this coming spring.

Q. Do you recall the evening of this Burt accident? A. I do.

50 Q. Where were you at the time? A. I was standing in front of the engine-house.

- Q. What street is the engine-house on? A. Canfield street.
- Q. It is north of Main street? A. Yes, sir.
- Q. And between what streets is the engine-house? A. Between Main street and William street.
- Q. What side of the street is it on? A. Coming from Main street, it is on the righthand side. 5
- Q. That would be the east side of Canfield street? A. Yes, sir.
- Q. And about how far north of Main street is the engine-house? A. Well, I should judge about 300 feet.
- Q. [By Mr. MacSherry.] 300 feet? A. About 300; I don't know exactly; about that. 10
- Q. [By Mr. Davis.] You say you recall the accident? A. Yes, sir.
- Q. And was there anything that attracted your attention to the fact that an accident had happened? A. Why, only that we see this trolley-car go down and heard a crash, and then we seen the people running, and we run out. When I got to Main street I see a man carrying Mr. Burtt up Main street, and then we run across and done what we could for him. 15
- Q. Where were you when you heard the crash? A. Standing in front of the engine-house.
- Q. And you say you saw a trolley-car go down? A. I did. 20
- Q. Down what street? A. Down Main street, toward Newark.
- Q. At the end of Canfield street? A. Yes, sir.
- Q. You saw it pass by Canfield street? A. Yes, sir.
- Q. Do you know whether or not it had stopped at Canfield street? A. It did not. 25
- Q. At the place that you were, in front of the engine-house, how distinctly did you hear the crash? A. I heard it pretty good. After I see this car go by it wasn't only a few seconds when we heard this crash. We seen the people running, and we said, "There is an accident." We didn't know whether it was this car or what it was that crashed, but we run out. 30
- Q. And you found that there was an accident? A. We found that there was an accident. I seen that it was Mr. Burtt, and we run down and done what we could.
- Cross Examination by Mr. MacSherry. 35
- Q. You were 300 feet from Main street? A. It may not be 300, about 300.
- Q. Were the lights lit in the street at the time? A. It was daylight.
- Q. Were the lights lit in the street? A. It was daylight. 40
- Q. Were lights lit in the street? A. No, there were no lights lit in the street; it was daylight.
- Q. You have heard of lights being lit in the street while it was daylight, just before it was dark, have you not? A. Well, I have seen lights lit in the street, but — 45
- Q. Were the lights lit in the car? A. In the trolley-car?
- Q. Yes. A. I couldn't swear whether there was lights lit in the trolley-car or not.
- Q. Was the headlight lit on the trolley-car? A. I couldn't see.
- Q. Was it an open or a closed car? A. It was a closed car. 50
- Q. Are you sure of that? A. I think it was a closed car.
- Q. Is there any doubt in your mind about it? A. Not a bit.
- Q. Mr. Cohrs: I meant to ask you, could you hear the

you were passing along the tracks? A. Could I hear the car?

Q. Yes. A. Yes, you can hear any car that goes down Main street.

THOMAS J. MOLONEY, plaintiff, recalled in his own behalf.

5

Direct Examination by Mr. Davis.

Q. Mr. Moloney, did Mr. Burttt live at home with his family? A. Yes, sir.

10 Q. And did he do the supporting of the family? A. Yes, sir.

Q. And you have been acquainted with the family for how many years?
A. Oh, eighteen or twenty years.

Q. And during that time did they always live on Essex avenue, in the house that they lived in at the time of his death? A. Yes, sir.

15

Cross Examination Waived.

AARON F. BURTT recalled in behalf of plaintiff.

20

Plaintiff rests.

Defendant's counsel moves that plaintiff be nonsuited on the following grounds:

25

(1) That the evidence does not support the allegations of the complaint.

(2) That there is no proof of negligence on the part of the defendant.

30

(3) That it appears from the evidence that the deceased was guilty of contributory negligence.

The Court. [After argument.] In a case of this kind, where the mouth of the injured person is closed by death, I think that the Court should not be insensible to that fact, and should lean towards the hearing of all the evidence on both sides.

35

I also want the jury to see these premises. I propose to ask the jury to visit these premises this afternoon, and to come here at ten o'clock tomorrow, when we will see if we can close the case some time tomorrow, the jury having had the advantage of seeing the premises and of hearing the testimony on both sides. When one o'clock comes we will take our usual recess until two o'clock, and then I will ask the jury to come back here, and I will see that they have an attendant to go with them to the place of the accident, which is very easily reached—it is right on the line of the trolley-car that goes past the Court House—and observe the situation with their own eyes.

45

For those reasons, I prefer not to grant the motion for nonsuit.

Defendant's counsel prays an exception to this ruling of the Court.

50

Exception noted as ground of appeal.

FRANK DEMMERT sworn in behalf of defendant.

Direct Examination by Mr. MacSherry.

Q. Mr. Demmert, where do you live, please? A. 189 Shepard avenue,
East Orange. 5

Q. And you are connected with the claim department of the Travellers
Insurance Company, are you not? A. I am.

Q. How long have you been with them? A. Since January 14th, this
year.

Q. Where is their office in Newark? A. 22 Clinton street. 10

Q. And you were formerly connected with the claim department of the
Public Service, were you not? A. Yes, sir.

Q. While there did you or did you not make any investigations in this
case? A. I did.

Q. Do you remember calling on a colored man by the name of Edward
Reaves? A. I did. 15

Q. Did you find out what he knew about this case? A. Yes, sir.

Q. And did he make a statement to you as to how this accident happened?
A. He did.

Q. And did he sign that statement? A. He did. 20

Q. And did he or did he not say to you that when the trolley-sar struck
the auto on the left front wheel it shoved the auto about 5 or 6 feet? A. He
did.

Q. And did he or did he not make that statement to you voluntarily? 25

Mr. Davis. I object to that. That is a conclusion.

The Court. It is a conclusion. I sustain the objection.

Defendant's counsel prays an exception to this ruling of the
Court. 30

Exception noted as ground of appeal.

Q. Did you ask him to make it? A. I did.

Q. The statement, I mean? A. Yes, sir.

Q. Did you ask him to say whether it was 5 or 6 feet or not? A. Oh, no. 35

Q. What? A. That is absurd.

Q. Just tell the circumstances under which he made that particular state-
ment to you. A. When I questioned him as to the relative position of the
automobile to that of the track, at the time I asked him how far it was,
and at first he said, "I couldn't say just how far, but it wasn't very far." I
then asked him to give me a relative position in the room where we took the
statement, and he said, "From about here to the door"—apparently the
kitchen door—from where we had been sitting. I judged that to be 5 or 6
feet, possibly, and I asked him, "Would you say that was over 5 or 6 feet?"
and he said, "No." 40

Q. Was that all that was said by either of you on that subject, that you
recall? A. On that particular point; yes, sir. 45

Cross Examination by Mr. Davis.

Q. Mr. Demmert, at that time you were working for the Public Service,
were you not? A. Yes, sir. 50

Q. And when did you sever your connection with the Public Service?
 A. I offered my resignation to the Public Service on January 1st of this year, and severed relations with them January 14th:

Q. You are not in their employ at the present time at all? A. No, sir.

5 Q. How long was you in their employ as an investigator? A. Approximately ten years.

Q. And during that time your business was to go around and see witnesses, get a statement out of them as to accidents, and, if possible, get them to sign the statements, was it not? A. Yes, sir.

10 Q. And in this case you did all the writing yourself? A. Yes, sir.

Q. And in this case you mentioned the figures of 5 or 6 feet, did you not?
 A. Well, I didn't mention the figures of 5 or 6 feet at all. The gentleman whom I interviewed stated that he didn't know just how far it was, but he said it wasn't very far, and then I related the distance from where I sat to
 15 this kitchen door, and he said, "It was about from here to this kitchen door."

Q. And then you said, "That would be about 5 or 6 feet"? A. I presumed that would be about 5 or 6 feet, and I asked him whether he would concede that that would be about 5 or 6 feet, and he said, "Well, it wasn't over 6 feet."

20 Q. And then you put it down, did you? A. Yes, sir.

Q. Now, will you please give us the whole of that conversation that you had on that occasion with this man? A. When I called there on that particular evening, in the vicinity of six o'clock, I asked for this man. A lady came to the door, with an infant, and I was invited in, and I told this man who
 25 I was; I told him I was a representative from the Public Service Railway Company, and said I wanted to learn some information concerning the accident. He said, "Why, do I have to say it again?" I says, "Why, have you said it to somebody else"? He said "Yes." I said, "Who did you tell the story to?" He said, "A Mr. Robinson." I said, "Well, don't worry on the subject
 30 at all. Tell me identically what you told Mr. Robinson"; and I took out my paper and wrote out the statement as near as possible as he gave it.

Q. All right. What did he say? A. Why, he stated that he was walking west on the southerly side of Main street, approaching Canfield street, and that when he was almost about to cross Canfield street—that would be at the
 35 easterly side of Canfield street—he noticed Mr. Burtt come out of the alley in his machine, and he beckoned "Hello" to Mr. Burtt, and Mr. Burtt responded to him by saying, "Hello, boys," at the same time facing these three colored men that were in the party.

Q. Did he say "facing them" or "looking towards them"? A. Why, I
 40 couldn't tell you exactly.

Q. Well, I want you to tell me exactly. Did he say he faced them or that he looked towards them? A. That Mr. Burtt was facing these colored men.

Q. He told you that? A. I am most sure of that.

Q. Why did you not put it down? You put down there "looking towards us," did you not [handing paper to witness]? A. Well, I have it here
 45 "looking towards us," and now I say "facing these three men." I don't see what the difference is.

Q. We will not argue about the difference. In writing down the statement that Mr. MacSherry has offered here you used the same language that
 50 the colored man used, did you not? A. I can't tell you that definitely.

Q. Do you mean to say that you wrote down this statement and had him sign it and did not use his language? A. I may not have used the identical words that the man said, but they were in point.

Q. Why not? A. Sometimes you take the statement—

Q. Never mind sometimes; I want this particular case.

5

Mr. MacSherry. It is a question whether this is cross examination or not, if your Honor please. I only called his attention to the 5 or 6 feet.

10

Mr. Davis. I think when a part of a conversation is brought out I have a right to test the memory of the witness and his credibility as to the whole statement.

The Court. I think you are entitled to cross-examine as to the whole statement, but there is another thing. This is a signed paper, and it may become evidential if it is offered in evidence, so the questions that are asked are really as to the contents of a written instrument, or a signed paper. I do not say that that is not proper, but that is a consideration to be borne in mind. I think you are entitled to cross-examine as to the whole paper.

15

20

Q. In this particular case, Mr. Demmert, you say you did not put down in writing the exact words that this colored man said to you, did you? A. I may not have.

25

Q. Why not? A. Why, frequently you take statements from people in accidents—

Q. No, in this case.

Mr. MacSherry. Please let him give his explanation.

30

Q. No, in this case. Why did you not with this colored man put down what he told you in his own language?

The Court. Just confine it to this particular case. A. I can't exactly say.

35

Q. Then you say that he told you that Mr. Burtt faced towards the colored men as he came out, do you? A. Correct.

Q. And that you wrote down on that paper that that man signed that Mr. Burtt in going out looked towards the men? A. Exactly.

Q. Now, why did you put down that he looked towards the men if the man told you that he faced towards them? A. Why, if he was looking toward them he would be facing them.

40

Q. No, do not argue.

Mr. MacSherry. Let him answer the question.

45

The Court. You are asking the witness to give an explanation. Why don't you let him do it?

Mr. Davis. Well, he is starting to argue.

The Court. Just answer the question in your own way.

50

Witness. I didn't see the difference, whether he would be "facing towards us" or "looking towards us;" I thought one was just as clear as the other.

5 Q. And that is the reason you used the word "looked" instead of "faced"?

A. Yes, sir; surely.

Q. Go ahead. What else did he say?

Mr. MacSherry. I would like to interrupt here.

10

Q. [By Mr. MacSherry.] Do you need the paper to refresh your recollection? A. I would like to see it; it is no more than fair that I should have it.

Q. [By Mr. Davis.] Just state, as far as you can, the conversation that
15 took place from your memory.

The Court. Let us consider about that. If it was not signed, I would have no hesitation in saying that you were right; but suppose it was a letter instead of a signed statement, would you be able to ask a
20 witness on the stand what the letter contained?

Mr. Davis. If you were testing his memory, yes, I should say so. The point is that he did not ask up to the present time for any refreshment of memory as to the 5 or 6 feet or looking or facing, and it did not
25 enter his mind that he could not remember the conversation until counsel suggested that he might look at the paper.

The Court. I am not a mind reader. I am thinking about the legal question. I do not think you could ask a witness what was in a
30 letter that he wrote, without showing him the letter.

Mr. Davis. But I am trying by the cross-examination to test his memory.

35 The Court. I do not think you can do it.

[Question read.]

Mr. Davis. Your Honor excludes that?

40

The Court. Yes. I shall give my reasons. I think this is analogous to the case of a letter or a deed or any other paper, or a note signed by a witness. Under those circumstances, the paper speaks for itself as to its contents. Its authenticity not being disputed, I do not
45 think the witness can be asked, for the purpose of testing his recollection, what such a paper contains unless the paper is shown to him, and if it is shown to him it will tell its own story.

Plaintiff's counsel prays an exception to this ruling of the Court.

50

Exception noted as ground of appeal.

Q. Mr. Demmert, were you here yesterday? A. No, sir.

Q. No part of yesterday? A. No, sir.

Q. Mr. Revis when on the stand yesterday said that you—

Objected to.

5

Q. Did you coax Mr. Revis to allow you to put in "5 or 6 feet"? A. Absolutely no.

Q. How long were you with him? A. With the witness in this case?

10

The Court. With Mr. Revis.

Witness. Why, possibly half an hour.

Q. Well, can you not recall how long you were with him? A. I couldn't say; I may have been there only twenty minutes. 15

Q. Do you know what time you went there? A. It was in the evening, somewhere in the vicinity of six o'clock.

Q. And what time did you leave? A. Well, not later than half-past six.

Q. He did not send for you, did he? A. Oh, no, sir.

20

Q. And what you were doing in that direction you were doing under pay from the Public Service, were you not? A. Yes, sir.

Q. Now, is it not so that in the taking of that statement Revis would make a statement to you, and then in putting it on paper you would use your own language and not his? A. Yes.

25

Redirect Examination by Mr. MacSherry.

Q. But when he came to give you the number of feet as illustrating how far a car went would you or would you not give his language and not your own? A. I would use his. 30

Recross Examination by Mr. Davis.

Q. As a matter of fact, it was your own "5 or 6 feet," was it not? A. Well, he conceded that. 35

Q. He conceded it after you used it? A. I didn't put it that way, to use the "5 or 6," but I asked him to give me the distance in the room.

Mr. MacSherry. I offer the signed statement.

40

Mr. Davis. I have no objection to its going in, but if it goes in I think I have a right to cross-examine on it.

The Court. I understand that Mr. Revis's statement is offered?

Mr. MacSherry. Yes, sir.

45

The Court. I think it is admissible on the ground that it is a signed paper.

[The paper referred to is marked Ex. D3.]

50

Counsel agree that the jury shall view the premises in question, in charge of the sergeant-at-arms of the court.

At one o'clock, P. M., the court takes a recess of one hour.

5

AFTER RECESS

10

The Court. I am told, gentlemen, that one of your number will find it convenient to go in his own automobile. There is no objection to that, of course, and he can take with him any one of the jury that he cares to. As long as you all meet together and all see the same things, the object of the view will be accomplished. You will not let any one talk to you, except to answer any questions that you desire to put. The map that has been put up will go with you, so that you may compare that with the locality. Mr. Mulligan, the sergeant-at-arms, will go with you.

15

20

Juror No. 8. Do I understand, your Honor, that we can ask any questions that we like with reference to the case while seeing the property?

25

The Court. That would depend a good deal on what the questions were. It does not occur to me that you will find it necessary to do anything but look at the situation.

30

Juror, No. 8. We can confirm positions such as we heard testified to here? I wanted to know if we could confirm the relative positions at the time the accident took place by having the spot pointed out?

The Court. No, you will have to rely on your recollection of the testimony and observe carefully the physical conditions.

[The jury withdraws in charge of the sergeant-at-arms.]

35

Adjourned until tomorrow, Friday, April 19, 1918, at ten o'clock A. M.

THIRD DAY.

40

Friday, April 19, 1918.

Met pursuant to adjournment.

Present, counsel as before stated.

45

50

Mr. MacSherry. I do not know that it is hardly necessary now, but I am willing to introduce this picture, which several witnesses have identified as being an illustration of the alley and Main street, Orange, with the several buildings that were pointed out on it. It is marked D1 for identification.

Mr. Davis. I do not object.

[The photograph referred to is marked Ex. D1.]

HERBERT HABERSTICK sworn in behalf of defendant.

5

Direct Examination by Mr. MacSherry.

Q. Mr. Haberstick, where do you live? A. 181 Cleveland street, Orange.

Q. And how old are you? A. Twenty-nine.

10

Q. How long have you lived there? A. Quite close to three years.

Q. What is your business? A. Motorman for the Public Service.

Q. How long have you been a motorman? A. About two years and a half.

Q. To get at it quickly, you are the motorman of the trolley-car we are talking about in this case, are you not? A. Yes.

15

Q. Who was your conductor? A. Waldman; I don't know his first name.

Q. Where is he? A. Sitting there (indicating).

Q. Do you remember the day that Mr. Burt was killed? A. Yes, sir.

20

Q. What kind of a car were you operating that day, an open or closed car? A. A closed car.

Q. How did the seats run? A. Up and down the length of the car.

Q. What type of car was it? A. 2226; it is kind of an old type.

Q. Well, it was not one of the big cars that they operate now on the Orange line? A. No; one of older style, 2200.

25

Q. And in what condition was your car? A. First class.

Q. The brakes and everything all right, eh? A. Yes, sir.

Q. Were there any flat wheels on the car? A. No, sir.

Q. Now, what is your run, where do you start from and where do you go to? A. I came from the Pennsylvania depot, and my trip coming back was from the Erie depot to the carhouse.

30

Q. Do you know where Day street is? A. Yes, sir.

Q. And Centre street? A. Yes, sir.

Q. And Canfield street? A. Yes, sir.

35

Q. Do you know where this alley is that we are talking about? A. Yes, sir.

Q. Now, on the day in question, do you remember whether you stopped at Day street or not? A. Yes, sir; I did stop at Day street; we always do.

Q. Why? A. It is an intersection; we are compelled to.

40

Q. And did you stop there that day? A. Yes, sir.

Q. I mean on this trip? A. Yes, sir; on this trip.

Q. Do you remember whether you stopped at Centre street or not? A. I could not say positively; no, sir.

Q. And as you came along from Centre street down across Canfield street and towards the alley, how was your car going as to speed? A. Well, as near as I can recall, between ten and twelve miles an hour.

45

Q. What was the condition of Main street at the time as regards pedestrians and vehicles? A. Well, I had a clear road ahead of me; I didn't see anything at all on the sides of the street.

50

Q. And what have you to say, if anything, about your gongs and bells?
 A. Well, I rang the bell just before I came to Canfield street, which I always do, on account of the fire-house being there.

Q. Are you sure you did it on this trip? A. Yes, sir.

5 Q. Where is the fire-house on Canfield street? A. Back quite a ways, about half the length of the block down Canfield street.

Q. Do you or do you not have to have your car under pretty good control when passing near a fire-house? A. Yes, sir.

10 Mr. Davis. I object to that, if your Honor please.

The Court. I suppose the question is as to a rule of the company.

15 Mr. Davis. Well, if there is any rule of the company, I suppose it is in existence; but the question is not what he ordinarily does, but what he did on this occasion.

Mr. MacSherry. That is true.

20 The Court. The question was a broader one; it would see to ask for a rule of the company.

Mr. MacSherry. I just want to know what he did that day. I withdraw the question.

25 Q. I want to know what you did that day. Just keep in mind what you were doing that day. Now, after passing Canfield street and up to the time of the collision, how was your car running? A. Well, it was coasting; I had no power on.

30 Q. Before this collision did you or did you not see this automobile driven by Mr. Burtt? A. Well, practically a short distance—

Q. Just say yes or no. A. Yes, sir.

Q. And where was your car, how far away from the alley was it, when you first saw the automobile? A. I was about 25 feet from the alley.

35 Q. And is it possible to see an automobile coming out of that alley until it gets to the house line? A. No, sir; it is impossible.

Q. And what, if anything, did you do when you first saw that automobile?
 A. Applied my brakes.

40 Q. You say you applied your brakes. How do you do that? A. By putting on the air.

Q. And what movement did he make or what direction did he take with his automobile? A. Well, he just turned a slight, little bit; he was coming straight out—

45 Q. Won't you talk louder? You have got your car 25 feet away from that alley when you first saw him coming out of it? A. Yes, sir.

Q. What part of his car did you see first? A. The front wheels.

Q. And what direction did that car take? A. Well, it was going—I am twisted in the course—

50 Q. You are dropping your voice again. A. He was going north, coming out of the alley.

Q. Which way did he turn, if he turned at all, left or right? A. He turned to the right the least bit, east.

Q. Did he turn away from you or towards you first? A. Well, he only made one turn, that I could see.

Q. Which way was that? A. That would be to the east just a little bit. 5

Q. And then what did you do, if anything? A. When I applied my brakes I found they wasn't going to take hold quick enough, and I pulled my reverse.

Q. What effect did that have? A. That reverses the car and stops the wheels immediately, so that they have to slide. 10

Q. Did your car hit this automobile or not? A. Yes, sir; it hit the automobile.

Q. What part of his automobile did it hit? A. In about the center of the step.

Q. And where was his automobile when your trolley-car hit it? A. It was about half on the track, on the eastbound rail. 15

Q. How far did your car go before it stopped? A. From the time we come together it was about 3 or 4 feet, I should think.

Q. And when you stopped where was your trolley-car as regards that alley? A. Well, the rear of the car was about on the west side of the alley. 20

Q. That is the first corner of the alley? A. Yes, sir; going east.

Q. Have you any idea how long that car is? A. Well, between 30 and 40 feet, I should imagine; I couldn't say exact.

Q. Now, did you hear any horn blown from that automobile? A. No, sir; I did not. 25

Cross examination by Mr. Davis.

Q. Mr. Haberstick you did not stop from the time you left Day street until the accident happened, did you? A. I couldn't say; no, sir.

Q. And this car-barn car was a car that took very few passengers, was it not? A. Most generally, yes; sometimes we pick up quite a few. 30

Q. And on this occasion when you left the corner of Main and Day streets— That is a trolley intersection, is it not? A. Yes, sir.

Q. —you had not any more than three or your passengers on board, had you? A. No, sir. 35

Q. From Main and Day streets down to where the accident happened it is a continuous downgrade, is it not? A. Well, it is a little downgrade; it isn't a bad grade.

Q. But it is continuously down? A. Yes, sir.

Q. And there is a sufficient grade there for you to coast, is there not? A. Yes, sir. 40

Q. And where was it that you started to coast from, what point in Main street? A. Right after I crossed Centre street I was coasting. We always coast, on account of the fire-house, which I always depend on the Chief, because he comes out quite often. 45

Q. From Day street to Center street is a distance of about 400 feet, is it not? A. Well, I should judge about that; yes, sir.

Q. And that was all downgrade, was it not? A. Yes, sir.

Q. And you had your power on up to Centre street? A. Up to the other side of Centre street. 50

Q. The west side of Centre street? A. Yes, sir; as near as I can remember.

Q. You had your power on for the distance from the west side of Day street to the west side of Centre street, a distance of about 400 feet, did you not? (No response.)

Q. Is that right? A. Please say that again.

Q. I say you had your power on and the car was being propelled under power from the time it passed the west side of Day street until it got to the west side of Centre street? A. I couldn't say that exactly.

Q. Why not? A. I don't remember whether I stopped at Centre street; I may have stopped there; I wouldn't say myself personally.

Q. If you stopped at Centre street, you did not begin to coast from Centre street, did you? A. No, I said from the other side of Centre street; I didn't say Centre street exactly.

Q. When you say "the other side of Centre street," you mean the west side, do you not? A. No, that would be the east side.

Q. Well, the other side is the side towards West Orange? A. Yes, sir. I didn't coast from there; I say coming east, the other side.

Q. What is the best of your recollection as to whether you stopped at Centre street or not? A. Well, I don't remember in my own mind; I couldn't say.

Q. You have no memory at all of stopping at Centre street? A. No, sir; not in my own mind.

Q. And when you coast, as you call it, you do not have any friction between the brakes and the wheels, do you? A. No, sir.

Q. That is, the wheels are running free, released entirely from the brakes? A. Yes, sir. Most generally you keep touching them with the brakes a little bit, to make sure you are all right. It is a habit.

Q. And as you passed Canfield street you were still coasting, were you not? A. Well, just as I went to cross Canfield street I put the power on. Just put it on a couple of notches, and then threw it off. That is a couple of points, maybe two or three points.

Q. You put it on a couple of notches and then threw it off again and continued to coast? A. Yes, sir.

Q. Now, when you got to the point about 25 feet from the alley, you were not then coasting? A. Yes, sir.

Q. Well, then, you were coasting when the automobile came into view? A. Yes, sir.

Q. And you say when you were 25 feet from the alley your power was off? A. Yes, sir; when I first saw the automobile.

Q. Not only was your power off, but you were coasting at that point? A. I was coasting; yes, sir.

Q. What type of car is this No. 2226 which you were driving? A. Well, it was a box car, as we call it.

Q. Was it the largest sized car? A. No, medium sized.

Q. And the length of it was about— A. 30 or 40 feet.

Q. Was it a steel car or a wooden car? A. No, a wooden car.

Q. And you are quite sure it was a closed car? A. Yes, sir.

Q. The 2200 type is closed, is it? A. Yes, sir.

Q. Now, you are quite sure, Mr. Haberstick, that you were as near

as 25 feet to the alley when you saw the front wheels of Mr. Burt's automobile just at the building line on the alley? A. I didn't say that.

Q. What did you say? A. I said when I saw Mr. Burt's automobile the front wheels was coming off the curb, in the gutter of the street, Main street. 5

By the Court.

Q. When the front wheels were coming into the gutter? A. Yes, sir.

Q. What happened then, or what was the distance then? A. 25 feet; 10
that was the first I saw of it.

By Mr. Davis.

Q. And at that point the front wheels had then reached the gutter, or 15
going down into the gutter? A. Well, they was in the gutter, practically,
just coming down off the curb, when I first saw him. I didn't see him when
he came down on the sidewalk, between the curb line and the alley; I didn't
notice him.

Q. Then were his front wheels about in the gutter when you were about 20
25 feet away from the alley? A. Yes, sir.

Q. Now, you are sure of that? A. Pretty sure; yes, sir.

Q. And how fast was he going at that time? A. Well, he was coming
a pretty fair speed; I wouldn't say exactly, because it was pretty quick notice. 25

Q. You know what speed you were going at at that time, do you not?
A. Well, yes, practically.

Q. What speed were you going at at that time? A. Well, when I first
noticed him, I was going practically about eight or ten miles an hour at that
time. 30

Q. Then you really had slowed down— A. I had started to slow down
the minute I saw the wheels on the curb.

Q. Just listen to my question. You stated in answer to Mr. MacSher-
ry's question that you were going at the rate of about ten or twelve miles
an hour? A. Yes, sir. 35

Q. At what point were you when you say you were going at the rate
of ten or twelve miles an hour? A. When I came across Canfield street.

Q. And then when you came across Canfield street you put on a couple
of notches, did you not? A. Yes.

Q. That did not decrease your speed, did it? A. Well, not practically,
no, because I threw it right off again. 40

Q. Well, when you put on a couple of notches, if it had any effect at all,
it increased your speed, did it not? A. Well, probably a slight bit; yes, sir.

Q. Well, how much an hour would the putting on of those notches in-
crease you speed? 45

Objected to.

(Question withdrawn.)

Q. If you were going at the rate of ten or twelve miles an hour as you 50

crossed Canfield street and put on a couple of notches, as you express it, at what rate per hour would the putting on of those couple of notches cause your car to go? A. I could not say.

Q. Why not? (No response.)

5 Q. How long have you been a motorman? A. About two years and a half.

Q. And you say you could not say— A. No, sir.

Q. You cannot say to what extent the putting on of those couple of notches would increase your speed? A. No, sir.

10 Q. Well, you are sure of this, are you not, Mr. Haberstick: that it would not decrease your speed any? A. No, it wouldn't decrease it any.

Q. Then, if you were going at ten or twelve miles an hour, and if at Canfield street you increased your speed to some extent by putting on a couple of notches, how do you account for the fact that when you reached 25
15 feet west of the alley your speed had gotten down to about eight or ten miles an hour? A. Well, because when I put the power on I threw it right off; therefore I don't remember that it took any effect on the speed; and we were going downgrade a slight bit, which the car will go downgrade without power.

20 Q. You were going downgrade without power when you were passing Canfield street at ten or twelve miles an hour, were you not? A. Yes, sir.

Q. You increased the speed, putting on the power a couple of notches, did you not? A. Yes, sir; and threw it right off.

25 Q. Now, the putting on of the power increased the speed did it not? A. Well, just a little; yes, sir.

Q. The throwing off of the power had no effect upon the speed excepting to cause the car to coast, did it? A. No, sir.

30 Q. Then, will you please explain, if you were going at the rate of ten or twelve miles an hour at Canfield street and increased your speed at that time, how the speed got reduced to as low as eight or ten miles an hour before you reached the alley? A. As soon as I threw my power off I applied my brakes a little bit.

Q. You did? A. Yes.

Q. Why did you not say that when you replied to Mr. MacSherry?

35

Mr. MacSherry. He said that several times before, your honor.

40 Q. Where did you apply your brakes? A. A little past Canfield street, I always start to slow up, because a little the other side of the alley there was a drain—I won't say it is there now—and after passing there it rises a little bit, and our life-guards always used to strike on that drain, so we always had to slow up to keep from breaking our life-guards.

45 Q. Do you recall the answer to my question, when I asked you when you got to a point 25 feet from the alley and you saw Mr. Burt's car, that you replied you were coasting? A. Yes, sir; my brakes were touching a little.

Q. Your brakes were having no effect on the wheels? A. Yes, sir.

Q. The speed of the car? A. Yes, sir; they were touching the wheels.

50 Q. Do you recall your car slowing when your brakes were touching that way? A. Yes, sir.

Q. Now, will you say at what rate of speed Mr. Burtt was proceeding when you saw him with the front wheels about in the gutter? A. I couldn't say as to his speed at all; he came out pretty quick.

Q. Well, would you say that he came out at a rate of speed as quickly as you were going? A. Well, I would judge about the same, because we both had—well, he must be going faster; he had a shorter distance than I had. 5

Q. And you think he was going as fast as you were? A. Yes, sir; practically.

Q. Did you ring your gong? A. I did; the minute I saw the wheels I kicked the gong twice. 10

Q. How much of the automobile had gotten beyond the building line when you first saw the automobile? A. Well, I couldn't say that exactly, because I didn't notice the building line; the only thing I noticed was the wheels when they came down off the curb; I didn't see it cross the sidewalk.

Q. When you first saw the automobile you saw the whole automobile, did you not? A. No, I saw the automobile wheels coming off the curb. 15

Q. And you noticed no other part of the automobile at all? A. No, sir.

Q. Did you notice the man that was driving the automobile? A. Not at that instant; no, sir; I was looking straight down the street; I was looking from one curb to the other. I had a clear street, and when this automobile dropped down off the curb I noticed it at once, and I kicked my gong twice. 20

Q. Now, when you struck this automobile you struck it between the front and rear mud-guards, did you not? A. Yes, sir.

Q. And at that time the automobile was right in front of your car, with the front wheels over to the second rail of the eastbound track and the rear wheels not yet reaching the first rail; that is, the southerly rail? A. Yes, sir. 25

Q. And the front wheel was to your left, to the left of your trolley-car, as the trolley-car struck it, was it not? A. Yes, sir.

Q. Now, Mr. Haberstick, as a matter of fact, you did not see this automobile at all until you struck it, did you? A. Yes, sir; I saw it before I struck it. 30

Q. Do you know Officer Curtin, of the Orange police force? A. I just know him by sight. I always knew him by the name of Burns, as I understood it. Today is the first time I heard that name. 35

Q. Well, he is a stout man; he rides a bicycle. A. Well, some man pointed him out to me today; I don't know.

Q. Well, after the accident you walked up the street with an officer, did you not? A. No, sir; I was taken up in an automobile.

Q. Well, you went with an officer? A. Yes, sir. 40

Q. Was that Officer Curtin? A. Well, I think it was; I wouldn't say positively, but I think it was the same man.

Q. Did you not say to Officer Curtin—

Mr. MacSherry. One moment. I want to object to anything that this witness said to anybody. I do not know what it is, but certainly he is not competent to bind this company. 45

Mr. Davis. I submit that upon the cross examination of this witness anything that would go to impeach the credibility of his testimony would be competent. Anything that he said in contradiction 50

of his testimony now at any former time, I submit, would be competent.

5 The Court. I have never known a question of this kind to be answered.

10 Mr. Davis. Not as binding upon the company, if your Honor please, but as impeaching the credibility of his testimony. In other words, if he testified here to a certain thing, and I asked him whether on a certain other occasion he did not make a statement to another witness different from the testimony that he is giving here, I submit that that is proper cross examination, and it goes to impeach the credibility of his testimony.

15 The Court. (After argument.) If you find any case that authorizes the question with respect to this class of employees, I shall follow it, of course; but at present I shall stand by what I understand to be the general rule applicable to employees whose business it is to act and not to speak, not to make statements.

20 Mr. Davis. May I frame the question and have your Honor rule upon it?

25 The Court. Certainly, ask your question.
Q. Mr. Haberstick, did you not say to—

The Court. No, that will not do; you cannot ask a question that will bring before the jury any statement that you claim that the witness made.

30 Mr. Davis. Well, I do not know how else to frame the question.

35 The Court. Put the matter in the form of a general offer to inquire of the witness as to statements made in conversation by him, which are for the purpose of contradicting his testimony on the stand, or something like that.

40 Mr. Davis. I cannot make the offer now; I only make the request that I be permitted to ask the question; I cannot make the offer of any testimony now, I presume, except in rebuttal. The question is whether I will be permitted to ask the question or not.

45 The Court. Well, put the matter in such a form that I can rule on it, but do not put it in such a form that it will bring to the attention of the Court and jury the precise thing that you want to prove. That would not be fair.

50 Mr. Davis. Well, I am entirely satisfied to frame the question only in your Honor's hearing, and let it go on the record without its getting to the jury.

The Court. No, that will not do. Put it in the way which I suggested that it might be put—your purpose being to lay a foundation for contradicting the testimony of the witness by proving statements made by him to another person. That is what you desire to do.

5

Mr. Davis. Well, it is not his general testimony; it is only on a certain point.

The Court. Yes.

10

Mr. Davis. I desire, then, to ask the witness a question which would lay the foundation for me to present on rebuttal testimony of one or more witnesses that—

The Court. As to statements made by him which, you say, were inconsistent with his present testimony?

15

Mr. Davis. Yes, sir; that immediately after the accident, and on Main street, Orange, in the vicinity of the accident, he made to Officer Curtin, of the Orange police force, a statement which, if true, would go towards contradicting the testimony now given by him on the stand.

20

The Court. Yes.

25

Mr. MacSherry. That I object to.

The Court. I sustain the objection, the ground of my ruling being that I think this is only an indirect way of proving statements made by the witness, who is a motorman, and I understand the established rule to be that such statements cannot be proved directly, and I think they should not be proved indirectly.

30

Plaintiff's counsel prays an exception to this ruling of the Court.

35

Exception noted as ground of appeal.

Q. Mr. Haberstick, after your car struck the automobile how far was the automobile shoved along or tossed to one side?

40

Mr. MacSherry. That I object to, because he has not said it was shoved along or tossed aside.

Mr. Davis. Well, it was either one or the other, I presume.

45

Mr. MacSherry. Not necessarily.

The Court. Well, the objection is this, I presume; that the question embodies something as stated by the witness which he has not said, so that I sustain the objection.

50

Mr. Davis. Well, I shall put it this way:

Q. Is it not true, Mr. Haberstick, that after the automobile was struck by your car the automobile was either shoved along or tossed aside to the extent of at least 10 or 12 feet? A. No, sir; it is not.

Mr. MacSherry. I object to that, because I think it is very ambiguous.

10 The Court. I do not see any ambiguity about it.

(Objection withdrawn.)

Q. When your car stopped where was the front of your trolley-car? A. 15 Just a little past the alley.

Q. How far past the alley? A. Well, I couldn't say exactly; maybe 10 feet, 15 feet.

Q. Do you know where the restaurant is in that building just east of the alley? A. No, I do not; no, sir; I never noticed it.

20 Q. Do you know where the intersection is between South Main street and Main street? A. Yes, sir.

Q. Do you know where the trolley pole is at the corner of that intersection? A. Well, I wouldn't say certain; I think it is about midway between that intersection and the alley.

25 Q. Is that your recollection of where the trolley pole is, about midway? A. I think so; yes, sir; I can't say for certain.

Q. Well, with regard to the trolley pole, where was it that the front part of your car was at the time you stopped after the accident? A. Why, about opposite this trolley pole, the front part of my car.

30 Q. The crash that was made was a very loud crash, was it not? A. Well, the jingling of glass, yes, sir; which makes quite a loud crash.

Q. Well, there was more of a crash than the mere breaking of glass, was there not? A. Well, not as I could say; no, sir; it was the jingling of the glass that made the most noise.

35 Q. People came running from all directions, so far as you could see? A. Well, yes, sir; right after it happened.

Q. Now, when you struck the automobile, Mr. Haberstick, did you shove it in front of you or did you push it to one side? A. Well, when I struck this automobile in the center we was both fast together; it kind of caught up 40 on the running-board of the automobile, which swung the automobile around a slight, little bit.

Q. To the right or left? A. Well, facing the automobile, that would be towards Newark, which is east. Just a little bit. We were both fast together.

45

By the Court:

Q. You say you were both fast together when you struck? A. After we struck, after my car struck, we were both fast together, the automobile 50 and the trolley-car.

Q. How long did you remain fast together? A. Well, until Mr. Burt was taken out of the machine.

By Mr. Davis.

5

Q. Then you backed up your car, did you not, to get it loose from the automobile? A. Yes, sir.

Q. And you stayed on the front platform until the car was backed up? A. Yes, sir; because the rear part of the automobile was swung around near my door.

10

Q. How far did you back us? A. Just a few feet; just far enough to get the automobile loose from my car.

Q. And when you got off the trolley-car was it then that you noticed where the rear of the car was? A. No, sir.

Q. When did you first notice where the rear of your trolley-car was— A. When I looked at it right after I hit.

15

Q. Wait until I finish. When did you first notice where the rear of your trolley-car was when you came to the stop immediately after the accident? A. We were both fast together when I looked out of the door at Mr. Burt; I looked around to see where my car was standing.

20

Q. Immediately after you came to the stop after striking the automobile you opened your door? A. And looked out.

Q. And looked around the side of your car to see where the back of the car was resting? A. Well, it wasn't exactly—

Q. No, did you do that? A. Yes, sir; I did.

25

Q. And did you do that for the purpose of finding out where the car was? A. No, sir; not at that instant; no, sir; I did not; I was looking for a way to get out to Mr. Burt myself.

Q. Which way did you look out, the right or lefthand side of the car? A. The righthand side of the car.

30

Q. That was the side the automobile was on. A. Yes, sir; it was up against the door.

Q. Was this your last trip? A. No, sir; I had five more trips to make; I was swinging on that trip, as we call it; I was pulling in for dinner.

Q. You were going to dinner, were you? A. Yes, sir.

35

LOUIS WALDMAN sworn in behalf of defendant.

Direct examination by Mr. MacSherry.

Q. Mr. Waldman, where do you live? A. 123 Lillie street, Newark.

40

Q. What is your business? A. I am working for the Submarine Boat Corporation, Port Newark.

Q. You used to be a conductor for the Public Service Railway Company, did you not? A. Yes, sir.

45

Q. And you were the conductor of the car that we are talking about in this case? A. Yes, sir.

Q. Who was your motorman? A. Mr. Haberstick.

Q. The man that was just on the stand. A. Yes, sir.

Q. Do you remember the day of this accident? A. Yes, sir.

50

Q. Where were you at the time the collision took place? A. I was on the back platform of the car.

Q. And about how many passengers, if you recall, were on that car? A. Four.

5 Q. And what have you to say, if anything, respecting the ringing of bells or gongs by the motorman before this collision? A. Why, when we left Day street, we made a stop at Centre street—

Q. Did you stop at Centre street? A. Yes, sir.

10 Q. For what purpose? A. To take up passengers. —and then passing Canfield street I heard the motorman ringing the bell.

Q. You heard the motorman ring his bell? A. Yes, sir.

Q. Just go on and tell when you first knew that something had happened; go on from Canfield street and tell us what you recall, if anything.

15 A. I was standing facing the motorman; I didn't have nothing to do at that time; and suddenly I heard a crash between the machine and the car.

Q. You had not seen the auto before that? A. No, I hadn't.

Q. And what did you do then? A. Why, I waited until the motorman stopped the car, and then I got off the car to see what had happened.

Q. You did not see the collision, then? A. No, sir.

20 Q. Yourself? A. No, sir.

Q. Now, how fast do you think the car was going as it proceeded along that track at the time in the vicinity of Canfield street and down towards the alley? A. Why, I think about between ten and twelve miles an hour, not more.

25 Q. And when the car came to a stop where was it with respect to that alley? A. Why, just about 20 feet east of the alley.

Q. What? A. About 20 feet east of the alley.

Q. What part of the car, the front or back? A. The front of it.

30 Q. And that would bring the rear of the car where? A. The rear of the car was covering the alley.

Q. Now, who went to the relief of this man in the automobile, if anybody? A. Why, when I got off the car I saw some of the men there pushing the car from the place where it stopped.

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

35 Cross examination waived.

MARIE WHITNEY sworn in behalf of defendant.

40 Direct examination by Mr. MacSherry.

Q. Where do you live, Madam? A. 333 Main street, Orange.

Q. Are you in business anywhere? A. I am not in business; I am a saleslady, a millinery saleslady, in Newark.

45 Q. For whom? A. Bedell.

Q. Where is their place of business? A. Broad and West Park streets.

Q. Do you know where Main street, Orange, is? A. I live on Main street, Orange.

50 Q. What part, how near or how far away from this alley—what is the name of it? A. Pierson's alley. Well, I live diagonally opposite it.

Q. I am showing you this Exhibit D1, and ask you if you can point out your house on that picture (photograph shown to witness)? There is the alley (indicating). A. No.

Q. Well, do you remember the day of this accident? A. Yes, sir.

Q. And where were you at the time? A. I was looking out of my sitting-room window towards the alley; I was looking for a friend coming off an eastbound car. 5

Q. And how many stories up, please? A. I live on the second floor over the store, making it the third story.

Q. And I understood you to say that you were about opposite the alley? A. Well— 10

The Court. Diagonally.

Witness. Diagonally. 15

By the Court.

Q. Which way does your diagonal go, east or west of the alley? A. East. 20

Q. Then you were nearer Newark than the line of the alley? A. Yes, sir.

By Mr. MacSherry. 25

Q. Did you know Mr. Burt in his lifetime? A. I have known him to see him; yes, sir.

Q. You could recognize him in the street? A. Yes, sir.

Q. Did you see him that day? A. I seen him that night looking out of the window, that afternoon, or evening. 30

Q. And where did you see him? A. Coming out of the alley in an automobile.

Q. And did you hear any horn sounded from his automobile? A. No, sir.

Q. And when he came out of the alley, did you see a trolley-car about that time? A. I heard the car coming. 35

Q. What did you hear? A. Well, the car had already passed Canfield street when Mr. Burt came out of the alley slowly, and it seems that he got on the track, the southeast track, the front wheel of his automobile got there, and I judge the car was about 25 feet away. 40

Q. And you had heard the car coming before that, had you? A. I heard it distinctly, because the motorman was ringing his bell very furiously.

Q. You heard that? A. Yes, sir.

Q. And what happened? A. I hollered, "My God! that man is going to get struck." 45

Mr. Davis. I ask that that be stricken out.

Mr. MacSherry. That goes out. 50

Q. Well, was the automobile struck? A. Apparently; I heard the noise. Of course, the trolley obstructed my view.

Q. And did you come downstairs at all? A. My first thought was of going to my bedroom to get some old muslin, and, on second thought, I
5 didn't think that was required, and I ran downstairs, two floors.

Q. And what did you see? A. I ran right over in front of Mr. Burt's undertaking store, and just then, with the aid of several men, he was walking.

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

10 Cross examination by Mr. Davis.

Q. What building is it that you live in? What store is in the building, do you remember? A. There is a butchershop; we live just over the butchershop. There is a grocery store there on the corner, Butler's, and then there is the National Meat Market, and then our door leading upstairs is right in
15 between the meat market and the vegetable store.

Q. Are you the third house from Canfield street? A. We are the second door from Canfield street, in the same building; yes, sir.

Q. The first on the corner is Butler's? A. Yes, sir.

Q. And then comes a meat market? A. Yes, sir.

Q. And you are over the meat market? A. Yes, this side of the meat
20 market.

Q. Which side do you live? A. Well, our dining-room is over the meat market; I should judge the sitting-room is—well, it is over the vegetable store.

Q. Well, then, your living-rooms are partly over the meat market and
25 partly over the vegetable store? A. Yes, sir.

Q. And the meat market is the second store east of Canfield street and the vegetable store is the third east of Canfield street. A. Yes, and that is my sitting-room.

Q. Do you understand the map? A. No, I don't, and I am rather near-
30 sighted, too, and I haven't got my glasses.

Q. Can you see Canfield street, where I am pointing (indicating on map)? A. Yes, sir.

Q. And you live, then about, say—on the corner is Butler's? A. Yes, sir.

Q. And your rooms are practically next to Butler's, then? A. No, sir.

Q. Well— A. Next to Butler's—that is one entrance to this building, but between Butler's there is a butcher-shop.

Q. You say you are partly over the first store next to Butler's, which is the meat store, and then partly over the vegetable store? A. Yes, sir.

Q. You are about a hundred feet up Main street from the alley, are you not? A. I am not very much of a judge of feet.

Q. Well, opposite to you is about Burt's office? A. No, sir.

Q. Is it Einson, the delicatessen? A. We can look directly into Einson's delicatessen from my dining-room, and from my sitting-room I can
45 look into Mr. Cowen's cafe.

Q. Directly opposite Canfield street, on the south side, next west of Burt's office, is Helfgott's clothing store, is it not? A. Yes, sir.

Q. And then comes Burt's office? A. Yes, sir.

Q. And Einson's delicatessen? A. Yes, sir.

Q. Who comes next to that? A. Berkowitz.

50

Q. Berkowitz, the tailor? A. Yes, sir.

Q. Then comes Johnnie Cowen's cafe? A. Johnnie Cowen's.

Q. And then— A. You didn't mention Einson's.

Q. Well, that is next to Burt's? A. Yes, sir.

Q. It is in the same building as Burt's? A. Yes, sir. 5

Q. And then east of Einson's is Berkowitz? A. Yes, sir.

Q. And next to Berkowitz is— A. Cowen's.

Q. Johnnie Cowen's? A. Yes, sir.

Q. And then next? A. Trepkau.

Q. And then next to Trepkau is the big building on the corner of the 10
alley and Main street? A. Yes, sir.

Q. There are two stores in that? A. Yes, sir.

Q. Do you not live, then, Mrs. Whitney, opposite a point on Main street
that is more than 100 feet west of the alley? A. That I couldn't say.

Q. And Main street at that point from house line to house line is from 15
75 to 100 feet, is it not—the distance from house line to house line? A. I
couldn't say.

Q. Well, it is very wide there, is it not? A. It is rather wide. You mean
from the door to the gutter?

Q. No, I mean from the front of the house on one side to the front of 20
the house on the other side. A. I couldn't say.

Q. And what you observed you observed from the second story of your
house? A. Yes, sir.

Q. That building? A. Yes, sir.

Q. Your window? A. Yes, sir. 25

Q. And what you were looking for particularly at that time was for a
friend that you expected to get off an eastbound car? A. Yes, sir.

By the Court.

Q. Was your friend going toward Newark? A. No, sir. 30

Q. Or coming from Newark? A. I expected them to come from Newark.

Q. That is what I understood. A westbound car? A. A westbound car.

Mr. Davis. I meant to say "westbound;" if I said "eastbound" it
was unintentional. 35

By Mr. Davis.

Q. And where that friend would get off the westbound car it would be
pretty nearly in front of your house, would it not? A. A little to the right; 40
yes, sir.

Q. That is, the car would stop on the east side of Canfield street? A.
Yes, sir.

Q. And the rear platform of the car— A. Would be right opposite the
butcher shop. 45

Q. —would be right in front of the butcher shop over which you lived?
A. My dining-room. I am very seldom in the dining-room.

Q. Had this westbound car that you were watching for come along
yet? A. No, sir.

Q. The first thing that attracted your attention to the trolley-car was 50

the noise of it, was it? A. Well, I was looking out of the window and I seen Mr. Burtt coming out of the alley.

Q. I know all that, but I have not come to that yet, Mrs. Whitney. The first thing that attracted your attention to the trolley-car at all was the noise
5 that the trolley-car made, was it not? A. Yes, you could hear the noise.

Q. And did you look around then to see the trolley-car. A. No, sir; I was looking towards the alley; I was looking that way out of my window, and the alley was, like, over there.

Q. You were looking towards the alley, and without paying any particu-
10 lar attention to what was going on, were you not? A. I wasn't paying particular attention; I was talking to my niece over pictures.

Q. You stated to Mr. MacSherry, I believe, in answer to questions, that you were attracted to the trolley-car in some way or other when it was either at Canfield street or before it passed Canfield street? A. That car had just
15 passed Canfield street. Looking that way, you could see the car coming.

Q. Did you look that way and see the car coming? A. I did.

Q. That is, you turned your head towards the west and looked up Main street, and you saw the car coming, did you? A. Slightly that way (illus-
trating). I heard it coming.

Q. (By the Court.) You mean toward the left. A. Toward the left;
20 yes, sir.

Q. (By Mr. Davis.) You heard it coming. A. Yes, sir.

Q. That would be towards your right, would it not? A. The right, yes,
sir. Pardon me.

Q. And when you looked towards your right how far up Main street
25 were you able to see? A. Oh, I didn't look up Main street much; I just looked over that way. I wasn't paying much attention at all. I seen the car passing Canfield street.

Q. And then what attracted your attention to look up Main street at all?
30 A. Nothing in particular, only just looking around casually.

Q. Was it not the noise made by a car that caused you to turn your head and look up Main street, and then see the car passing Canfield street? A. Well, I am so accustomed to the noise of the cars that that would be the least thing that would attract my attention.

Q. Then what was there in connection with the trolley-car that caused
35 you to turn your head and look up Main street towards the car passing Canfield street? A. The car had passed Canfield street; I looked up that way; I turned my head; we were talking. I saw then Mr. Burtt coming out—

Q. One moment. I haven't got to that yet. Then you did not see the
40 trolley-car passing Canfield street did you. A. I did.

Q. Could you possibly see the car passing Canfield street unless you turned your head? A. Yes.

Q. You could? A. Yes.

Q. And then why did you turn your head? A. Well, I wasn't looking for
45 the trolley-car; I was simply looking at general things.

Q. And then where was it, Mrs. Whitney, that you heard the gong of this car ring furiously? A. Well, I should judge it was about a little below Trepkau's. I am no judge of feet. I know it was a little below Trepkau's.

Q. (By the Court.) What is that? A. Trepkau's undertaking estab-
50 lishment.

Q. (By Mr. Davis.) And Trepkau's is the second building west of the alley, is it not? A. No, sir; the third building.

Q. The third building west of the alley? A. Yes, sir.

Q. What is the second building west of the alley? A. The store on the corner, an empty store, and then the hemstitching store, and then comes the undertaker. 5

Q. But the one on the corner and the one next to the corner are in the one building? A. Yes, sir.

Q. And then Trepkau's is the building next to the corner building? A. Yes, sir. 10

The Court. The third store and the second building then?

Mr. Davis. Yes, sir. 15

Q. Then your attention was attracted to the trolley-car again when it was about in front of Trepkau's by the gong being rung furiously; is that right? A. Yes, sir.

Q. At that time had you noticed Mr. Burt's automobile coming out of the alley? A. I couldn't tell you that. 20

Q. Why not? A. I don't remember. All I can remember is seeing the automobile come out of the alley; I seen him coming out—

Q. But you did see the automobile coming out of the alley before you heard the gong, did you not? A. The automobile was coming out of the alley, and then I heard the bell ring, yes, the trolley-car. 25

Q. Then you saw the automobile coming out of the alley before you heard the gong ring, did you not? A. Well, I am not—it seems to me—I can't just tell you much about that.

Q. Why not? A. Well, I am used to the gongs there, but this ringing of the motorman's bell, it was so furious, don't you know— 30

Q. So unusual? A. Yes, sir.

Q. Then, I say you saw that automobile as you looked towards the alley, and you saw the automobile coming out of the alley before you heard the gong ring, did you not? A. That I don't remember.

Q. Well, why don't you remember that, Mrs. Whitney? A. I don't know. 35

Q. When you heard this gong ring, then you looked in the direction that the sound came from, did you not? A. Yes, sir.

Q. And you had not noticed the trolley-car from the time you saw it passing Canfield street until your attention was again attracted when the gong was rung; is that so? A. The car had passed Centre street. 40

Q. No, Canfield. A. Or Canfield.

Q. I say you paid no attention to the trolley-car from the time you saw it passing Canfield street until your attention was attracted by the furious ringing of the gong; is that so? A. Yes—well, the principal thing that attracted my attention was the automobile. 45

Q. No, I am talking about the trolley-car. You paid no attention to the trolley-car from the time you saw it pass Canfield street until you again looked at it when you heard the gong rung; is that so? A. Yes, it was the gong that attracted my attention. 50

Q. Then you looked, did you? You looked when you heard the gong?
A. Yes.

Q. And then that was the first time that you saw the automobile, was it not, when you looked on hearing the gong? A. I had seen the automobile
5 before that.

Q. Now, how long before that, Mrs. Whitney, did you see the automobile? A. It didn't seem to me but about like a few minutes, hardly.

Q. Well, you do not mean a few minutes? A. No, a few seconds.

Q. Then you had looked over and you had seen the automobile coming
10 out of the alley a few seconds before you heard the gong; is that right? A. I seen the automobile first and heard the gong afterwards.

Q. Did you hear my question, Mrs. Whitney?

(Question read.)

15

A. Yes, sir.

Q. Now, when you looked over and when you first saw the automobile this few instants, or seconds, before you heard the gong, where was the trolley-car at that time?
20

The Court. Just at what time?

Q. At the time you looked over and saw the automobile the first time, a few seconds before you heard the gong of the trolley-car, where at that time
25 was the trolley-car? A. It had passed Canfield street.

Q. You were paying no attention at that time to the trolley-car, were you? A. Yes, I was, too.

Q. Then did you follow the course of the trolley-car from the time it was passing Canfield street until the accident happened? A. Yes.

30 Q. Did you? A. Yes.

Q. Now, then, Mrs. Whitney, what was there about the progress of that trolley-car that caused you to follow the trolley-car from the time it was passing Canfield street until the time the accident happened? A. Repeat that again, please.

35 Q. (Question read.) A. Nothing, only the bell ringing.

Q. Where did the bell start to ring, Mrs. Whitney? A. That I don't remember.

Q. Now, you have trolley-cars passing under your window every few minutes of the day and night, do you not, going one way or the other; isn't
40 that so? A. Yes, sir.

Q. And usually you pay no attention to those trolley-cars at all, do you? A. Not unless they are going fast, or something like that.

Q. Now, was not that the reason that you followed the course of this trolley-car from the time it was passing Canfield street until the accident happened, because it was going very fast, Mrs. Whitney? A. No, sir.
45

Q. It was not? A. No, sir.

Q. Then what reasons do you give, if you can give any, for following the progress of that trolley car from the time it was passing Canfield street right down to the time the accident happened? A. Why, nothing in particular,
50 only the bell ringing.

Q. Did the bell ring constantly from the time it was passing Canfield street? A. No, sir.

Q. Mrs. Whitney, you were called on by Mr. Robinson shortly after the accident, were you not, and asked to make a statement? A. Yes, and I refused. 5

Q. And you refused to make a statement? A. Yes.

Q. And you were called on by someone from the trolley company, and you did make a statement, did you not? A. Yes, sir.

BERTHA BADER sworn in behalf of defendant. 10

Direct examination by Mr. MacSherry.

Q. Miss Bader, where do you live? A. Orange, New Jersey.

Q. Do you know Mrs. Whitney, the lady who was on the stand? A. Yes, sir; she is my aunt. 15

Q. Are you a relative of hers? A. She is my aunt.

Q. And did you know Mr. Burtt in his lifetime? A. By sight.

Q. Do you remember the afternoon he was killed? A. Yes.

Q. Where were you at the time? A. I was up in my aunt's parlor. 20

Q. Is that the lady that has just left the stand? A. Yes, Mrs. Whitney.

Q. You were visiting there, then, were you? A. Yes, sir.

Q. You did not see this accident, I understand? A. No, I did not.

Q. What first attracted your attention to anything out of the ordinary happening; if your attention was attracted? A. My aunt hollered. 25

Q. You need not say what she said. She hollered? A. Yes, sir.

Q. And before that time, or anywhere around there, had you heard anything of a trolley-car? A. Yes, sir; I heard the motorman ringing his bell.

Q. You heard that, did you? A. Yes, sir.

Q. Was that before or after your aunt hollered? A. After she hollered. 30

Q. How many times was the bell rung? A. Well, that I couldn't say.

Q. Well, did you hear the car pass your house? A. Yes, sir.

Q. What sound came from it as it passed your house? A. Well, I don't know; just like any other car passing; nothing unusual.

Q. Well, did you hear it? A. Yes, certainly.

Q. Did you hear any bells rung as it passed your house? A. Yes, sir, I did. 35

Q. You did? A. I did.

Q. Did you go out afterwards? A. No.

Q. Did you look out of the window? A. Yes.

Q. Did you see the trolley-car then? A. Why, it was at a standstill when I looked out. 40

Q. Where was it? A. Right in front of the alley.

Q. Could you see the automobile from where you were? A. No.

Cross Examination by Mr. Davis. 45

Q. You and your aunt were talking, Miss Bader, were you? A. Well, no, we weren't exactly talking; we were looking at pictures we had.

Q. And how close to the window were you? A. Well, I had my back to the window. 50

Q. Where was it that your aunt was sitting? A. Well, she was sitting right across in the other window, the west window.

Q. Did you have your back to the same window that she was sitting at? A. No.

5 Q. Was she sitting more towards Canfield street that where you were or towards the other way? A. Yes, towards Canfield street.

Q. And how was she sitting with regard to the window? A. Well, she was leaning out of the window, like leaning on the table, looking out.

10 Q. Looking towards you? A. Well, her face was towards Main street; she wasn't facing me.

Q. She was sitting facing the window? A. Yes, sir.

Q. You say she and you were looking at pictures? A. Well, she wasn't looking at them; I was.

15 Q. What was she doing? A. Looking out of the window.

Q. How long had she been looking out of the window— A. I don't know.

Q. —before you heard this gong? A. I couldn't say.

20 Q. When did you last look at your aunt while you were engaged in this inspection of the pictures and see her looking out of the window? A. I don't know; I couldn't say when I last looked at her; I don't remember.

Q. You have heard many trolley-cars go by your aunt's place, have you not? A. Yes, sir.

25 Q. What was there about this particular trolley-car going by your aunt's place that impressed it on you so that you remember it going by? A. The motorman ringing his bell.

Q. Did he ring his bell as he went by your aunt's place? A. He did.

Q. Did he ring the bell when he was in front of your aunt's place? A. Yes.

30 Q. And did he ring the bell from there down to the alley? A. He did, after he passed Canfield street.

Q. All the way? A. All the way.

Q. He kept the bell going continuously from— A. Not continuously; every once in awhile he would ring it.

35 Q. How many times did you hear him ring the bell from the time he passed Canfield street until your aunt screamed? A. I couldn't say; I never took notice of how long they ring their bells.

Q. Did you hear him ring it passing Canfield street? A. Yes, he did.

40 Q. And then did you hear him ring it in front of your aunt's place? A. Yes, sir.

Q. And then did you hear him ring it in front of Johnnie Cowen's place, about? A. Well, in front of Trepkau's, about.

Q. In front of Trepkau's? A. Yes.

Q. And then did you hear him ring it again after that. A. Yes

45 Q. And then, counting the time that he was passing Canfield street, you heard him ringing the bell—counting that as one time, you heard him ringing the bell on at least four occasions before your aunt screamed; is that right? A. Yes, sir.

Q. Are you sure of that? A. Yes, positive.

50 Q. What makes you so positive of that? A. Well, they always ring

their bells, but this was louder than any other time, I think; they always ring their bells.

Q. Was it ringing louder than any other time you heard it passing Canfield street? A. No, not passing Canfield.

Q. Was it rung louder in front of your place? A. No. 5

Q. Then at Canfield street and in front of your place and in front of Trepkau's was just the usual ring; is that true? A. That is true.

Q. How did you know he was in front of Trepkau's when he rang the bell the third time, if you had your back turned? A. Well, I was sitting sideways; I could turn around and look out. 10

Q. Well, did you turn around and look? A. I did.

Q. What was there that occurred while he was ringing his bell in front of Trepkau's that caused you to look out? A. No.

Q. Nothing at all? A. No.

Q. And you looked out simply because you heard the bell ring? A. I did. 15

Q. Did you look out when the bell was rung in front of your own place? A. Yes.

Q. And then you saw that the car was out in front of your place, did you? A. I did.

Q. Did you look out when you heard the bell ring in front of Canfield street? A. No. 20

Q. How did you know, then, that he was passing Canfield street when you heard the bell ring the first time? A. Well, I can usually tell the distance; I have been around there quite awhile; I can usually tell where they are.

Q. Now, there was something about this car's progress that made you remember it distinctly, was there not? A. There was. 25

Q. What was there about the progress of this car that made you remember distinctly all these times that he rang the bell? A. Well, he rang it so loudly.

Q. First when you heard the bell you concluded that it was passing Canfield street? A. Yes. 30

Q. Well, is it not so that he rings the bell while he is approaching Canfield street rather than when he is passing it? A. Sometimes.

Q. Well, did you hear him ring the bell as he approached Canfield street? A. No, I did not. 35

Q. You did not, eh? A. No.

Q. And you did not look around when you heard the bell at Canfield street? A. No.

Q. You did look around when you heard the bell in front of your aunt's place, did you? A. Yes. 40

Q. And you looked around again when you heard the bell in front of Trepkau's place? A. I was still looking.

Q. You mean to say that you continued to look from the time you heard the bell in front of your aunt's place until you heard it in front of Trepkau's? A. Yes. 45

Q. You were looking at the trolley-car? A. No.

Q. Where did you look? A. I was looking out of the window.

Q. But you started to look when you heard the bell; is that right? A. Yes, sir.

Q. And you did not see any of this accident at all? A. Not at all. 50

Q. And when you looked around when the bell was rung in front of Trepkau's place, did you see the car then in front of Trepkau's place? A. Yes.

5 Q. And you did not see the automobile at that time at all? A. Well, I didn't look that way.

Q. Were you looking in that direction of Trepkau's? A. Well, diagonally, in the general direction of Trepkau's.

Q. Was not that in the direction of the alley? A. Well, that isn't in the direction of the alley; you can look at Trepkau's without looking at the alley.

10 Q. Now, Miss Bader, is it not so that you have got such a distinct recollection of seeing this particular car—was not the reason of that because the car was going at such a rate of speed? A. No.

Q. Have you got any explanation to give at all as to why you watched the car and how you can remember at this time that the bell was rung three or
15 four times from Canfield street to the alley? A. Nothing, only the ringing of the bell.

Q. No other reason in the world? A. Nothing at all.

ANNA SALTER sworn in behalf of defendant.

20

Direct Examination by Mr. MacSherry.

Q. Mrs. Salter, where do you live? A. 341 Main street, Orange.

Q. And where is that as regards Pierson's alley? A. It is just opposite
25 Pierson's alley.

Q. How long have you lived there? A. A year and a half.

Q. Perhaps you can tell us this. There has been some paving of the streets there since this accident, has there not? A. I beg your pardon?

Q. I want you tell us whether there has been any repavement of the street there since the accident to Mr. Burtt. A. Yes.

30 Q. You remember this accident to Mr. Burtt, do you not? A. Yes, sir.

Q. What repavement has been done? A. It has been cemented and has been blocked.

Q. The tracks are about in the same position, though, are they not? A. Yes, sir.

35 Q. Did you know Mr. Burtt in his lifetime? A. No, sir; only by sight.

Q. You knew him by sight? A. Yes, sir.

Q. Do you remember the day that he was killed? A. I do.

Q. Where were you? A. I was sitting at the front of my store, on a trunk.

40 Q. You were sitting in front of your store? A. Yes, sir.

Q. What kind of a store have you, please? A. A bargain store, gents' furnishings and ladies' furnishings and different articles, trunks and bags.

Q. How long had you been sitting there? A. Oh, I was sitting there the latter part of the afternoon, because there was no business.

45 Q. [By the Court.] When you say "in front of the store" do you mean in the front part of the store? A. No, sir; in front of the show-window.

Q. [By Mr. MacSherry.] You were on the sidewalk? A. I was on the sidewalk.

Q. And at the time of this accident were there many people in the street?
50 A. No, sir.

Q. How about vehicles, automobiles, and so forth, on the street? A. No, there weren't many.

Q. Now, did you see Mr. Burt in his auto? A. I did.

Q. What did you see him do? A. I seen him coming out of the alley very quickly. 5

Q. What direction did he take, which way did he go? A. He was trying to cross the tracks, you see; I don't know what tracks; going up north, I believe.

The court. Going north would be right across the street to you. 10

Q. Was he coming towards you or not? A. Well, he was trying to cross the tracks, I believe, because there is two sides; there is one side going up and one side going down.

[By the Court.] The question is on what line he was coming out. Was he going straight across or turning to his right or left? A. He was going across. 15

Q. [By Mr. MacSherry.] Did you hear any horn blown from his automobile? A. No, sir.

Q. Did you notice which way he was looking, if any? A. He did not look in any ways, no. 20

Q. What about a trolley-car? A. Well, I seen the trolley-car coming down at an ordinary speed.

Q. Did you hear any bells rung? A. I did not.

Q. You do not remember about any bells? A. I don't remember any bells. 25

Q. Well, what happened? A. Well, you see, while he was coming out he tried to—he was just going to cross the first track when the trolley was about a short distance away from the automobile—

Q. How far away? A. Oh, about 25 feet away from the automobile. 30

Q. That was the distance away of the automobile when he reached the first rail, was it? A. Yes, sir.

Mr. Davis. She did not say that.

Mr. MacSherry. I beg your pardon! Yes, she did.

Q. Didn't you say that? A. Yes, sir. 35

[The stenographer reads from the record.]

Q. What do you mean by the first track? A. The first rail.

Mr. Davis. One moment. I want to get a chance to object to Mr. MacSherry's question, which was not properly based on that answer, I think. He stated "the first rail." It was a leading question. The answer got in before I could object. I want to get my objection on the record now. 40

[The stenographer reads from the record as follows: "Q. That was the distance away of the automobile when he reached the first rail, was it? A. Yes, sir."] 45

[After argument, the question is withdrawn.]

The Court. Strike out the question and answer. 50

Q. How many tracks are there there—not rails, but how many tracks on that street? A. Oh, about six tracks.

Q. No. A. Five.

Q. What do you mean by a track? There are two rails to a track, are there not? A. Two rails to a track,

Q. Well, there are two tracks there, are there not? A. Yes, sir; two tracks.

Q. And when you say that he got the wheels of his automobile partly over the first track, what do you mean by that? A. Well, the first rail.

10 Q. When the trolley-car was about 25 feet away? A. Yes, sir.

Q. Did you see the collision between the two? A. I did.

Q. And where did the trolley-car stop after the collision? A. It stopped near the picture store.

Q. Where was the rear of it? A. Near the alley, covering the alley.

15 Q. Did you leave your place? A. I did not.

Cross examination by Mr. Davis.

Q. Mrs. Salter, with regard to the National Hotel, is your place towards Canfield street or towards Newark? A. Towards Newark.

Q. You know where Monteverdi's is? A. Yes, sir.

20 Q. Are you near Monteverdi's? A. Oh, I am about five doors away from Monteverdi's.

Q. Still further toward Newark; is that right. A. Nearer to Canfield street.

Q. Well, that is what I am getting at. Your place is between the National Hotel and Canfield street, is it not? A. Yes, sir.

Q. And do you know where Butler's is, on the corner of Canfield street?

A. Yes, sir.

Q. How many doors from Butler's are you? A. Three doors away.

Q. Three doors? A. Three houses.

30 Q. Well, there is Butler's, and then comes the meat market, does it? A. Yes, sir.

Q. And then the vegetable store? A. The vegetable store.

Q. And then who? A. The furniture store, the cigar store, and then comes myself.

35 Q. Then you. A. Yes, sir.

Q. You are the sixth store from Canfield street. A. Yes.

Q. And the third building; is that the idea? A. Yes, sir.

Q. And how many doors are you away from the National Hotel? A. Just two doors, one house away.

40 Q. Well, next to the National going towards Canfield what is there? A. There is an apartment house.

Q. How many stores in that, one or two? A. There is one store, but it wasn't rented; it was vacant.

Q. That was Baldwin's shoe store, was it? A. Yes, sir.

45 Q. And then you came next? A. Yes, sir.

Q. Then you are the next store towards Canfield street from that vacant store that is in a brown stone building, are you not? A. Yes, sir.

Q. And you are about opposite what store that is on the other side of Main street? A. The hemstitching, just the entrance of the hemstitching, with the entrance of the vacant store near the alley.

Q. You know where Trepkau's is? A. Yes, sir.

Q. Are you about opposite Trepkau's? A. No, sir.

Q. Or a little nearer to the alley than Trepkau's? A. Nearer to the alley.

Q. Now, you were sitting on a trunk in front of your store, were you not? A. Yes, sir. 5

Q. And you were talking to a gentleman named Seldon, were you not?

A. Yes, sir; but I wasn't talking to him at the time of the accident.

Q. Well, but he was there, was he not? A. He was there; yes, sir.

Q. Who else was there? A. There was no one else there. 10

Q. Who? A. No one else.

Q. How long before the accident happened was it that you had been talking to Mr. Seldon? A. Oh, about ten minutes.

Q. And he was still there, standing? A. No, he went to his store.

Q. Then he was not there at the time of the accident? A. No. 15

Q. Is that right? A. He was near the door, near his door, because he got a customer at the moment for a cigar.

Q. Is Mr. Seldon the cigar store man? A. Yes, sir.

Q. And the cigar store is next to you? A. Yes, sir.

Q. And at the time of this accident was Mr. Seldon outside of the store or inside? A. He was outside of the store. 20

Q. Was he standing in his doorway or on the sidewalk? A. In his doorway.

Q. Just about how far from his doorway is the doorway to your store, Mrs. Salter? A. Oh, about 4 feet. 25

Q. Four feet? A. Yes, sir.

Q. And this trunk that you were sitting on, was it near your doorway? A. Yes, sir.

Q. Was it between your doorway and Mr. Salter's doorway? A. Mr. Salter's? 30

Q. I beg your pardon! Mr. Seldon's. Was it between your doorway and the cigar store doorway—this trunk? A. You see, our show-window projects, you see; the doorway is inside.

Q. Where was the trunk you were sitting on? A. It was on the sidewalk. 35

Q. Well, was it on the sidewalk between the entrance to your doorway and the entrance to Mr. Seldon's store that the trunk was that you were sitting on? A. Yes, sir.

Q. And about how far from his doorway was the trunk? A. About 5 feet, the entrance to his store, 5 feet. 40

Q. I meant to where he was standing, how near was the trunk? A. About 5 feet.

Q. And he was standing there and you were sitting on the trunk? A. Yes, sir.

Q. You were not carrying on any conversation with him at that time; is that right? A. Yes, sir. 45

Q. And you were talking to him before that time? A. Yes; not much; he only asked me about my husband, a few words.

Q. What direction were you facing as you sat on the trunk there, Mrs. Salter? A. Just opposite. 50

Q. You were looking over towards the other side of the street? A. Yes, sir.

Q. And as you looked over towards the other side of the street you saw Mr. Burttt coming out of the alley? A. I did.

5 Q. How far down the alley was he away from the crosswalk when you first saw him? A. In the middle of the alley.

Q. That is, about the middle between Main street and where the alley branched off? A. Yes, sir.

10 Q. Did you then continue to look at him all the time from that time until the accident happened? A. I did.

Q. Why was it that you continued to look at him coming out of the alley in his automobile from the time that you saw him first, half-way down the alley, until the accident happened? A. Because he went out rather fast.

15 Q. Well, would you call it very fast? A. I would, considering the way people go out from the alley.

Q. What is that? A. The trucks go out from the alley, they generally go out very slowly.

Q. Well, about how fast would you say he was going? A. Well, he was going quickly, fast; I can't tell you just how fast, but he was going fast.

20 Q. That was when you first saw him or when he came to the street, which was it? A. When I first saw him.

Q. And then when he got as far as Main street was he still going fast? A. He was.

Q. Did his automobile bump over the crosswalk? A. No, sir.

25 Q. I mean the crosswalk crossing the alley on Main street? A. No, sir.

Q. It did not give any bump there? A. No, sir.

Q. And do you say that when he got as far as Main street he was going as fast as he was going when you first saw him in the alley? A. Yes.

30 Q. Can't you give any idea how fast that was, Mrs. Salter? A. Well, I can't, because he was going fast; he was sitting so upright in his car, with his white shirt.

Q. He was in his shirt sleeves, was he not? A. White shirt.

Q. Well, now, can't you give us any idea how fast he was going? A. Weil, he was going fast.

35 Q. Well, what you would call fast? A. Yes, sir.

Q. Now, would you say he was going as fast as a trolley-car usually goes? A. Yes, sir.

Mr. MacSherry. What line?

40 Mr. Davis. Oh, I should say the Orange line.

Q. Mr. MacSherry would like to know what line of cars do you have reference to when you speak about the speed of Mr. Burttt's car, that it was going as fast as a trolley-car would go. What line? A. Well, it was going
45 as fast as a trolley-car.

Q. Well, do you mean by that as fast as a trolley-car would go on Main street? A. No, sir.

Q. Well, whereabouts? A. A little slower.

Q. A little slower than the cars generally go on Main street; is that right?
50 A. Yes, sir.

Q. But still, he was going what you would call fast, or very fast, which?
A. Fast.

Q. And did he continue to go at that speed until he was struck by the trolley-car? A. Yes, sir.

Q. Now, you did not hear any gong on the trolley-car rung, did you? A. 5
No, sir.

Q. And, as far as you know, no bell was rung on the trolley-car, was there? A. No, sir. I am not sure, you see. Probably it did ring, but I didn't pay no attention at the time, because I seen the automobile; that is what attracted my attention. 10

Q. But you heard no bell on the trolley-car ring almost continuously from Canfield street down to the alley, did you? A. I haven't paid no attention to it.

Q. As far as you know, and as far as you can remember, there was no bell rung, was there? A. I haven't paid no attention to it. 15

Q. Well, I say, so far as you know, and as far as you can recollect, there was no bell rung on the trolley-car, was there? A. Yes, sir—no, sir.

Q. Where was the trolley-car when you first noticed it, Mrs. Salter? A. Ch, about near Trepkau's.

Q. You did not see the trolley-car at all, then, as it came almost opposite 20
to where you were sitting; is that right? A. Yes, sir.

Q. You did not see it up by Canfield street? A. No, sir.

Q. And when you first saw the trolley-car about at Thepkau's, you say that Mr. Burt's automobile was then about at the first rail of the tracks? 25

Mr. MacSherry. She has not said that.

Mr. Davis. Well, I think we had better let her say it. She said that.

Mr. MacSherry. Oh, no. 30

Mr. Davis. This is cross examination.

[Question read.]

Mr. MacSherry. That I object to, because that is predicted on testimony 35
that the witness did not give.

The Court. I do not think the witness has given the distance to Trep-
kau's. 40

Mr. Davis. Then I shall put it in this way:

Q. Do you say that when you first saw the trolley-car about opposite
Trepkau's Mr. Burt's automobile was about at the first rail of the trolley
tracks? A. No, sir; it was not. 45

Q. Now, where was Mr. Burt's automobile when you first saw the trol-
ley-car at Trepkau's or near Trepkau's? A. Oh, it was in the alley, coming
out.

Q. How far in the alley was it when you first saw the trolley-car about
at Trepkau's? A. Oh, it must have been about 60 feet. 50

Q. You do not mean that, do you, Mrs. Salter? Do you know how much 60 feet is? A. Well, about 40. I am no judge of any feet, you see.

Q. Just take the length of this room as an example. How long do you thing this room is from where you are sitting down to the end of the room?

5 A. About a hundred.

Q. About a hundred. That is your idea? A. Yes.

Q. With regard to the length of this room, how far do you say that Mr. Burtt was in the alley when the trolley-car was about at Trepkau's? Was he half-way in?

10

Mr. MacSherry. From where she is sitting?

Mr. Davis. Yes, from where you are sitting. Was he half the length of the room or about three-quarters, or what?

15 A. About half the length.

Q. Now, do you mean by that that he was about half the length of this room beyond the crosswalk over the alley; is that what you mean? A. Yes, sir.

Q. You know where Trepkau's is, Mrs. Salter? A. Yes, sir.

20 Q. And you know that Trepkau's place is in the building directly next to the corner building of the alley, do you not? A. Yes, sir.

Q. And do you still say that when the car was about opposite Trepkau's Mr. Burtt had not yet reached the crossing of the alley, but he was about half the length of the room in this alley? A. No, he had already reached the picture store, at the junction of the picture store with the alley; the wheels of the automobile were projecting out to the gutter, you see, from the alley.

25 Q. What did you mean a moment ago when I asked you about where Mr. Burtt's automobile was in the alley when the trolley-car was about opposite Trepkau's by saying that it was about half the length of this room beyond the crosswalk? A. The distance.

30 Q. The distance from what? A. Between the automobile with the trolley-car.

Q. That is what you were referring to? A. Yes, sir.

Q. You did not understand my question, then? A. No, sir.

35 Q. Well, now, when the trolley-car was about opposite Trepkau's undertaking establishment will you just state where the automobile was? A. The automobile was just coming out of the alley, at the gutter.

Q. At the gutter? A. Yes, sir.

40 Q. Then it was not at the picture store? A. No, it was beyond the alley, you see, entering into the gutter.

Q. Then how did you come to refer to the picture store just a few minutes ago? A. Well, being that the automobile passed the picture store.

Q. It went past the picture store? A. Yes, sir.

Q. That is the idea? A. Yes, sir.

45 Q. You say that the automobile—the front wheels of it were where when the trolley-car was about opposite Trepkau's? A. About 30 feet.

Q. I mean with relation to the gutter or the street, where do you say that the front wheels of the automobile were about, when the trolley-car was about opposite Trepkau's? A. It was toward the gutter, in the half space.

50 Q. Was it at the gutter? A. Yes, sir.

Q. Now, before Main street had the new wooden block pavement put on there was a depression there for the gutter, was there not? A. Yes, sir.

Q. You came down from the crosswalk into a sort of a depression, which was the gutter, and then you went up again onto the street, did you not? A. Well, I don't remember that. 5

Q. Well, how much of a gutter was there? A. Well, I believe it was on the same level with the level.

Q. With the alley? A. Yes, sir, that is what I seen.

Q. Then at that point when the trolley-car was about in front of Trepkau's the front wheels of Mr. Burt's automobile were about in the gutter? A. Yes, sir. 10

Q. And when you saw that Mr. Burt's automobile had gotten to the first rail the trolley-car was how far away. A. 25 feet.

Q. 25 feet? A. Yes, sir.

Q. Was Mr. Burt's automobile going as fast or faster than the trolley-car? A. It was on the same speed. 15

Q. Just about the same speed? A. Yes, sir.

Q. Did you notice that particularly? A. Yes, sir; I did.

Q. And that struck you as unusual, did it? A. I saw that there was an accident right away. 20

Q. And when the trolley-car struck the automobile what did it do to the automobile, did it push it or toss it aside? A. No, sir.

Q. What did it do? A. It didn't do anything; the car just stopped.

Q. That is, right away? A. Right away.

Q. Do you know where the trolley pole is east of the alley, just about near the restaurant in the Willow Hall building? A. I do. 25

Q. With relation to that trolley pole, where did the front part of the trolley-car stop after it struck the automobile? A. It stopped in front of the picture store.

Q. That is, the front part of the trolley-car— A. The trolley-car. 30

Q. —was in front of the— A. The picture store.

Q. In front of the picture store? A. Yes, sir.

Q. And where was the automobile when the trolley-car stopped? A. I didn't see that, because the car covered up the whole view of it.

Q. Did you go over then to see what the trouble was? A. I did not. 35

RAYMOND KRANTZ sworn in behalf of defendant.

Direct examination by Mr. MacSherry.

Q. Mr. Krantz, where do you live? A. 1 Grove place, East Orange. 40

Q. What is your business? A. Westinghouse, time clerk.

Q. Do you remember the day of this accident? A. I do.

Q. Where were you? A. A passenger on the trolley-car.

Q. What part of the car were you in? A. On the lefthand side going east. 45

Q. Was it an open or closed car? A. Closed car.

Q. Do you know where Day street is? A. I do.

Q. Did the car stop at Day street? A. It did; I got on there.

Q. Now, do you know where Center street is? A. Yes, sir. 50

Q. And what, if anything, happened there? A. Nothing happened there, only the car stopped to let on a woman passenger.

Q. That is all I want to know. Did or did not the car stop at Centre street? A. It did.

5 Q. Did you see a lady get on? A. I did.

Q. Now, after leaving Centre street, do you know where Canfield street is? A. Yes sir.

Q. Did you or did you not hear any bells or gongs on that car rung between Center street and Canfield street? A. I did.

10 Q. And what, if anything, have you to say as to the speed of the car as it went along from Center street down past Canfield street? A. It went at a fair rate of speed.

Q. And at Canfield street or after leaving there did you or did you not hear any gong rung from that car? A. He did; he rang it after passing Canfield street.

15 Q. How many times? A. Several times.

Q. And what have you to say, if anything, as to the speed of the car after it passed Canfield street up to the time of the collision? A. At a fair rate of speed.

20 Q. Now, what, if anything, did you see of this collision? A. I didn't see anything of it, only what I heard was the crash.

Q. Now, did you see the automobile before the crash? A. No, sir.

Q. Did you see anything— A. Nothing at all.

Q. You did not see any object at all? A. No object at all.

25 Q. Did you get out of the car? A. I immediately ran to the front of the car when I heard the collision.

Q. What was the car doing by the time you got to the front? A. It stopped.

Q. Do you know where Pierson's alley is? A. Yes, sir.

30 Q. Where did it stop as regards its proximity to or from Pierson's alley? A. The rear of the car blocked the alley.

Q. Was the automobile upset? A. No, sir.

Cross examination by Mr. Davis.

35 Q. Were you reading a paper, Mr. Krantz? A. No, sir.

Q. What were you doing? A. I was looking out of the window on the north side.

Q. And not paying any special attention to anything? A. No, sir.

40 Q. You were not paying any special attention to the ringing of the bell, were you? A. I just heard the bell ring several times.

Q. How often do you travel on trolley-cars? A. Oh, pretty nearly every day of my life.

Q. Do you go back and forth to business? A. Yes, sir.

45 Q. And where do you usually go to and from? A. From Greenwood avenue to Plane street; I change at the carbarns and take a Roseville car.

Q. Greenwood avenue, East Orange, to Plane street? A. Yes, sir; Newark.

50 Q. You were not going from work, I suppose? A. No, sir; I was coming from the Montclair Y. M. C. A.

Q. And you would not be able to say now, today, whether between any two blocks, or any two certain blocks, between Greenwood avenue and Main street, that on a certain day the bell of the trolley-car you were travelling on rang several times between those two blocks, would you? A. It probably would in case there was any traffic in the way of it. 5

Q. You wouldn't be able to say now whether, for instance, on the 12th of July, last year, if you had been travelling between Greenwood avenue and Plane street, that between Twelfth street and Eleventh street, on Warren street, that the trolley-car bell rang? A. I would say so, yes.

Q. You would be able to say that? A. I Yes, sir. 10

Q. Did you travel on the 12th of July last year? A. That I don't remember.

Q. What particular day did you travel between Greenwood avenue and Plane street? A. Possibly the next day after the accident. 15

Q. And do you know whether on your travel between Greenwood avenue and Plane street the next day after this accident occurred whether or not the motorman rang his bell on Warren street between Eleventh street and Twelfth street. A. That I don't know.

Q. Is the woman that got on at the corner of Center street in the room here? A. I don't recognize her. 20

Q. Could you describe the woman that got on? A. I couldn't tell you who she was.

Q. What part of the car were you sitting in? A. In the rear part of the car. 25

Q. Was she a young woman or an old woman, or what? A. I should judge she was thirty-five years old.

Q. She was the only one that got on at Center street? A. The only passenger.

Q. She was in the car, then, at the time of the accident? A. Yes, sir. 30

Q. How many others were in the car? A. About two others besides myself and this lady.

Q. And you do not know whether that lady is in the room now or not? A. No, I couldn't say.

Q. Well, is there any lady in the room that looks like the lady that got on at Center street? A. No, sir. 35

Q. Then, so far as you know and you are able to recollect, the lady that got on at Center street is not in the room, is she? A. Yes, sir.

Q. Is she? A. She isn't in the room.

Q. How many times do you recall the gong being rung between Center street and Canfield street? A. I don't remember the number of times, but it was rung several times. 40

Q. Well, do you mean by that it was rung on several different occasions or it was rung once several times? A. Well, it was rung once after we left Center street and before Canfield street; that is, going over the crosswalk. 45

Q. Well, from the time you left Center street until you got to Canfield— A. It rang all the way from Center street to Canfield and beyond that.

Q. It rang all the way? A. Yes, sir.

Q. Continuously? A. Well, sort of a "Gang! Gang!" and then a couple of more. 50

Q. Now, there was little or no traffic in the street at that time, was there? A. That I couldn't see.

Q. Were you not rather surprised when you heard the gong of this trolley-car going almost continuously from Centre street down Main street?

5 Objected to.

Objection overruled.

10 A. Nothing particular, any more than if there was any traffic in the way of the trolley-car.

Q. Did you look out and see any traffic? A. I couldn't look out.

Q. But, so far as you could see, on Main street at that hour there was practically no traffic, was there? A. That I couldn't see from where I was sitting.

15 Q. Well, you ride in trolley-cars very frequently, do you not? A. Yes, sir.

Q. And did you not regard it as something unusual that the motorman kept up an almost continual ringing of his bell from the time you left Center street until the accident happened? A. I shouldn't think so, no, unless there was enough traffic in his way to cause him to do that.

20 Q. But you saw no traffic at all? A. No traffic at all.

Q. Then, I say, did you not regard it as very unusual, if you saw no traffic in the way to require the ringing of the gong, that he kept up this continuous ringing of his bell? A. That I couldn't say, because—

25 The Court. The witness has said that he did not see the traffic. I think the question has been asked and answered often enough.

Redirect examination by Mr. MacSherry.

30 Q. There are quite a number of short blocks there, are there not? A. Yes, sir.

Q. Is there anything unusual in a motorman, so far as your experience goes, in ringing the bell continuously when crossing short blocks? A. Not unless they see there is anything in the way.

35 Q. Now, does or does not the fact that a man was killed there, or severely injured so that he died, make an impression on you as to what happened on that evening? A. There was an accident happened.

Q. And does or does not that fix things in your mind? A. It does.

Recross examination by Mr. Davis.

40 Q. Mr. Krantz, about these short blocks. Would you regard a block 400 feet long a short block? A. Well, it all depends on how short the block is.

Q. Well, I am telling you. Would you regard a block 400 feet long as a short block? A. I should think so, yes.

45 Q. And are there any blocks at all, short or long, between Canfield street and Center street? A. There is one.

Q. What is it? A. You say between Canfield and Center?

Q. Between Canfield and Center? A. There isn't any.

50 Q. Are there any blocks at all, short or long? A. Not between those two blocks.

Q. Are there any blocks, short or long, between Center and Day streets?

A. No, there is no block in there.

Q. Then what short blocks were you referring to when you said— A. Between Day street and Center street.

Q. Between Day and Center streets? A. Yes, sir. 5

Q. Would you regard the block from Day to Center streets, 389 feet long, as a short block? A. I should, yes.

Further direct examination by Mr. MacSherry. 10

Q. Well, it is a short block between Canfield street and Pierson's alley, is it not? A. Yes, sir.

Q. And between Pierson's alley and the street to the right, namely, South Main street, is it not? A. Yes, sir. 15

Defendant rests.

WILLIAM J. CURTIN sworn in behalf of plaintiff in rebuttal.

Direct examination by Mr. Davis. 20

Q. Mr. Curtin, are you a member of the Orange police department? A. Yes, sir.

Q. How long have you been a member of the Orange police department? A. Over nine years. 25

Q. Was it you who took into custody Mr. Haberstick after the accident? A. Yes, sir.

Q. And did you walk or go up Main street with him after that time? A. We went up in an automobile.

Mr. Davis. Now, if your Honor please, I offer to prove by Mr. Curtin what I attempted to lay the foundation for, and which your Honor overruled; that is, to the effect that Mr. Haberstick made a statement to Mr. Curtin on Main street immediately after the accident, which, if true, would— Well, I want to use the same language that I did before. 30

The Court. You desire to use the testimony for the purpose of contradicting the witness? 35

Mr. Davis. For the purpose of contradicting the witness Haberstick.

Mr. MacSherry. That I object to. 40

The Court. The ruling will be the same as it was before.

Plaintiff's counsel prays an exception to this ruling of the Court. 45

Exception noted as ground of appeal.

Cross examination waived.

Mr. MacSherry. If your Honor please, I must respectfully move for the direction of a verdict in this case on two grounds: first, that there is no proof 50

to go to the jury of the negligent action of the agents of the company in operating this car; and, secondly, that there is uncontradicted proof of negligence on the part of Mr. Burt in driving and operating his automobile.

5 The Court [After argument.] In my opinion, this case is a jury case, by which I mean that there are questions as to the occurrence of the accident on which the jury ought to pass. For that reason I deny the motion.

10 Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

At 12:45 o'clock, P. M., the court takes a recess until 2 o'clock P. M.

15 After recess.

Mr. MacSherry sums up for defendant.

Mr. Davis sums up for plaintiff.

20 The Court charges the jury as follows:

ADAMS, J.

25 Gentlemen of the Jury. This action is brought by Thomas J. Maloney, administrator of the goods and chattels of Aaron F. Burt, deceased, of Orange, to recover, under a statute which is known to lawyers as the Death Act, what the jury shall deem to be the probable pecuniary value of the life of the deceased to his widow and next of kin. I shall have something more to say about the statute under which this action is brought.

30 Turning now to the case itself. There are two important classes of questions: those which relate to the conduct of the motorman and those which relate to the conduct of Mr. Burt. Was the car run at excessive speed? That is a question which relates to the conduct of the motorman. If it was run at excessive speed, was the excessive speed a cause of the accident to Mr. Burt? 35 That would not necessarily follow. It might be that a car run at excessive speed might pursue such a course that its excessive speed would not injure anyone. You will have to consider, then, those two questions: whether the car was, as a matter of fact, run at a speed that can be called excessive, and whether that excessive speed over what was proper was a cause of the acci- 40 dent to Mr. Burt. I do not say the cause, but a cause—whether it stood to the accident in the relation of a cause to an effect. Again, was due notice given of the approach of the car? That was an obligation which rested upon the motorman. If due notice was not given, was the failure to give such notice a cause of the accident? Those questions may be taken up separately. Was 45 the car run at excessive speed? When is a speed excessive? There is no statutory rule as to the speed of a trolley-car; no legal rate of speed is prescribed. When, then, is speed excessive? And what is due notice by signal of the approach of a car? The answer to those questions comes from the application of a general rule, which is this. Is it the duty of every person who drives a 50 vehicle on the public highway to take reasonable care so to exercise his own

legal right of travel as not to interfere with another person in the exercise of his legal right of travel in a thoroughfare which is for the common use of both. This, you perceive, is not a guaranty that there will be no collision; it is a guaranty of reasonable care to avoid one. This general obligation furnishes the test of the different things which make up the duty of a driver of a trolley-car. I shall mention three things to which it applies: Reasonable care to be vigilant; that is, to use your eyes and ears. Reasonable care to give warning when necessary. Warning is not always necessary. Warning is never necessary when the person who is supposed to be warned is already aware of the approach of the vehicle which gives the warning. He does not need the warning; he sees the vehicle, and that of itself is all the warning that he needs. Reasonable care not to proceed at a speed which is inconsistent with due regard for the rights of others. When a driver does not use reasonable care as to the speed of his vehicle, when he runs its speed up to a rate such as to occasion a reasonable probability that it will result or may result in injury to others, then he is not acting with reasonable care and is in the wrong, and the speed is excessive, because it is unreasonable speed.

There is a great deal of contradictory testimony on this point as to the speed of the car. The burden of proof is on the plaintiff. If you are satisfied that the speed was excessive, as I have defined the meaning of that word, then you will take up the next question: Was the excessive speed a cause of the accident? Was the motorman as vigilant, as observant, as he should have been? Did he see the automobile as soon as he should have seen it? Did he give due warning of the approach of the car? If due notice was not given was the failure to give notice a cause of the accident? In short, to sum it all up, did the motorman comply with the general rule which obliged him to use reasonable care to operate his car so as not to interfere with the right of travel of Mr. Burt on Main street? And, if the motorman fell short of the performance of this obligation, was his shortcoming to do his full duty a cause of the injury to Mr. Burt? If you are not satisfied of this, your verdict should be for the defendant. If the evidence leads you to put the blame on the motorman, your verdict should be for the plaintiff, unless you conclude that Mr. Burt, by some want of reasonable care and prudence on his part, occasioned the accident or occasioned it in part. If so, he cannot recover, for no man can recover for a result injurious to him which he himself produced or contributed to the production of.

Now, what was the obligation of Mr. Burt? It was no different from the obligation of any person under similar circumstances. It was to use reasonable care for his own safety. What was the situation? He was approaching a busy city street, on which there were two lines of trolley-cars, through an alley which was completely walled up on both sides at the point where he reached the street. You probably looked with interest at that particular locality for the purpose of seeing where Mr. Burt was, where he must have been when he first got his view of the street, and that, of course, was when he had cleared the line of the buildings. It was a good view that was then available. I am, naturally, speaking of the view to the west, but the same is true of the view to the east. Mr. Burt's duty was to look. It is always a man's duty to look. If he did not look, he was negligent, and cannot recover. There is strictly speaking, no evidence as to whether he looked or not. If he did look, he saw the car. Of course he saw the car; he must have seen it.

Just what was his position when he saw the car? The evidence is not definite. The front of his automobile was about 5 or 6 feet extending in front of him as he sat in the seat. The photographs give you a very good idea. The sidewalk was 8 feet 4 inches, and it was 17 feet 7 inches from the line of the

5 curb to the nearest rail, and the point at which he would get his view up the street was back here on the property line, or on this dark line which indicates the line of the buildings (indicating on map). So that there was 23 feet 11 inches, say 24 feet, from the point where he was when he got his first view to the west to the first rail of the nearest track. Assuming that he saw the

10 trolley-car when he was at that point, and he must have seen it if he looked, it is evident that he was then in a position of entire safety. He did not have to go on. His front wheels were only 6 feet in front of him. He had time to stop in a perfectly safe place. He chose to go on. This brings us to the very important question, and you cannot form an intelligent judgment as to

15 whether he acted prudently or not without answering it. Where was the trolley-car when he first saw it? We know where he was. When you have determined where the trolley-car then was you will be able to answer this question: Did Mr. Burt act with reasonable care and prudence for his own safety in going on? If he did, he was not to blame in going on and he is not

20 chargeable with contributory negligence, and, if the case is made out against the defendant in other respects, he is entitled to a verdict. But if he in going on did not act with the care and prudence that a reasonably prudent man should exercise for his own safety, then he cannot recover, because he was negligent. If he saw or should have seen a risk and took it, he acted at his

25 own peril, and must bear the consequences, and his estate cannot recover.

About thirty witnesses have been sworn in this case, most of whom on both sides did not see the accident. It is quite natural that the witnesses should fall into classes. There is a class of witnesses who were not on the ground at all; there is a class who heard the crash and obtained their first

30 knowledge of the accident from that, and they tell what they found *ex post facto*—what was the situation in which the crash left it—and there are other witnesses who testify from knowledge of what occurred just before and at the time of the collision, and as the question of legal liability depends mainly on the situation that existed just before and at the time of the collision, rather

35 than what occurred afterwards, their testimony is to be attended to with very great care. The testimony is competent, every bit of it on both sides, but it is not all equally valuable on the question of liability. Some of it does not bear on that question at all.

With a view of presenting the testimony that seems to me to be instructive on this particular point, I have had written out by the stenographer and

40 have before me the testimony of Harry Berkowitz, Edward Davis, a colored man; Edward Revis, a colored man; Henry Venable, a colored man, and Miss Margaret K. Cross, a group of witnesses who were favorably situated to have a knowledge of the situation just before the accident and who were situated

45 in very much the same way, and while you, no doubt, remember the testimony pretty well, I shall take the liberty of reading extracts from their evidence.

Harry Berkowitz, who was a business man doing business at 340 Main street, next to Mr. Burt's office, came up from the east and was waiting at

50 the alley to cross the alley and go west. There were some other persons with

him. He says: "I saw Burttt coming out of the alley, from the inside, in an automobile, and we let him pass, and he passed us, and I started to go up. We were three together, three colored fellows and I. I was standing on the east side of the alley, on the south side of Main street. I waited until Mr. Burttt passed in his automobile; after Mr. Burttt passed me in his automobile I started to go on to my store, to the west. To do that I crossed the alley. The colored men went the same direction as I did. Question. Now, how far had you gone before your attention was attracted to anything? Answer. Well, I was only maybe a couple of steps over the alley. Question. Had you crossed over the alley? Answer. Crossed over the alley. Question. And how many steps beyond the alley had you gotten? Answer. Well, maybe a couple of feet or so. Then there was a hit from the trolley-car to the automobile, coming quick around, and I saw that a car was swinging around the automobile and pulling him maybe from 10 to 15 feet." That means swinging the automobile around. "That trolley-car came from the west side, going towards Newark. I did not observe it at all before it struck the automobile." So that you have the time that intervened between Mr. Burttt's automobile clearing the alley so that these people could walk on and the time when he was struck as equivalent to the time it took them to walk across the alley and go about a couple of feet on the other side.

Edward Davis, a colored man, says: "I was about 5 feet away from the alley; I was on the side of the alley towards Newark; I was on Main street. I was coming from home and I was going west on the south side of Main street. There were three more colored fellows with me, one named Eddy Revis, one named Venable, and the other was Douglas Daniels, but he is dead. I saw Mr. Burttt before the accident; he was sitting in his car, just coming out of the alley. He passed by me in the car as I stood there; he passed us by and waved his hand. I judge he was going about as fast as a man could walk. He was coming out of the alley towards Main street, and his car was facing right out Main street, towards the north of Main street. I waited there at the corner until after he had passed; I mean his automobile had passed. I waited until all the automobile had passed by, too. After the automobile had gone by we looked around and started on up the walk again, right up towards west. The other men started with me; we went all together. Question. How far did you go before anything happened? Answer. We hadn't stepped over the curb of Pierson's alley. Question. Just state what you saw. Answer. Well, as we was looking up the street, of course, the trolley was coming; the car was coming fast, and just as we stepped off the curb the crash came, and I turned right around and ran to the car, to Mr. Burttt's automobile. When I first saw the trolley-car it wasn't quite to Canfield street, I should judge about 10 or 15 feet away from Canfield street, west of Caifield street. When I saw this trolley-car about 10 feet west of Canfield street Mr. Burttt was just past the Main street curb, the front; his whole hind wheel wasn't past yet, though. The automobile had passed me when I saw the trolley-car up about 10 feet beyond Canfield street. I saw the trolley-car all the way from a point 10 feet beyond Canfield street until it struck the automobile. I couldn't exactly say how fast the trolley-car was going, but I know it was going fast. Question. Did you see Mr. Burttt do anything as the trolley-car approached? Answer. Yes, sir; it seemed to me he tried to turn the wheel back around to the curb, to the south side of Main

street; it seemed before he could get it around the car had run into him. When the trolley-car struck him it just turned him around, threw him right around back to the curb, pushed him up. It threw the automobile facing Newark."

5 Edward Revis, another colored man, says: "At the time of the accident I was with a fellow by the name of Dug Daniels, who is dead, another fellow by the name of Venable, and Davis. I knew Br. Burt, and I saw him coming out of the alley. At that time I was standing on the corner of the
10 alley there, in front of the picture store, I guess about 5 feet from the alley, with these other men. Mr. Burt came out pretty slow, about as slow as a man walks, something like that. As he went out of the alley his car was pointed right towards the car track, east; he was turning towards east, towards Newark. After his car passed me by I started across the alley, walking, and these other men went along with me. There was nothing but the
15 trolley-car that attracted my attention. When I first seen it, I guess, it was a little the other side of Mr. Burt's place of business. We reached across the alley before the accident came. When the accident happened, I guess, I was just stepping up on the curb on the opposite side of the alley, the west side. When I first saw the trolley-car I was on the east side of the alley. When I
20 first saw the trolley-car Mr. Burt was just about half over the sidewalk, when I first seen it, and the trolley-car at that time was about in front of his place; it might have been a little further up; I couldn't say."

Henry Venable, another colored man, says: "I was with Revis and
25 Davis walking on Main street at the time of this accident; we was going up Main street, west, towards West Orange. I know where the alley is near Willow Hall. I saw Mr. Burt come out of the alley. I didn't know him. I hadn't got across the alley at the time he came out. As he drove his car out of the alley onto Main street I was behind the other two gentlemen, and they
30 stopped for him to come out of the alley, and so I stopped, too. As he drove his car out I guess I was about a yard, something like that, from the alley, and I was standing behind these other two men, close to them. After Mr. Burt's car went past the crosswalk at the corner of the alley I passed on across the alley. Question. Did you cross over the whole width of the alley
35 before anything happened? Answer. Yes, I crossed over the alley, and before anything happened I got a couple of feet, I guess, something like that, beyond the west side of the alley. When I got a couple of feet beyond the west side of the alley the automobile stopped; that is what attracted my attention. If I don't make no mistake, when it stopped, I think, the front
40 wheels of the automobile was over the first rail of the car track. Then it stopped still."

Miss Margaret K. Cross was going the other way; she was on the west side of Pierson's alley. Miss Cross said: "I was waiting for Mr. Burt's car to pass me. I did not notice these colored men waiting there. I was going
45 east on Main street. After Mr. Burt's car passed me I proceeded down Main street, easterly. Question. How far had you gotten going east on Main street before anything attracted your attention? Answer. It didn't seem to be only a few steps; just about crossed the alleyway. I know where the picture store is. When something attracted my attention I was just about
50 the center of the picture store, just about opposite the front door of the pic-

ture store. The noise of the collision then attracted my attention, and I looked around."

There was, of course, other testimony in the case, which it would be idle for me to dwell upon at large, but I have felt inclined to emphasize the testimony of this group of witnesses on this particular point so as to present clearly to the minds of the jury the picture that their united testimony seems to produce, and the practical question that arises out of that testimony, which relates to the question of contributory negligence, is this: Did Mr. Burttt act with reasonable care and prudence for his own safety in going on under those circumstances? Taking the situation just as it stood, taking the car as he saw it—for he must have seen it—taking his own position, taking the distance that separated his front wheels from the track, does it appear that he acted with the discretion, prudence and caution of a man of ordinary sagacity and care for his own safety? If so, then you acquit him of any negligence contributory to the accident. If not, his estate is not entitled to your verdict.

So much for the testimony.

Now I must say a word about the statute under which this action is brought. At common law, before a certain English statute was passed, which we have copied in almost all of the American states, if not all of them, no actoin lay to recover damages for the death of a member of a family. A man could himself sue for personal injury. As soon as he died his family had no legal claim. That was felt to be a blot on the law; it was felt that there was a right which the law ought to recognize under those circumstances; but it was a merely pecuniary right, the law recognizing the difficulty of estimated wounded affection in dollars and cents. So that the question is under our statute, which is the same as the English statute, to put it in as bald a way as I can, if you find that the plaintiff is entitled to a verdict if you conclude that the plaintiff has made out a case, what would Mr. Burttt probably have been worth in dollars and cents to his widow and next of kin if he had not died when he did? If you do not reach the conclusion that the plaintiff is entitled to a verdict, you will not have to concern yourselves with this matter at all, as that would simply end the case by a verdict for the defendant. You say that is guesswork. Well, it is to some extent guesswork, because it deals with the untertain future. It is something like life insurance. That deals with the future, and in a certain sense it is guesswork, although it is based on experience and probabilities—it is all within the range of probability and not of certainty—and the probabilities are those which relate to the probable length of life of Mr. Burttt if he had not died when he did. Of course, he might have died the next day of something else. You consider the probable length of the life of his widow, the probable length of the life of his children, the probable success or want of success of his business, the probable disposition of Mr. Burttt to contribute to the support of his wife and children. The family consists of a number of daughters, five of whom, I think, are married, and one is under eighteen and the others are all twenty-one or over. Those that are married, of course, are taken care of by their husbands. Mr. Burttt was fifty odd, I think, and his wife was about sixty, a little older than he. He seems to have been a man of vigorous health. I do not know what the testimony is as to her health, but we will assume it to be average, and we will assume the health of the other persons to be average. If Mr. Burttt had lived, what would he probably have contributed

to the support of the widow and next of kin? With his death, of course, it would have terminated, and with their deaths it would have terminated. When you come to that part of the case, when you have figured out the probabilities, the next thing to notice is that that figure would be too much, because it would be cash down, whereas you are considering the present value of a future possibility, and you have to commute it to the present time, and I do not know what a judge can ever do in a case of this kind except to leave it to the good sense of the jury, which I accordingly do to you.

I have been requested to charge certain propositions on behalf of the plaintiff. I deny the first and third except as I have charged. I shall charge the second with a modification. I shall read it as presented: "The plaintiff had a right to rely upon the duty imposed by law upon the defendant company and upon the motorman in charge of the car in question to exercise care in operating the car in respect to its speed, or the control thereof, so as not to endanger the safety of other travellers upon the highway, whether on foot or in vehicles, and if the defendant failed to observe this duty and such failure was the proximate cause of the accident, the defendant company was liable in damages to the plaintiff." I say if the result was the only cause, because if it was not the only cause the defendant company would not be liable in damages.

The first sentence of the fourth request, which consists of two sentences, I deny except as I have charged. I shall charge the second sentence: "If the plaintiff reached the point of crossing before the trolley-car at a time when the trolley-car was a sufficient distance away, when, if proceeding at a reasonably safe rate of speed and being reasonably under safe control, the speed of the trolley-car could have been slackened or brought to a standstill, and if, by reason of lack of control or excessive speed, the trolley-car ran into the automobile, the defendant would be liable for damages."

(The jury retires.).

Mr. Davis. If your Honor please, I pray an exception to that part of your Honor's charge which read something like this: "It was the duty of the deceased," or "of Mr. Burt"—I do not know just what your Honor said—"to look and to look carefully, and if he did not look he was negligent and cannot recover in this case. If he did look, he saw the car," and so forth. There are about five or six lines there.

Exception noted as ground of appeal.

Mr. Caffrey. We take an exception to that part of your Honor's charge which says that there was due notice to be given by the motorman of the approach of the car; that was an obligation resting on the motorman.

Exception noted as ground of appeal.

Mr. Caffrey. And then later in the charge there was a reference to the speed, which was inconsistent with the rights of others—that entire paragraph. We except to that.

Exception noted as ground of appeal.

Mr. Caffrey. There is another part of the charge relating to the probabilities of the running of the car. I did not get the wording, but it follows that part relating to the speed. I would like to include that entire paragraph.

The Court. You may have an exception to anything I said as to the probabilities of running. I am not aware that I said anything. 5

Exception noted as ground of appeal.

PLAINTIFF'S REQUESTS AND EXCEPTIONS. 10

Plaintiff's counsel respectfully requests the Court to charge the jury as follows:

(1) If, when the deceased approached the trolley tracks, he reached the point of crossing ahead of the trolley-car, he had the right of way and it was the duty of the defendant, through its motorman, to respect such right of way. 15

(Denied except as charged.) 20

Plaintiff's counsel prays an exception to the refusal of the Court to charge specifically as requested.

Exception noted as ground of appeal. 25

(2) The plaintiff had a right to rely upon the duty imposed by law upon the defendant company and upon the motorman in charge of the car in question to exercise care in operating the car in respect to its speed, or the control thereof, so as not to endanger the safety of other travellers upon the highway, whether on foot or in vehicles, and if the defendant failed to observe this duty and such failure was the proximate cause of the accident, the defendant company was liable in damages to the plaintiff. 30

(Charged as modified.) 35

Plaintiff's counsel prays an exception to the refusal of the Court to charge specifically as requested.

Exception noted as ground of appeal.

(3) The deceased was justified in assuming that the motorman was aware that the defendant company had no paramount or exclusive right in the highway and that he must keep such a lookout of the tracks ahead of him and must keep his car under such control as to be able to reduce its speed and even to bring it to a standstill, if necessary, to avoid collision with a person who, without negligence on his part, might happen to cross the tracks in front of the trolley-car; and upon failure to perform such duty, if such failure was the proximate cause of the accident, the defendant company would be liable in damages. 40 45

(Denied except as charged.) 50

Plaintiff's counsel prays an exception to the refusal of the Court to charge specifically as requested.

Exception noted as ground of appeal.

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(4) The deceased might reasonably assume that the motorman would keep a lookout and would control and reduce the speed of the car until the deceased was charged, or until at least a reasonably prudent person in his position would have been charged, with notice that the car was being operated
10 either in ignorance of his presence or in clear defiance of his rights; and if there was no negligence on the part of the deceased in going upon the tracks, the defendant would be liable, if the plaintiff reached the point of crossing before the trolley-car at a time when the trolley-car was a sufficient distance away, when, if proceeding at a reasonably safe rate of speed and being rea-
15 sonably under safe control, the speed of the trolley-car could have been slackened or brought to a standstill, and if, by reason of lack of control or excessive speed, the trolley-car ran into the automobile, the defendant would be liable for damages.

20 (Denied except as charged.)

Plaintiff's counsel prays an exception to the refusal of the Court to charge specifically as requested.

25 Exception noted as ground of appeal.

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Essex County Circuit Court 5

THOMAS J. MOLONEY, Administrator ad prosequendum of the Estate of Aaron F. Burt, deceased. <div style="text-align: right;">Plaintiff,</div>			10
vs.			
PUBLIC SERVICE RAILWAY COMPANY, <div style="text-align: right;">Defendant.</div>	}	Action at Law Verdict by a Jury Judgment for Deft. Costs, \$59.58.	15

L. S. Hoffman, Atty of Deft. 20

This action was tried before Judge Frederic Adams with a Jury at the Essex County Circuit on April 19, 1918.

The cause having been heard and submitted to the jury, they returned their verdict as follows:

They find in favor of the said Defendant Public Service Railway Company and against the said Plaintiff Thomas J. Moloney, Admx. of Aaron F. Burt. 25

Whereupon it is adjudged that the complaint of the plaintiff be dismissed and the defendant recover of the plaintiff costs, which are taxed at Fifty Nine Dollars and Fifty Eight Cents. 30

Judgment entered and signed April 19, 1918.

WM. S. GUMMERE, Judge. 35

Book 94—page 507.

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5 **New Jersey Court of Errors
and Appeals**

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THOMAS J. MOLONEY, Administrator, etc.,
Appellant.

15

vs.

PUBLIC SERVICE RAILWAY COMPANY,
Defendant.

Stipulation.

20

IT IS HEREBY STIPULATED between counsel that all of the testimony and exhibits bearing upon the amount of money damages and embracing the decedent's income, volume of business, etc. may be omitted from the printed state of the case on appeal, as not having any bearing upon the points on appeal.

25

Dated, October 8, 1918.

HOWE AND DAVIS,

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Attorneys for Appellant.

LEFFERTS S. HOFFMAN,

Attorney for Defendant.

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Essex County Circuit Court 5

<p>THOMAS J. MOLONEY, Administrator, etc., Plaintiff, vs. PUBLIC SERVICE RAILWAY COMPANY, Defendant.</p>	}	<p>Action at Law Notice of Appeal.</p>	<p>10 15</p>
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To Lefferts S. Hoffman, Esquire.

Attorney for above named defendant. 20

Take notice that the above named plaintiff hereby appeals to the Court of Errors and Appeals of the State of New Jersey, from the judgment entered in the Essex County Circuit Court on the nineteenth day of April 1918, in favor of the defendant and against the plaintiff in the above stated cause. 25

Dated, May 3, 1918.

HOWE AND DAVIS,
 Attorneys for Plaintiff. 30

Filed May 31, 1918.

JOHN H. SCOTT, Clerk. 35

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Mr. Davis. "May I frame the question and have your Honor rule upon it?"

The Court. "Certainly, ask your question."

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Q. "Mr. Haberstick, did you not say to—"

The Court. "No, that will not do; you cannot ask a question that will bring before the jury any statement that you claim that the witness made."

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Mr. Davis. "Well, I do not know how else to frame the question."

The Court. "Put the matter in the form of a general offer to inquire of the witness as to statements made in conversation by him, which are for the purpose of contradicting his testimony on the stand, or something like that."

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Mr. Davis. "I cannot make the offer now; I only make the request that I be permitted to ask the question; I cannot make the offer of any testimony now, I presume, except in rebuttal. The question is whether I will be permitted to ask the question or not."

20

The Court. "Well, put the matter in such a form that I can rule on it, but do not put it in such a form that it will bring to the attention of the Court and jury the precise thing that you want to prove. That would not be fair."

Mr. Davis. "Well, I am entirely satisfied to frame the question only in your Honor's hearing, and let it go on the record without its getting to the jury."

25

The Court. "No, that will not do. Put it in the way which I suggested that it might be put—your purpose being to lay a foundation for contradicting the testimony of the witness by proving statements made by him to another person. That is what you desire to do."

30

Mr. Davis. "Well, it is not his general testimony; it is only on a certain point."

35

The Court. "Yes."

Mr. Davis. "I desire, then, to ask the witness a question which would lay the foundation for me to present on rebuttal testimony of one or more witnesses that—"

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The Court. "As to statements made by him which, you say, were inconsistent with his present testimony."

Mr. Davis. "Yes, sir; that immediately after the accident, and on Main street, Orange, in the vicinity of the accident, he made to Officer Curtin, of the Orange police force, a statement which, if true, would go towards contradicting the testimony now given by him on the stand."

45

The Court. "Yes."

50

Mr. MacSherry. "That I object to."

The Court. "I sustain the objection, the ground of my ruling being that I think this is only an indirect way of proving statements made by the witness, who is a motorman, and I understand the established rule to be that such statements cannot be proved directly, and I think they should not be proved indirectly."

10 (2) To the witness, William J. Curtin:

Question offered to be propounded to him by plaintiff's attorney in rebuttal of testimony of Herbert Haberstick, embraced in the following:

15 Mr. Davis. "Now, if your Honor please, I offer to prove by Mr. Curtin what I attempted to lay the foundation for, and which your Honor overruled; that is, to the effect that Mr. Haberstick made a statement to Mr. Curtin on Main street immediately after the accident, which, if true, would—well, I want to use the language that I did before."

20 The Court. "You desire to use the testimony for the purpose of contradicting the witness?"

Mr. Davis. "For the purpose of contradicting the witness Haberstick."

25 Mr. MacSherry. "That I object to."

The Court. "The ruling will be the same as it was before."

The Court refused to charge the jury as follows:

30 (1) "If, when the deceased approached the trolley tracks he reached the point of crossing ahead of the trolley-car, he had the right of way and it was the duty of the defendant, through its motorman, to respect such right of way."

35 (2) "The plaintiff had a right to rely upon the duty imposed by law upon the defendant company and upon the motorman in charge of the car in question to exercise care in operating the car in respect to its speed, or the control thereof, so as not to endanger the safety of other travellers upon the highway, whether on foot or in vehicles, and if the defendant failed to observe this duty and such failure was the proximate cause of the accident, the defendant company was liable in damages to the plaintiff."

40 (3) "The deceased was justified in assuming that the motorman was aware that the defendant company had no paramount or exclusive right in the highway and that he must keep such a lookout of the tracks ahead of him and must keep his car under such control as to be able to reduce its speed and even bring it to a standstill, if necessary, to avoid collision with a person who, without negligence on his part, might happen to cross the tracks in front of the trolley car; and upon failure to perform such duty, if such failure was the proximate cause of the accident, the defendant company would be liable in damages.

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(4) "The deceased might reasonably assume that the motorman would keep a lookout and would control and reduce the speed of the car until the deceased was charged, or until at least a reasonably prudent person in his position would have been charged, with notice that the car was being operated either in ignorance of his presence or in clear defiance of his rights; and if there was no negligence on the part of the deceased in going upon the tracks, the defendant would be liable. If the plaintiff reached the point of crossing before the trolley-car at a time when the trolley-car was a sufficient distance away, when, if proceeding at a reasonably safe rate of speed and being reasonably under safe control, the speed of the trolley-car could have been slackened or brought to a standstill, and if, by reason of lack of control or excessive speed, the trolley-car ran into the automobile, the defendant would be liable for damages."

The Court charged the jury as follows:

"Mr. Burt's duty was to look. It is always a man's duty to look. If he did not look, he was negligent, and cannot recover. There, is strictly speaking, no evidence as to whether he looked or not. If he did look, he saw the car. Of course he saw the car; he must have seen it."

(3) The Court refused to permit plaintiff's attorney to ask the motorman, Herbert Haberstick, a witness for defendant, on cross examination, a question as to whether immediately after and near the place of the accident, on Main street, Orange, he had not made a statement to Police Officer William J. Curtin, of the Orange Police Department, different from the testimony given by the witness on a point covered in his testimony.

(4) The Court refused to permit plaintiff's attorney to offer in rebuttal, through Police Officer William J. Curtin, of the Orange Police Department, a witness sworn in rebuttal by the plaintiff, testimony to the effect that immediately after and near the place of the accident, on Main street, Orange, the motorman, Herbert Haberstick, made a statement to him different from the testimony given by the witness, Haberstick, on a point covered in his testimony.

(5) The verdict was against the clear weight of the evidence.

(6) The verdict should have been in favor of the plaintiff.

HOWE AND DAVIS,

Attorneys for Plaintiff-Appellant.

(4) The witness testified that he reasonably assumed that the motorist would see a light and would control and reduce the speed of the car until the witness was stopped or until at least a reasonably prudent person in his position would have done so. The witness testified that the car was being operated in a reckless manner at the time of the collision and that the witness was not negligent in going upon the tracks. The witness testified that the trolley-car was a sufficient distance away when it proceeded at a reasonably safe rate of speed and being under his control, the speed of the trolley-car could have been checked or reduced to a stop, and if by reason of lack of control or excessive speed the trolley-car ran into the automobile, the defendant would be liable for the accident.

The Court charged the jury as follows:

"The jury must always look to the facts and circumstances. If he did not look, he was negligent and cannot recover. If he did look, he was not negligent as to whether he looked or not. If he did look, he saw the trolley-car and the fact that he saw it."

The Court refused to permit plaintiff's attorney to ask the motorist whether he was negligent and whether he was negligent as to whether he looked or not. The Court refused to permit plaintiff's attorney to ask the motorist whether he was negligent as to whether he looked or not.

James J. Corbin, of the Ontario Police Department, testified that the trolley-car was moving on a point covered in his testimony.

The Court refused to permit plaintiff's attorney to ask the motorist whether he was negligent and whether he was negligent as to whether he looked or not. The Court refused to permit plaintiff's attorney to ask the motorist whether he was negligent as to whether he looked or not. The Court refused to permit plaintiff's attorney to ask the motorist whether he was negligent as to whether he looked or not.

- (5) The verdict was against the clear weight of the evidence.
- (6) The verdict should have been in favor of the plaintiff.

HOWE AND DAVIS

Attorneys for Plaintiff-Appellant

New Jersey Court of Errors and Appeals

5

THOMAS J. MOLONEY, Administrator ad
prosequendum of the Estate of Aaron F.
Burt, deceased,

Plaintiff in Error.

vs.

PUBLIC SERVICE RAILWAY COMPANY,

Defendant in Error.

On Appeal from

Essex Circuit Court

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BRIEF FOR PLAINTIFF IN ERROR.

This matter comes before the Court on appeal from a judgment rendered in favor of the defendant by a jury in Essex Circuit Court. The suit was brought for damages for the death of plaintiff's decedent, who, while riding in an automobile on Main Street, Orange, on July 5th, 1917, was run into and killed by a trolley car of the defendant, bound from Orange to Newark. 25

The objections noted as grounds for appeal are few in number, and will be treated separately. 30

GROUND AS TO EVIDENCE

FIRST. This objection is based upon the ruling of the Court on the admissibility of a question, on cross-examination, of the defendant's witness, Haberstick. The witness Haberstick was sworn and examined in behalf of the defendant and testified in its behalf as to the operation of the trolley car and how far he was from the place of the accident when he first saw the automobile; where the automobile was when he first saw it; the speed of the trolley-car, and many other details regarding the accident. On cross-examination of this witness, the plaintiff's counsel attempted to ask the witness Haberstick a question, which would lay the foundation for contradicting him on rebuttal, to the effect that immediately after the accident the witness Haberstick made to Officer Curtin, of the Orange police force, a statement which, if true, would go toward contradicting the testimony now given by Motorman Haberstick on the witness stand. The Court refused to allow the question to be put or answered and the Court's ruling was noted as a ground of appeal. 35 40 45

We respectfully urge that the trial judge erred in this ruling in excluding this question and the answer which might be made to it. The 50

same situation was presented in the case of Sperbeck vs. Camden &c. Ry. Co., 64 Atl. Rep. 1012. The decision of the Court is brief and is given in full herewith.

Sperbeck et ux. v. Camden & S. Ry. Co., 64 Atl. Rep. p. 1012.

5

“PER CURIAM. This writ brings up a judgment in an action brought by husband and wife against the defending company, for injuries received by the wife. The judgment is single for the sum of \$1,500 for the plaintiffs. The brief of the plaintiff in error challenges the legality of the
10 judgment upon the ground that there should have been a separate assessment to the husband and to the wife.

The single answer to this insistence is that there is no assignment of error directed to this point. It is also assigned for error that the trial court permitted the counsel for the plaintiffs to recall two witnesses, the
15 motorman and the conductor of the trolley car, who testified for the defendant, for further cross-examination. They were then asked if on a certain day in the presence of a certain person they said they were seven minutes late at a particular point, and stopped to let passengers off, and that Mrs. Sperbeck was such a large woman that she took all day in getting off, and so they started the car, and that caused the accident. This
20 was permitted over objection. Then the husband took the stand and swore that the former witnesses said in his presence what they had just denied saying on further cross-examination. This was objected to. It is entirely clear that the questions asked of the motorman and conductor on cross-examination were competent, because, if it had appeared they had said
25 what the question included, it modified and, in a degree, discredited the stories told on the examination in chief. These two witnesses having denied that they had used this language, it is entirely competent to prove by another witness that they had used this language, and so by their statements outside, had discredited the story told in court. This is one of the
30 most familiar rules controlling the admission of evidence. The permission to recall these witnesses for cross-examination was within the discretion of the court. In respect to the motion to direct a verdict for the defendant, we cannot say that the evidence was so controlling that no part of the verdict for the plaintiff should be permitted to stand.

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Judgment is affirmed.”

SECOND. The decision on this ground of appeal will be governed
40 by the decision on the first ground. Officer William J. Curtin, of the Orange police force, was called on rebuttal by the plaintiff, and offer was made to present, by Mr. Curtin, evidence contradictory to the evidence of Motorman Haberstick, had the foundation for such rebuttal been permitted to be laid on cross-examination of Haberstick. The Court excluded
45 the offer and objection was taken as ground for appeal.

It is respectfully urged that under the case of Sperbeck vs. Camden &c. Ry. Co., supra, the Court erred.

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GROUNDS AS TO CHARGE TO JURY.

(1) The objection to the Court's refusal to charge in the language of request (1) is abandoned.

The Court refused to charge the jury as follows:

(2) "The deceased had a right to rely upon the duty imposed by law upon the defendant company and upon the motorman in charge of the car in question to exercise care in operating the car in respect to its speed, or the control thereof, so as not to endanger the safety of other travellers upon the highway, whether on foot or in vehicles, and if the defendant failed to observe this duty and such failure was the proximate cause of the accident, the defendant company was liable in damages to the plaintiff."

(3) "The deceased was justified in assuming that the motorman was aware that the defendant company had no paramount or exclusive right in the highway and that he must keep such a lookout of the tracks ahead of him and must keep his car under such control as to be able to reduce its speed and even bring it to a standstill, if necessary, to avoid collision with a person who, without negligence on his part, might happen to cross the tracks in front of the trolley car; and upon failure to perform such duty, if such failure was the proximate cause of the accident, the defendant company would be liable in damages."

(4) "The deceased might reasonably assume that the motorman would keep a lookout and would control and reduce the speed of the car until the deceased was charged, or until at least a reasonably prudent person in his position would have been charged, with notice that the car was being operated either in ignorance of his presence or in clear defiance of his rights; and if there was no negligence on the part of the deceased in going upon the tracks, the defendant would be liable. If the plaintiff reached the point of crossing before the trolley-car at a time when the trolley-car was a sufficient distance away, when, if proceeding at a reasonably safe rate of speed and being reasonably under safe control, the speed of the trolley-car could have been slackened or brought to a standstill, and if, by reason of lack of control or excessive speed, the trolley-car ran into the automobile, the defendant would be liable for damages."

The refusal of the Court to charge, as requested, in the language covered by grounds 2, 3 and 4 was erroneous and is not corrected by any other part of his charge.

The language of this request is substantially, if not identically, the language used by the Court in *Peterpolo vs. Public Service Railway Co.*, 81 N. J. L. 390, where the Court says:

"The plaintiff had a right to rely upon the duty imposed by law upon the traction company, and upon the motorman in charge of the car in question, to exercise care in operating the car in respect to its speed, and the control thereof, so as not to endanger the safety of other travelers using the highway, whether on foot or in wheeled vehicles. Plaintiff might reasonably suppose that the motorman was aware that he and his employer had no paramount or exclusive right in the highway, and that he must keep such a lookout on the tracks ahead of him, and must keep his car under such control, as to be able to reduce its speed, and even to bring it to a standstill, if necessary, to

avoid collision with a traveler who, without negligence on his part, might happen to cross the tracks in front of the trolley-car. Plaintiff, had a right to assume that the motorman was aware that the plaintiff, without negligence on his part, reached the point of crossing ahead of the trolley-car, he had the right of way, and that such right of way would be respected by the motorman. In short, plaintiff might reasonably assume that the motorman would keep a lookout, and would control and reduce the speed of the car, until plaintiff was charged, or at least until a reasonably prudent person in his position would have been charged, with notice that the car was being operated either in ignorance of his presence or in complete defiance of his rights."

The above language leaves no doubt, that the Court's refusal to charge as requested in Nos. 2, 3 and 4 was error

The Court charged the jury as follows:

"Mr. Burt's duty was to look. It is always a man's duty to look. If he did not look, he was negligent, and cannot recover. There is, strictly speaking, no evidence as to whether he looked or not. If he did look, he saw the car. Of course he saw the car; he must have seen it."

The above charge informed the jury, that at all times and under all circumstances, a man must look before crossing a trolley track; and that failure to look is negligence per se.

This is directly contrary to the doctrine laid down in *Traction Co. v. Haight*, 59 L. 77.

30

The other grounds of appeal are as follows:

(3) The Court refused to permit plaintiff's attorney to ask the motorman, Herbert Haberstick, a witness for defendant, on cross-examination, a question as to whether immediately after and near the place of the accident, on Main street, Orange, he had not made a statement to Police Officer William J. Curtin, of the Orange Police Department, different from the testimony given by the witness on a point covered in his testimony.

(4) The Court refused to permit plaintiff's attorney to offer in rebuttal, through Police Officer William J. Curtin, of the Orange Police Department, a witness sworn in rebuttal by the plaintiff, testimony to the effect that immediately after and near the place of the accident, on Main street, Orange, the motorman, Herbert Haberstick, made a statement to him different from the testimony given by the witness, Haberstick, on a point covered in his testimony.

The argument as to these points is embraced fully under the heading of "Grounds as to Evidence." It is respectfully contended that the case of *Sperbeck v. Camden Ry. Co.*, supra, is controlling.

The remaining grounds are:

(5) The verdict was against the clear weight of the evidence.
 (6) The verdict should have been in favor of the plaintiff.

50

IT WAS PROPER TO SUBMIT THE CASE TO THE JURY.

It may be contended by the defendant that even if the Court below erred, that the verdict for the defendant should not be disturbed on the ground that the Court should have granted defendant's motion for a non-trial, or for a direction of a verdict for the defendant. 5

Such an argument, if made, cannot prevail, because of the abundance of testimony in the plaintiff's case to go to the jury on the negligence of the defendant.

The state of the plaintiff's case as to testimony, at the time both of these motions were made and refused, is very clearly shown in that part of the Court's charge (Case pp. 122-125) in which he refers at length to the testimony of a group of witnesses, all sworn in behalf of the plaintiff. In reading this testimony, it should be borne in mind that from the west side of the alley (out of which the deceased came) to the east side of Canfield street (extended) it was 123 feet, and to the west side of Canfield street (extended) it was 158 feet (Case p. 11) and that one or more of the following witnesses placed the trolley even more than 158 feet away, when the deceased was about to enter upon the trolley tracks; with the further testimony that the front wheels of the automobile had crossed the second rail of the trolley track when the trolley-car struck (case p. 93); with the further testimony that when the trolley-car passed the witness Nahr, about 20 or 30 feet east of Canfield street, it was going at the rate of 30 miles an hour (case p. 24), and with all the other evidence in the case on the points involved, it seems clear that there was a considerable amount of evidence in the case warranting submission to the jury, and the refusal of both motions to non-suit and direct a verdict. 10 15 20 25

The part of Judge Adams' charge summarizing the more important parts of the testimony and found Case pp. 122-125, is as follows:

"About thirty witnesses have been sworn in this case, most of whom on both sides did not see the accident. It is quite natural that the witnesses should fall into classes. There is a class of witnesses who were not on the ground at all; there is a class who heard the crash and obtained their first knowledge of the accident from that, and they tell what they found ex post facto—what was the situation in which the crash left it—and there are other witnesses who testify from knowledge of what occurred just before and at the time of the collision, and as the question of legal liability depends mainly on the situation that existed just before and at the time of the collision, rather than what occurred afterwards, their testimony is to be attended to with very great care. The testimony is competent, every bit of it on both sides, but it is not all equally valuable on the question of liability. Some of it does not bear on that question at all. 30 35 40

"With a view of presenting the testimony that seems to me to be instructive on this particular point, I have had written out by the stenographer and have before me the testimony of Harry Berkowitz, Edward Davis, a colored man; Edward Revis, a colored man; Henry Venable, a colored man, and Miss Margaret K. Cross, a group of witnesses who were favorably situated to have a knowledge of the situation just before the accident and who were situated in very much the same way, and while you, no doubt, remember the testimony pretty well, I shall take the liberty of reading extracts from their evidence. 45 50

"Harry Berkowitz, who was a business man doing business at 340 Main street, next to Mr. Burt's office, came up from the east and was waiting at the alley to cross the alley and go west. There were some other persons with him. He says: "I saw Burt coming out of the alley, from the inside, in an automobile, and we let him pass, and he passed us, and I started to go up. We were three together, three colored fellows and I. I was standing on the east side of the alley, on the south side of Main street. I waited until Mr. Burt passed in his automobile; after Mr. Burt passed me in his automobile I started to go on to my store, to the west. To do that I crossed the alley. The colored men went the same direction as I did. Question. Now, how far had you gone before your attention was attracted to anything? Answer. Well, I was only maybe a couple of steps over the alley. Question. Had you crossed over the alley? Answer. Crossed over the alley. Question. And how many steps beyond the alley had you gotten? Answer. Well, maybe a couple of feet or so. Then there was a hit from the trolley-car to the automobile, coming quick around, and I saw that a car was swinging around the automobile and pulling him maybe from 10 to 15 feet." That means swinging the automobile around. "That trolley-car came from the west side, going towards Newark. I did not observe it at all before it struck the automobile." So that you have the time that intervened between Mr. Burt's automobile clearing the alley so that these people could walk on and the time when he was struck as equivalent to the time it took them to walk across the alley and go about a couple of feet on the other side.

Edward Davis, a colored man, says: "I was about 5 feet away from the alley; I was on the side of the alley towards Newark; I was on Main street. I was coming from home and I was going west on the south side of Main street. There were three more colored fellows with me, one named Eddie Revis, one named Venable, and the other was Douglas Daniels, but he is dead. I saw Mr. Burt before the accident; he was sitting in his car, just coming out of the alley. He passed by me in the car as I stood there; he passed us by and waved his hand. I judge he was going about as fast as a man could walk. He was coming out of the alley towards Main street, and his car was facing right out Main street, towards the north of Main street. I waited there at the corner until after he had passed; I mean his automobile had passed. I waited until all the automobile had passed by, too. After the automobile had gone by we looked around and started up on the walk again, right up towards west. The other men started with me; we went all together. Question. How far did you go before anything happened? Answer. We hadn't stepped over the curb of Pierson's alley. Question. Just state what you saw. Answer. Well, as we was looking up the street, of course, the trolley was coming; the car was coming fast, and just as we stepped off the curb the crash came, and I turned right around and ran to the car, to Mr. Burt's automobile. When I first saw the trolley-car it wasn't quite to Canfield street, I should judge about 10 or 15 feet away from Canfield street, west of Canfield street. When I saw this trolley-car about 10 feet west of Canfield street Mr. Burt was just past the Main street curb, the front; his whole hind wheel wasn't past yet, though. The automobile had passed me when I saw the trolley-car up about 10 feet beyond Canfield street. I saw the trolley-car all the way from a point ten feet beyond Canfield street until it struck the automobile. I couldn't exactly say how

fast the trolley-car was going, but I know it was going fast. Question. Did you see Mr. Burttt do anything as the trolley-car approached? Answer. Yes, sir; it seemed to me he tried to turn the wheel back around to the curb, to the south side of Main street; it seemed before he could get it around the car had run into him. When the trolley-car struck him it just turned him around, threw him right around back to the curb, pushed him up. It threw the automobile facing Newark." 5

Edward Revis, another colored man, says: "At the time of the accident I was with a fellow by the name of Dug Daniels, who is dead, another fellow by the name of Venable, and Davis. I knew Mr. Burttt, and I saw him coming out of the alley. At that time I was standing on the corner of the alley there, in front of the picture store, I guess about 5 feet from the alley, with these other men. Mr. Burttt came out pretty slow, about as slow as a man walks, something like that. As he went out of the alley his car was pointed right towards the car track, east; he was turning towards east, towards Newark. After his car passed me by I started across the alley, walking, and these other men went along with me. There was nothing but the trolley-car that attracted my attention. When I first seen it, I guess, it was a little the other side of Mr. Burttt's place of business. We reached across the alley before the accident came. When the accident happened, I guess, I was just stepping up on the curb on the opposite side of the alley, the west side. When I first saw the trolley-car I was on the east side of the alley. When I first saw the trolley-car Mr. Burttt was just about half over the sidewalk, when I first seen it, and the trolley-car at that time was about in front of his place; it might have been a little further up; I couldn't say." 10 15 20 25

Henry Venable, another colored man, says: "I was with Revis and Davis walking on Main street at the time of this accident; we was going up Main street, west, towards West Orange. I know where the alley is near Willow Hall. I saw Mr. Burttt come out of the alley. I didn't know him. I hadn't crossed the alley at the time he came out. As he drove his car out of the alley onto Main street I was behind the other two gentlemen, and they stopped for him to come out of the alley, and so I stopped, too. As he drove his car out I guess I was about a yard, something like that, from the alley, and I was standing behind these other two men, close to them. After Mr. Burttt's car went past the crosswalk at the corner of the alley I passed on across the alley. Question. Did you cross over the whole width of the alley before anything happened? Answer. Yes, I crossed over the alley, and before anything happened I got a couple of feet, I guess, something like that, beyond the west side of the alley. When I got a couple of feet beyond the west side of the alley the automobile stopped; that is what attracted my attention. If I don't make no mistake, when it stopped, I think, the front wheels of the automobile was over the first rail of the car track. Then it stopped still." 30 35 40

Miss Margaret K. Cross was going the other way; she was on the west side of Pierson's alley. Miss Cross said: "I was waiting for Mr. Burttt's car to pass me. I did not notice these colored men waiting there. I was going east on Main street. After Mr. Burttt's car passed me I proceeded down Main street, easterly. Question. How far had you gotten going east on Main street before anything attracted your attention? Answer. It didn't seem to be only a few steps; just about crossed the alleyway. I know 45 50

where the picture store is. When something attracted my attention I was just about the center of the picture store, just about opposite the front door of the picture store. The noise of the collision then attracted my attention, and I looked around."

5 There was, of course, other testimony in the case, which it would be idle for me to dwell upon at large, but I have felt inclined to emphasize the testimony of this group of witnesses on this particular point so as to present clearly to the minds of the jury the picture that their united testimony, seems to produce, and the practical question that arises out of that testi-
 10 mony, which relates to the question of contributory negligence, is this: Did Mr. Burt act with reasonable care and prudence for his own safety in going on under those circumstances? Taking the situation just as it stood, taking the car as he saw it—for he must have seen it—taking his own position, taking the distance that separated his front wheels from the track,
 15 does it appear that he acted with the discretion, prudence and caution of a man of ordinary sagacity and care for his own safety? If so, then you acquit him of any negligence contributory to the accident. If not, his estate is not entitled to your verdict."

20

CONCLUSION.

From all of the above it is respectfully contended that the verdict of the jury in favor of the defendant should be set aside and a new trial ordered, Because the court erred as follows:

25 (1) In refusing to allow the defendant's witness Haberstick to be cross-examined as requested.

(2) In refusing to allow the plaintiff to offer rebuttal evidence through the witness Curtin.

(3) In charging the jury as above.

30 (4) In refusing to charge the jury as requested by the plaintiff.

HOWE & DAVIS,

Counsel for Plaintiff in Error.

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New Jersey Court of Errors and Appeals.

THOMAS J. MOLONEY, Adminis-
trator ad prosequendum of the
Estate of Aaron F. Burtt, de-
ceased,

Plaintiff in Error,

vs.

PUBLIC SERVICE RAILWAY COM-
PANY,

Defendant in Error.

On Appeal
from Essex
Circuit
Court.

Brief for Defendant in Error.

Mr. Burtt drove his automobile out of an alley called Pierson's Alley, Center Alley, or Brook Alley (P. 10), entering with his machine onto Main Street, which runs at right angles to the Alley, and which contains two trolley tracks, called the east-bound track and the west-bound track. There were buildings on both corners of the Alley and Main Street (P. 12). Mr. Burtt's machine was hit by an east-bound trolley car, and he received injuries from which he died. The Alley in question does not continue on the opposite side of Main Street, and therefore this was not a typical right-angled crossing accident, for Mr Burtt, after he emerged with his automobile from the Alley, was obliged, if he were to continue in motion, to turn and proceed in either one direction or the other on Main Street. A glance at the map, which is in evidence, will make this clear.

The first matter taken up in the plaintiff's brief is as to whether or not the Court erred in not permitting certain questions to be put to defendant's witness Haberstick, who was the motorman operating the car which was in collision with the automobile of the plaintiff's decedent. It does not appear by the printed book exactly what the question was which counsel for plaintiff wished to ask this witness, but it is evident from the plaintiff's brief that he wished to ask the witness whether or not he had stated to Officer Curtin something about where the automobile was when he first saw it, or something as to the speed of the trolley car.

While the ostensible object of the question may have been to lay a foundation for the purpose of allowing Officer Curtin to give evidence contradicting the motorman, and thus tend to impeach him, it is perfectly manifest that the real effect would be that the plaintiff would be enabled to introduce some testimony of Officer Curtin which would not only tend to impeach the motorman, but would also be in the nature of an admission of guilt on the motorman's part.

Of course, for whatever purpose the testimony of Officer Curtin was introduced, if believed by the jury, it would be strongly prejudicial to the defendant so far as concerns the negligence of the motorman.

The rule is well established that the unauthorized statements of a servant, other than such statements as may be a part of the *res gestae*, descriptive of the happening of an accident, are not binding on the master. *Hustis vs. Banister Co.*, 63 N. J. L. 465, Aff. 64 N. J. L. 279; 43 Atlantic 650, Aff. 48 Atlantic 230; *Blackman vs. W. J. & S. S. R. Co.*, 68 N. J. L. 1, 52 Atlantic 370;

Huebner vs. Erie R. R. Co., 68 N. J. L. 468, Aff. 69 N. J. L. 327, 55 Atlantic 273; *Rapp vs. Transit Company*, 72 Atlantic 38; *Baker vs. North Jersey St. Ry. Co.*, 77 N. J. L. 336, 72 Atlantic 434.

In the case of *Hustis vs. Banister Co.*, decided by this Court in 1899, plaintiff was allowed to prove by an admission of the defendant's president his knowledge of the condition of certain shafting previous to the accident which formed the basis of the suit. An objection was made, evidently on the ground that it did not appear at the time the testimony was offered that the president knew anything about the condition of the shafting. The president was afterwards called as a witness, however, and denied any knowledge of such condition of the shafting, so that, in the opinion of the Supreme Court "it was competent to contradict him by proof of his inconsistent admission," although it was done out of time. The Court further says, however, "Had the objection been put on the ground that such an admission was not evidential against the corporation, I should think it erroneous to have allowed it to be proved," and the Court of Errors, 64 N. J. L. 279, 48 Atlantic 230, in affirming this judgment says, "The only matter in the opinion of the Court below which calls for any remark here is the suggestion that although it might have been illegal for the plaintiff to put in evidence an admission made by the defendant's president as to the condition of things before the accident, which was the ground of the plaintiff's suit, yet the defendant had removed that illegality by subsequently calling the president as a witness to deny having made the admission and to testify to a different condition. The ground on which *this* Court holds that the defendant cannot avail

itself of the error, if any, committed in receiving the evidence, is that the *only* objection made to the admission of the evidence was that the president did not appear to have had knowledge of the prior conditions."

It will be noted that the Court of Errors in its opinion differs somewhat from the Supreme Court as to the testimony given by the president of the defendant in this Hustis case. In the Supreme Court's opinion it is stated that the president "denied any such knowledge," which, no doubt, refers to the knowledge contained in the alleged admission. But he testified to more than this, because in the Court of Errors opinion it appears that he testified also as to the real condition of the shafting, according to his knowledge, and denied having made the alleged admission. Notwithstanding this testimony on the part of the president of the defendant, the Court of Errors, in affirming the judgment of the Supreme Court, was particular not to adopt the reason of the Supreme Court, viz, that the president's statement was admissible as it contradicted his other testimony, and to point out that it affirmed the judgment because "the only objection made to the admission of the evidence was that the president did not appear to have had knowledge of the prior conditions" and when that objection was obviated and no further objection interposed the defendant was not at liberty subsequently to contend that the admission was illegal evidence against the defendant.

It would thus appear that the evidence of the president's admission should not have been received in evidence had it been objected to on the ground that his statement made after the accident was not competent in a suit against the com-

pany, despite the fact that he had afterwards testified that he had not made the admission and that the conditions prior to the accident were, in fact, different from those stated in the alleged admission. Evidently the question arose and was considered by our Court of Errors and Appeals as to whether or not an admission of an unauthorized agent prejudicial to the defendant could be used to impeach such agent when he was called as a witness, and apparently it was held by that court that impeachment by such testimony was not allowable. In other words, the rules regarding the impeachment of a witness could not be invoked where they came in conflict with the more important substantive rule of law that the unauthorized statement of an agent is not admissible where such statement is of a condition which would render the master liable. See the cases of *Loughlin vs. Brassil*, 79 N. E. 854 (N. Y.), and *Lane vs. Bryant*, 75 Mass. 245.

In the *Loughlin* case, above cited, decided by the Court of Errors of New York in 1907, it appeared that an employe of the defendant testified that after an accident a certain bolt and nut were in place. It was sought to impeach his testimony on this point by something he said after the accident indirectly contradicting the statement, but the Court held that such evidence "of a character to be very influential with the jury" was improper.

In the case of *Sperbeck vs. C. & S. Ry. Co.*, 64 Atlantic, 1012, cited in the plaintiff's brief as authority for the contention that the motorman's statement to Officer Curtin was admissible in evidence it does not appear that the objection to the introduction of the statement of the conductor of the defendant was objected to on the ground

that such statement was not admissible against the defendant, and, as pointed out in the *Hustis* case, unless the proper objection was made the Court would not disturb the judgment.

It may be said that the objection that such testimony of an employee is prejudicial to the defendant is without merit, inasmuch as the Court should charge the jury that the evidence thus admitted is not proof of the fact about which the statement is made, but is admitted merely for the purpose of impeaching the witness and if believed affects only the credibility of that particular witness, but we submit that if such testimony is believed by the jury the jury will take it as conclusive proof of such fact even though the defendant produced a dozen unimpeachable witnesses to the contrary and the trial judge charged in the strongest terms that the testimony could not be used for that purpose. Admitting that the jury would endeavor to obey the instruction of the Court and restrict their consideration of the testimony to the impeachment of the witness, they might believe they were doing so and still be involuntarily and unconsciously influenced against the defendant.

The appellant objects to the Court's refusal to charge certain requests. The objection to the refusal to charge Request No. 1 is abandoned by him.

It will be noted (p. 126, l. 10) that the Court charged the second request with a modification. The appellant had asked the Court to charge that if there was a certain failure of duty, "and such failure was the proximate cause of the accident, the defendant company was liable in damages to the plaintiff." The Court, having in view the fact that there can be more than one proximate

cause, that contributory negligence might be a concurring proximate cause, and would, if it existed, defeat the appellant's claim, added—"I say if the result was the only cause, because if it was not the only cause, the defendant company would not be liable in damages." If the appellant's request had read—and such failure was the *only* proximate cause—the Court's correction would not have been necessary. But the word "only" did not appear in the request.

The Court specifically denied the third request. The request read,—

"The deceased was justified in assuming that the motorman was aware that the defendant company had no paramount or exclusive right in the highway and that he must keep such a lookout of the tracks ahead of him and must keep his car under such control as to be able to reduce its speed and even bring it to a standstill, if necessary, to avoid collision with a person who, without negligence on his part, might happen to cross the tracks in front of the trolley car; and upon failure to perform such duty, if such failure was the proximate cause of the accident, the defendant company would be liable in damages."

In this request the words "the proximate cause" are justified in standing alone, because they are accompanied (as they were not in the second request) with a positive negation of contributory negligence, owing to the fact that the person assumed to be crossing the tracks is doing it "without negligence on his part." The request, down to the semi-colon, was an entirely proper request, except that it was unnecessary as being a needless amplification and detailing of what the Court had already charged in the second request. If, as the Court

charged in charging the second request, "The plaintiff had a right to rely upon the duty imposed by law upon—the motorman—to exercise care in operating the car in respect to its speed, or the control thereof, so as not to endanger the safety of other travellers upon the highway, whether on foot or in vehicles," it would naturally follow without being stated, that the deceased's justification in assuming what the motorman was aware of would extend to all those minutae incidental to the exercise of "care in operating the car in respect to its speed, or the control thereof, so as not to endanger the safety of other travellers," &c. It might be said that the third request contains an element absent in the second request in that it sets out that the deceased was justified in assuming that the motorman was aware that the defendant company had no paramount or exclusive right in the highway. But no such claim had been asserted by the defendant. And if the appellant wanted a charge on that topic, he should ask for it directly, and not as something which the deceased was justified in assuming that the motorman was aware of. And the Court had already charged, (p. 120, l. 49), "It is the duty of every person who drives a vehicle on the public highway to take reasonable care so to exercise his own legal right of travel as not to interfere with another person in the exercise of his legal right of travel in a thoroughfare *which is for the common use of both.* * * *

This general obligation furnishes the test of the different things which make up the duty of *a driver of a trolley car.*" And the Court had also said, (p. 121, l. 25), "In short, to sum it all up, did the motorman comply with the general rule which obliged him to use a reasonable care

to operate his car so as not to interfere with the right of travel of Mr. Burt on Main Street?"

It seems to us that all the essential elements in the third request to charge were otherwise sufficiently charged. Furthermore, as such third request is drawn, that part after the semi-colon can only logically mean that "The deceased was justified in assuming that the motorman was aware that * * * upon failure to perform such duty, if such failure was the proximate cause of the accident, the defendant company would be liable in damages." But this seems to be entirely inconsequential. If "the deceased was justified in assuming that the motorman was aware" as to what his duty was, there was no need of his further "assuming that the motorman was aware" as to the penalty that a breach of that duty might cause to fall upon the defendant company.

As to the fourth request to charge, it will be noted, (p. 126, l. 22) that the Court charged the second sentence thereof. The first sentence, which the Court refused to charge, begins as follows:—"The deceased might reasonably assume that the motorman would keep a lookout and would control and reduce the speed of the car * * * ." That part of it was not in substance essentially different from the second request as charged. But what is the rest of this first sentence of the fourth request? Principally a pointing out of the fact that certain conditions might arise when the right of the deceased to "reasonably assume" would cease. The appellant would not benefit by having that pointed out. Such a reference to possible conditions would have been for our benefit, and not for his. That part of the omitted sentence of the fourth request which reads: "and if there was no negligence on the part of the de-

ceased in going upon the tracks, the defendant would be liable," means that such liability would arise if, the deceased being free from negligence, the motorman did not "keep a lookout and * * * control and reduce the speed of the car * * *," which is essentially the same thing that was charged in the second request to charge as modified by the Court.

In *Consolidated Traction Co. vs. Chenoweth*, 29 Vroom, 416, the trial judge, despite a lucid and entirely correct judicial exposition of the law, was asked to charge three propositions relating to supposititious facts that might be found to exist. The appellate court said:

"From this narration it is apparent that the trial judge was asked to tell the jury what inferences were to be drawn from certain states of facts, if they found such facts to exist. No appeal was made to him to propound any legal principle; all that he was to do was to declare that, postulating a certain condition of affairs, it was demonstrated that the plaintiff's negligence was, in whole or in part, the cause of his own injury. But how could the judge assert that such was the necessary conclusion from the facts assumed? Simply because all men of common sense must draw such inference from such premises. This being so, there is, obviously, not the least ground for the theory that it was a judicial duty to express an opinion on the point, and this for the reason that the function in question was one that strictly belonged to the jury, and in the performance of which it is scarcely conceivable they could make a mistake. When the Court declared that "the measure of the duty of the plaintiff in crossing a public highway traversed by surface cars propelled by electricity, was to use such precaution

and care for his safety as a reasonably prudent man would use under the circumstances," it seems altogether unreasonable to suppose that the jury, finding either of these three supposititious cases to be founded in truth, would have concluded that the plaintiff was not liable to the charge of contributory negligence.

"The result is that it rested entirely in the discretion of the judge to state the legal rule as he did, succinctly but clearly, or to further elaborate it by applying it to any possible phases of the testimony."

In the present case, it may be said that the request to charge in fact did involve legal principles, rather than states of facts; but for practical purposes, and so far as concerned any proper requirement by the appellant, the only legal principles concerned were (1) the duty of care on the part of the motorman; (2) the right of the decedent to rely upon the performance of that duty; and (3) the fact that the rights of the two vehicles in the street were equal. We submit that these topics were sufficiently covered by the second request to charge, as it was charged after modification by the Court, and by those parts of the Court's charge (p. 120, l. 49, and p. 121, l. 25) hereinbefore quoted.

The discretion resting in the Court concerning requests to charge that are built around particular possible situations, is discussed in *Dobbs vs. West Jersey and S. R. Co.*, 49 Vroom, p. 679, and *Cottrell vs. Asbury Fountain*, 51 Vroom, p. 1.

One of the grounds of appeal (not numbered) is that the Court charged the jury as follows:

"Mr. Burtt's duty was to look. It is always a man's duty to look. If he did not look he was

negligent, and cannot recover. There is, strictly speaking, no evidence as to whether he looked or not. If he did look, he saw the car. Of course, he saw the car; he must have seen it."

The appellant's comment on the above charge is as to the propriety of the words, "It is always a man's duty to look," and to the fact that the charge inferentially informed the jury that a breach of such duty to look is negligence. Perhaps the words, "It is always a man's duty to look," were too broad. But the real test as to whether or not they were harmful depends upon whether or not it was *this decedent's duty*, under the circumstances of this particular case, to look. A court may give misinformation to a jury, but if it is not pertinent to the facts before the jury, and has no bearing on the decision of the case, it cannot justify reversal. The case cited by the appellant (*Consolidated Traction Co. vs. Haight*, 30 Vroom, 577) was one in which a trolley car was following a wagon, and struck it in the rear. The alleged error there under discussion when the point arose (p. 581) was the refusal "to charge that it was the duty of the driver to look behind from time to time, as well as to listen, so that if the car is near he may turn off and allow it to pass," &c. The Court referred to *Traction Co. vs. Scott*, 29 Vroom 682, where, "It was held that the rule requiring one to look and listen before crossing a steam railway, in order to be in the exercise of ordinary care, does not apply *with equal force* to one crossing the track of a street railway in a city street where the company and the public stand upon an equal footing in the use of the highway, and that the failure to do so was not necessarily, *under all circumstances*, negligence per se."

In *Dennis vs. North Jersey Street Railway Co.*, 35 Vroom, 439, the Court said, "The plaintiff was not bound as matter of law, to stop, look or listen for the approach of the car before going over the crossing. The precise question whether he was in the exercise of reasonable care was for the jury." The Court then discusses the refusal of the trial court to charge that "a person crossing a street in a wagon is bound to look for approaching vehicles and if neglecting so to do is hurt, he will be considered to have contributed to the injury by his negligence, and will be barred from recovery against the person who inflicted it." And the Court, we think properly, held the request to charge to be bad. The request was *general*. It was not confined to *the case before the Court*. The Court said, "The request would have been proper, perhaps, if it had contained the further provision that if the failure to look for the approaching car was the want of ordinary care under the circumstances, and that such neglect contributed to the accident, then no recovery could be had. The mere failure of the plaintiff in his wagon to look for the approaching car, is not negligence in him, *unless it contributed, in some degree, to his injury.*"

Unquestionably it could not be a negligence that would bar recovery, unless it so contributed. The syllabus of the case, however, is a little misleading where it says, "The question whether he was negligent or not must be submitted to the jury for them to determine as a question of fact." Obviously, there are circumstances (and we claim that they exist in the case at bar) under which the negligence of a failure to look, and the fact that such failure to look is a proximate cause of the accident, are for the Court, and not for the

jury. But the syllabus of a case, condensed and therefore often misleading, is not, we presume, *the law*. The case is affirmed by the Court of Errors and Appeals in 36 Vroom, page 312.

We get light upon the situation in the case of *Hackney vs. West Jersey and Seashore Ry. Co.*, 49 Vroom, 454, decided by our Court of Errors and Appeals in 1909, where we find the following:

“While this is a settled rule respecting the duties of a pedestrian crossing a trolley track, it has been said that it is not per se negligence for a driver of a vehicle not to look for a trolley car before crossing a street railway.

“In no case, however, has it been held that in no situation is it negligence per se for the driver of a vehicle to attempt to cross without looking. The rule is that the driver of a vehicle as well as a pedestrian, must take reasonable care to avoid a collision before attempting to cross a trolley track. While the facilities for observation may be greater in the case of a pedestrian than in the case of a driver of a vehicle, yet the rule of a reasonable care applies equally to both,

“When the failure to look in the driver of a vehicle is manifestly negligence, that driver is guilty of contributory negligence. *McHugh vs. North Jersey Street Railway Co.*, 46 Atl. Rep. 782; *Hannon vs. North Jersey Street Railway Co.*, 36 Vroom 547.

“In *Denis vs. Lewiston, B. and B. Street Railway Co.*, 104 Me. 39, a wagon driven by the plaintiff was struck by a trolley car. The Supreme Court of Maine said that while it was true that the rule of looking and listening had been held in that court not to be applicable to street railways, yet the driver is bound to exercise all reasonable care, and in exercising this care, he may be re-

quired in many situations to look and listen. It was held in that case that the plaintiff, in not looking, was guilty of contributory negligence, and a new trial was directed. * * *

“In the present case the plaintiff, by the adjustment of his load and of his seat, had so placed himself that he could not look, and so did not look; and he took no pains to change his position and relieve himself from his condition of blindness so that observation would be effectual before driving across the track. In doing this he was guilty of manifest negligence which contributed to the accident.”

So there are evidently cases in which the question of the duty to look, the negligence of a failure to look, and the question as to whether or not such failure is a “proximate cause,” are for the Court, and not for the jury. In the present case, the only point in which the instruction in question was general, and not limited to the particular case, was the assertion, “It is always a man’s duty to look,” and as to that, as we have pointed out, insofar as it was not applicable to the circumstances of this particular case, it was mere surplusage. The only application of the expression with which we are concerned, is contained in the Court’s juxtaposed expression, “Mr. Burt’s duty was to look.” The appellant has, in his brief, made no attempt to argue the question as to whether it was or not. As to the words, “If he did not look, he was negligent and cannot recover,” the appellant, in discussing the alleged objectionable charge, merely points out their alleged objectionable character as a general proposition, saying, “The above charge informed the jury, that at all times and under all circumstances, * * * failure to

look is negligence per se." A further part of the language excepted to is, "There is, strictly speaking, no evidence as to whether he looked or not." This language did not quite accord with the fact, because one witness (p. 109, l. 20) said, "Q. Did you notice which way he was looking, if any? A. He did not look in any ways, no." Of course, that testimony was of little value, for it is difficult for a bystander to know just what a man is looking at. However, if these words of the charge were a departure from the fact, the appellant was not injured thereby, for the testimony overlooked was more inclined to injure the appellant than to help him. At any rate, the appellant makes no argument on the propriety of these words of the charge.

A further part of the language objected to is, "If he did look, he saw the car. Of course he saw the car; he must have seen it." The appellant does not argue as to the propriety of these words. At any rate they were a comment on the evidence which we deem justifiable; and they expressed what was doubtless a fact, for it is difficult to understand how, if he looked after reaching a point where his vision was not obstructed by buildings, he could avoid seeing the trolley car.

Respectfully submitted,

LEFFERTS S. HOFFMAN,
LEONARD J. TYNAN,
HOWARD MACSHERRY,
*Attorneys of and of Counsel
with Appellee.*