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**New Jersey Supreme Court**

(Filed November 8, 1926.)

HUDSON CIRCUIT.

ROSE TOTA, Administratrix ad  
prosequendum of the Estate of  
Constantino Tota, deceased,  
*Plaintiff,*

vs.

THE PENNSYLVANIA RAILROAD  
COMPANY, THE NEW YORK &  
LONG BRANCH RAILROAD COM-  
PANY and THE CENTRAL RAIL-  
ROAD COMPANY OF NEW JERSEY,  
corporations,  
*Defendants.*

10  
Action  
at Law.

20  
Notice of  
Appeal.

To JOHN S. APPLGATE & SON,  
Attorneys for Defendants:

Gentlemen:

PLEASE TAKE NOTICE, that the plaintiff 30  
appeals to the New Jersey Court of Errors and  
Appeals from the whole of the judgment entered  
in this cause.

Dated, Nov. 1, 1926.

Yours, etc.,

ALEX. SIMPSON, 40  
Attorney for Plaintiff.

Grounds of Appeal.

(Filed, Dec. 31, 1926.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

10 ROSE TOTA, Administratrix ad prosequendum of the Estate of Constantino Tota, deceased, Plaintiff-Appellant,

vs.

20 THE PENNSYLVANIA RAILROAD COMPANY, THE NEW YORK & LONG BRANCH RAILROAD COMPANY and THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, corporations, Defendants-Respondents.

Action at Law.

Appeal from New Jersey Supreme Court.

Grounds of Appeal.

The appellant states the following grounds of appeal:

30 1. Because the trial Court erroneously directed a verdict in favor of the New York and Long Branch Railroad Company because there was no evidence to go to the jury on the question of an extra hazardous crossing.

2. Because the trial Court erroneously charged the jury as follows:

40 "Of course, gentlemen of the jury, if after considering this case you find that the rail-

Grounds of Appeal.

road company was not negligent, that they did all the law required them to do,—you have nothing to do with signal bell, nothing to do about a gateman or flagman—if they gave the statutory signals, then there can be no recovery. If they did not, and the man himself was not guilty of contributory negligence, then there can be a recovery and you should fix the damages in the way and manner I have instructed you." 10

3. Because the charge of the trial Court limited any right of recovery to the plaintiff for violation of the statute regarding signals and excluded from the consideration of the jury the question of whether or not by reason of extra hazardous crossing there should not have been some precautions taken other than the statutory signal. 20

ALEX. SIMPSON, Attorney for Plaintiff-Appellant.

30

40

**Judgment of Non-Suit and Verdict for Defendants.**

(Judgment, May 17, 1926.)

**NEW JERSEY SUPREME COURT.**

No Costs.

10 THE PENNSYLVANIA RAILROAD  
COMPANY, THE NEW YORK &  
LONG BRANCH RAILROAD COM-  
PANY and THE CENTRAL RAIL-  
ROAD COMPANY OF NEW JERSEY,  
corporations,

*Defendants,*

ads.

20 ROSE TOTA, Administratrix ad  
prosequendum of the Estate of  
Constantino Tota, deceased,  
*Plaintiff.*

Action  
at Law.

On Postea.

Judgment of  
Non-suit and  
Verdict for  
Defendants.

It is ordered that judgment of non-suit be and hereby is entered in favor of defendant Central Railroad Company of New Jersey, and against the plaintiff, and on verdict in favor of defendants Long Branch Railroad Company and The Pennsylvania Railroad Company, and against the plaintiff, without costs.

30

Entered, May 17, 1926.

On Motion of  
JOHN S. APPLGATE & SON,  
Attorneys.

A true copy.

40 EDWARD J. KELLEHER,  
Clerk.

**Summons.**

The State of New Jersey to The Pennsylvania Railroad Company, the New York & Long Branch Railroad Company and The Central Railroad Company of New Jersey, corporations:

10

(Seal)

YOU ARE SUMMONED to answer the annexed complaint of Rose Tota, administratrix ad prosequendum of the Estate of Constantino Tota, deceased, in an action at law in the Supreme Court. And take notice, that unless you file your answer to said complaint with the Clerk of the Supreme Court, at Trenton, within 20 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.

20

WITNESS, William S. Gummere, Chief Justice of the Supreme Court, at Trenton, this 18th day of January, 1926.

EDWARD J. KELLEHER,  
Clerk.

ALEX. SIMPSON,  
Attorney.

30

40

Complaint.

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

10 ROSE TOTA, Administratrix ad  
prosequendum of the Estate of  
Constantino Tota, deceased,  
*Plaintiff,*

vs.

20 THE PENNSYLVANIA RAILROAD  
COMPANY, THE NEW YORK &  
LONG BRANCH RAILROAD COM-  
PANY and THE CENTRAL RAIL-  
ROAD COMPANY OF NEW JERSEY,  
corporations,  
*Defendants.*

Action  
at Law.

Complaint.

Plaintiff residing at New York City, in the State  
of New York, says that:

30 1. Plaintiff is administratrix ad prosequendum  
of the Estate of Constantino Tota, deceased, and  
brings into court letters of administration ad pro-  
sequendum granted to her upon the said estate  
by the Surrogate of the County of Monmouth, on  
the 17th day of December, 1925.

40 2. Defendants on the 12th day of March, 1925,  
were engaged in the operation of steam railroads  
at Hazlet, in the County of Monmouth, and main-  
tained a public crossing of said railroads over a  
public highway known as Hazlet Avenue, at Haz-  
let, aforesaid.

Complaint.

3. Intestate of the plaintiff, on the 12th day of  
March, 1925, was killed through the negligence of  
the defendants.

4. The negligence of the defendants consisted  
in this: Defendants did not use reasonable care 10  
to maintain and operate trains over said public  
crossing in a proper and safe manner, but on the  
contrary failed to use reasonable care to give sig-  
nals by ringing a bell or blowing a whistle within  
300 yards of said public crossing, as required by  
statute; and did not use reasonable care to in-  
stall automatic signals for the purpose of ringing  
bell or giving signal before locomotives ap-  
proached said crossing, and to keep and maintain 20  
same in proper condition; and did not use reason-  
able care to install safety gates or to have a flag-  
man or watchman at said public crossing; and did  
not use reasonable care in the operation of said  
trains, but, on the contrary, propelled two trains  
over said crossing, going in opposite directions,  
without any warning thereof, and maintained said  
crossing in such a manner with permanent ob-  
structions so that the vision of those approaching 30  
the crossing was obstructed until they were prac-  
tically upon said crossing, and by reason of such  
negligence, plaintiff's intestate was struck and he  
was killed on the 12th day of March, 1925.

5. Intestate of plaintiff was at all times in the  
exercise of due care for his safety.

6. Intestate of plaintiff left him surviving, his  
widow, the plaintiff herein, a son, age 4 years, and  
a daughter, age 8 years, who have suffered pec- 40  
uniary injury by reason of his death.

*Answer.*

7. The within action is commenced within twenty-four calendar months after date of death of plaintiff's intestate.

Plaintiff demands \$75,000.

10

ALEX. SIMPSON,  
Attorney for Plaintiff.

*Answer.*

NEW JERSEY SUPREME COURT,

20

HUDSON COUNTY.

ROSE TOTA, Administratrix ad  
prosequendum of the Estate of  
Constantino Tota, deceased,  
*Plaintiff,*

vs.

30

THE PENNSYLVANIA RAILROAD  
COMPANY, THE NEW YORK &  
LONG BRANCH RAILROAD COM-  
PANY and THE CENTRAL RAIL-  
ROAD COMPANY OF NEW JERSEY,  
corporations,

*Defendants.*

Action  
at Law.

Answer.

40

Defendant, The Pennsylvania Railroad Com-  
pany, body corporate, answering the complaint  
filed in the above entitled suit, says:

*Answer.*

1. Objection will be made before or at the time  
the above action is moved for trial that it ap-  
pears in the complaint that the plaintiff is a non-  
resident; that letters of administration and pro-  
sequendum were issued to said plaintiff by the  
Surrogate of the County of Monmouth, notwith-  
standing which the venue in this action is laid  
in Hudson County, whereas it should have been laid  
in Monmouth County, and on said grounds motion  
will be made to dismiss said suit for want of jur-  
isdiction, or that the venue be changed to Mon-  
mouth County.

10

2. It denies the truth of the matters contained  
in the complaint.

20

FIRST DEFENSE.

1. The accident complained of was the result of  
contributory negligence on the part of plaintiff's  
decedent and occurred without any fault on the  
part of this defendant.

JOHN S. APPLGATE & SON,  
Attorneys of Defendant,  
The Pennsylvania Railroad Company.

30

40

Answer.

NEW JERSEY SUPREME COURT,  
HUDSON COUNTY.

10 ROSE TOTA, Administratrix ad  
prosequendum of the Estate of  
Constantino Tota, deceased,  
*Plaintiff,*

vs.

20 THE PENNSYLVANIA RAILROAD  
COMPANY, THE NEW YORK &  
LONG BRANCH RAILROAD COM-  
PANY and THE CENTRAL RAIL-  
ROAD COMPANY OF NEW JERSEY,  
corporations,  
*Defendants.*

Action  
at Law.

Answer.

Defendant, The Central Railroad Company of  
New Jersey, body corporate, answering the com-  
plaint filed in the above entitled suit, says:

30 1. Objection will be made before or at the time  
the above action is moved for trial that it appears  
in the complaint that the plaintiff is a non-resi-  
dent; that letters of administration ad prosequen-  
dum were issued to said plaintiff by the Surrogate  
of the County of Monmouth, notwithstanding  
which the venue in this action is laid in Hudson  
County, whereas it should have been laid in Mon-  
mouth County, and on said grounds motion will  
40 be made to dismiss said suit for want of jurisdic-

Answer.

tion, or that the venue be changed to Monmouth  
County.

2. It denies the truth of the matters contained  
in the complaint.

FIRST DEFENSE.

1. The accident complained of was the result of  
contributory negligence on the part of plaintiff's  
decedent and occurred without any fault on the  
part of this defendant.

JOHN S. APPLGATE & SON,  
Attorneys of Defendant,  
The Central Railroad Company  
of New Jersey.

10

20

30

40

Answer.

NEW JERSEY SUPREME COURT,  
HUDSON COUNTY.

10 ROSE TOTA, Administratrix ad  
prosequendum of the Estate of  
Constantino Tota, deceased,  
*Plaintiff,*

vs.

20 THE PENNSYLVANIA RAILROAD  
COMPANY, THE NEW YORK &  
LONG BRANCH RAILROAD COM-  
PANY and THE CENTRAL RAIL-  
ROAD COMPANY OF NEW JERSEY,  
corporations,  
*Defendants.*

Action  
at Law.

Answer.

Defendant, The New York & Long Branch Rail-  
road Company, body corporate, answering the  
complaint filed in the above entitled suit, says:

30 1. Objection will be made before or at the time  
the above action is moved for trial that it appears  
in the complaint that the plaintiff is a non-resi-  
dent; that letters of administration ad prosequen-  
dum were issued to said plaintiff by the Surrogate  
of the County of Monmouth, notwithstanding  
which the venue in this action is laid in Hudson  
County, whereas it should have been laid in Mon-  
mouth County; and, further, for the reason that  
40 the defendant's principal place of business and  
the location of its duly authorized agent upon

Answer.

whom service of suit papers may be served is at  
Long Branch, in the County of Monmouth and  
State of New Jersey, at which place this defend-  
ant was served in this action; and, further, for  
the reason that said defendant was not served in  
this suit in the County of Hudson where the venue  
of said suit is laid; and on said grounds motion  
will be made to dismiss said suit for want of juris-  
diction, or that the venue be changed to Mon-  
mouth County. 10

2. It denies the truth of the matters contained  
in the complaint.

FIRST DEFENSE. 20

1. The accident complained of was the result of  
contributory negligence on the part of plaintiff's  
decedent and occurred without any fault on the  
part of this defendant.

JOHN S. APPLGATE & SON,  
Attorneys of Defendant,  
The New York & Long Branch  
Railroad Company. 30

## Case.

## NEW JERSEY SUPREME COURT.

Before—HON. WILLARD W. CUTLER, J., and a jury.

10 ROSE TOTA, Administratrix ad  
prosequendum of the Estate of  
Constantina Tota,  
*Plaintiff,*

vs.

20 THE PENNSYLVANIA RAILROAD  
COMPANY, THE NEW YORK &  
LONG BRANCH RAILROAD COM-  
PANY AND THE CENTRAL RAIL-  
ROAD COMPANY OF NEW JERSEY,  
*Defendants.*

Jersey City, N. J., May 7, 1926.

## APPEARANCES:

30 ALEXANDER SIMPSON, Esq., for the plaintiff.

JOHN J. APPLGATE, Esq., for the defendant.

Sen. Simpson: I offer in evidence letters of ad-  
ministration issued to Rose Tota, dated the 17th  
day of December, 1925, by the Surrogate of the  
County of Monmouth.

(Marked Exhibit P-1.)

40 Sen. Simpson: I understand it is admitted that  
the trains which were involved in this accident

*Frank Di Palma—Direct Examination.*

were operated by the Pennsylvania and the right  
of way was the right of way of the New York and  
Long Branch Railroad.

Mr. Applegate: That is admitted.

FRANK DI PALMA, sworn.  
(Examined through an interpreter.)

Direct Examination by Sen. Simpson:

Q. Where do you live? A. Haslett, New Jersey.

Q. How long have you lived there? A. 11 years.

Q. On the 12th of March, 1924, were you at  
home? A. I was in my barn. 20

Q. Around six o'clock at night were you in your  
barn? A. Yes, sir.

Q. About how far in your barn from the Haslett  
railroad crossing? A. 300 feet.

Q. How near is it to the railroad tracks? A.  
About 50 feet.

Q. Now, on the 12th of March, when you were  
in your barn, about six o'clock, as you have de-  
scribed the location, was your attention attracted  
by anything at the crossing? A. I heard a great  
noise made by the train there and I looked out. 30

Q. What did you see when you looked out? A.  
I saw that the train had hit the truck and the  
truck turned around on the crossing.

Q. Which way was the train going that you saw  
hit the truck? A. From New York.

Q. From New York or to New York? A. The  
train was coming from New York and going to  
Long Branch. 40

*Frank Di Palma—Direct Examination.*

Q. Up to the time you heard the crash had you heard any whistle or bell from the train? A. No.

Q. After you saw that automobile hit and turned around, did you see anything else happen to it?

A. Then I left my barn and I went to the place where this thing happened. 10

Q. When you went toward the place, as you were going toward the place, did you see anything else happen? A. Then I saw a train came from Long Branch, which was the 6:12 train going to New York, and 200 feet before reaching the crossing it hit the truck also.

Q. When the train which was going toward Long Branch hit the truck, what happened to the truck? A. It turned on the crossing. 20

Q. Now, up to that time had you heard any whistle or bell from the train which hit the truck the second time? A. No.

Q. How long was it between the time you heard the first crash and the time you saw the second train hit the truck? A. About two minutes or two minutes and a half.

Q. And what position was the truck in after the first train hit it and before the second train? A. I saw the whole business went up in the air. 30

Q. Did it come down before the second train hit it or was it up in the air when the second train hit it? A. Yes.

Q. Where was it when the second train hit it? A. The body of the truck was not there, but the man was in the car.

Q. Then what happened to the car after they knocked the body of it off? A. The first train sent the man who was on the truck about 25 feet away. 40

Q. So that there was no man on the truck when

*Frank Di Palma—Direct Examination.*

the second train hit it, was there? A. There was another man there.

Q. There was a man in it? A. Yes, sir.

Q. Was the man in it when the second train hit it? A. The man from New York.

Q. Do you know the man Jenowicz who was in the truck—did he live in your town? A. I seen him on the embankment, 25 feet away. 10

Q. Did he live in your town? A. Yes, sir.

Q. When you found him you knew him; you knew who he was, did you? A. They were placing some cloth over his face, and I told them to uncover it.

Q. When you found him did you know who he was? A. Then I could tell who it was. 20

Q. Who was he? A. Jenowicz.

Q. Did he live in your town? A. The next village.

Q. You knew him, did you? A. Yes, for a short time I knew him. He was a farmer.

Q. Do you know whose truck that was, whether it was Jenowicz's or not? A. Everybody said it was his truck.

Mr. Applegate: I object. 30

The Court: Strike it out.

Q. Did you know whether it was Jenowicz's truck or not? A. No, I am not sure.

Q. Well, when you got to the crossing, what condition did you find? A. They were covering him up.

Q. Was Jenowicz still alive? A. Yes.

Q. And Tota was dead? A. He was in pieces. 40

Q. And what did they do, take away the pieces

*Frank Di Palma—Direct Examination.*

in a truck? A. Yes; taken to the Long Branch Hospital.

Q. Jenowicz was taken? A. Yes, sir.

Q. And where was the truck? A. It was in front of the head of the engine.

10 Q. How long had you lived in this place up to the time of the accident? A. Seven years.

Sen. Simpson: Cross examine.

Cross Examination by Mr. Applegate:

Q. In which direction was the truck traveling as it approached the railroad crossing? A. It was coming from the main road and was going toward the station.

20 Q. Going east or west? A. I don't know what east or west is.

Q. Was he going away from your barn or toward it? A. He was coming on the road, going toward the station.

Q. Was he going away from your barn or toward it? A. I could not say that because the barn is here and the road is that way.

30 Q. Is your barn on the same side of the track that the station is on, or on the opposite side? A. On the opposite side.

Mr. Applegate: There is no question that the station is on the west side?

Sen. Simpson: And he is on the east side.

Mr. Applegate: He must be; he said he was on the opposite side.

Sen. Simpson: All right.

*Frank Di Palma—Re-direct Examination.*

Q. Was the automobile going toward the station at the time of the accident? A. Yes, sir.

Mr. Applegate: Then the automobile was going from east to west.

Q. How far is your barn from the railroad crossing? A. 300 feet.

Q. Isn't it more than that? A. It cannot be.

Q. How far is your barn south of the crossing? A. 300 feet I told you before.

Q. How far is the barn from the nearest railroad track? A. About 50 feet.

Q. And is the barn toward the Long Branch side of the crossing or toward the New York side of the crossing? A. My farm is alongside of the tracks.

Q. I am speaking of the barn; is the barn located on the north side of the crossing or south of the crossing? A. One door is by the tracks; another door is by the yard.

Q. What were you doing in the barn at this time? A. I was painting the tools for the farm.

Mr. Applegate: That is all.

Re-direct Examination by Sen. Simpson:

Q. I show you a photograph; do you see your barn in that picture? A. I could not see very good; it is too dark to see.

Q. Can you tell what that structure is on that picture? A. This little house belonged to a tomato factory.

*Augustine Vigna—Direct Examination.*

AUGUSTINE VIGNA, sworn.  
(Through an interpreter.)

Direct Examination by Sen. Simpson:

10 Q. Where do you live? A. At the present time I am living here.

Q. Where did you live on the 12th of March, 1925? A. Haslett, New Jersey.

Q. Did you know the witness who just left the stand; did you know him the 12th of March? A. Yes, sir.

Q. Were you on your way to his house to get some milk? A. Yes.

20 Q. Did anything attract your attention to the crossing this night? A. No.

Q. Well, what if anything did you see of the accident? A. I saw the express when it hit the truck.

Q. Which way was the express going when it hit the truck? A. Long Branch.

Q. What did it do to the truck when it hit it? A. It turned the truck on the tracks going to New York.

30 Q. You did not see it hit by anything then except by the express, is that it? A. Yes, sir.

Q. You did not see it hit by any other train than the express train? A. The second train only.

Q. You did not see the first train that hit it? A. It was hit by the express.

Q. But you did not see it before it was hit by the express? A. I saw the truck, yes.

40 Q. What was it brought your attention to the truck? A. The truck passed in front of me and was going toward the station.

*Augustine Vigna—Direct Examination.*

Q. Which side of the track were you on? On the same side of the track as the barn of the first witness or on the other side? A. I was on the side of the barn.

Q. And how far from the crossing were you when the truck passed you? A. About 50 feet. 10

Q. And did you know the people in the truck when it passed you? A. No.

Q. Did you see who was driving the truck? A. I saw both men, but I do not know who was conducting the truck.

Q. Which side of the truck was the driver on, the left side or the right side? A. He was on the left-hand side.

Q. Did you stand to let the truck pass you? A. 20 Yes, sir.

Q. And how far were you then away from the station when you stopped to let the truck pass you? A. I did not measure the distance, but about 50 feet.

Q. Fifty feet from the station or 50 feet from the crossing? A. From where I was to the crossing.

Q. Did you watch the truck as it passed you until it got on the crossing? A. No. 30

Q. Where was the truck the next time you saw it after it passed you? A. When the train hit him.

Q. What position was he on the crossing when the train hit him? A. He was going toward the station.

Q. He was then on the crossing? A. Yes.

Q. And pointing toward the station? A. Yes, 40 sir.

*Augustine Vigna—Direct Examination.*

Q. And in which direction was the train coming from that hit him? Coming from New York or going to New York? A. It was coming from New York.

10 Q. And when it struck the truck how far over the crossing was the truck? A. It was on the crossing at the time it turned over on another track.

Q. Well, was it the crash of the train striking it that attracted your attention or were you looking at it just before the train hit it? A. It was the crash which attracted my attention.

20 Q. That is, you remember him passing you, then you heard a crash and you looked around, is that it? A. Yes, sir.

Q. When you looked around after you heard the crash, what did you see? A. When I went near there I went there in order to find out what was the trouble and I saw one man was off the track and near the bank and the other one was still on the truck.

Q. And the man that was on the truck, was he living or dead or what? A. I didn't look very close.

30 Q. Was he living or dead? A. I could not say whether he was dead or living.

Q. You did not stay around to see if they took him out of the truck? A. No, I did not.

40 Q. Drawing your attention to the question I asked you before, when you heard the crash and looked toward the crossing, what was the first thing you saw? A. I saw one man who was on the bank at the side of the track and one was on the truck.

*Augustine Vigna—Direct Examination.*

Q. Where was the truck when you turned, after the crash? A. Was on the tracks.

Q. Which track was it on? A. The track from New York.

Q. How far did the train go after it hit the truck? A. It stopped right away; the last car was very near the crossing. 10

Q. With the last car near the crossing on the Long Branch side? A. Yes, sir.

Q. At any time before you heard the crash had you heard any whistle from the train coming from Long Branch? A. No.

Q. And when you saw this accident happen and you got up there, did you wait until these men were taken away or did you go right away? A. I went home and called out my brother. 20

Q. And as you approached the crossing, drawing your attention to the Long Branch side, did you hear any engine bell at all on the Long Branch side? A. There was no train coming from Long Branch, was going toward Long Branch.

Q. I am talking about the one going to New York. A. Nothing at all.

Q. How long had you lived around that crossing at the time of the accident? A. About two years. 30

Q. About what time of day was this accident? A. About 6:10 or 6:12.

Q. Was it dark or daylight then? A. It was clear; it was not exactly clear, but it was not dark.

Q. Was it daylight, full day, or night? A. Yes, was about that.

Q. About what? A. Neither dark nor light. 40

*Augustine Vigna—Direct Examination.*

Q. Was it daylight or black night or was it daytime? A. The sun was down, but you could see.

10 Q. All right. Now, as to the direction that this truck was going as you walked that way, how near did you have to get to the crossing before you could see up and down?

Mr. Applegate: Objected to. This witness is not qualified to answer a question of that kind.

Sen. Simpson: I withdraw the question.

20 Q. Had you known this crossing for two years, and had you crossed it for two years? A. Every day.

Q. And in the direction the truck was going how close would you have to get to the first track before you could see up and down either way on the track?

Mr. Applegate: Objected to.

The Court: He may tell us if he knows.

30 Mr. Applegate: There is no evidence here that he made any observation or measurement.

The Court: We do not know yet.

A. From one side you could see about ten or fifteen feet away and the other side you would have to go very close to the track to look and see things.

40 Q. I am drawing your attention to the fact that these men were approaching the track from the side you were on. A. In order to see up and down you should go very close.

*Augustine Vigna—Direct Examination.*

Q. Well, what do you mean by very close? A. Near the tracks.

Sen. Simpson: I offer these photographs in evidence.

Mr. Applegate: When were they taken? 10

Sen. Simpson: April the 23rd of this year.

The Court: If there is no objection, they may be received.

(Photographs marked Exhibits P-2, P-3 and P-4.)

Q. I show you Exhibit P-2; is this the side of the crossing you were on when you saw this accident? A. I was on this side here.

Q. I am talking about the crossing; which side were you on? A. On the other side. 20

Q. That is, you were on the east side or the west side? A. Near the small house.

Q. Near this small house? A. Yes, sir.

Q. I show you Exhibit P-4; were you on the same side as those buildings or the other side? A. I was right here.

Q. Were you on the same side of the crossing as the buildings? A. Yes, sir.

Q. What is the building, a tomato factory or what? A. A tomato factory. 30

Q. You were on the same side as the tomato factory? A. Yes.

Sen. Simpson: Cross examine.

Cross Examination by Mr. Applegate:

Q. The automobile was going from east to west, was it? A. Was going from east to west. 40

*Augustine Vigna—Cross Examination.*

Q. You heard the train whistle, didn't you? A. I heard some whistle when I came out from the house.

Q. And which train was that that you heard whistle? A. That I could not tell you. I don't know. 10

Q. Did you sign the name which appears at the bottom of this page I am showing you? A. Yes.

Q. That is your signature? A. Yes.

Q. Where were you when you heard the whistle which you spoke of? A. I was home; when I came out from the house.

Q. How long after you came out of the house did you see the automobile? A. One or two minutes. 20

Q. And how long after you came out of the house did the accident happen? A. It was within two minutes.

Q. Did you see the first train that struck the automobile? A. I saw it when it hit the truck.

Q. You saw the train hit the truck? A. Yes, sir.

Q. That is the first train that hit it? A. The express.

Q. Is the express the train that was going to Long Branch? A. Yes, sir. 30

Q. And that is the southbound train, isn't it? A. Was going to Long Branch.

Q. Did you see the second train that struck the truck? A. Yes.

Q. So that you saw both trains, didn't you? A. Yes, sir.

Q. And did you hear the whistle of the express train as it approached the crossing just before 40

*Augustine Vigna—Cross Examination.*

the accident? A. No, I heard the whistle only when I come out from the house.

Mr. Applegate: I would like to have this marked D.

(Statement marked Exhibit D-1 for Identification.) 10

Q. That you say is your signature? A. Yes, sir.

Q. Now, is this your signature? A. Yes, sir.

Q. You signed your name there, didn't you? A. Yes, sir.

Mr. Applegate: I would like to have this statement marked D.

(Marked Exhibit D-2 for Identification.) 20

Q. And did you read it? A. Yes, I read it after it was written.

Q. Did you read it before you signed it? A. Yes, sir.

Q. And you read it over to me standing out in the corridor today, didn't you? A. No, I did not.

Q. Do you mean to say that you and I were not standing out in the corridor about noon today? A. Only a small fraction— 30

Sen. Simpson: I object to that as not proper cross examination. That he read it over at the time he signed it, of course I do not object to, but that he and counsel for the defense were having a little afternoon tete-a-tete in the corridor and read it over together does not seem to me to be proper cross examination. I do not dispute his 40

*Augustine Vigna—Cross Examination.*

signature; he does not deny that he read it over, and the fact that counsel may have had him in a corner out in the corridor and read it over seems to me is not proper cross examination.

10 The Court: I don't think it is competent unless some question arises.

Q. Did you hear the noise of the train before you saw the train hit the truck? A. I heard the train coming.

Q. How long before you saw the train hit the truck did you hear it coming? A. About a minute or two.

20 Q. Where was the truck when you heard the noise of the train coming? A. It was going on the road.

Q. And how far away was the truck from the crossing when you heard the noise of the train coming? A. I did not measure the distance, but I can say it was from 50 to 100 feet.

Q. And how far were you at that time from your house? A. About 50 feet.

30 Q. Had the automobile passed you at that time? A. Yes, sir.

Q. Did you see the train at that time? A. I did not see the train before it hit the truck; the factory was in front of me.

Q. And you did not see the train before you heard the train, is that it? A. Yes, the noise.

Q. And are you pretty sure you did not hear anything like a whistle from this train? A. What train?

40 Q. The express train. A. Only when I came from the house.

*Augustine Vigna—Cross Examination.*

Q. And that was the express train that you have been speaking about, was it? A. I think so.

Q. How long after it came out of the house did you see the truck? A. After a few paces.

Q. What do you mean by a pace, three feet? A. About thirty or forty feet. 10

Q. So that you were out of the house when you heard the whistle of the train, weren't you? A. While I was coming out the door.

Q. And what was it—the automobile was in sight at that time, wasn't it? A. No, I could not say.

Q. You could not see the truck until you got a few paces from your door, is that it? A. Maybe the truck was 100 feet away from me. 20

Q. Past you toward the crossing, or on the other side? A. Yes, sir.

Q. Did you see the train coming from the south? A. You mean the local from Long Branch?

Q. Yes. A. No.

Q. You did not see that at all? A. No.

Q. Then you did not see it strike the automobile, did you? A. When I went near the tracks, yes.

30 Q. Then you did see that train, the local train, did you? A. I saw it when I went near the tracks, yes.

Q. Which train did you see first, the express or the local? A. I saw both trains.

Q. Which one did you first? A. The express.

Q. Where was the local when you saw the express? A. It was below Di Palma's house.

Q. By Di Palma, do you mean the man who testified a few minutes ago? A. Yes. 40

Q. And were the two trains on the crossing at

*Augustine Vigna—Re-direct Examination.*

the same time? A. No, there was a slight difference between the two.

Q. Which train got there first? A. The express train.

10 Q. And after the express train passed the crossing then did the local train come along and strike the truck? A. The same time.

Q. That was the second strike you mean, is that it? A. Yes.

Mr. Applegate: That is all.

Re-direct Examination by Sen. Simpson:

20 Q. This house you lived in, how far was it from the second crossing? A. The house is near the battery.

Q. How far is it from the crossing? A. About 20 or 25 feet.

Q. As you came out of the house and were coming out of the door you heard the whistle, is that it? A. Yes.

Q. And you do not know where it came from?

30 Mr. Applegate: Please don't lead.

A. No.

Q. Now, at the time you stood in the doorway of the house, as I understand it, you told counsel for the defense up to this time that you stood in the doorway you had not seen the truck, is that the fact? A. No.

Q. And the truck did not come in sight until you got down to the roadway?

40 Mr. Applegate: I object.

*Augustine Vigna—Re-direct Examination.*

Sen. Simpson: It is exactly repeating what I brought out.

Mr. Applegate: You have no right to cross examine your own witness.

Q. Will you state whether or not the truck was 10 in sight as you stood in the doorway? A. No.

Q. How long after you stood in the doorway and heard the whistle was it that the truck came in sight? A. About a minute or two.

Q. You are just guessing when you say a minute or two, aren't you? A. I am sure.

Q. How far did you walk from the doorway where you stood when you heard the whistle? How many paces did you take before you saw the 20 truck? A. About 50 feet.

Q. You walked 50 feet you mean? A. Well, no, I did not walk so far.

Q. Well, how far did you walk before you saw the truck? A. From 20 to 25 feet.

Q. Where was the truck when you first saw it? Was it behind you? In front of you, or where was it? A. In back of me.

Q. Now, this statement that you signed, is that in English or in Italian? A. In English. 30

Q. Where did you sign it? A. In Elizabethport.

Q. Did somebody send for you to come down to an office or something? A. They sent me from the office.

Q. From what office? A. The place where I was working.

Q. Your office sent you down to where? A. Elizabethport with the Central Railroad. 40

*Henry A. Valling—Direct Examination.*

Q. And you made this statement there? And it was written down by somebody else, is that it?

A. Yes.

Q. And was it read over to you in Italian? A. No; I read it myself in American.

10

Sen. Simpson: That is all.

Re-cross Examination by Mr. Applegate:

Q. You read English very well, do you? A. Not very well.

Mr. Applegate: That is all.  
(Recess to May 10th, 1926.)

20

10 A. M., May 10, 1926.

HENRY A. WALLING, sworn.

Direct Examination by Sen. Simpson:

Q. Where do you live? A. Haslett.

Q. Who are you employed by? A. New York and Long Branch Railroad.

30

Q. How long have you been employed by them? A. About 18 years.

Q. Were you in charge of the station near the crossing at Haslett on March 12? A. I was employed at the station, the crossing at Haslett Avenue.

Q. Were you on duty when this accident happened? A. Yes, sir.

Q. What was the first thing you knew about the accident? A. Why, there was a lady in the

40

*Henry A. Valling—Direct Examination.*

station getting a ticket and she had gone out the door and came in the station again and said there was an accident down at the crossing.

Q. How far is that crossing from your station?

A. I suppose about 600 yards.

Q. In which direction of the compass was it from your station? A. East from the station.

10

Q. That is the crossing was east of the station about 600 yards? A. Yes, sir.

Q. Was there any crossing bell there at that crossing that night? A. No crossing bell, no, sir.

Q. Was there any flagman there? A. Not that I know of, not at that time of the year.

Q. What do you mean, that time of the year?

A. They had a flagman all during the summer season.

20

Q. How many months did you have a flagman there? A. Why, I imagine that commenced about the last of May and kept on until the last of October, I think—I am not sure about those dates.

Q. There was no flagman there on the night of the accident? A. No, sir.

Q. No automatic crossing bell? A. No, sir.

Q. No gates? A. No gate, no sir.

Q. That is, it was just the ordinary crossing? A. Yes, sir.

30

Q. Now, what did you find when you went out after this woman told you that there had been an accident at the crossing—what did you find? A. I saw the remains of the truck on the train going to New York, where they hit it the second time.

Q. Where was the truck or the remains of it?

A. Why, just opposite the freight house, that is about I suppose 200 yards, probably or 150 yards from the station.

40

*Henry A. Valling—Direct Examination.*

Q. Is that east of the station? A. East of the station, yes, sir.

Q. And the remains of the truck then were about 400 yards from the crossing? A. About that I suppose.

10 Q. Which side of the crossing were they, north or south side? A. The north side of the crossing where the accident happened.

Q. What do you call this crossing where the accident happened? A. Haslett Avenue.

Q. And you say the train you saw was one going toward New York? A. Yes, where the remains of the truck was on.

20 Q. Was it on that train? A. In front of the cowcatcher, the pilot.

Q. That is when you got out you found the remains of the truck on the head of this pilot? A. Yes.

Q. Was the train in motion when you got out or had it stopped? A. Stopped.

Q. Where had it stopped with reference to the crossing? A. I suppose about 150 yards from the station.

30 Q. East of the station? A. Yes, sir, east of the station.

Q. Then, if it was east of the station and the crossing was, you say, 600 yards east of the station, this train was going to New York or from New York? A. To New York.

Q. Then it had not reached the crossing had it, if it was going east? A. Where the accident happened?

40 Q. Yes. A. Why, the crossing is east of the station and the train stopped before it got to the station so that that was east of the station too.

*Henry A. Valling—Direct Examination.*

Q. And how far over the station had this train gotten? A. Well, now I suppose—I have never measured those things but I suppose about 350 yards probably about that, I could not tell you, I have not measured it.

10 Q. Did you see the other train that came from New York that is supposed to have hit the automobile first? A. I may have noticed it when it was going by. I was in the station at the time.

Q. But it did not stop? A. No, sir.

Q. Now, when you got out and found the remains of the truck, what was the next thing you did? A. Went in the station and reported to the Chief Dispatcher at Long Branch.

20 Q. Did you find the bodies of these men, either of them? A. No, sir. I was not down at the crossing where they were. I could not leave the station.

Q. Do you know who found their bodies? A. No, I do not.

30 Q. Did anybody come in and report to you? A. I think the butcher boy, that is Bahrenburg, I think his name is, went down to the crossing in his car and he came back and said that they had killed one man and taken the other one to the hospital.

Q. Who was that? A. Bahrenburg.

Q. Is he here? A. No, sir, he is not here.

Q. He is the one came back and reported? A. Yes.

Q. Do you know who took the dead body of this man away from the crossing? A. I understood it was—

Mr. Applegate: I object.

40 The Court: We are getting too much hearsay, Senator.

*Joseph Webster—Direct Examination.*

Q. Well, when you saw the body taken— A. I never saw the bodies.

Q. How long had you been employed at the station before the accident? A. About 18 years.

10 Q. Had there ever been an automatic crossing bell there? A. Not at that crossing, no, sir.

Q. What was the nearest crossing to that, east or west of it? A. The Hamdell Turnpike is what they call it.

Q. How far is that from this crossing? A. I should judge about 700 yards. I have not measured it. I could not say for sure.

Q. Is there an automatic bell at that crossing?

20 Mr. Applegate: I object.

The Court: Sustain the objection.

Sen. Simpson: Exception. Cross-examine.

Mr. Applegate: No questions.

JOSEPH WEBSTER, sworn.

Direct Examination by Sen. Simpson:

30 Q. What is your business, Mr. Webster? A. I am agent at the Haslett station.

Q. Is that near the Haslett crossing? A. Yes, sir.

Q. Were you employed there the 12th of March? A. Yes, sir.

Q. What time did you get to work on the 12th of March? A. 5:30 A. M.

Q. What time did you leave? A. 3 P. M.

40 Q. How long had you been at that station, did you say? A. At that particular day?

*Joseph Webster—Cross Examination.*

Q. No, how long had you been employed there? A. I have been agent there 18 years.

Q. At that same station? A. Yes, sir.

Q. Are you familiar with this crossing which is east of the station, the Haslett crossing? A. Oh, yes, very familiar. 10

Q. How many tracks are there there? A. There are two main tracks and a side track.

Q. And on the day of the accident or at any time prior to that was there a crossing bell there, an automatic crossing bell? A. No, there has never been any crossing bell there.

Q. Or any safety gates or watchman? A. No, there is a sign, "Railroad crossing."

Q. Well, was there ever a flagman there? A. Oh, yes, part of the year and for a number of years they have placed a flagman there along in May or June and kept him on till probably the end of September or October. 20

Q. Well, in this month, there was no flagman there? A. No, sir.

Sen. Simpson: Cross-examine.

Cross Examination by Mr. Applegate:

30 Q. Is that a regular practice, to have a flagman there part of the year and not the remaining part? A. Yes. That has been the custom for, I suppose, 15 or more years.

Q. During the summer months, to have a flagman there? A. Yes, sir.

Q. And during the winter months and fall there is no flagman there? A. No, sir.

Q. And that has been the practice for some years, hasn't it? A. Yes. 40

*Lee W. Berry—Direct Examination.*

LEE W. BERRY, sworn on behalf of the plaintiff.

Direct Examination by Sen. Simpson:

10 Q. You are the resident agent of the New York and Long Branch Railroad, are you? A. Yes, sir.

Q. And you were subpoenaed to produce here the surveys and maps showing the width of the crossing in question, the Haslett crossing, for a mile each way. Have you got those surveys and maps? A. I have a blueprint.

20 Q. Will you refer to it and show what is the width of the right of way of the Haslett crossing? A. Yes, sir.

Mr. Applegate: We will admit anything you want to know about that.

Sen. Simpson: I want to find out where these banks are; are they on your land or not on your land, the banks that show on the pictures?

Mr. Applegate: The width there is 100 feet, isn't it?

30 The Witness: Right.

Mr. Applegate: Mr. Traffart, the engineer of maintenance and way can tell you all about that.

Sen. Simpson: All right, I won't bother with Mr. Berry then.

Cross Examination by Mr. Applegate:

40 Q. You were asked if you were the resident agent of the New York and Long Branch Railroad? A. Yes, sir.

*Charles H. Traffart—Direct Examination.*

Q. And you answered that you were? A. Yes, sir.

Q. And the particular place of business of the New York and Long Branch is at Long Branch, Monmouth County, New Jersey? A. Yes, sir.

Q. That is its official office? A. Yes, sir. 10

Q. And you were served there with the summons and complaint in this action, were you? A. Yes, sir.

Mr. Applegate: That is all.

CHARLES H. TRAFFART, sworn. 20

Direct Examination by Sen. Simpson:

Q. What is your business with the New York and Long Branch? A. In charge of the Maintenance and Way Department.

Q. And you are familiar with this Haslett crossing, are you? A. Yes, sir.

Q. Showing you Exhibit P-4, can you tell what the width of that crossing is? A. The planked portion, about 20 feet. 30

Q. And on each side of that, how far does the line of your land extend? A. East and west?

Q. No, north and south. A. The tracks run north and south and the right of way runs east and west.

Q. I want to get the dimension of the crossing. You said 20 feet. A. That is the planked portion of the roadway.

Q. I mean across. A. The width of the right of way? 40

*Charles H. Traffart—Cross Examination.*

Q. Yes. A. 100 feet.

Q. Did you do any measuring at all in connection with this accident? A. No, sir.

Q. Well, have you sufficient knowledge to tell me whether or not on this picture those banks are on your right of way or owned by you, or what? A. This portion here?

Q. Yes. A. Yes, it is on the right of way.

Q. And that canning factory, you have nothing to do with that, have you? A. No.

Q. It is not owned by you or leased by you? A. No, sir, it is off the right of way line.

Q. Showing you this picture, Exhibit P-3, on the left-hand end, how far does the right of way go over to that structure which I think is the canning factory? A. Well, it is hard to tell you, counsellor, but it is 50 feet from the center between those tracks over to the right of way line. I would say that this right of way line is somewhere in there. From the angle at which the picture is taken, it is hard to tell where the line is.

Sen. Simpson: That is all.

## Cross Examination by Mr. Applegate:

Q. Now, Mr. Traffart, the canning factory that has been referred to is shown on Exhibit P-4. Are any of the buildings shown in these photographs, Exhibit P-3 and P-4, on the right of way? A. No, sir.

Q. And is that same true in regard to the building shown on the photograph marked Exhibit P-2, excepting the flagman's shanty? A. Yes, sir.

Q. No buildings on the right of way other than the flagman's shanty? A. No, sir, there is not.

*Charles H. Traffart—Re-direct Examination.*

Q. And the width of the right of way you say is 100 feet? A. 100 feet, yes, sir.

Q. And the planked crossing is 20 feet? A. Yes, sir, the planked portion of the crossing, the roadway.

Q. Now, showing you Exhibit P-2, you are familiar with that crossing, are you? A. Yes, sir.

Q. Showing you Exhibit P-2, which has the automobile in the foreground, which way is that automobile pointing, east or west? A. East.

Q. And the flag station then is on the east side of the tracks? A. Yes, sir.

Q. There is a dwelling just opposite the automobile? A. Yes, sir.

Q. In the center of the picture? A. Yes, sir.

Q. And the ends of the terraces looking toward the tracks in Exhibit P-2, are they on the right of way of the New York and Long Branch? A. No, sir. That is the edge of the right of way, the east edge of the right of way.

Q. Well, is any part of the embankment shown, or any part of the road on which the automobile stands on the right of way of the New York and Long Branch? A. No, sir.

Mr. Applegate: That is all.

## Re-direct Examination by Sen. Simpson:

Q. Is the situation there now the same, physically, as it was the 12th of March? A. I would say it was practically the same.

Sen. Simpson: That is all.

*William L. Thompson—Direct Examination.*

WILLIAM L. THOMPSON, sworn on behalf of the plaintiff.

Direct Examination by Sen. Simpson:

10 Q. You do investigating for my office, don't you? A. Yes, sir.

Q. And did you go to this Haslett crossing and make measurements and observe the physical situation? A. Yes, sir.

Q. When did you go? A. April 23rd, 1926.

Q. Did you have a photographer with you? A. I did.

20 Q. Now, showing you Exhibit P-2, how is that automobile pointing, is it going east or west? A. Pointing east.

Q. And showing you this Exhibit P-3, the automobile, how is that pointing there? A. West.

Q. Now, then, did you make any observations on the day you were there to ascertain how close you have to get to the tracks with an automobile going east before you had a view up and down the tracks? A. Yes, sir.

Q. How close did you have to get going east?

30 Mr. Applegate: I object as incompetent, irrelevant and immaterial. The decedent in this case was not going east. He was going from east to west.

Sen. Simpson: I want to show the whole situation.

The Court: I think you may do that.

Mr. Applegate: Exception.

40 Q. Does this Exhibit P-3 show an automobile going west? A. Yes, sir.

*William L. Thompson—Direct Examination.*

Q. Now, it is going from east to west, is that it? A. From east to west.

Q. And is the automobile in this picture going from east to west? A. Yes, sir.

Q. How close did you have to get with that automobile to the Haslett crossing before you had a view of the tracks? A. Ten feet. 10

Q. And is that automobile in this picture P-3 in the position you would have to be in when you were first able to get a view up and down? A. Yes, sir.

Q. Why was that, what was in the way? A. Obstructions; a bank on the south and buildings on the north of that railroad.

Q. There is a bank on the south? A. Yes, sir. 20

Q. And about how high is the bank? A. About six and one-half feet.

Q. What is there on the north? A. A canning factory, coal bin and other buildings.

Q. Now, is the automobile shown in Exhibit P-3 as it advanced beyond this bank in the position that you have described? A. Right out to the edge of the bank.

Q. Before you could get any view? A. Before you could get any view of any train coming from the south. 30

Q. Well, how about a train coming from the north? A. The same position, but I would have to be back from 16 feet more to get in a good position to see a train coming from the north.

Q. Why is that? A. Because of the obstructions. It is on the south side where most of the obstructions are; the bank is higher than my head. I would have to get to this line to see down the southbound track. 40

*William L. Thompson—Cross Examination.*

Q. And the north side, how near did you say you had to come before you could see the train?

A. I would say 18 feet from the tracks before I could see a train coming from the north.

10 Q. And why was that? What obstructed your view of the north? A. The buildings.

Q. The canning factory? A. Yes, sir.

Sen. Simpson: That is all.

## Cross Examination by Mr. Applegate:

Q. You say you viewed this crossing on April 23rd, 1926, last month, of this year? A. Yes, sir.

20 Q. And you took the observations concerning which you have just testified, did you? A. Yes, sir.

Q. Who took the pictures? A. Mr. Hemmes, 642 Newark Avenue, Jersey City.

Q. Did you make any actual measurements there? A. I made actual measurements on the ninth day of this month, yesterday.

30 Q. And you have a memorandum of those measurements you made? A. Well, they are in my head.

Q. That is all? A. Yes, sir.

Q. Did you use a tape? A. Yes, sir.

Q. But you made no memorandum whatever of your figures? A. Mr. Simpson has the memorandum.

Q. Made by you, in your own handwriting? A. Yes, sir.

40 Q. What is the distance, Mr. Thompson, from the east rail of the northbound track to the point where you say you could first view the railroad tracks? A. From the northbound rail?

*William L. Thompson—Cross Examination.*

Q. Yes. A. The inside of the northbound rail or the outside?

Q. The easterly rail. Did you take those measurements? A. About 18 feet.

10 Q. Did you take those measurements, Mr. Thompson? A. No, sir.

Q. Then how do you know, if you did not take measurements? A. Because I had come out within ten feet of the spur track—the spur track lies this side of the northbound track on that crossing.

Q. Do you know where the east side of the right of way is of the railroad company—do you know where it ends? A. It ends on the line with Di Palma's farm.

20 Q. Did you take the measurement from the east right of way line to the east rail of the northbound track? A. 30 feet and 5 inches.

Q. Do you mean to say that after having reached a point 30 feet and 5 inches away that a person looking north cannot see a train? A. That is the measurement from the line to the first rail. I was 20 feet out before I could see it.

30 Q. 20 feet from the right of way line? A. The bank hides all view of the train coming from the south on that line.

Q. How far is this bank from the east rail of the northbound track? A. About 3 feet. She goes down into a gutter and goes up about 3 feet.

Q. I didn't ask you that. I asked you how far the embankment was from the east rail of the northbound track. A. 30 feet 5 inches.

40 Q. What is there to interfere with the view of a person after passing this embankment which is 30 feet 5 inches from the east rail of the northbound track, from seeing a train coming from

*William L. Thompson—Cross Examination.*

the north? A. I don't understand your question that way.

Q. If there is a train coming from the south, what is there to interfere with your view? A. The bank.

10 Q. You had passed the bank which you say is 30 feet 5 inches from the east rail of the northbound track? A. From Di Palma's line to the rail of the northbound track is 30 feet 5 inches.

Q. Having passed this bank what is there to interfere with the view of the train going north? A. I had not passed the bank.

20 Q. I say, suppose you do pass the bank, what is there to interfere with a view of the train? A. I had to come well out before I could see a train coming north.

Q. How far were you there from the east rail of the northbound track? A. 18 feet.

Q. And you can see a train perfectly there, can't you? A. Not very well.

Q. Not even after you passed the embankment? A. The embankment is on my left and on the right there are obstructions, buildings, the little ketchup factory, the little house stands there.

30 Q. The ketchup factory on the right side? A. Right on the line of the right of way.

Q. And you cannot be mistaken about that either, can you? A. Positively not.

Q. Now, looking south as you approach that railroad crossing from the east, going west, looking south, where do you say is the first point you can see any distance south? A. I have to come down to the spur track.

40 Q. To the siding, you mean? A. I have to go out thirty feet before I can see a train coming

*William L. Thompson—Cross Examination.*

southbound because that road is down in a gulley.

Q. And you have to come out 30 feet from where before you can see a train from the south? A. From the line of the farm, the west side of the tracks.

Q. You mean the right of way line? A. The 10 west side of the tracks.

Q. You mean the right of way line, do you, the railroad company's property? A. I mean the westerly right of way line.

Q. This automobile that was struck was going west, wasn't it? A. You just speak about going east.

Q. I am speaking of going from the east to the west, the same direction that the automobile in question was going. Now, where would you have to be, traveling in that direction, going west, when you first could see a train approaching from the south? A. I would have to be within ten feet. 20

Q. Of what? A. Of the northbound rail before I actually could have a clear view of the train coming from the south, from Long Branch.

Q. You would have to be 10 feet from the northbound track? A. Yes, sir.

Q. What do you say interferes with the view? 30 A. The flagman's shanty and the high bank.

Q. And how far is the flagman's shanty from the east rail of the northbound track? A. Ten feet or twelve feet.

Q. Guessing at it, are you? A. No, sir; just about twelve feet.

Q. Did you measure it? A. I took a measurement from the northbound track.

Q. Did you take a measurement from the distance of the flagman's shanty to the east rail of 40

*William L. Thompson—Re-direct Examination.*

the northbound track? A. No, I know what I am about.

Q. You are guessing at it, aren't you? A. No, I am not.

10 Q. You can take a measurement by merely looking at it, you do not have to actually measure it?

(No answer.)

Q. What is your business? A. Investigator.

Q. Are you a civil engineer? A. No, sir.

Q. And you are an investigator for Senator Simpson's office, are you? A. Yes, sir.

Q. And you have been employed by him how long? A. Two and one half years.

20

Mr. Applegate: That is all.

Re-direct Examination by Sen. Simpson:

Q. This bank you have been speaking about, that is on what side? A. The west side.

Q. And the canning factory is on the same side, is it? A. Yes, sir.

30 Q. The canning factory is north, I take it, and the bank is south, is that right? A. Yes, sir.

Q. Now, when you said 31 feet, what were you referring to? In reference to the first rail of the northbound track where would this 31 feet put you? A. It would put me from the east rail onto Di Palma's fence line.

40 Q. What I am trying to find out is, when you get clear of this bank, you could not see toward the south until you got clear of the bank. When you got clear of that bank how near was the first rail of the northbound track? A. Ten feet.

Sen. Simpson: That is all.

*Rosa Tota—Direct Examination.*

ROSA TOTA, sworn.

Direct Examination by Sen. Simpson:

(Examination through an interpreter.)

Q. Were you the wife of Mr. Tota? A. Yes, 10  
sir.

Q. Constantino Tota? A. Yes, sir.

Q. Where were you married to Constantino Tota? A. New York.

Q. What date? A. August 21, 1916.

Q. And when did he die? A. March 12.

Q. Was his body brought home? A. No.

Q. Where did you see his body after he was killed? A. I saw it at the funeral in Jersey City. 20

Q. How old was your husband when he was killed? A. 35.

Q. And how old are you? A. 28.

Q. Did you have any children by this marriage? A. Two.

Q. What are their names and ages? A. Ter-  
razina Tota, nine and one half years—ten years,  
and Marie, five years.

Q. Was your husband in business for himself? A. Yes, sir. 30

Q. And what was his business? A. He would buy suits at wholesale and sell them himself.

Q. Did he do business in this County of Monmouth? A. I don't know the County.

Q. Where he was killed, was that part of his territory? A. Yes; that is the place where he had a lot of clients.

Q. How much money did he give you in a week? A. No less than \$75, because I used to pay out of that everything. 40

*Rosa Tota—Cross Examination.*

Q. What did he earn? A. No less than \$125 a week.

Q. Is this a picture of your husband in his lifetime? A. Yes, sir; a week before the accident.

10 Sen. Simpson: I offer the picture in evidence.

(Marked Exhibit P-5.)

Cross Examination by Mr. Applegate:

Q. Where is your home Mrs. Tota? A. Astoria; 358 Astoria Avenue, Astoria, Long Island.

20 Q. And in regard to your husband's business, do you say he bought suits and sold them; can you tell us more specifically what he did? Did he buy suits wholesale and peddle them about the county? A. Yes. He would go around.

Q. And sell them from house to house? A. Yes, sir.

Q. Did he use an automobile in that business or did he walk? A. He always walked.

Q. And did he carry his own samples? A. Yes, sir. They ordered the suits from him and he would deliver them.

30 Q. And was his business mostly confined to Italian farmers? A. He would have dealings with Italians, Americans, Irish, all kinds of people.

Q. Did Mr. Tota have a bank account? A. No, he had no money in the bank because I have to take care of the children.

Q. Did he have a bank account? A. No.

40 Mr. Applegate: That is all.

*Rosa Tota—Re-direct Examination.*

Re-direct Examination by Sen. Simpson.

Q. Mr. Applegate asked you about an automobile; did your husband know how to drive an automobile? A. No.

Q. Did he own a Ford truck at the time he was killed? A. It did not belong to him. 10

Q. Do you know these people, the Jenowicz—the man he was supposed to be with on the day he was killed? A. Yes.

Q. Did you visit them? A. Yes, sir; three years ago.

Q. Do you mean three years before the accident, or three years from now? A. Two years before the accident. 20

Q. You mean three years from now? A. Two years before the accident. 20

Q. At the time, what was the business of this man your husband was with? A. Jenowicz had a farm.

Q. Did he have a Ford truck at the time you visited him? A. Yes.

Sen. Simpson: That is all. 30

Sen. Simpson: I would like to offer Chapter 379 of the laws of 1868 which is the Charter of the New York and Long Branch Railroad, to show that they had only the right to take 100 feet for their right of way.

Mr. Applegate: We object to it, if your Honor please, incompetent, irrelevant and immaterial. 40

Sen. Simpson: I will withdraw the offer Mr. Applegate.

That is the case. Of course it is stipulated that these trains were the Pennsylvania trains, both of them, and that the right of way was the New York and Long Branch.

10 Mr. Applegate: I move for a nonsuit: First, as to the Central Railroad Company of New Jersey because there is no evidence in the case that that railroad company played any part whatever in this accident.

Sen. Simpson: We do not resist that motion.

The Court: That motion may be granted.

20 Mr. Applegate: Next, as to the New York and Long Branch Railroad Company, we ask for a nonsuit in favor of that company on the ground that no negligence has been shown on the part of this defendant. The evidence is that the two trains in the accident were both trains of the Pennsylvania Railroad Company and the negligence claimed is the failure to give the statutory signals as alleged.

30 In regard to the Pennsylvania Railroad Company we, by reason of the statute, are in no position to ask for a nonsuit because the question of contributory negligence as to that company is a jury question, as I understand it.

40 The Court: I shall not grant the motion now. I will allow the situation to be shown more clearly on the defendant's case. If it is not shown to be an extra hazardous crossing I will direct a verdict. I am not certain

*Charles H. Traffart—Recalled, direct.*

where this bank is, from the evidence as it stands now.

Mr. Applegate: Exception.  
Defendant's case.

10

CHARLES H. TRAFFART, recalled.

Direct Examination by Mr. Applegate:

Q. You have already testified that you are the Engineer of Maintenance and Way of the New York and Long Branch Railroad Company? A. Yes, sir.

Q. And that railroad company extends from 20 where to where? A. From the north end of the Raritan branch in the City of Perth Amboy to Bay Head, in Ocean County.

Q. And doesn't extend northward further than Perth Amboy, is that so? A. It extends 200 feet north of the north shore of the river.

Q. And it does not go beyond Perth Amboy? A. No, it does not.

Q. And it has no road bed, no right of way, no 30 property of any kind in the County of Hudson? A. No, sir; it has not.

Q. You are familiar with the crossing in question, are you? A. Yes, sir.

Q. And what is the proper name of that crossing? A. Haslett Avenue crossing.

Q. And the width of the right of way there I think you said is 100 feet? A. 100 feet.

Q. You are familiar with this map, are you? A. 40 Yes, sir.

*Charles H. Traffart—Recalled, cross.*

a sign there warning that there was no flagman there.

10 Q. Was there a notice on the sign there indicating that there was a flagman there or that there was not a flagman there? A. There were signs on each side indicating that there was not a flagman.

Q. What indicated that? A. A sign with the words "danger, no flagman."

Q. Where were those signs? A. Here (indicating).

Q. They are the warning signs you have already pointed out? A. Yes, sir.

20 Q. And you say this notice was on both sides of the tracks, is that right? A. They were.

Q. And were they there at the time of the accident? A. They were.

Mr. Applegate: That is all.

Cross Examination by Sen. Simpson:

Q. What is your business with the railroad? A. Engineer, Maintenance of Way.

30 Q. Have you anything to do with putting a flagman there? You are not the man who says whether there shall be a flagman there or an automatic signal or anything like that? A. No, sir; only when I am instructed by the office.

Q. But you maintain the right of way? A. Yes, sir.

Q. Now, you refer to the northbound track, is that a track that goes to the north? A. Yes.

40 Q. As I understand it you say the right of way extends west from the westerly rail of the north-

*Charles H. Traffart—Recalled, cross.*

bound track, how far? A. The right of way extends 50 feet from each side of the center of those two main tracks; 50 feet this way and 50 feet that way.

Q. There was some talk about a bank being on the northeast side of the crossing; do you know anything about such a bank of land? A. The northeast side of the crossing? 10

Q. That is the side opposite the canning factory. Is there a bank on the side opposite the canning factory? A. No, sir.

Q. Your right of way goes 50 feet back? A. 50 feet from the center of the tracks here.

Q. Now, does your map show how near the flagman's shanty was to the first rail a man would come to if he was coming as I understand this man was coming? A. The westerly face, 24 feet from the rail. 20

Q. And he would have 24 feet to go to get to the first rail? A. Yes, sir.

Q. How far is it from the easterly face? A. That would be about seven feet further. The shanty is about seven feet.

Q. And you say there is no embankment of any kind on this side of the tracks, is that right? A. No. 30

Q. Is there any embankment? A. There is a slight embankment in here, yes.

Q. Well, is that on your right of way? A. Yes, sir.

Q. And how high is that embankment, do you know? A. Only from observation.

Q. Give us your opinion. A. About four feet or four feet six above the top of the rail. 40

Q. Well, how far does it extend—that would be north or south? A. That would be south.

*Charles H. Traffart—Recalled, cross.*

Q. How far south did it extend? A. I could not say exactly—not a great distance.

Q. How far is it from the easterly rail of the northbound track? How far would you have to walk from that rail to get to it? A. I could not tell you exactly. 10

Q. Is there any way to measure it? A. No, sir.

Q. It does not show on the map? A. No, sir.

Q. You do not know how far your right of way extends beyond this embankment, do you? A. No, sir.

Q. Now, you stated that there was no obstruction on this side; doesn't that embankment obstruct your view at all? A. You mean a man approaching a crossing in an automobile? 20

Q. If a man were walking. A. Of course, he could not see as good as a man sitting in an automobile.

Q. If a man were walking, would this embankment, four or five feet high, have anything to do with his view? A. It would.

Q. Did you have any photograph taken for this trial? A. I do not know anything about the photograph.

Q. Do you know the reason for putting a flagman on this crossing in the summertime and not having one there at other times? A. Why, yes. There are a considerable number more of trains in the summer than there are in the winter. 30

Q. In March? A. Yes.

Q. That is, there are more trains in the summertime than there would be in March? A. Yes, sir.

Q. And as I understand you there was no automatic bell at this crossing at all? A. No automatic bell, no, sir. 40

*Charles H. Traffart—Recalled, cross.*

Q. How long have you been in charge of maintenance of way? A. I have been employed by the New York and Long Branch Railroad 36 years; on the maintenance of way about 22.

Q. 22 years? A. 20 years or 22 years.

Q. I show you a photograph—I will ask to have it marked for identification. 10

(Marked Exhibit P-6 for Identification.)

Q. Showing you photograph Exhibit P-6 for Identification, are the embankments on both sides of the road on this crossing, both the east and west sides? A. No, sir; not on the right of way.

Q. How high is this embankment shown in the photograph? A. I have not measured it, I could not say. 20

Q. Well, the photograph marked Exhibit P-6 for Identification has an embankment on the south side and the westerly side of the crossing; the other embankment, which does not show on the map, is that as high as this? A. No. I call that the westerly side and this the easterly side.

Q. The canning factory, we will call that the easterly side? A. Yes, sir. 30

Q. On the side opposite that, the westerly side, an embankment shows on the photograph. Would you say the embankment you have described as being on the easterly side of the crossing is as high as this embankment? A. It is not.

Q. What is the difference in size? A. I could not tell you exactly, but the one on this side is considerably lower than that one.

Q. Did you have ties stacked along the right of way at that time? A. What do you mean? 40

*Charles H. Traffart—Recalled, re-direct.*

Q. There seem to be ties there. . Ties lying along the siding?

Q. Do you know how far back this embankment shown on this picture extends behind the right of way? A. It does not extend behind it.

10 Q. Well, does it include it? A. It does include it, yes, about up to that hedge.

Q. And it was made, I suppose, when the road was first put through, constructed? A. I think so.

Sen. Simpson: That is all.

Re-direct Examination by Mr. Applegate:

20 Q. You were giving us the distance from the east rail of the northbound track to the easterly right of way line; you did give us that? A. Yes, sir.

Q. Now, will you please give us the distance from the east rail of the southbound track to the easterly right of way line. A. 53 feet. I think you asked me that.

Q. That is from the east rail of the southbound track? A. Yes, sir.

30 Q. The other distance you said was what? A. The easterly rail of the northbound track?

Q. Yes, to the easterly line of the right of way. A. 41 feet.

Mr. Applegate: That is all.

Re-cross Examination by Sen. Simpson:

40 Q. Did you say the right of way extends 41 feet from the easterly rail of the northbound track? A. Yes, sir.

*George F. Randolph—Direct Examination.*

Q. That is, you go 41 feet from your right of way before you come to your first rail? A. Yes, sir.

Sen. Simpson: That is all.

10

GEORGE F. RANDOLPH, sworn on behalf of the defendant.

Direct Examination by Mr. Applegate:

Q. You live where Mr. Randolph? A. Freehold, New Jersey.

Q. Your business is what? A. Civil engineer.

Q. How long have you been in that business? A. 18 years.

Q. At my request did you make observations and take the measurements at the Haslett Avenue crossing? A. Yes, sir.

Q. And when was that? A. It was in March, 1925.

Q. That is, last year? A. Yes, sir.

Q. Do you remember the exact date? A. I don't remember it; I have it in my book.

Q. Look at your book. You are looking now at your field book? A. Yes, sir.

Q. What is the date? A. I was there on March 14, 1925, to make observations, and made an actual survey for the purpose of making a map on March 16, 1925.

20

30

Mr. Applegate: I offer this map in evidence.

(Marked Exhibit D-2 in evidence.)

40

*George F. Randolph—Direct Examination.*

Q. You made the map Exhibit D-2, did you?  
A. Yes, sir.

Q. And you made it around March 14th? A.  
March 16.

Q. And that map is correct, is it? A. Yes, sir.

10 Q. And correctly shows the situation as exist-  
ing at the crossing at that time? A. Yes, sir.

Q. And what observations did you make? A.  
We made observations looking both north and  
south from the center line of the Haslett Avenue  
crossing. These observations were taken with  
certain known distances from the east rail of the  
southbound track.

20 Q. Did you actually measure those distances?  
A. Yes, sir.

Q. And where did you make a note of the meas-  
urements and observations? A. In my field book.

Q. Is that the book you have in your hand?  
A. Yes, sir.

Q. You made them at the time, did you? A.  
Yes, sir.

Q. Now referring to that—can you recite those  
observations from memory? A. No, sir.

30 Q. Well, referring to this book, will you please  
give us the observations that you made with the  
distances, measurements—by the way, who was  
with you, if anyone? A. Mr. Coleman, the  
photographer.

Q. Did he take pictures at the time? A. He took  
pictures from different points.

Q. You were there at the time, were you? A.  
I was there at the time.

40 Q. All right. Measurements were taken east-  
wardly from the easterly rail of the southbound  
track at the center of the Haslett Avenue road.

*George F. Randolph—Direct Examination.*

The first observation looking southerly had an  
unobstructed view for about 2000 feet.

Q. At what point? A. 30 feet from the east-  
erly rail of the southbound track looking  
southerly.

10 Q. Now, at that point was there anything on  
the right of way to interfere with a further view?  
A. No, sir.

Q. You say you could see 2000 feet? A. Yes,  
sir.

Q. What was your next point? A. The next  
point was 50 feet from the east rail of the south-  
bound track looking southerly. I actually did see  
a train approaching from a point 755 feet south  
of the crossing.

20 Q. That is from the 50 foot point, is it? A. Yes,  
sir.

Q. I show you a photograph—you have already  
testified that Mr. Coleman was present and took  
photographs from the points of observation you  
have mentioned? A. Yes, sir.

Q. You have referred now to a point some seven  
hundred feet south of the crossing where you saw  
a train approaching? A. Yes, sir.

30 Q. Did Coleman take a photograph of that? A.  
Yes, sir.

Q. I show you a photograph and ask you if  
that is the photograph to which you refer? A.  
Yes, sir.

Mr. Applegate: I would like to have this  
marked for identification.

(Marked Exhibit D-3 for identification.)

40 Q. What was your next point of observation?  
A. The next point was taken 80 feet east of the

*George F. Randolph—Direct Examination.*

southbound track and I had practically the same view as at the previous point.

Q. That was what? A. About 750 feet. We did see a train approaching.

10 Q. Your next point. A. That was taken at a point 100 feet east of the southbound track. Looking southerly I did see the upper half of a train one thousand feet south approaching the crossing. I saw the upper half of this train. All of the train was visible at a point 250 feet from the crossing. The next point was taken 133 feet—

20 Q. That was looking straight west, was it? A. I am following my notes. I took an observation at this point and the vision was about the same as at the 100 feet point.

Q. Were those all of your observations taken looking south? A. All of the observations taken looking south, yes, sir.

30 Q. Now, what observations did you make looking north? A. From the same point—at the 30 foot point I had an unobstructed view well beyond the Homdell Road, including that crossing, for 1058 feet northerly from the Haslett Avenue crossing, so that we could have a view well beyond that point.

Q. What was the next point? A. 50 feet and I had the same view as at the 30 feet point, well beyond the Homdell Road, 1058 feet. You could see at least 2000 feet from the Haslett Avenue crossing.

40 Q. The next point was— A. 80 feet looking north, we could see the Homdell Road crossing, 1058 feet north from the Haslett Avenue crossing. The next point at 100 feet. I could see to a

*George F. Randolph—Direct Examination.*

point 224 feet northerly of the Haslett Avenue crossing.

10 Q. What was there interfered with the view at the 100 feet point? A. There was a house that interfered with that view, a house which is on the north side of Haslett Avenue Road, extends back. Then the furthest point is 133 feet. We could see 109 feet northerly from the crossing.

Q. What interfered with your view there? A. The surroundings, a house, and the canning factory.

Q. Is that out on the right of way of the railroad company? A. No, sir.

20 Q. An embankment has been spoken of on the east side of the right of way of the railroad company, being partly on the railroad company's right of way? A. Yes, sir.

Q. Have you any measurements of that, how far that is from the crossing? A. No exact measurement except that the top of the bank is practically the right of way line of the railroad.

30 Q. Well, indicate just what you mean on the map please. A. The top of the bank would be practically in this dash and dot line marked "right-of-way" and would then slope toward the railroad, getting less as it gets to the railroad.

Q. Going from east to west, having passed the embankment or the right of way, then to what extent does the embankment obscure the view looking north, if any? A. No obstruction.

Q. No obstruction whatever? A. No.

40 Q. Now, what about looking south? A. There is no real obstruction looking south. The train can be very easily seen. It is not high enough to obstruct the view of a train approaching.

*George F. Randolph—Direct Examination.*

Q. The easterly right of way line is how many feet from the northbound track? A. From the northbound track about 40 feet.

Q. And from the southbound track? A. 53 feet.

10 Q. And you say there is nothing between those points to interfere with a view looking north and south? A. No, sir.

Q. At my request did you visit the crossing in question, on Saturday of last week? A. Yes, sir.

Q. And was that after listening to the testimony of the two witnesses, Vigna and Di Palma? A. Yes.

20 Q. And did you make measurements of the barn referred to in their testimony? A. I made measurements of the two barns I found in that vicinity.

Q. Whereabout were those barns located? A. The nearer barn is 500 feet south of the crossing. That was 134 feet east of the south track and there is a barn about 550 feet south of the crossing and 241 feet from the track.

Q. Do the barns in question, of which you have spoken, appear in the photograph I am showing you? A. No.

30 Q. Neither of the barns you have referred to are shown in Exhibit P-2? A. No.

Q. Are they shown on Exhibit P-3? A. There (indicating).

Q. You have punched a hole through this, have you? A. Yes.

Q. That barn which you have indicated on Exhibit P-3 is how far from the crossing? A. 500 feet.

40 Q. And how far from the southbound track? A. 134 feet.

*George F. Randolph—Direct Examination.*

Q. Does that barn appear in Exhibit P-6? A. No, sir.

Q. On Exhibit P-4? A. No, sir.

Q. Will you run these photographs over and tell us if the barn appears in any of them? A. A part of the barn is visible in this photograph. 10

Q. Indicate that by punching a hole through it. You are punching a hole through the picture which appears to be marked for identification, Exhibit D-2? A. Yes.

Q. Does it appear in the picture I am now showing you? A. Yes, part of it.

Q. Mark that please. The hole that you have punctured in the last picture is on Exhibit D-3 for identification? A. Yes, sir. 20

Q. Will you please look these pictures over and tell us if they are all the pictures to which you have referred to a little while ago having been taken by Mr. Coleman at the same time you made your observations? A. Yes, sir, these are the southerly views and these are the northerly views.

Q. Do they correctly show what they purport to represent? A. Yes, sir.

Q. Did Mr. Colman aid you or assist you in making the measurements you cited in regard to observations? A. Yes, sir. 30

Mr. Applegate: That is all.

Cross Examination by Sen. Simpson:

Q. When did you make the observations? A. March 14, 1925.

Q. That was after this accident? A. I don't know just when the accident was. 40

*George F. Randolph—Cross Examination.*

Q. The 12th of March. Is there a down-grade as you approach the crossing from either side?

A. The tracks or the road?

Q. The road, doesn't the road slope toward the crossing? A. Yes, sir, there is a slight depression

10 at the crossing.

Q. On each side or only on one side? A. I believe it is on each side.

Q. Did you measure what the grade was? A. No, sir.

Q. These banks that show in all these photographs and which have been testified to, as I understand it, as being on the right of way, did you measure those banks when you made your observations? A. Yes, sir, the height of them?

20

Q. Yes. A. No, sir.

Q. Why didn't you get the height of the bank if you wanted to show that the bank did not interfere with the view? A. Because they were not high enough.

Q. Well, they were part of what you observed? A. I didn't consider them high enough to make it necessary to take an elevation of them.

30 Q. So that you do not know how high those banks are? A. I know approximately how high.

Q. You did not measure them? A. No, sir.

Q. Well, what do you approximate them to be without measuring them? A. From observation.

Q. Well, I mean what is your approximation of how high they are? A. The bank on the easterly side of the track about five foot high. I am speaking now from the track alongside.

40 Q. That is, from the rail you mean? A. Yes, sir.

*George F. Randolph—Cross Examination.*

Q. Well now, how high is it from the ground itself? A. At that point possibly three feet.

Q. You said five feet before; what do you mean by five feet? A. Five feet above the track elevation. Three feet above the road elevation at that point.

10

Q. When you say road you mean the country road; you do not mean the railroad? A. No, sir; when I say road I mean the approaching road at the Haslett Avenue crossing.

Q. Are the banks the same size on the east and the west side of the crossing? A. No, sir.

Q. Where are they higher, on which side? A. On the west side.

Q. How much higher are they on the west side? A. Possibly twice as high.

20

Q. Do you know how long they have been there? A. No, sir.

Q. How long have you been connected with the railroad? A. I am not connected with the railroad.

Q. What is your business? A. Civil engineer.

Q. How long have you done work for the railroad? A. Three years.

Q. You are familiar with this crossing? A. I only have been there to make this survey.

30

Q. Now this canning factory, is that on the east side of the crossing? A. The east side of the tracks, yes, sir.

Q. And as far as the country road is concerned, is it on the north side of the country road or the south side? A. The actual north point at this place is confusing, but referring to the northbound track, it is on the north side of the Haslett Avenue crossing.

40

*George F. Randolph—Cross Examination.*

Q. That is, on the north side referring to the northbound tracks? A. Yes, sir.

Q. And on the same side of the county road as the flagman's shanty? A. No, sir.

10 Q. Wouldn't the flagman's shanty interfere with you as you approached the railroad, so far as view is concerned? A. If you stood directly back of it it would, yes.

Q. I mean, without stopping, as you passed back of it, your view is cut off from the tracks, isn't it? A. Momentarily, to a certain point.

20 Q. I mean, if you had stopped in the middle of the shanty, then of course you could not see through the shanty and to that extent your view would be interfered with? A. Yes, sir.

Q. How near is this shanty to the nearest, the northeast rail? A. 24 feet.

Q. Is it on top of the bank? A. No, sir.

Q. Here is a photograph marked Exhibit P-4; is this little building here the shanty? A. Yes, sir.

Q. That is on the other side from the canning factory, isn't it? A. Yes, sir.

30 Q. How close to the northbound rail is this shanty? A. 24 feet.

Q. And how wide is it as you pass it, the length of it? A. It is about five feet.

Q. So that for five feet your view would be obscured by that? A. Yes, sir.

Q. This bank which is also on Exhibit P-4, how close is the edge of that bank where the road cuts into it, to the north rail? A. I don't quite follow your question.

40 Q. I mean a man coming down the road has to pass that bank at some point to clear it? A. Yes.

*George F. Randolph—Cross Examination.*

Q. Now when he clears it, he actually clears that bank, how near is he to the nearest, the north rail? A. About 40 feet.

Q. And the right of way is about 41 feet back from the nearest, the north rail? A. Yes, sir.

10 Q. Now these photographs Mr. Applegate had, you were there when they were taken, you say? A. Yes, sir.

Q. And they correctly represent the conditions there? A. Yes, sir.

Q. Is it a straightaway track there? A. Yes, sir.

Q. No curves in it? A. No.

20 Q. For what distance is it straightaway, north and south? A. As far as the eye can see.

Q. Do you know how far back the canning factory is from the easterly line of the right of way? A. No, sir. I can give you that by scale.

Q. Will you give it to me? A. On the easterly side of the right of way?

Q. Yes. A. The building proper?

Q. Yes. A. 29 feet.

Q. When did you measure these barns? A. Saturday morning.

30 Q. And how near is the nearest one to the crossing? A. 500 feet.

Q. Did you measure the nearest edge of the barn or the furthest edge? A. The nearest edge, to the center line of the crossing.

Q. It is about 500 feet? A. Yes, sir.

Q. And how far is it from the rails? A. 134 feet from the southbound track.

40 Q. Well then there was another barn there, wasn't there? A. Another barn back of that, overlapping that barn.

*George F. Randolph—Re-direct Examination.*

Q. What time of day did you make these observations? A. From ten to eleven A. M.

Q. You do not know what time the sun set that day, do you? A. No, sir.

10 Sen. Simpson: That is all.

*Re-direct Examination by Mr. Applegate:*

Q. This picture which I now show you, what does that indicate? A. That is a view taken from the center of the road on the easterly side of the tracks looking toward the west.

Q. That is from east to west? A. Yes, sir.

20 Q. And that was taken on the same day the others were taken? A. Yes, sir.

Q. The residence shown beyond the shanty is a private residence, is it not? A. Yes, sir.

Q. The embankments shown on the picture, are those on the westerly side of the tracks? A. Yes, sir.

Mr. Applegate: I offer these pictures in evidence.

30 (Marked Exhibits D-6, D-7, D-8, D-9, D-10, D-11, D-12, D-13 and D-14 in evidence.)

Q. I show you Exhibit P-2, which shows an automobile in the foreground and shows the shanty and so forth; in which direction is that automobile pointed? A. In an easterly direction.

Q. Is that on the west side of the tracks? A. Yes, sir.

40 Q. Now I ask you if you located the whistle board? Can you tell us where the whistle board

*George F. Randolph—Re-cross Examination.*

is located in relation to the crossing? A. I did locate that.

Q. How far from the crossing, north and south? They are not shown on the map? A. No, sir. It is beyond the limits of the map. There is a whistle board for the southbound track 1470 feet north of the center line of the Haslett Avenue crossing and there is a whistle board for the northside track which is about 3400 feet south of the Haslett Avenue crossing. 10

Mr. Applegate: That is all.

*Re-cross Examination by Sen. Simpson:*

20 Q. This embankment that runs from the shanty, how far down the tracks does that run, do you know? A. I do not know.

Q. Well, is it the same distance away from the rail all the way down, or does it get nearer the rail as it goes down? A. It does not get any nearer.

Q. You do not know if it gets any further away? A. I think the bank lessens as it get further away in this case. 30

Q. You mean it gradually goes down? A. Yes, sir.

Q. This picture, Exhibit P-3, this automobile was going east or west? A. The automobile was going west.

Q. Coming from the easterly side? A. Yes, sir.

Sen. Simpson: That is all.

40

*Andrew R. Coleman—Direct Examination.*

ANDREW R. COLEMAN, sworn, for the defendants.

Direct Examination by Mr. Applegate:

10 Q. You are the gentleman to whom Mr. Randolph referred as having taken the photographs in question, are you? A. Yes, sir.

Q. The photographs were taken when? A. The 14th of March, 1925.

Q. Did you play any part in helping Mr. Randolph make observations there? A. Yes.

Q. What did you do? A. I made the photographs and took observations of the distances north and south.

20 Q. Now, what observation did you make there and with what result? A. Well, at 30 feet east of the northbound track—

Q. Looking what way? A. Looking south, you can see 2,000 feet.

Q. When you say you can see 2,000 feet, is there anything to interfere with the view or is it a clear view? A. A clear view, yes.

30 Q. All right, go ahead now, please. A. North to Homedell Road.

Q. Give us your observation first. A. 2,000 feet.

Q. What is the next point? A. Then at 50 feet you can see south a clear view.

Q. How far? A. Well, at least 2,000 feet.

Q. Have you got that there? A. Yes, sir.

Q. From the results of your observation? A. Yes, sir.

Q. What is the next point? A. At 80 feet you can see south clearly.

40 Q. How far? A. About the same, 2000 feet.

*Andrew R. Coleman—Cross Examination.*

Q. What is the next point? A. At 100 feet you can see south clearly 755 feet.

Q. Now, is that all the observation you took at those points looking south? A. 133 feet, looking south.

Q. What about looking north. A. At 30 feet you could see north to Homedell Road. 10

Q. How far is that? The jury does not know where the Homedell Road is. A. Just above the depot there, I think it is 1400 feet.

Q. And what was your next point? A. At 50 feet we could see north to the same point clearly.

Q. What was your next point? A. At 80 feet you could see north to the same point clearly.

Q. Yes. A. And at 100 feet, about 224 feet. 20

Q. What interfered there with the view? A. There is a little house.

Q. Now, Mr. Coleman, having approached that crossing going from east to west and having gotten within 30 or 40 feet, between 30 and 40 feet of the northbound track, was there anything there in the nature of an obstruction in the way of an embankment or anything else to interfere with your view looking north and south? A. No, sir. 30

Mr. Applegate: That is all.

Cross Examination by Sen. Simpson:

Q. What do you call this county road that crosses the railroad? A. Where the accident took place?

Q. Yes, where you were taking the measurements? A. I am not sure. 40

Q. Well, whatever it was, does it curve as it approaches the railroad tracks? A. Yes.

*Albert Hardy—Direct Examination.*

Q. The county road curves, does it? A. Yes.

Q. How much of a curve has it as it approaches the railroad tracks? A. Not much of a curve.

Q. Did you measure these embankments which seem to be on the east side of this crossing, at all?

10 A. No.

Q. You made the pictures and took these observations? A. Yes, sir.

Q. What time of the day did you take them? A. Well, near the middle of the day.

Q. You remember that? A. I have forgotten whether it was just before noon or after noon.

Q. It was a clear day? A. Yes, sir.

Q. The sun was shining? A. A clear day.

20 Q. And you did not make any observations shortly before sunset around the 12th of March to find out what the light was there and whether you could see as clearly as you did at 11 o'clock in the day? A. No.

Sen. Simpson: That is all.

30 ALBERT HARDY, sworn on behalf of the defense.

Direct Examination by Mr. Applegate:

Q. Mr. Hardy, what is your profession? A. Locomotive engineer.

Q. On the 12th day of March, were you running a Pennsylvania train on the New York and Long Branch Railroad? A. Yes, sir.

40 Q. What train was that? A. Train 7:35.

*Albert Hardy—Direct Examination.*

Q. And bound in which direction? A. South, what we call west.

Q. That is the Pennsylvania express? A. Yes, sir.

The Court: From where to where?

The Witness: From Manhattan Transfer I pick it up and take it to Point Pleasant. 10

Q. What was your first stop after leaving New York? A. Red Bank.

Q. On the day in question your train was in an accident, was it? A. Yes, sir.

Q. Just describe this accident, to the best of your recollection—in the first place how fast were you going? A. About 50 or 55 miles an hour. 20

Q. Did you have a clear track? A. Yes, sir.

Q. Go ahead. A. The first thing I knew about it, the fireman hollered and jumped up and I heard the crash.

Q. You were going toward Long Branch? A. Yes, sir.

Q. And on the southbound track? A. Yes, sir.

Q. And as an engineer were you on the right hand side of the cab? A. I was on the right side.

Q. That would be the east side? A. The east side. 30

Q. The automobile was coming from the east side? A. The east side.

Q. So that you did not see it? A. I didn't see it.

Q. You heard the fireman holler? A. Yes, sir.

Q. What did you do then? A. I immediately applied the emergency brakes.

Q. And how far were you from the truck when you first applied the brakes? A. I was practically right at the crossing. 40

*Albert Hardy—Direct Examination.*

Q. Now, before you approached that crossing, at that time, were there any signals given from your locomotive? A. Yes.

Q. What were they? A. Two long and two short whistles.

10 Q. Who gave them? A. Myself.

Q. And whereabouts did you give them? A. I started the whistle at the whistle board and continued to give them until I had passed the station at Haslett; I was practically at the freight station when I stopped giving the last whistle.

20 Q. Will you describe please what sort of a whistle you gave. When you say you gave two long and two short whistles, what do you mean by that? A. This (indicating) would be two long; that will be one short and that will be one short.

Q. Two long and two short? A. The long whistle lasts about three to three and one-half seconds and the two short ones run a little over two seconds.

Q. That would be eleven seconds altogether you were giving signals? A. Between ten and eleven seconds.

30 Q. What other signals, if any, were given by your locomotive? A. As soon as the crash came, I pulled the whistle again one long continuous whistle and I continued to pull the whistle until we had stopped.

Q. That is, after the accident? A. Yes, that was after the accident and the fireman was ringing the bell from the time I blew the whistle until the crash came and he still was pulling the bell when he jumped up and hollered "whoa."

40 Q. Is the bell operated by a cord or is it an automatic bell? A. Operated by a cord.

*Albert Hardy—Direct Examination.*

Q. When you say he was ringing the bell, how do you know? Did you see him? A. I could see him pull the rope.

Q. You could see him and hear him? A. Yes, sir.

10 Q. Now, it was your train that struck the automobile, was it? A. Yes, sir.

Q. And how far below the crossing did your train stop after the accident? A. I judge a little more than the length of the train; I forget how many cars we had that day.

Q. Eight or nine at least I suppose? A. My rear car was just over the crossing a little ways.

20 Q. About how far would you say? A. I don't know; I didn't go back to see.

Q. Did your train back up? A. Yes, sir.

Q. When your train stopped after you applied your brakes and before you backed up, about how far was your rear car from the crossing? A. When we backed up?

Q. Before you backed up. A. I could not say, I didn't go back to see.

The Court: Where was your engine?

30 The Witness: About ten cars or so from the crossing.

Q. Did you see another train almost immediately after the accident, approaching you? A. Yes, sir.

Q. That was on the northbound track? A. Yes, sir.

Q. And that was a Pennsylvania train also? A. Yes, sir.

40 Q. And did you observe what happened as this

*Albert Hardy—Cross Examination.*

train came along? A. No, sir. I knew there was a wreck there; I kept blowing the whistle continuously and tried to draw the attention of the other man because he was passing me at the time.

Q. What other man? A. Train number 726.

10 Q. The engineer? A. Yes, sir, and I was trying to draw his attention to the wreck on the tracks because we had no chance to do any flagging. We had not stopped yet when he went by my engine.

Q. And was the whistle blowing when his train went by? A. Yes, sir.

Q. You did not see where his train struck the wreck? A. No, sir.

20 Mr. Applegate: That is all.

## Cross Examination by Sen. Simpson:

Q. When you say 50 miles an hour, that is an estimate, is it, or is it exact? A. That is an estimate.

Q. You might have been going faster than that? A. Not at that point.

30 Q. Why not at that point? A. The train was running on time.

Q. You mean you were not behind time? A. No, sir.

Q. Where was the last place you had stopped before you had struck this automobile? A. I do not remember.

Q. What side of the engine were you on, the right side or the left side? A. The right side of the engine, the west side.

40

*Albert Hardy—Cross Examination.*

Q. Were you nearest to the east side of the crossing or was the fireman nearest to the east side of the crossing? A. The fireman.

Q. And you knew nothing about this accident until the crash, did you? A. No, sir.

Q. Now you say you started whistling at the whistle board and you stopped at the freight house. How far is the freight house from the crossing? A. I could not exactly tell you, but somewhere around about eleven or twelve hundred feet.

Q. From the crossing? A. No, from the whistle board.

Q. I am not talking about the whistle board, I am asking you how far is the freight house from the crossing? A. I don't know.

Q. But the freight house is the place where you stopped whistling, is it? A. Between the freight house and the depot.

Q. When you said before you stopped whistling at the freight house, was that exact or not? A. Between the passenger station and the freight house.

Q. That is where you stopped whistling? A. Yes; they are both together there.

Q. How far are they from the crossing? A. I cannot tell you.

Q. South or north of the crossing? A. North.

Q. Were you going north or south? A. South.

Q. How far did you have to go after you passed the freight house before you heard this crash? A. I could not tell you this distance.

Q. How long have you been running on this road? A. For the past 20 years.

40

*Albert Hardy—Cross Examination.*

Q. Yet you cannot say how far the freight house is from the crossing? A. I never measured it.

Q. Don't you know whether it is one mile, two miles or how far? A. I could not tell you.

10 Q. Although you have passed there every day for 20 years? A. I never measured it in the 20 years.

Q. You have never formed an estimate, whether it is 100 feet, or 500 feet or a mile? A. Yes, sir.

Q. How long a period of time elapsed from the time when you first blew the whistle until this crash? A. I could not tell you exactly. From the time I stopped blowing the whistle probably about two seconds.

20 Q. I said, from the time you started blowing the whistle until this crash what time elapsed? A. About 13 or 14 seconds.

Q. From the first blast until the crash? A. Yes, sir.

Q. When you brought your train to a stop, did you get off the train? A. I got off my engine.

Q. What did you do when you got off? A. Walked around to see what damage was done to the engine.

30 Q. That is the first thing you did. Did you see how badly the engine was hurt? A. That is the first thing I did.

Q. And after you looked over the engine, what did you do? A. I stayed right there.

Q. Did you see this man that had been killed? A. No, sir.

Q. Did you see the automobile? A. No, sir.

Q. It wasn't on your engine? A. No, sir.

40 Q. Well, did you see the automobile at any time? A. No, sir.

*Albert Hardy—Cross Examination.*

Q. All you know is your firemen jumped up and there was a crash? A. That is all.

Q. What made you put on the emergency brake, was it the crash? A. The man hollering stop.

10 Q. And you had a clear view ahead of you, didn't you—it was straight-away there? A. Yes, sir.

Q. Was it dark at that time of night? A. Well, it was not daylight and it was not dark.

Q. Was it getting dark? A. Yes, you could see probably half a mile or a mile away.

Q. It was dusk, was it? A. Dusk.

Q. Did you have your headlight lighted? A. Yes, sir.

20 Q. Where did you light it? A. I could not say now.

Q. You cannot remember? A. No, sir.

Q. Was that your business or the fireman's business? A. My business.

Q. So that you know nothing at all about this accident except that 13 seconds after you started the whistle for this crossing you heard a crash and you knew there was something wrong and you put on your emergency? A. I did.

30 Q. Now, it was your business, of course, to look out for the train, wasn't it—I mean you had to take care of what was ahead of you and to see that you were running all right? A. Yes, sir.

Q. And you were managing the engine? A. Yes.

40 Q. If you had to look out ahead of you, had to control the engine, had to whistle for the crossing, what opportunity did that give you to listen for a bell? A. That is my business to see that the fireman is ringing the bell.

*Albert S. Terhune—Direct Examination.*

Q. How many crossings did you pass before the accident on this trip? A. At this point?

Q. From the time you left Manhattan Transfer? A. I could not say, I didn't count them.

Q. You do not know how many? A. No, sir.

10 Q. But you are quite sure that the bell was rung for each crossing? A. Yes, sir.

Q. And that is the reason you say it was ringing, because you knew it must be rung? A. I knew it was.

Q. It was not an automatic bell? A. No, sir.

Q. The bell was rung by a man pulling it? A. It was a cord bell.

20 Q. Which side of the engine was the whistle board on? A. The right side.

Q. Your side? A. My side.

Q. The whistle board was on the west side? A. The whistle board is on the west side of the track, on the right side of the engine.

Sen. Simpson: That is all.

30 ALBERT S. TERHUNE, sworn on behalf of the defendants.

Direct Examination by Mr. Applegate:

Q. You are in the employ of the Pennsylvania Railroad? A. Yes, sir.

Q. And have been for how long? A. 15 years.

40 Q. On March 12, 1925, what was your occupation? A. Locomotive fireman on train number 735.

*Albert S. Terhune—Direct Examination.*

Q. And your engineer was Hardy? A. Yes, sir.

Q. The man that just left the witness stand? A. Yes, sir.

Q. You were in an accident that day? A. Yes, sir.

Q. About what time of day was it? A. Shortly 10 after six P. M.

Q. Was it a clear day or a stormy day? A. Clear.

Q. Light or dark? A. Light.

Q. Describe the accident, please, as you saw it—you were sitting on the east side of the locomotive? A. On the east side.

Q. That is the left side going south? A. Yes, sir. Shortly before crossing this crossing, the engine blew a warning whistle and— 20

Q. What do you mean by a warning whistle? A. The steam whistle.

Q. What kind of a whistle did he blow, more than one? A. He blew four times; two long and two short.

Q. Is that the usual statutory crossing signal? A. Yes, sir. I was ringing the bell.

Q. Where did you start to ring the bell? A. Before crossing the previous crossing. 30

Q. How far is that from the crossing where the accident happened? A. I could not say just how far, but perhaps one thousand feet or so.

Q. Where was it in relation to the whistle board? A. Oh, it is perhaps 1500 feet from the whistle board.

Q. And you started to ring the bell at what point? A. About the whistle board, before we came to the station. 40

*Albert S. Terhune—Direct Examination.*

Q. And did you ring it continuously or not?  
A. Continuously, yes.

Q. Was it ringing at the time of the accident?  
A. Yes, sir.

10 Q. Now, did you see the automobile approaching the crossing? A. Yes, sir.

Q. And how long before it was struck? A. Oh, perhaps two seconds.

Q. Go ahead and tell us just what happened.  
A. I was ringing the bell and as we approached the crossing this automobile came out from back of this house and hit the side of our locomotive.

20 Q. You say came out from back of this house—what house do you mean? Can you see it in any of these photographs? Just look them over hastily. A. This one.

Q. You are pointing to the house shown on Exhibit D-13, aren't you? A. Yes, sir.

Q. The house with a window and door in the front? A. Yes, sir.

Q. All right, go ahead. A. This Ford truck came out from back of this house and ran into the side of our engine and I just about as the crash came, hollered to the engineer.

30 Q. You say the truck ran into the side of your engine? A. Yes.

Q. What do you mean by that? A. He ran into the head of the engine, toward the front on the side about the bottom of the cylinder and I was ringing the bell and I hollered to the engineer and jumped up out of the way and he applied the emergency.

40 Q. You say you jumped out of the way? A. Yes, so as not to get hit by any of the debris.

Q. It struck right under your seat then, did it? A. No, just ahead of the cab.

*Albert S. Terhune—Direct Examination.*

The Court: Then you mean to say that the truck struck your engine instead of your striking the truck?

The Witness: The truck struck our engine on the side. We did not hit the truck at all. 10

Q. And you say you hollered? A. I hollered to the engineer, yes, and he applied the emergency.

Q. Did you holler to the engineer when you first saw the truck or when the truck struck you or when did you holler? A. Well, just about as the crash came.

Q. It almost all happened together, did it? A. Traveling at a high rate of speed, it all happened at one time. 20

Q. And the engineer applied the brakes? A. Immediately, yes.

Q. And the train stopped how far from the crossing? A. About a carlength, I should judge, from the last car.

Q. And your engine was— A. We had seven cars, that would make about eight cars and the engine would be nine from the crossing. 30

Mr. Applegate: That is all.

Cross Examination by Sen. Simpson:

Q. What time did this accident happen? A. Shortly after 6 P. M.

Q. About what time? A. Well, I should judge about 6:12 or 10 minutes after 6.

Q. You say it was perfectly light? A. It was very clear, yes. 40

*Albert S. Terhune—Cross Examination.*

- Q. You know the sun sets at 6:02 on that day?  
A. Yes, but it was very clear.
- Q. Very clear at 6:10? A. Yes, sir.
- Q. What was the last station you stopped at?  
A. Newark.
- 10 Q. You had not stopped between Newark and this accident? A. No.
- Q. What was the station you were going to stop at? A. Red Bank.
- Q. What time would you get there? A. About 6:22.
- Q. How far is Red Bank from the place of the accident? A. About seven miles.
- Q. And you were on time, were you? A. Yes, sir.
- 20 Q. Would it take you 12 minutes to go those seven miles? A. No.
- Q. How fast do you think you were going at the time of the accident? A. Around 50 miles an hour.
- Q. Around 50 miles an hour? A. Yes, sir.
- Q. You did not know anything until you saw this automobile come from behind this house, is that right? A. That is the first I saw of it.
- 30 Q. At that time how far away was it from the nearest—I withdraw the question. Was the track that you were on the nearest to the side the automobile came from? A. No, the furthest.
- Q. You were on the south track? A. Yes, sir.
- Q. Then when he came from behind the house, how far was he from your track? A. I don't know exactly the distance there, but I should judge around 100 feet.
- 40 Q. Do you know how far the house is from the northbound track, the nearest rail of the northbound track? A. No, sir, I do not.

*Albert S. Terhune—Cross Examination.*

- Q. But you saw him come from behind this house? A. Yes, sir.
- Q. And you were then on the crossing, weren't you? A. No, sir.
- Q. How near were you to the crossing? A. We were halfway between the two crossings. 10
- Q. Well how near were you to the crossing?  
A. Oh, a couple of hundred feet, say 300 feet.
- Q. You were 300 feet away? A. Yes, sir.
- Q. And in that 300 feet he went how far? A. I don't know.
- Q. Well, how far would he have to go to run into your engine? A. Well, from the house to that track I should judge is about 100 feet.
- Q. So that he went 100 feet while you were going 700 feet and you were going 50 miles an hour? A. About that, yes, sir. 20
- Q. What part of your engine do you say this man hit? A. He hit the cylinder on the side of the engine.
- Q. How far back? Back of the cylinder? A. Maybe four or five feet.
- Q. Did you see whether your engine threw him over in front of the other train? A. The engine did not throw him over; the front of our engine did not throw him over. 30
- Q. Well, he was thrown away from your train—what happened? A. I don't know.
- Q. According to you then he simply ran into your train and backed away from your train? A. I didn't see him back away.
- Q. Your train did not do anything to him, according to you? A. I don't know what damage was done by our train. 40

*Albert S. Terhune—Cross Examination.*

Q. Well, you saw the whole thing; you saw this car run into your train? A. Yes, sir.

Q. What happened after that? A. We had gone by, by that time.

Q. Gone by where? A. The crossing.

10 Q. You had not dragged him with you, had you? A. No, sir.

Q. Well, what happened to the automobile? It was right under your eyes and you saw it run into your train. What happened to it? A. We passed it at 50 miles an hour; you cannot see what happened.

Q. You do not know what happened to this automobile? A. No.

20 Q. All you saw, according to you, is that he came and ran into your train? A. That is all.

Q. How far is this freight house from the crossing, do you know? A. I don't know.

Q. Do you know the freight house? A. Yes.

Q. Had you passed the station and the freight house before you reached this crossing? A. Yes, the station and the freight house are together.

Q. You had passed it? A. Yes, sir.

30 Q. How far back were they when you got to the crossing? A. I don't know.

Q. How long did it take you to get from the freight house to the crossing? A. A second or two.

Q. And you were ringing this bell by hand? A. Yes, sir.

Q. Did you have to ring it by hand all the way from Jersey City? A. You do not ring it continuously.

40 Q. Well, whenever you come to a crossing you have to ring it by hand? A. Yes, sir.

*Albert S. Terhune—Cross Examination.*

Q. What else did you have to do on this locomotive beside ring the bell by hand? A. Keep the steam pressure up, that is about all.

Q. And you have to fire the engine? A. Yes, sir.

Q. And you have to get coal from the tender behind? A. Yes. 10

Q. Who rang the bell while you were putting coal on the fire? A. I don't fire at railroad crossings.

Q. Did anybody ring the bell while you were firing? A. Nobody rings the bell only myself.

Q. Well, then, when you were firing nobody was ringing the bell? A. No, but that was between crossings. 20

Q. I didn't ask you whether it was or not; I am asking you the simple question, was there anybody ringing the bell while you were firing? A. No, sir.

Q. Well, how often did you fire this engine from the time you left Manhattan Transfer? A. I don't know that.

Q. Well, how much coal did you use? A. Perhaps a quarter of a ton.

Q. A quarter of a ton from Manhattan Transfer? A. Yes, sir. 30

Q. And you don't know how many times you put it on the fire, do you? A. Maybe ten or twelve times.

Q. Now, did you see who was driving this automobile? A. No, sir.

Q. Did you see what kind of an automobile it was? A. A Ford truck.

Q. Well, after you had stopped did you get out of the engine? A. Yes, sir. 40

*Albert S. Terhune—Cross Examination.*

Q. Did you see this Ford truck or did you see the bodies of the men? A. I did, yes.

Q. Where was the Ford truck when you saw it? A. I didn't see it.

Q. You did not see it? A. No, sir.

10 Q. Did you see the men? A. Yes, sir.

Q. Where did you see the men? A. One lying alongside of the track and the other in the center of the northbound.

Q. The other track? A. Yes, sir.

Q. And the center of the northbound? A. Yes, sir.

Q. Where was the northbound train? A. Just on the opposite side of the crossing.

20 Q. It had cleared the crossing? A. Yes, sir.

Q. And do you remember whether or not your trains passed each other at the crossing or had you cleared the crossing before the northbound train reached the crossing? A. We cleared the crossing.

Q. Before he reached it? A. Yes, sir.

30 Q. Where were you with reference to this crossing when you saw the northbound train approaching? A. On the left side, just on the other side of the crossing, the far side of the crossing.

Q. You were about to reach the crossing? A. No, we were past the crossing.

Q. You were past the crossing before you saw the northbound train? A. Yes, sir.

Q. And how far away was he from you? A. Oh, quite a distance down.

40 Q. Well, where did you see him is what I am trying to find out? A. I don't know the name of the place.

*Albert S. Terhune—Re-direct Examination.*

Q. Well, where was your train when you saw the northbound train? A. Just before we got to Haslett station.

Q. Before you got to the Haslett station? A. Yes, sir.

Q. And where was he then, how near the crossing was he? A. About three miles down the track. 10

Q. You saw him before you saw this automobile? A. Oh, yes.

Q. Now, there were no lights at that crossing, were there? A. No lights?

Q. No automatic lights at the crossing? A. I don't think so.

Q. Well, there are crossings where they have lights that flash up and down as a train approaches? A. Yes, sir. 20

Q. But there were no such lights on this crossing? A. I don't think so.

Sen. Simpson: That is all.

Re-direct examination by Mr. Applegate:

Q. Did you fire that engine at any crossing coming down that day? A. No, sir.

Q. Why not? A. Because it was not necessary. Those engines will go two or three miles before you have to touch the fires again. 30

Q. After your train stopped were there any signals given? A. Not after we stopped, but before we had stopped there were.

Q. Well, as the northbound train was approaching were there any signals given from your engine? A. Yes, sir.

Q. What were they? A. The engineer blew his whistle continuously to attract the other engineer's attention. 40

*Albert S. Terhune—Re-cross Examination.*

Q. To attract his attention to what? A. To let him know that there had been an accident ahead or to stop him.

Q. Now, you were on the left side of the engine, were you? A. The left side, yes.

10 Q. Can you say whether or not the northbound train as it approached the crossing gave a signal? A. Yes, sir, he did.

Q. What signal did he give? A. He gave two long and two short blasts of the whistle.

Q. Do you know whether or not the bell was ringing on that engine? A. I could not tell you that. The whistle was blowing as he passed me; I cannot say about the bell.

20 Mr. Applegate: That is all.

*Re-cross Examination by Sen. Simpson:*

Q. Your engineer after the crash started blowing his whistle, didn't he? A. Yes, sir.

Q. How far away was the other train from the crossing when he started to blow his whistle? A. Almost to it.

30 Q. What do you mean by that, 100 feet, 200 feet away or what? A. More than that; I suggest about five or six hundred feet.

Q. You started to give him notice that something was wrong with your engine? A. Yes, sir.

Q. Then when he stopped he had cleared the crossing in the other direction? A. Yes, sir.

Q. You heard your own engineer's whistle? A. Yes, sir.

40 Q. And you were ringing the bell, which was right near you? A. Yes, sir.

*Carl Coss—Direct Examination.*

Q. Do you mean to say that ringing your own bell and paying attention to it and listening to it, you are still able to tell that the other car was giving a signal? A. He was blowing the whistle as he passed our engine.

Q. Where did he pass your engine? A. Just 10 after we had cleared the crossing.

Q. How many feet had your engine gone over the crossing? A. I could not tell you.

The Court: What kind of a bell was it you were ringing on your engine?

The Witness: A big, brass bell, the regulation bell.

The Court: What does it weigh? 20

The Witness: I should judge around eighty or ninety pounds.

Mr. Applegate: That is all.

*Re-cross Examination by Sen. Simpson:*

Q. Was that a camelback engine you were on? A. No, sir.

CARL COSS, sworn for the defense. 30

*Direct Examination by Mr. Applegate:*

Q. You were the conductor on 7:35 on the day of the accident in question, were you? A. Yes, sir.

Q. And that was a Pennsylvania southbound train? A. Yes, sir.

Q. And your train was in an accident that day? 40 A. It was.

*Carl Coss—Direct Examination.*

Q. Whereabouts were you in the train at the time of the accident? A. I was in the first coach of the train.

Q. When you say the first coach do you mean the first coach from the engine? A. Yes, sir.

10 Q. And when did you first know that there had been an accident? A. After the train had stopped and I walked back.

Q. Well, there was no station there, was there? A. Not at that point where we stopped.

Q. Did you have any indication of something unusual happening by reason of the brakes being put on, or anything of that sort? A. Yes, sir.

20 Q. Where was that? A. I cannot tell you the exact location, but it was south of the Haslett station.

Q. About how far from the crossing where the accident happened? A. I cannot answer that.

Q. No idea? A. No.

Q. No idea whether it was ten feet or one hundred feet or a mile? A. It was neither.

Q. Well, can you give us any idea at all? A. Not definite.

30 Q. Well, indefinite. A. I would say half-way between the Haslett station and the crossing, and I believe it has been testified here that there was a distance of several hundred feet between the two.

Q. Now, as your train approaching this crossing before the accident, can you say whether or not there were any signals given from your locomotive? A. I heard the engine whistle before approaching the crossing.

40 Q. The whistle for this particular crossing? A. I presume it was, yes.

*Carl Coss—Direct Examination.*

Q. Well, how many whistles did you hear? A. The usual whistle, two long and two short.

Q. Did you hear the bell ringing or not? A. I did not hear the bell ringing.

Q. Where did your train stop after the accident? A. The rear car cleared the crossing where the accident happened about one or two car lengths. 10

Q. How many cars were there in your train? A. Seven.

Q. And did you get down after the accident and go back? A. Yes, sir.

Q. Did you see the northbound train approaching? A. I did.

Q. And when your train stopped, whereabouts was the automobile that was struck, that is, where was it with reference to the crossing—how far south of the crossing? A. Well, there wasn't very much left to call it an automobile. 20

Q. Well, whatever it was, where was it? A. Scattered.

Q. Well, whereabouts was it scattered, all along the track you mean? A. Along the northbound track.

Q. Did you see the bodies? A. Yes, sir. 30

Q. Whereabouts were they with reference to the crossing? A. One man was lying alongside of the northbound track, south of the crossing. The other man was in the center of the northbound track.

Q. And where was the northbound train at that time? A. It had stopped on the north track about two or three car lengths. The rear car was about two or three car lengths from the crossing. 40

*Carl Coss—Direct Examination.*

Q. When you say you saw these men on the tracks, you are speaking of the time after the northbound train came along and struck the wreck? A. That is correct.

10 Q. Now, I am speaking of the time before the northbound train came along. A. I didn't see the men.

Q. How soon after your train stopped did the northbound train come along? A. It had arrived before we stopped.

Q. Then your two trains were almost at the crossing together, is that so? A. Yes, sir.

20 Q. Can you say whether or not your train had actually gotten over the crossing before the northbound train came along? A. No, I cannot.

Q. But it was somewhere about the same time, wasn't it? A. Very close together.

Q. And how far was the northbound train, when it stopped, from the crossing? How far beyond the crossing did it stop? A. I am not positive but I would say the rear car was about two or three car lengths from the crossing.

Mr. Applegate: That is all.

30 Cross Examination by Sen. Simpson:

Q. What coach were you in? A. I was in the first coach back of the parlor car.

Q. How many cars is that from the engine? A. That was the second car.

Q. You were in the second car behind the engine? A. Yes, sir.

40 Q. And what were you doing? A. I was talking to the brakeman.

*Carl Coss—Cross Examination.*

Q. One of the crew? A. Yes, sir.

Q. What portion of the coach were you in, the front, rear or where? A. The front.

Q. And there were other passengers in the train? A. Yes, sir.

10 Q. How long had you been sitting in this first coach? A. I was not sitting, I was standing.

Q. How long had you been standing in this coach? A. I don't remember.

Q. How many crossings had you passed from the time you left Manhattan Transfer? A. I don't know.

Q. Are you quite sure that the whistle was sounded at every crossing? A. I am not positive.

20 Q. Then what was it particularly that attracted your attention to this whistle given by your train; you say two long and two short—in other words, if it had been his custom to whistle at any crossing you would not have paid any particular attention to it. What was there about it to attract your attention? A. As the conductor of the train, I am required to account for any detention to the train—

30 Q. But you knew nothing about any detention until the brakes went on and after these whistles? A. You did not let me finish what I started to say. As conductor of the train I am required to give an account for any detention of the train. Train Number 726, the northbound train and our own train were due at about the same time. We were due there first. It was the practice of the engineer to blow for that crossing and if possible the northbound train will give you the right of way, providing we are not late, and I was observing 40 whether we would get to the Haslett station ahead

*Carl Coss—Cross Examination.*

of the northbound train when I heard him blow for the crossing and he did not slacken up, so I knew we were going through and no record of detention would have to be made by me.

10 Q. What does the right of way mean? A. Some trains are superior to others, and we had the right of way as an express train.

Q. You were not on the same track, were you? A. No.

Q. Then what do you mean by the right of way? Do you mean one would have to wait for the other to pass over the crossing? A. In crossing stations; not a crossing.

20 Q. You mean by that that two trains cannot pass a station together? A. There is a special notice in the time-table giving express trains the right of way over local trains at stations.

Q. But you had reached the station before this accident and passed it, hadn't you? A. Yes.

Q. Then this circumstance that you have described so minutely had nothing to do with fixing your memory of this whistle? A. The station is right at the crossing. The crossing is at the station.

30 Q. How far is the station from the crossing? A. Very close together, I don't know the distance.

Q. 1,000 feet? A. I don't think it was that great.

Q. Do you give the same whistle for a station that you give for the crossing? A. We do not blow for the station.

40 Q. Haven't you just described how you blew for the right of way? A. The fact that I have in mind was the signal for the crossing, which is recognized by the northbound train.

*Carl Coss—Re-direct Examination.*

Q. That is, if you get to the crossing first, having already passed the station, do you not whistle for the right of way for the station, is that it? A. No.

Q. When did you whistle for the right of way at the station? A. There is no signal for the right of way at the station. 10

Q. Then how do you get it? A. Why, the engineer blowing for that crossing is a sort of a signal that we are coming.

Q. So that having passed the station you then blow for the crossing to get the right of way at the station? A. The signal is blown before we reach the station.

Q. So the signal you heard was given before you reached the station? A. Yes, sir. 20

Q. And was finished before you reached the station? A. I cannot recall when it was finished.

Sen. Simpson: That is all.

Re-direct Examination by Mr. Applegate:

Q. There is a rule that two trains are not allowed in a station at the same time, isn't there? A. That is correct. 30

Q. And your train was an express train and did not stop at Haslett? A. Right.

Q. But the northbound train did stop at Haslett? A. Correct.

Q. And you being an express train had the right of way over this local train? A. Yes, sir.

Mr. Applegate: That is all.

*Richard Case—Direct Examination.*

RICHARD CASE, JR., sworn on behalf of the defendants.

Direct Examination by Mr. Applegate:

10 Q. You are employed by the Pennsylvania Railroad Company? A. Yes, sir.

Q. And you were flagman— A. I was a baggage master then. I am brakeman now.

Q. On train 735? A. Yes, sir.

Q. You were in the baggage car? A. In the baggage compartment, yes, sir.

Q. And where is that in relation to the engine? A. Next to the engine.

20 Q. You remember the accident? A. Why, some of it, yes.

Q. At the time of the accident you were on the baggage car, were you? A. Yes, sir.

Q. Did you get out of the train after the accident? A. I got out of the train after the accident, yes, sir.

30 Q. Did you see the northbound train approach the crossing, or had it passed when you got out? A. I was opening the door of the baggage car as the train went by.

Q. Can you say whether or not there was any signal given by your locomotive as it approached the crossing in question? A. Why, I was looking out when I heard the whistles and it must have been about that time, because that came before the accident.

Sen. Simpson: I object to that as a conclusion.

40 The Court: He cannot give us his conclu-

*Richard Case—Cross Examination.*

Q. How long before the accident did you hear the whistles? A. Probably two or three seconds before the accident.

Q. What whistles did you hear? A. I heard several whistles; I didn't count them to see whether there were four or five, or what they 10 were.

Q. How do you know they came from your engine? A. Because I was right close to the engine. It sounded to me as if it was from the engine.

Q. Do you know where your train was when you first heard whistles? A. No, sir.

Q. Can you give us some definite idea as to how long before the accident happened that you heard these signals? A. Before the accident? 20

Q. Yes. A. When the whistles started?

Q. Yes. A. Around maybe ten seconds or so, I could not exactly say.

Mr. Applegate: That is all.

Cross Examination by Sen. Simpson:

Q. How long before the accident had these whistles finished? A. Maybe two or three seconds before the accident. 30

Q. Were these whistles on your train? A. Down at my engine.

Q. Coming from your engine? A. Yes, sir.

Q. Which was your train? A. The one going south.

Q. That is, this express we have been speaking about? A. Yes, sir.

Q. And you say the whistles finished about two or three seconds before the accident? A. Well, then they started again. 40

*Richard Case—Cross Examination.*

Q. Now, what space was it before they started again? A. It seemed almost together.

Q. Was there any appreciable space? A. Not a long space, not over a second or two.

10 Q. What was the first you knew of an accident?  
A. Why, this other train had passed us.

Q. That is, your signal stopped two or three seconds before the other train passed you? A. Then continued again.

Q. I didn't ask you about continuing again. A. The first signal.

20 Q. I am trying to get you to identify the signal which you have testified to. You say the first signal which lasted ten or eleven seconds before the accident finished two or three seconds before the accident? A. From two to three seconds.

Q. Then they started to blow all over again? A. Yes.

Q. Were you looking out before they started to blow again? A. No, I was not.

Q. How long after they started to blow over again did you start to look out of the door? A. About maybe two or three seconds.

30 Q. You opened the door? A. Yes, sir.  
Q. What did you see when you opened the door? A. I saw that there had been an accident and that there was some wreckage on the track, something on the track.

Q. Did you get off and look at it? A. I got my stretcher out from the baggage car.

Q. What did you find? Did you find one man killed? A. When I got back with the stretcher they had him ready.

40 Q. How far over this crossing was the train when it stopped? A. I didn't observe.

*Richard Case—Cross Examination.*

Q. What were you doing in your baggage car when you heard these signals? A. I don't remember at this time what I was doing.

Q. What was it attracted your attention to these signals that were just the regular crossing signals—were they regular crossing signals? A. 10  
Yes, sir.

Q. And you heard those all the way from Manhattan Transfer? A. I don't know whether I heard them all or not.

Q. Coming all the way from Manhattan Transfer you were in the baggage car? A. I am the baggage man.

Q. Your work was handling the baggage? A. 20  
Yes, sir.

Q. Yet although you did not identify each crossing signal you pick out definitely a signal at this crossing, don't you? A. I do.

Q. Nothing to draw your attention to it, was there? A. There was, yes.

Q. What was it? A. It was always impressed upon my mind in any accident or anything like that to try to remember what happened and I impressed upon my mind that I had heard the 30  
signal.

Q. And the accident was after the signals? A. Why, yes.

Q. The accident was after the signals? A. Yes.

Q. And this accident after the signals fixed your attention directly on the signals before the accident? A. That I heard them, yes.

Sen. Simpson: That is all.

*James P. A. Kenna—Direct Examination.*

JAMES P. A. KENNA, sworn on behalf of the defendants.

Direct Examination by Mr. Applegate:

10 Q. Your occupation is that of locomotive engineer, is it? A. Yes, sir.

Q. You were engineer on the Pennsylvania train 726 on the day of the accident? A. Yes, sir.

Q. That was the train bound north? A. Yes, sir.

Q. Was your train to stop at Haslett? A. Yes, sir.

20 Q. When did you first know that there had been an accident at that crossing? A. Why, when I first seen the wreckage on the tracks in front of me about 200 feet.

Q. You were then how far from the crossing? A. About 300 feet. I noticed the wreckage about 100 feet south of the crossing along the tracks and I seen it about 200 feet from there. I didn't know what it was.

Q. Was that the first you saw of the automobile? A. That was the first I saw of the automobile.

30 Q. When you saw the wreckage on the track was the Pennsylvania train 735 standing there? A. I don't know whether he was standing there. He was on this side of me; I don't know whether he was standing or moving.

Q. When you approached that crossing on that day did your locomotive give any signal? A. Yes, sir.

40 Q. What were they? A. I blew the whistle for the crossing, two long and two short blasts of the whistle.

*James P. A. Kenna—Direct Examination.*

Q. And where did you start to blow the whistle?

A. Why, at the whistling board.

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

Q. The whistling board for the northbound train? A. Yes, sir.

Q. Is that what you mean? A. Yes, sir.

10

Q. Which side of the track is that on? A. Why it is on the east side of the track.

Q. On your right hand side? A. Yes, sir.

Q. And you say you gave the usual signal, is that right? A. Two long and two short blasts of the whistle.

Q. Can you say whether or not the bell on your locomotive was ringing? A. The bell was ringing.

Q. How do you know it was? A. Because the fireman was sitting up there and ringing it, going into the station and over the crossing.

20

Q. Did you see him ringing it at that particular time? A. Yes, I seen him ringing it.

Q. Where had he started to ring? A. He started way down below the second crossing, below that.

Q. How many crossings are there near together there? A. Four of them coming into the Haslett station.

Q. So his bell was ringing continuously? A. At all the crossings, yes, sir.

30

Q. Was the bell ringing as your train reached the crossing where the accident happened? A. Yes, sir.

Q. And had it been ringing all that itme? A. Yes, sir.

Q. How far north of the crossing did your train stop? A. Why, the hind end of the train stopped one car length or two from the crossing.

40

*James P. A. Kenna—Cross Examination.*

Q. One car length? A. Yes, north of the crossing.

Q. Where did you start to slow up your train to stop at the Haslett station? A. Why, about down at the whistling board I made my first application of the brakes.

Q. Was that before you had seen any wreckage on the tracks? A. Oh, yes, before I saw the wreckage.

Q. And how fast were you going when you reached the crossing? A. About 35 miles an hour.

Q. Now, can you say whether or not as your train approached this crossing you heard any signals from the southbound train? A. No, sir, I didn't notice that, I was blowing my whistle as I was passing that train and with the noise of my own I didn't pay no attention or hear the other.

Mr. Applegate: That is all.

Cross Examination by Sen. Simpson:

Q. Where was the wreckage when you first saw it? A. Why in the center of the northbound track about 100 feet south of the crossing.

Q. Your track? A. Yes, sir.

Q. What did it look like? A. Just like a flat piece of iron.

Q. Smashed all up? A. Smashed all up, yes.

Q. And you came to it, didn't you? A. We picked up wreckage on the front of the pilot.

Q. Did you pick the men up too? A. No, the men—I didn't see no men. When I stopped

*James P. A. Kenna—Cross Examination.*

the wreckage was on the front of the pilot, the iron work.

Q. Did you have a headlight on your locomotive? A. Yes, sir, a light.

Q. And it goes ahead of you? A. Yes, sir.

Q. It was dusk, was it? A. Yes, sir.

Q. Were these men in this wreckage? A. I don't know, I didn't see them; I just saw this black mass there.

Q. And you went through that black mass and when you encountered it it was 100 feet from the crossing? A. About that.

Q. And when you picked it up how far did you take it over the crossing? A. Just one car length from the rear of my train. I had five cars in the train.

Q. How far is the freight house from that crossing? A. The freight house? A. I don't know just how many feet it is from the crossing. The freight house was right over in front of me on the left when I stopped.

Q. That is to the left of the cars? A. Yes.

Q. And how far was the station over the crossing? A. Why, the station was just on the other side of the freight house, both together there, just a little space between them.

Q. The engineer of the other train says he whistled to attract your attention to the fact that something was wrong. Did you hear that whistle? A. I didn't notice. I was blowing my whistle at the same time.

Q. Did you notice any whistles indicating anything wrong? A. No.

Q. And you did not know there was any acci-

*James P. A. Kenna—Cross Examination.*

dent until you saw— A. Until I saw it 200 feet in front of me.

Q. And it was just a mass of twisted iron? A. Yes, sir.

10 Q. And the fireman was in the same cab with you? A. Yes.

Q. And there was nothing between the two of you? A. Nothing between us.

Q. Can you see him without any trouble? A. Nothing at all there.

Q. And you say he was ringing the bell? A. Yes, sir.

20 Q. Could you hear the bell or just see him making the motions? A. Yes, sir, I can see him pulling the bell rope.

Q. And you heard it, notwithstanding the fact that you were whistling at the time? A. Just as soon as I gave the last blow of the whistle.

Q. How far were you away from the crossing at the time? A. About 300 feet.

Q. When you pulled the last whistle? A. Yes.

Q. And it was then you heard him ring the bell? A. Yes, sir.

30 Q. How far were you away from the crossing when you gave the whistle the last blast, about 300 feet? A. 300 feet when I seen the wreckage.

Q. That is the same time as you gave your last blast? A. Yes, sir.

Q. And the same time you heard him ringing the bell, is that right? A. Yes.

Q. And after that you picked up the wreckage? A. Yes, sir.

40 Q. Did he still keep on ringing the bell after you struck the wreckage? A. I don't know; I was trying to get stopped at the time.

*William D. Stapleton—Direct Examination.*

Q. How far did you go before you put the brakes on? A. I had the brake set at the time.

Q. You began putting on the brakes and after you put on the brakes you were going how fast? A. Thirty-five miles an hour.

10 Q. How fast were you going before you put the brakes on? A. About sixty miles an hour.

Q. And you were to stop at this station? A. Haslett, yes.

Q. Do you know what time it was? A. Yes, we were right on time. We were due at 6:12.

Sen. Simpson: That is all.

(Recess Until Two P. M.)

20

WILLIAM D. STAPLETON, sworn on behalf of the defendants.

Direct Examination by Mr. Applegate:

Q. What is your occupation, Mr. Stapleton? A. Locomotive fireman.

30 Q. Were you firing on engine number 726 on the day of the accident? A. Yes, sir.

Q. That was the train going north? A. Yes, sir.

Q. When did you first know of the accident? A. The engineer called my attention to a black object in front of the engine and no more than he cut down I heard the noise under the engine.

Q. Heard what? A. The noise the grinding.

40 Q. How far away was that black object when

*William D. Stapleton—Direct Examination.*

you first saw it, from the crossing? A. I could not tell you that.

Q. How far was the train from the crossing when you first saw it? A. He was the one called my attention to it.

10 Q. How far was the train from the crossing when you first saw it? A. I could not tell you.

Q. Can you state whether or not any signals were given from your locomotive? A. No, sir.

Q. You do not know? A. No, sir.

Q. Whether any bell was ringing or whistle blown?

Sen. Simpson: I object to that as leading. The witness has already testified he does not know.

20 Q. Well, what signal was given, if any.

Sen. Simpson: I object. The witness says there was not any signal given. This question assumes as a fact that signals were given and I object to the question on the ground it assumes as a fact something not in evidence.

30 Q. What did you do on your locomotive as you approached the crossing, if anything? A. I was ringing the bell.

Q. Where did you start to ring the bell? A. I generally make it a practice the minute the engineer starts to blow.

The Court: Not what you make a practice, we do not care anything about that; what did you do in this case?

40 The Witness: I was ringing the bell.

*William D. Stapleton—Direct Examination.*

Q. Where did you start to ring it? A. Well, no more than he started to blow the whistle.

Q. Where was that? A. I suppose, at the whistle post.

Q. And how far away from the crossing? A. I could not tell you.

Q. Do you know where the whistle post is? A. No, sir, not now. I did then; I have been away from there thirteen or fourteen months.

Q. You are not running down there now? A. No, sir, not for fourteen months.

Q. How long did you continue to ring the bell? A. I make it a practice to—

Q. Not what you make it a practice to do, what did you do that day? A. I rung the bell until we got past the crossing.

Q. What about the whistle, was there any whistle blown? A. The engineer blows his whistle.

Q. Do you know how many times he blew it? A. Four blows.

Mr. Applegate: That is all.

Cross Examination by Sen. Simpson:

Q. Because you know of the practice, you testify that is what happened on this day. It was always your practice to ring the bell, isn't that so? A. Yes, sir.

Q. And it is always the practice to blow a whistle? A. Yes, sir.

Q. And it is that practice that makes you certain about it being done on this day because it is the practice, is that it? A. No.

Q. You never crossed any crossing without do-

*William D. Stapleton—Cross Examination.*

ing it. A. Oh, I always ring the bell crossing a crossing.

Q. Well, I say it is your practice and it is because of that practice that you are testifying as you have, isn't that a fact? A. No, I was ringing the bell passing the crossing that day.

10 Q. Did you do it every day? A. Yes, sir.

Q. You say that is the practice to do it; why do you do it? A. Because we are instructed that way, to ring the bell going over crossings.

Q. You do not know how far away from the crossing you started to ring the bell, do you? A. No, I could not swear to that, no.

Q. And you don't know how far away from the crossing it was you heard these four blasts, do you? A. No, I could not swear to that.

Q. All right. Now, the only thing you know about the accident is you heard this grinding underneath? A. Yes, sir.

Q. And was it before you heard the grinding or after that you started to ring the bell? A. After I rung the bell. I was ringing the bell when this happened.

Q. You were ringing the bell when this grinding was called to your attention? A. Yes, sir.

Q. Did you stop ringing the bell then? A. No, sir.

Q. Kept on? A. Yes, sir.

Q. How far did your train go before it stopped? A. About a car length the other side of the crossing.

Q. When Mr. Applegate asked you if there were any signals given and you said no. What did you mean by that? A. I suppose he meant signals swung on the track, or something.

40

*William D. Stapleton—Re-direct Examination.*

Q. What did you mean when Mr. Applegate said, "Any signals given" and you said "No"? What did you mean by that? A. That is what I meant; I thought maybe he meant a signal was swung on us, or something.

Q. Do you know how far away from the crossing you were when you heard this grinding? A. I could not tell exactly.

Q. You never at any time saw the automobile, did you? A. No, sir.

Q. You were looking straight ahead? A. I could not tell you that.

Q. Were you looking out ahead of you? A. I presume so.

Q. Wasn't it your business to watch for anything on the track? A. One of my duties.

Q. And was it your business also to watch for signals? A. Yes, sir.

Q. And you were watching, weren't you? A. Yes, sir.

Q. And you say you never saw this automobile, is that right? A. Yes, sir.

Sen. Simpson: That is all.

Re-direct Examination by Mr. Applegate:

Q. Which side of the engine were you on? A. The left side.

Q. The left side going north? A. Yes, sir.

Mr. Applegate: That is all.

The Court: What kind of a bell did you have on the engine?

The Witness: Pulled by a rope.

40

*Frank K. Newman—Direct Examination.*

The Court: But what kind of a bell?

The Witness: A brass or bronze bell, whatever it is made of.

10 Q. How big? A. I judge maybe it weighed between 80 and 100 pounds.

FRANK K. NEWMAN, sworn on behalf of the defendants.

Direct Examination by Mr. Applegate:

20 Q. What was your occupation on March 12, 1925? A. Passenger conductor.

Q. And you were on train 726, of the Pennsylvania Railroad Company, bound north? A. Yes, sir.

Q. Do you remember the accident at Haslett crossing? A. Yes, sir.

Q. Whereabouts were you on the train? A. In the first car.

30 Q. The first car from what? A. From the engine.

Q. That is the baggage car? A. No, sir, it is a combination car, baggage and passenger car.

Q. A combination car? A. Yes, sir.

Q. When did you first know that there had been an accident? A. Why, after the train stopped, I got off to see what was the matter and I saw that there had been an accident.

40 Q. Now, before your train stopped did you hear any signal from your locomotive? A. I heard the whistle blow, yes.

*Frank K. Newman—Cross Examination.*

Q. How many times? A. Four times.

Q. And do you know how far you were from the crossing when that started to blow? A. Well, quite a ways, maybe a quarter of a mile when we first started.

10 Mr. Applegate: That is all.

Cross Examination by Sen. Simpson:

Q. These four blasts, when they finished how far away were you from the crossing? A. Why, we were pretty near up to the crossing.

Q. How far? A. I should judge maybe a car length or two.

Q. Were you looking out? A. No, sir.

20 Q. Well, how could you tell inside a closed car how near you were to the crossing? A. Why, the train stopped just the other side of the crossing and I was—

Q. Then you are figuring on the distance you were away from the crossing by the interval of time that elapsed from the last whistle until you stopped? A. Yes, sir.

30 Q. Where were you when you stopped? A. Where was I?

Q. Where was your engine when you stopped? A. The other side of the crossing.

Q. More than one car length or only one car length on the other side of the crossing? A. The whole train just cleared the crossing.

Q. How many cars were there on the train? A. Five.

40 Q. Well, then, what space of time was there from the time you heard the last blow until the train stopped? A. Probably ten or fifteen seconds.

*George F. LeCompte—Direct Examination.*

- Q. Did you time it by a watch? A. No, sir.  
 Q. Just estimated it? A. That is an estimate.

Sen. Simpson: That is all.

10 GEORGE F. LECOMPTE, sworn on behalf of  
 the defendants.

Direct Examination by Mr. Applegate:

- Q. What was your business on the 12th day of  
 March last? A. Baggage master.  
 Q. And on what train? A. Train Number 726.  
 Q. That is the Pennsylvania train, northbound?  
 20 A. Northbound, yes, sir.  
 Q. Do you remember the accident that occurred  
 at Haslett crossing? A. Yes, sir.  
 Q. And can you say there were any signals  
 given from your engine? A. Yes, I heard the en-  
 gineer blow the whistle.  
 Q. How many times? A. Four. Two long and  
 two short.  
 Q. Where were you on the train? A. I was in  
 the baggage compartment of the combined car,  
 30 next to the engine.  
 Q. Where was it the whistle started to blow?  
 A. Why, it started quite a little distance south  
 of the crossing.  
 Q. And blew how many times? A. Four.  
 Q. Do you know anything about the bell,  
 whether the bell was ringing? A. I cannot recall  
 whether I heard the bell ringing or not.

40 Mr. Applegate: That is all.

*George F. LeCompte—Cross Examination.*

Cross Examination by Sen. Simpson:

- Q. What is your position? A. Baggage master.  
 Q. And were you on the express or on the local?  
 A. On the local.  
 Q. That was going to stop at Haslett? A. Yes, 10  
 sir.  
 Q. It was going to stop at the station? A. Yes,  
 sir.  
 Q. Where had you started from? A. Point  
 Pleasant.  
 Q. What time? A. We left there at five o'clock.  
 Q. How often did you hear the train whistle  
 from the time you left there? A. I heard it at  
 most every crossing coming up. 20  
 Q. You heard the whistle at every crossing?  
 A. Yes, sir.  
 Q. Did you have anything else to do on the  
 train? A. Yes, sir.  
 Q. What did you have to do? A. Take care of  
 the baggage along the road.  
 Q. Did you stop to look at your watch at every  
 crossing? A. I was not doing anything just at  
 that particular moment.  
 Q. How many crossings were there? A. I have 30  
 not counted them all.  
 Q. You know he whistled at every crossing;  
 don't you know how many there were? A. No, sir,  
 I cannot tell you exactly how many there were.  
 Q. Are you still employed by the Pennsylvania  
 Railroad Company? A. Yes, sir.  
 Q. In what capacity? A. Trainman.  
 Q. What was it attracted your attention to these  
 four blasts that you describe? A. I don't know 40

*George F. LeCompte—Cross Examination.*

if there was anything in particular that attracted me, I just heard it.

10 Q. How soon after you heard those four blasts did your train stop after it cleared the crossing; what was the length of time? A. Oh, it was not over two or three seconds I don't think, after it cleared the crossing before we stopped. I felt the sudden application of the brakes and we stopped.

Q. I mean how long a space of time was it before you stopped, between the whistling and the stopping of the train? A. Maybe a couple of seconds, two or three seconds, maybe four seconds.

20 Q. Four seconds from the time you heard the last whistle until you stopped? A. Yes, sir.

Q. Were you looking out at all? A. No, sir.

Q. Did you see this automobile? A. I did not see this automobile until the train stopped.

Q. Did you get out after it stopped? A. Yes, sir.

Q. What did you find when you got out? A. I found the wreckage of an automobile under the pilot of the engine.

30 Q. Where was the wreckage, was it under the engine? A. On the pilot of the engine, the cow-catcher.

Q. What was its condition? A. Oh, it was a mass of twisted iron.

Q. A mass of twisted iron? A. Yes, sir.

Q. Did you see these men? A. No, sir.

Q. You did not help take them away? A. No, sir.

*Holmes Bresnahan—Direct Examination.*

HOLMES BRESNAHAN, sworn on behalf of the defendants.

Direct Examination by Mr. Applegate:

Q. What position did you occupy on March 12, 1925? A. Flagman on the 726. 10

Q. And where were you in the train? A. In the rear car.

Q. What were you doing? A. Why, I was taking transportation.

Q. Assisting the conductor? A. Yes, sir.

Q. Do you know whether or not any signals were given from your locomotive as it approached the Haslett Avenue crossing? A. I heard the whistle blown, yes. 20

Q. How many times? A. Four times.

Q. And where was your train when you heard the whistle blown first? A. I could not say how far away it was from the crossing, but it was quite a little distance.

Q. Do you know where the whistle board is there? A. Yes, sir.

Q. How near the whistle board was it? A. I imagine right by the whistle board when he blew.

Q. You say you were taking up tickets? A. Yes, sir. 30

Q. What attracted your attention to the whistle? A. Well, I most always hear the whistle blown.

Q. I mean on this particular occasion; you say you heard it; how do you know you heard it? A. Well, I heard the other train blow, then I heard our train blow.

Mr. Applegate: That is all.

*Holmes Bresnahan—Cross Examination.*

Cross Examination by Sen. Simpson:

Q. How long did it take to give these four whistles? A. Well, it takes about five or six seconds to give the four whistles.

10 Q. I am talking about this night, not what it takes to give them, but this night that your attention was attracted; how long did it take to give these whistles? A. About the same length of time, about five or six seconds to give the whistles.

Q. Was he over the crossing before the whistles were finished? A. No, sir.

Q. How long before he struck the crossing did he stop the whistling? A. Four or five seconds before we struck the crossing.

20 Q. Do you know how far in distance away from the crossing he was when he stopped whistling? A. I cannot say that.

Q. Do you know how long it takes from the whistling board to the crossing? A. No, I do not.

Q. You were busy collecting tickets, were you? A. Yes, sir.

30 Q. Well, when you heard the whistle did you look up or pay any attention or just go on collecting tickets? A. I stopped for a minute, yes.

Q. You did not stop until you knew there was something wrong, did you? A. As soon as I heard the brakes go on, why, then I stopped.

Q. How long before you heard the brakes go on did you hear the last whistle? A. Oh, it must have been two or three seconds.

Q. And was it dusk or dark, or what? A. No, it was not dark.

40 Q. The sun had set? A. The sun had set, yes.

*Arthur D. Brill—Direct Examination.*

Q. But what was it, dusk or light or what was it? A. It was kind of light yet.

Q. You got out of the train, did you say? A. Yes, sir.

Q. What did you see when you got out? A. I went back with my flag and took my light and went back to see what had happened. 10

Q. Could you see these men where they were lying? A. I seen one of them, yes.

Q. Which one? A. The man that was in the middle of the tracks.

Q. You do not know who he was? A. No, sir.

Q. What day of the week was this? A. March 12.

Q. But what day of the week was it? A. That I could not say. 20

Q. You remember clearly you heard a whistle but you do not know what day of the week it was? A. No, sir.

Sen. Simpson: That is all.

ARTHUR D. BRILL, sworn on behalf of the defendants. 30

Direct Examination by Mr. Applegate:

Q. You were a brakeman on train number 726 on March the 12th? A. I was.

Q. And do you remember the accident that occurred at Haslett crossing? A. Yes, sir.

Q. Whereabouts were you on the train as you approached the crossing? A. Between the second and third cars. 40

*Arthur D. Brill—Direct Examination.*

Q. What were you doing? A. I was waiting for the train to make the station stop at Haslett.

Q. That was a regular stop, was it, for that train? A. Yes, sir.

10 Q. Can you say whether or not there were any signals given from your locomotive? A. I heard the engine blow two long and two short.

Q. Whereabouts was your train at that time? A. Approaching the station at Haslett, that is, this side of the crossing. We were going to make a station stop.

Q. Do you know where the whistle board is? A. No, sir.

20 Q. You do not know anything about that? A. No, sir.

Q. How far from the crossing was your train when you heard this whistle start to blow? A. I don't know.

Q. What did you do after the train stopped? A. I got out to see what was the matter and when I found out what was the matter I got the stretcher and put the man in it then went to Long Branch.

30 Q. When you heard the whistle blow did you do anything? A. What do you mean? I don't understand the question.

Q. I cannot make it any clearer. When you heard the whistle blow, what did you do, if anything? A. Nothing.

Q. Nothing at all? A. Yes.

Mr. Applegate: That is all.

Cross Examination by Sen. Simpson:

40 Q. This was the regular station whistle you heard, wasn't it, as you approached the station

*Arthur D. Brill—Cross Examination.*

you were going to stop? A. There is no regular station whistle. I heard two long and two short blasts.

Q. That is the whistle he always gives when he is approaching a station when he is going to stop? A. No, sir, that was a road crossing whistle I heard. 10

Q. This was a local train and it was going to stop at Haslett? A. Yes, sir.

Q. And he gave no whistle at all to indicate to the station that he was going to stop? A. No, sir.

Q. You do not have a regular station whistle then? A. No, sir.

Q. And you never whistle for the right of way? A. No, sir. 20

Q. Never heard the engineer whistle for the right of way? A. No, sir.

Q. How long were you on this run at the time? A. Why I have been on that run for about three years.

Q. On the 12th of March? A. Two years then.

Q. Up to the 12th of March? A. Yes, sir.

Q. And you remember clearly that there were two long and two short blasts given? A. Yes, sir. 30

Q. And you do not know how far away you were from the crossing when you made them? A. No, sir.

Q. You put a man on the stretcher. Who was it you put on the stretcher? A. The man that was alive.

Q. That was not the man in this case? A. That was not the man that was ground up, no, sir. 40

*George F. Randolph—Recalled, direct.*

Q. The man in this case, did you find him? A. Yes, sir.

Q. Where? A. In the center of the tracks.

Q. Was he ground up? A. Very bad.

Q. All cut to pieces? A. Yes, sir.

10

Sen. Simpson: That is all.

Mr. Applegate: That is all, if your Honor please.

Sen. Simpson: There was something I omitted in my cross examination. I would like to recall the civil engineer.

20

GEORGE F. RANDOLPH, recalled.

Cross Examination by Sen. Simpson (continued):

Q. The freight house is north of this crossing, isn't it? A. Yes, sir.

Q. Can you tell us how far it is from the crossing? A. Only approximately.

Q. You did not measure it? A. No, sir.

30

Q. It does not show on this map? A. No, sir. It is beyond the boundaries of the map. The map reaches a distance of about 300 feet each way from the crossing.

Q. How far is the freight beyond that? A. Beyond the boundaries of the map.

Q. How far? A. About 200 feet.

Q. So that it would be about 500 feet from the crossing? A. Between 500 and 600 feet; yes, sir.

40

Sen. Simpson: That is all.

*Court's Charge.*

Sen. Simpson: We have no rebuttal.

Mr. Applegate: If your Honor please, I renew my motion and ask for a direction of a verdict in favor of the New York and Long Branch Company because there is no evidence to go to the jury on the question of an extra hazardous crossing. 10

The Court: I will direct a verdict as far as the New York and Long Branch Company is concerned.

Sen. Simpson: Exception.

Mr. Applegate: That leaves the Pennsylvania Railroad Company only.

Sen. Simpson: Will the Court take judicial notice of the fact that the sun set on that day at 6:02? 20

Mr. Applegate: If the sun did set at 6:02, we agree that that go in.

The Court: All right. It is conceded as a matter of fact that the sun set at 6:02.

(Both sides summed up to the jury.)

*Court's Charge.*

30

The Court thereupon charged the jury as follows:

The Court: Gentlemen of the jury: Under the common law there could be no recovery of damages for the life of a human being, but in our State the legislature, years ago, passed an act known as the Death Act that provided that under certain circumstances and conditions there could be a recovery of money damages for the death of 40

*Court's Charge.*

a person and the first section of that act under which this action is brought reads as follows:

10 "Whenever the death of a person shall be  
caused by a wrongful act, neglect or default,  
and the act, neglect or default as such as  
would, if death had not ensued, have entitled  
the party injured to maintain an action and  
recover damages in respect thereof, then and  
in every such case the person who, or corpo-  
ration which, would have been liable if death  
had not ensued, shall be liable to an action for  
damages notwithstanding the death of the  
person injured and although the death shall  
20 have been called under such circumstances as  
amount in law to felony."

Now, as I have read that section to you, you  
will notice that it is not every death for which  
there can be a recovery, but it is only in cases  
where if the person injured had not died there  
could be a recovery of damages against the per-  
son who caused the injury. In other words, it is  
only in cases of negligence that there can be a  
30 recovery for the death. So in this particular case  
which you are now considering, before the plaintiff  
can ask at your hands a verdict against the rail-  
road company, they must satisfy you by a pre-  
ponderance of the evidence that the death of this  
man was caused by the negligence of the railroad  
company. If that does not appear, the mere fact  
that the man was killed in an accident does not  
entitle the administrator of his estate to recover.

40 The plaintiff must prove to you by a preponder-  
ance of the evidence that the death was caused by  
the negligent act of the railroad company.

*Court's Charge.*

It is not disputed in this case that on the 12th  
day of March of last year, 1925, about 6:10 or  
6:12 in the evening, an automobile truck was being  
driven along the road, Haslett Avenue, and in at-  
tempting to cross this railroad track belonging to  
the New York and Long Branch Railroad Com- 10  
pany over which trains of the Pennsylvania Rail-  
road Company were operated, it was struck or  
came in contact with a train or trains operated by  
the Pennsylvania Railroad Company and as a re-  
sult of that collision this man was killed, and his  
widow applies to the Surrogate of the County of  
Monmouth and letters of administration ad prose-  
quendum (that is, administration to bring this par-  
ticular suit) were granted her and she brings this 20  
suit to recover damages which she as the widow  
and the children as the next of kin suffer by rea-  
son of this man's death. That is the case which  
you gentlemen have to determine.

The first question which you will have to de-  
termine in order to arrive at a verdict is: Was  
this accident caused by the negligence of the Penn-  
sylvania Railroad Company?

The Central Railroad Company of New Jersey 30  
and the New York and Long Branch Railroad  
Company were made defendants with the Penn-  
sylvania, but there was no evidence that the Cen-  
tral Railroad Company had anything to do with  
this accident, so a nonsuit was granted so far as  
the Central Railroad Company was concerned.  
The evidence did not show, so far as the other  
phase of this case is concerned, that there was any  
responsibility on the part of the New York and  
Long Branch Railroad Company to maintain gates 40  
or watchman or a flagman at that particular sta-

*Court's Charge.*

tion at that particular time, and as long as there was no responsibility on their part there could be no negligence on their part in not maintaining gates or a bell at that point. It also appears that while they maintained a flagman during the summer months, they never maintained a flagman during the winter time or fall, and that there was a notice posted at that place as required by the statute, that there was no flagman at that particular crossing at that time, and so the Court has directed that so far as the New York and Long Branch Railroad Company is concerned, you must find no cause of action against them. That is the direction of the Court, for which you have no responsibility, and if the Court is wrong, counsel have their redress.

That leaves this case standing against the Pennsylvania Railroad Company, the railroad company that was operating the train or trains which struck this man and which injured him and from which injury he died almost immediately.

In order to determine this question, you must determine what the duty of that railroad company was. This was a grade crossing, that is a crossing where the railroad company crosses a public road at grade, and every railroad crossing is a place of danger and the legislature recognizes that fact and has directed what signal shall be given at a railroad crossing by an approaching train, and if they give the statutory signal then they have done all that the law requires them to do, and if they give such signal in a way and manner which the statute directs, there is no liability in case of an accident.

*Court's Charge.*

A bell of a weight not less than 30 pounds shall be placed on each engine and rung continuously in approaching a grade crossing of a highway, beginning at a distance of at least 300 yards from the crossing and continuing until the engine has crossed such highway; or a steam whistle shall be attached to each engine and be sounded, except in cities, at least 300 yards from the crossing and at intervals until the engine shall have crossed the highway.

That section also provides that there shall be a sign, conspicuously placed with the inscription, "Look out for the locomotive" on each side of the track. There is no dispute that the sign was there, but the question is, was the statutory signal given? It is not necessary for the railroad company to sound a whistle and ring a bell. One or the other is all that is required. They have a right to do both if they so desire, but if they sounded the whistle on that engine, commencing at a point 300 yards away and blowing it at intervals until the train crossed that crossing, that was all the law required them to do, and if they did that and they collided with the truck going across that crossing, or if in crossing that crossing the truck collided with them, there would be no responsibility.

If they rang the bell on that engine, commencing at a distance of 300 yards away from the crossing, and they continued to ring it until the train passed over that crossing, and the accident occurred by reason of their running into this truck going over the crossing, or if the accident occurred by reason of the truck running into them while the train was crossing the crossing, there would be no liability. But if they failed to give that signal and this man

*Court's Charge.*

who was in this truck was not guilty of contributory negligence, then the widow can, as the administratrix, bring an action and recover.

10 The plaintiff is obliged to establish by a preponderance of the evidence that the railroad company failed to give the statutory signal. That is the question which you have to meet.

20 Now, if you find that the railroad company failed to give the statutory signal, that is, that it did not ring the bell from the point where it was required to—and the evidence is that they commenced to ring the bell when they blew the whistle, and the engineer says he blew the whistle from the whistle board, which according to the evidence is more than 300 yards away—then there would be no liability. If they did not do that, either ring the bell or blow the whistle, as the statute provides, then there would be liability on the part of the railroad company unless this man was guilty of contributory negligence.

30 Of course a person driving on a railroad track is obliged to use the care and caution that a reasonably prudent man would use. He should look and listen before going on the tracks, and if by reason of his own negligence he goes on the tracks under those circumstances and is struck by a train, why he could not recover even if the railroad company was negligent in its failure to give the statutory signal.

40 But, if you believe the evidence in this case, this man who was killed was not driving this truck. If he was not driving this truck and was simply an invitee in this truck, the contributory negligence of the man who drove it could not be attributed to him. Of course, if there is any evi-

*Court's Charge.*

dence of contributory negligence on his own part, he could not recover, but if the negligence was the negligence of the driver, you can see that because the driver of the truck was guilty of contributory negligence, the driver's negligence should not be attributed to this man who was killed. 10

You see, members of the jury, the primary question in this case: did the railroad company fail to give the statutory signal and was the railroad company negligent? Because if they were negligent and this man was not guilty of contributory negligence, then there could be a recovery.

If you find there can be a recovery in this case, then you will have to go a step further and determine the amount of recovery. While the legislature in this State gives an administrator the right of recovery for the death of a human being, the same legislature provided that the recovery should be limited to the pecuniary loss which was suffered by the widow or next of kin, by reason of such death. You can not take into consideration, in considering a case of this kind, the sorrow, the loss of companionship or anything that cannot be admeasured by a money value. 20

In other words, the legislature has limited the recovery to the pecuniary loss which the next of kin and the widow sustained by reason of the sudden death of this widow's husband. Now, in arriving at that you have the right to consider what this man was contributing to the widow. You have a right to consider how much he was earning at that time, but in addition to that you must take into consideration all the possibilities and probabilities of the case. He might have died in the near future in the ordinary course of nature. 30 40

*Court's Charge.*

10 He might not have been able to carry on the business that he was doing and earn the same amount of money that he had been doing. You should take all those questions into consideration and then find what sum, in your opinion, would be the pecuniary loss which resulted to this widow by reason of her husband's death, and the loss to these children.

20 It is not a sum which will produce that amount, gentlemen of the jury, as income, but it is what sum you find from the evidence, if there can be a recovery, that the pecuniary loss of this widow and children is after considering all the circumstances of the case. You have nothing to do about the value of a dollar in a case of this kind because whatever amount he had been paying to his wife was in the same ratio as the money the children will receive if she receives anything. That does not enter into this case at all. It is the amount that you find is the pecuniary loss by reason of this man's death. You see, members of the jury, he was living at home and he was getting his own living out of the \$75 that was paid the wife to support the house and pay the rent and take care of the family of which he was a member, so the pecuniary loss to the children is not \$75 a week, but it was that less the amount that would go to his own support during that particular time.

30 The law also provides that after you determine that amount, you must discount it because you see the widow was getting \$75 a week. Out of that, however, she paid board of her husband, then she would have the balance for herself and her children, and if you find a verdict for the plaintiff she would get all the money at once, in

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*Exceptions.*

one lump sum, so the law says it is the present pecuniary value. You must discount that amount so that the amount which she will receive will not be a sum over a period of time, but having it at once she can use and gain the income if she invests it. It must be the present value of this pecuniary loss. 10

Of course, gentlemen of the jury, if after considering this case you find that the railroad company was not negligent, that they did all the law required them to do—you have nothing to do with gates, nothing to do with signal bell, nothing to do about a gateman or flagman—if they gave the statutory signals, then there can be no recovery. If they did not, and the man himself was not guilty of contributory negligence, then there can be a recovery and you should fix the damages in the way and manner I have instructed you. 20

**Exceptions.**

Sen. Simpson: Exception to your Honor limiting any right of recovery to the plaintiff for violation of the statute regarding signals and excluding from the consideration of the jury the question of whether or not by reason of extra hazardous crossing there should not have been some precautions taken other than the statutory signal; especially what your Honor said at the end of your charge "You have nothing to do with automatic bells, nothing to do with flagmen, nothing to do with the gate, you are to decide solely on the violation of the statute." 30

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P-2



p 3

159

P-4



710

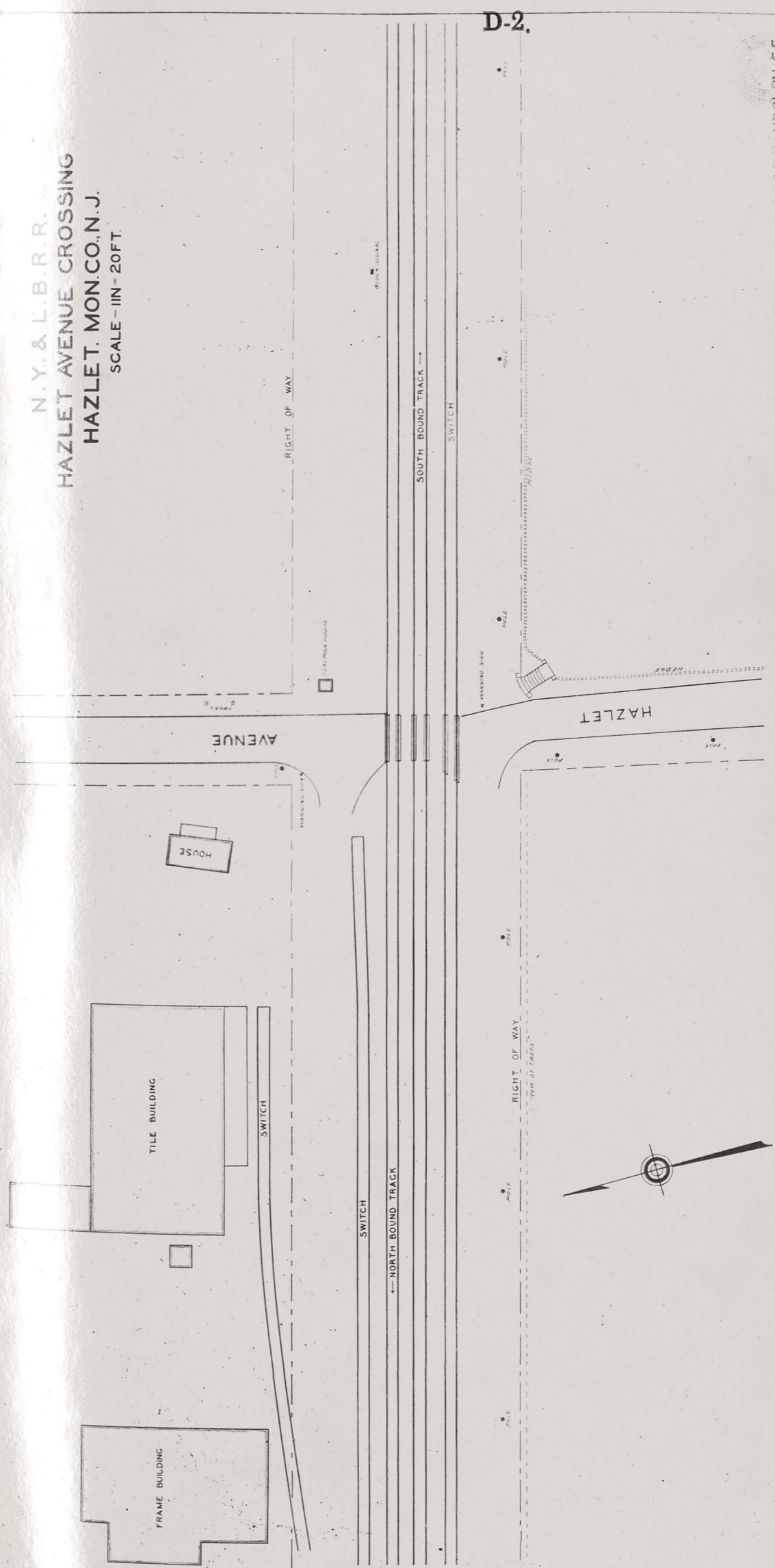


P-6  
P-6

D-2.

N. Y. & L. I. B. R. R.  
HAZLET AVENUE CROSSING  
HAZLET, MON. CO., N. J.  
SCALE - 1/4" = 20 FT.

D-2



CO. OF RANDOLPH, P. H. C. E.  
MARCH 18, 1923

View





D-6

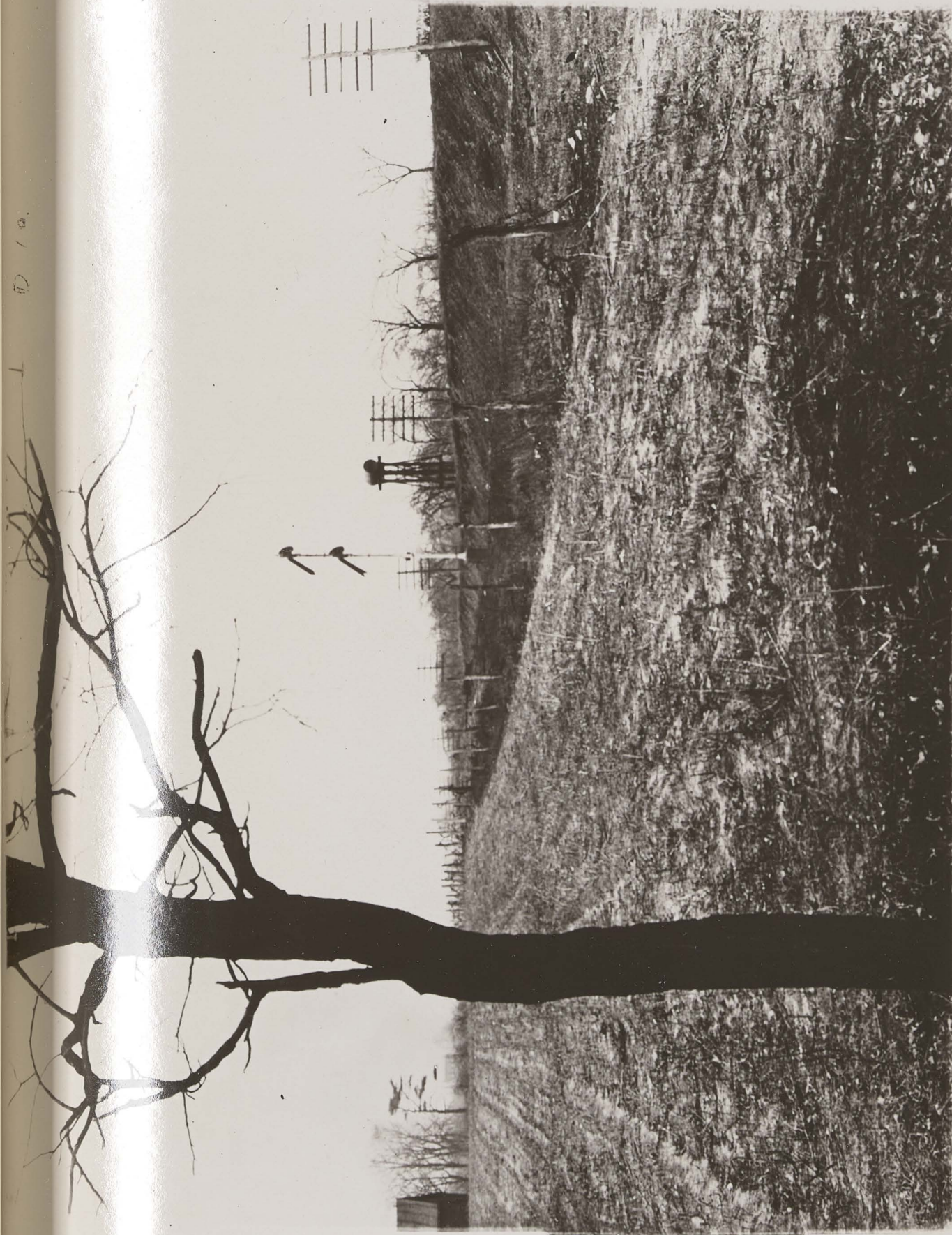


D-7

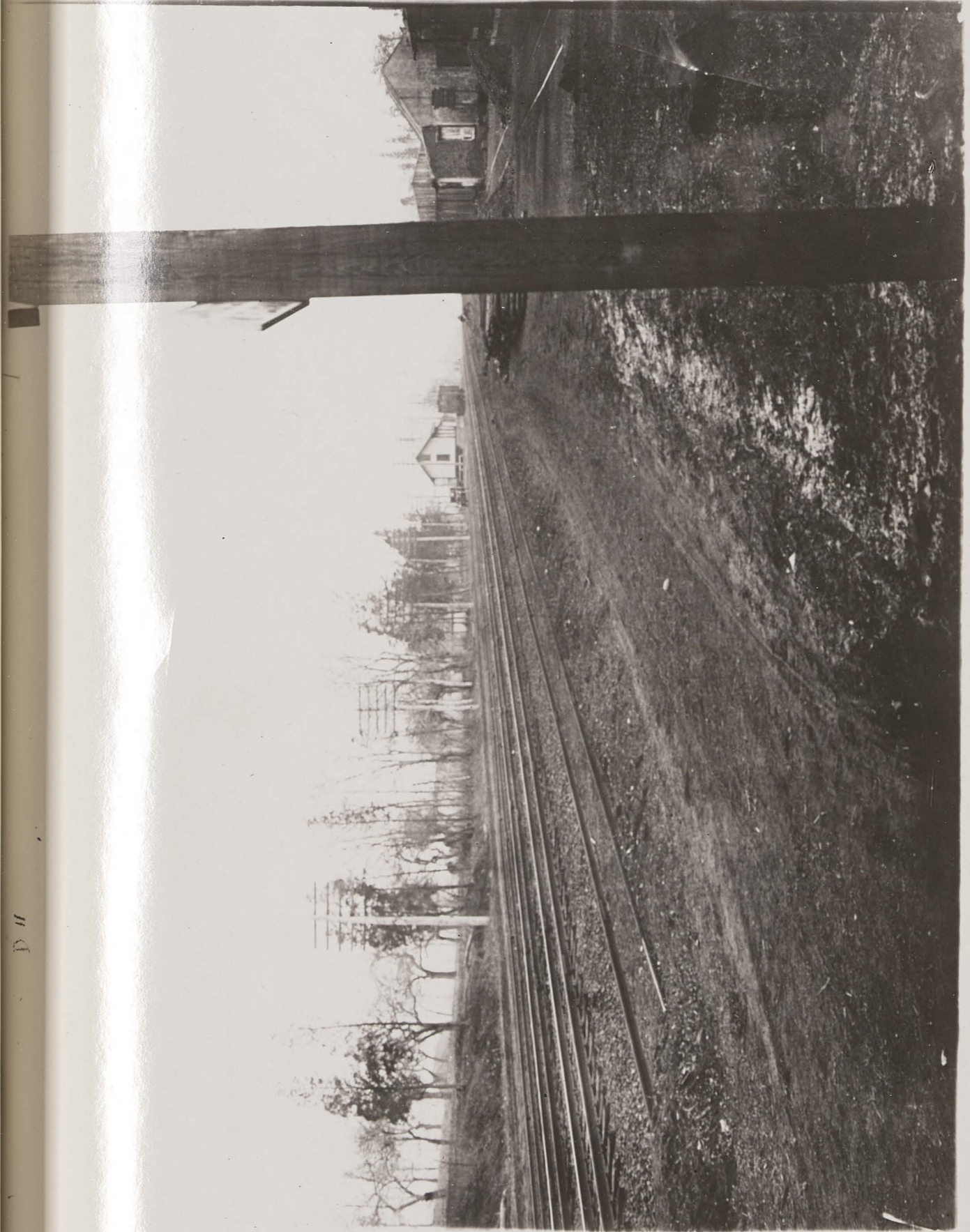
D-8







D-10.



D 11



D-12



7. 3

151

D-14.



DIX

## New Jersey Court of Errors and Appeals 10

ROSE TOTA, Administratrix ad  
prosequendum of the Estate of  
Constantino Tota, deceased,  
*Plaintiff-Appellant.*

vs.

THE PENNSYLVANIA RAILROAD  
COMPANY, THE NEW YORK &  
LONG BRANCH RAILROAD COM-  
PANY and THE CENTRAL RAIL-  
ROAD COMPANY OF NEW JERSEY,  
corporations,  
*Defendants-Respondents.*

Action at Law.

Appeal from  
New Jersey  
Supreme Court.

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**BRIEF OF PLAINTIFF-APPELLANT.**

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This is an appeal from a judgment for the defendant in an action brought to recover damages for the death of the intestate of the plaintiff at a railroad crossing. The intestate of the plaintiff was killed at a crossing of the defendant company, which was unguarded neither by a watchman or gates, nor by automatic signals. The crossing was at a place called Haslett, N. J. The ground of appeal is that the court erroneously instructed the

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jury that if statutory signals were given, then there could be no recovery. The following was the language of the court:

10 "Of course, gentlemen of the jury, if after considering this case you find that the rail- road company was not negligent, that they did all the law required them to do,—you have nothing to do with gates, nothing to do with signal bell, nothing to do about a gateman or flagman—if they gave the statutory sig- nals, then there can be no recovery. If they did not, and the man himself was not guilty of contributory negligence, then there can be a recovery, and you should fix the damages in the way and manner I have instructed you." 20

There is an exception allowed to this part of the charge, and error is assigned upon it.

#### Facts.

30 This was a dangerous crossing made so by the way in which it was maintained by the defendant company, that is, the jury had a right to so find. The photographs submitted and the evidence of the plaintiff, especially that given by the witness Vigna, shows that you have to get within ten feet of the track on one side and right on the track on the other side before you have a vision up and down the tracks. The reference to the photo- graphs are those marked P-2, P-3 and P-4. This evidence is found on pages 24 and 25 of the State of Case. There were no automatic crossing bells or gates (S. C., p. 33). The witness Henry A. 40

Valling testified: "There was a flagman kept at the crossing part of the year, but not at the time of the accident" (S. C., p. 33). The evidence of Charles H. Traffart was that crossing was twenty feet wide, and from the plank to the bank it was one hundred feet (S. C., pp. 39-40). He also tes- tified that it is fifty feet from the center of the crossing to the right of way (S. C., p. 40). This same witness also testified that the banks are prac- tically part of the road and shut off the view. The witness William L. Thompson testified that, refer- ring to Exhibit P-2 you have to get within ten feet of the first track before you have any view because of the obstructions of the bank and build- ings. The bank six and one-half feet high. There is also a coal bin and other buildings. You would have to pass the bank before you have any view. 10 There are more obstructions on the south side than on the other side, and the bank is higher (S. C., p. 43). On the other side you have to be within eighteen feet of the tracks before you can see (S. C., p. 44). 20

With this situation the decedent approached in an automobile driven by another person, and there was a truck moving along at the same time which drowned the noise of the on-coming train, and the automobile was struck almost as soon as it got on the crossing. The jury could have found that he had no chance to see, nor did the driver have any chance to see, or hear the approaching train. There were no gates, no flagmen, no signal of any kind, although part of the year the defendant com- pany had maintained a flagman at the crossing. All of these facts might have been found by the jury. 30 40

### Alleged Error.

The court withdrew from the jury the right to find that the crossing was a dangerous crossing, made so by the defendants, and that, therefore, no recovery could be had upon any ground, except the failure to give the statutory signals. The facts were as recited above. The crossing was obstructed by the defendant company; that the defendant company, during part of the time, maintained a flagman, serving notice on the public that there was a flagman there; that by reason of the action of the defendant, the view of the crossing was obstructed, and under these circumstances the case clearly came within the rule laid down in the following cases, and the jury should have been allowed to determine whether it was a dangerous crossing, and if so, what, if any, precautions, besides the statutory signals should have been adopted.

In the case of the Philadelphia & Reading Railroad Company vs. The State, 61 N. J. L., page 71, the Supreme Court held:

“If a crossing has some peculiarly dangerous feature, something more than the statutory signals are required from the railroad company.”

See also:

*Grover vs. N. Y. S. & W. R. R. Co.*, 1 Misc., 517;

*Molyneaux vs. N. Y. S. & W. R. R. Co.*, 1 Misc., 535.

In the case of *HORANDT vs. C. R. R. CO.*, 78 N. J. L., 190, this case holds there is no liability,

yet it re-stated the law of the necessity of more than statutory signals if the crossing was dangerous.

In the case of the Pennsylvania R. R. Co. vs. Mathews, 7 Vroom., 531, Chief Justice Beasley, speaking for the Court of Errors and Appeals, said:

“If a railroad, for its own convenience, curves its track as it leaves a deep cut, within a few feet of a highway, and also sees fit to put up buildings close along such track, and by these means, or either of them, heightening the danger in the use of such highway, it seems to me very clear that such company must be held to have taken upon itself the duty of reverting such danger, by the employment of every reasonable precaution within its power.”

To the same effect is the case of *New York, Lake Erie and Western R. R. Co. vs. Leaman*, 25 Vroom., 202.

It is also urged by the appellant that the trial court erred in submitting the question of decedent's contributory negligence to the jury. There was no contention on the part of the defendant that the decedent was contributorily negligent, he was not driving the automobile, and from the evidence there was no observation that he could have made, and nothing that he could have done that would have prevented the accident. Therefore it was error to submit this question to the jury, for it charged them that they had a right to consider contributory negligence of the decedent—not only this, but more than that—it charged them that they must exculpate the decedant's intestate for

contributory negligence before any recovery could be had. It is urged that the law is that the burden of proof to establish contributory negligence is on the defendant and not as the trial court here charged on the plaintiff.

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**RESUME.**

The appellant respectfully submits that the court erred in instructing the jury that the only question in the case was as to whether or not the defendant gave the statutory signals and that the judgment below should be reversed.

Respectfully submitted,

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ALEX. SIMPSON,  
Attorney for Plaintiff-Appellant.

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## New Jersey Court of Errors and Appeals.

ROSA TOTA, Administratrix ad Prosequendum of the Estate of Constantino Tota, deceased,  
Plaintiff-Appellant,

vs.

PENNSYLVANIA RAILROAD COMPANY and THE NEW YORK AND LONG BRANCH RAILROAD COMPANY,  
Defendants-Respondents.

Action at Law.

Brief on Part of Defendants-Respondents

The present case was tried before a jury at the Hudson Circuit May 7th, 1926. A non-suit was granted in favor of defendant Central Railroad Company of New Jersey and a verdict was directed in favor of defendant New York & Long Branch Railroad Company, and a verdict rendered in favor of defendant Pennsylvania Railroad Company.

The suit is the result of crossing accident at Hazlet Avenue, Hazlet, Monmouth County, New Jersey, March 12th, 1925, when plaintiff's decedent while riding in a motor car was struck and killed by a train of the defendant Pennsylvania Railroad Company.

This appeal is taken on part of plaintiff on the ground that the Court erred in directing a verdict in favor of the New York and Long Branch Railroad Company and because the Court charged the jury that in considering whether defendant Pennsylvania Railroad Company was negligent, their inquiry must be limited to the question whether or not the statutory signals were given. (See grounds of appeal, printed case page 2).

### DISCUSSION OF FACTS AND LAW.

The train was travelling south, the automobile from east to west. Immediately after the collision another train of defendant Pennsylvania Railroad Company, but going north, ran over the wrecked motor which had been thrown from the southbound tracks; where it was first struck, to the northbound track. The accident occurred in the day time, 6 P. M. (87, line 40).

The right of way is 100 feet in width and is the property of the New York & Long Branch Railroad Company over which the Pennsylvania Railroad Company and Central Railroad Company of New Jersey operate their trains. (53, lines 15-40; 52, lines 1-10; 56, line 36).

From the east rail of the north bound track to east right of way line is 41 feet (54, line 25). From the east rail of the southbound track to the easterly right of way line is 50 feet (54, line 32). The train which collided with the decedent was running south on the southbound track. The second train going north on the northbound track. The automobile was going from east to west.

From the east rail of northbound track to east rail of southbound track is 17 feet. Between rails of the two tracks is four feet eight inches. (54, lines 35-40).

There were no obstructions on the right of way line. (43, line 29).

The flagman's shanty is on the south side of the crossing road, twenty-four feet from northbound track. There were warning signs on either side of the crossing and likewise signs notifying the traveling public that there was no flagman on duty. (55 line 35; 56, lines 2-10).

The embankments at the crossing on the east side which is the side from which decedent approached the crossing were but three feet above the road elevation and five feet above the track elevation (69, lines 1-10); on the west side twice as high (69, line 20). Going from east to west looking north at

the easterly right of way line there is no obstruction. (65, line 30). One travelling from east to west clears the bank at a point 40 feet east of the east rail of the northbound track. (71, lines 1-10) or 50 feet from the east rail of the southbound track.

The track is straight at the crossing either side as far as the eye can see. (71, line 15).

Plaintiff's photograph exhibits are (see case p. 137) as follows:

P-2 looking east from west side of crossing.

P-3 looking south. The buildings therein shown other than the flag shanty which is on the south side of the road are not on the right of way of the company. (55, lines 20-30; 65, lines 10-20).

P-4 looking north.

William L. Thompson testifying for plaintiff, not a civil engineer, and an investigator in the employ of plaintiff's counsel (48, lines 10-20), said that going from east to west one in an automobile must be ten feet from the crossing before one had a view of the tracks (43, lines 10-20). Plaintiff's exhibit P-3 shows the falsity of that evidence. When asked what were the obstructions to the view he replied, a bank on the south and buildings on the north (43, lines 15-30). We refer again to exhibit P-3. Witness places canning factory on west side of tracks (48, lines 21-30). All the photographs show it on the east side, likewise the map Exhibit D-2. See also testimony of Randolph (65, line 13).

Observations taken by Randolph, a civil engineer, and Coleman, a photographer, witnesses for the defendant, show the following facts:

30 feet from east rail of southbound track looking south see 2000 feet. (63, lines 1-10).

50 feet, see south 755 feet (63, lines 15-30).

80 feet, see south 750 feet (63, line 40).

100 feet, see a train 1000 feet south (64, line 10).

133 feet, see same as at 100.

Looking north—

30 feet from east rail of southbound track see 10580 feet (64, line 25).

50 feet, same as 30 foot point (64, line 31).

80 feet, same. (64, line 36).

100 feet, see 224 feet.

133 feet, see 109 feet.

Defendants' photograph exhibits were taken from the same points, respectively, above referred to. See exhibits D-5 to D-14 inclusive.

It is respectively submitted that the evidence both on part of plaintiff and defendant shows the crossing in question, was not an extra hazardous one in the sense requiring extra precautions to guard the same. It was just the ordinary country crossing, as counsel for plaintiff characterized it, (33, line 30), and not extra hazardous even though all the evidence offered on the part of the plaintiff tending to show conditions existing at the crossing be taken as true. There were no obstructions on the east side on the right of way of defendant looking north, the direction from which the train that struck decedent was approaching, and none on the south side other than the flag shanty. The result of the stated observations shows clearly that a person approaching the crossing from the east had a clear vision north and south of an approaching train while still in a place of safety. Whether the crossing was an extra hazardous one was under the evidence not a jury question, but one of law and the Court was justified in granting the motion to direct a verdict in favor of the New York and Long Branch Railroad Company and charging the jury that the only question for them to consider so far as negligence on the part of the Pennsylvania Railroad Company was concerned was whether that Company had failed to give the statutory signals.

That there was a railroad crossing at the place in question was clearly evident to the traveller on the highway. The tracks and crossing and crossing signs were in plain view. The road in question is a country road in the midst of a farming district. We have here a country crossing and clear view while in a place of safety of an approaching train either from the north or south. No hazardous con-

dition created or under the control of the Railroad Company.

The combination of circumstances or facts relied on by plaintiff-appellant as constituting an extra hazardous crossing falls far short of its contention when viewed in the light of the rule established by the decision in *Pennsylvania Railroad Co. vs. Matthews*, 36 N. J. L. 532.

"They are not called on to keep flagmen, under ordinary circumstances, at cross-roads nor to give any other notice of the approach of their trains than those signals that are prescribed by statute. If greater safeguards are requisite for the safety of the community, and those public agents are to be put under greater restrictions in the exercise of their franchises, such contrivances must proceed from the legislative, and not from the judicial power.

"The rule is, as I understand it, that when the company has created extra danger, it is bound to use extra precaution. If the track is put in a position where the trains, when close to their transit over a public street or road, cannot be seen, then is an extra danger which calls for more than the ordinary cautionary signals. I can see no difficulty in applying this rule; it will, obviously, be very much under the control of the court."

In *Danskin vs. P. R. R. Co.*, 76 N. J. L. 661, the Court say:

"The rule laid down in the *Matthews* case, under the facts of that case, was that if the place was 'so peculiarly dangerous that prudent persons could not use the public road in safety unless the Company employed a flagman or other extraordinary means to signal the approach of their trains, then in such

event it was incumbent on them to employ such extraordinary means.'

"There is nothing in the mere fact of the existence of proof of woods that rendered a crossing so peculiarly dangerous that prudent persons cannot use the public road in safety. In fact it is probable that such obstructions to the vision occur most frequently in the remote districts where trains are infrequent and travelers are few and we doubt if it has ever been held that it was permissible for a jury to infer the existence of a duty to employ extraordinary precautions upon unfrequented roads merely because of the existence of woods at the point of crossing."

In *Horandt v. C. R. R. Co.*, 78 N. J. L. 190, 195:

"The rule is well settled that when a railroad company has created at a crossing a place of extra danger, it is bound to use extra precautions, (*P. R. R. Co. vs. Matthews*, 7 Vr. 531, 535); but only when the situation has been created by some act of the company. *New York, Lake Erie and Western R. R. Co. v. Leaman*, 25 Id. 202; *Phila. & Reading R. R. Co. vs. State*, 32 Id. 71; *Siracusa vs. Atlantic City R. R. Co.*, 39 Id. 446. As will appear later, we do not think that the evidence showed the place to be one of extra danger, but conceding this for the present, there was nothing in the case to show that any alleged dangerous feature of the crossing was occasioned by the act of the company. The charge in this respect therefore was erroneous."

*New York, Lake Erie & Western Railroad Co. vs. Leaman*, 54, N. J. L. 202:

"Questions touching the duty of extra statutory care have arisen in cases where a

crossing has been accused of possessing unusual features of danger. In such cases it has been held that the company is under a duty to maintain flagman or gates at the crossing. But this duty only arises when this peculiarly dangerous feature is in consequence of the acts of the company itself in constructing its road or buildings."

In *Siracusa v. Atlantic City Railway Co.*, 68 N. J. L. 446, it was in evidence that a large building near the tracks cut off the view of the railroad for some distance, but it did not appear when the building was erected. The trial judge charged the jury that whether the situation of the buildings and tracks was one that called for extra precautions to prevent injuries to travelers on the street, was a question for the jury. The Supreme Court held the charge was erroneous. This case also stands for the proposition that the burden being on the plaintiff to prove negligence he must show affirmatively the facts which imposed upon the company the duty of giving additional precautionary signals.

In *Kyle v. Lehigh Valley R. R. Co.*, 81 N. J. L. 186:

"The obvious presumption upon which this legislation proceeds is that, if the signals prescribed by the statute are given, prudent persons can use the public roads in safety as far as the dangers ordinarily attendant upon the exercise of the right granted to the railroad company is concerned. This legislative scheme therefore does not purport to cover those cases in which the railroad company has created extraordinary dangers that increase the risk to the public beyond the point where prudent persons, if warned by audible signals, can use the public roads in safety. Hence, a railroad company that brings about such a situation imposes upon itself the common law duty of using reasonable care to pro-

tect the public from the dangers peculiar to such situation.

"The rule in question, therefore, by thus providing for two situations that are mutually exclusive, covers all possible cases, since any given case must fall within one or the other of its categories, in that it must either be a case in which prudent persons can use the public road in safety if the statutory signals are given or else one in which, even if such signals be given, such persons cannot safely use such roads. The difference between the two classes of cases does not consist, as is too often assumed, in the mere fact of an additional element of risk created by the company. Such circumstances may or may not suffice to take the case out of the statutory regulation. It is only when such added element of risk creates a condition in which, even if the statutory signals be given, prudent persons cannot with safety use the public road that such statutory regulations ceases to be the measure of the company's duty. Hence, the fact that some obstruction to vision or hearing has been created by the railroad company does not of itself dispose of the question; such fact is indeed relevant only in so far as it bears upon the crucial question whether the defendant has rendered the use of the public road so dangerous that persons of ordinary prudence cannot use it in safety even if the statutory signals be given. \* \* \* Such question is not alone whether new elements of danger have been added by the railroad to those that previously existed at a crossing, but whether the danger of crossing the railroad has been so increased that the statutory signals no longer afford protection to a prudent public."

Swenson v. Del. L. & W. R. Co., 99 N. J. L. 403:

"It is true that, where a railroad company

has created unusual features of danger at a public highway crossing, it is under a duty to take precautions additional to those required by the statute for the protection of people using such crossing. But, as was declared by us in the case of New York etc. R. Co. vs. Leaman, 54 N. J. L. 202, 205, 23 Atl. 691, 15 L. R. A. 426, this duty only arises when the peculiarly dangerous feature is permanent, and is a consequence of the acts of the Company itself in constructing its road or buildings.

Molyneaux v. N. Y. & Susq. etc. R. R. Co., 1 N. J. Misc. Reports, 535:

"The rule is that only when the railroad company itself has created the extra danger at a grade highway crossing, it is bound to use extra precautions in running trains other than those provided for by the statute."

For the foregoing reasons it is respectfully submitted that no error appears in the record warranting a ~~refusal~~<sup>reversal</sup> of the judgment appealed from.

JOHN S. APPLGATE & SON,  
Attorneys of Defendants-  
Respondents.