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JUDGMENT RECORD.

CAMDEN COUNTY COMMON PLEAS COURT.

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10	KATHRYN ROTHFUSS, by her next friend, ALFRED ROTHFUSS, and ALFRED ROTHFUSS in his own right,	}	Action at Law. Judgment on Verdict.
	<i>Plaintiffs,</i>		
	v.		
	PUBLIC SERVICE RAILWAY COMPANY, a corporation,	}	
	<i>Defendant.</i>		

20

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Witness, JOHN B. KATES, Judge.  
ALBERT S. WOODRUFF, attorney.  
WILLIAM D. BROWN, clerk.

Judgment entered on this seventh day of March,  
A. D. nineteen hundred and twenty-two.

Damages for Kathryn Rothfuss, etc.....	\$2,500.00
Damages for Alfred Rothfuss.....	1,000.00
30 Costs .....	81.51
	\$3,581.51

SUMMONS.

The defendant was duly summoned.

## COMPLAINT.

Plaintiffs, Kathryn Rothfuss, by her father and next friend, Alfred Rothfuss, and Alfred Rothfuss in his own right, both of 2727 Hayes Avenue, Camden, New Jersey, say that:

1. Defendant is a corporation, existing under and by virtue of the laws of the State of New Jersey, and on February 17, 1920, owned and operated and still owns and operates a street railway system in the City of Camden, New Jersey; therein defendant then owned and used tracks laid in and along Broadway, a public street in the City of Camden, where the same intersects Washington Street, another public street in said city, and thereover, by its servants and agents operated its trolley cars for the carriage of passengers for hire. 10 20

2. On the afternoon or early evening of said day, said plaintiff, Kathryn Rothfuss, attempted to lawfully cross Broadway from the west side to the east side thereof at Washington Street aforesaid, a lawful public crossing, and was there struck by one of defendant's said trolley cars then proceeding northwardly on Broadway on defendant's tracks, and seriously and permanently injured.

3. At said time and place said plaintiff, Kathryn Rothfuss, was crossing Broadway at said public crossing at Washington Street in a careful and prudent manner and said accident was caused and said injuries inflicted upon said plaintiff entirely by reason of the carelessness and negligence of the 30

defendant's servants and agents then operating and in control of said northbound car, in that said servants and agents then and there operated said car so as to cause it to approach and cross Washington Street where it intersects Broadway, at an unreasonably high rate of speed and so as to permit said car to be out of their control, and in that they then and there failed and neglected to keep a proper and reasonably careful lookout for pedestrians crossing  
10 in front of said car at said crossing, and to have said car under control so as not to negligently or wilfully injure said plaintiff, and failed and neglected to give proper warning that said car was about to cross said intersection, by gong, which was its usual method of warning, or by other reasonable warning sound or signal.

4. When said plaintiff, Kathryn Rothfuss, was struck by said trolley car as aforesaid, she was rendered unconscious and suffered a severe and permanent nervous and physical shock, and bruises, contusions, and sprains of the body, and deep lacerations of the forehead and nose, and contusions of the eyes and face. Said plaintiff was taken to and confined in Cooper Hospital and caused to undergo operations and treatments, and by reason of her said injuries has suffered a permanent impairment of her vision and will be permanently scarred, disfigured and physically and nervously weakened.

30

5. Said plaintiff, Kathryn Rothfuss, has been caused and will be caused to suffer great physical and mental pain, and has been incapacitated from work; said plaintiff, Kathryn Rothfuss, is an infant, was employed, and her father, the plaintiff, Alfred Rothfuss, has lost and will lose her services and

earnings and has been and will be caused to spend moneys in and about attempting to cure her of her injuries.

Plaintiff, Kathryn Rothfuss, demands \$35,000 damages.

Plaintiff, Alfred Rothfuss, demands \$10,000 damages.

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ANSWER.

10

(Filed April 9, 1920.)

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

OBJECTIONS.

20

It avers that the complaint does not state facts sufficient to constitute a cause of action as to Alfred Rothfuss in his own right, and it reserves the right to move to strike out the name of said Alfred Rothfuss as a party to this suit at the trial of this suit.

1. It admits the first paragraph of the complaint;
2. It denies the remaining paragraphs of the complaint.

30

FIRST DEFENSE.

1. It avers that the negligence of plaintiff, Kathryn Rothfuss, contributed to the happening of the said alleged accident, in that she entered the path-

way of the approaching trolley car at a time when said trolley car was so near as to endanger the safety of said plaintiff.

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10

## REPLY.

Plaintiffs deny every allegation in the answer of the defendant.

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20

## JUDGMENT.

Therefore the Sheriff is commanded that he cause to come before the Judge of our Common Pleas Court at Camden, in the County of Camden, on the seventh day of March, 1922, twelve, etc., by whom, etc., who neither, etc., to recognize, etc., because as well, etc., the same day is given to the parties, etc., and the jurors of the jury whereof mention is made  
30 also come who to speak the truth of the matter within contained being chosen, tried and sworn upon their oaths say they find for the plaintiff, Kathryn Rothfuss, by her next friend, Alfred Rothfuss, damages in the sum of twenty-five hundred dollars, and Alfred Rothfuss in his own right, damages in the sum of one thousand dollars, and the Court doth

order judgment final in favor of the plaintiffs and against the defendant for the sum of thirty-five hundred dollars, besides costs of the suit to be taxed.

Therefore, be it considered that the said plaintiffs do recover against the said defendant their damages by the jurors aforesaid in form aforesaid assessed and also the sum of eighty-one dollars and fifty-one cents for their costs and charges by the Court before the Judge now here adjudged of increase to the said plaintiffs and with their assent which said damages, 10  
costs and charges in the whole amount to the sum of thirty-five hundred and eighty-one dollars and fifty-one cents.

And the said defendant in mercy, etc.

Judgment entered and signed this seventh day of March, 1922.

JOHN B. KATES,  
*Common Pleas Judge.*

(Certificate of clerk of Camden County is annexed 20  
to the certified copy of judgment record.)



ORDER DISCHARGING RULE TO SHOW  
CAUSE.

CAMDEN COUNTY COURT OF COMMON  
PLEAS.

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10

KATHRYN ROTHFUSS, by her father  
and her next friend, ALFRED  
ROTHFUSS, and ALFRED ROTHFUSS  
in his own right,  
*Plaintiffs,*

v.

PUBLIC SERVICE RAILWAY COMPANY,  
a corporation,  
*Defendant.*

} Action at Law.  
Order.

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A rule to show cause having been entered in this cause on the 13th day of March, 1922 and the cause having been argued by Henry H. Freyling, Esquire, for the defendant, and Albert S. Woodruff, Esquire, for the plaintiff and the Court having considered the same and finding no cause for making the rule absolute:

It is, thereupon, on this 30th day of March, 1922, 30 on motion of Albert S. Woodruff, ordered that the said rule to show cause be, and is, hereby dismissed with costs and the judgment is hereby confirmed.

JOHN B. KATES,  
*Judge.*

(Certificate of clerk of Camden County is annexed to the certified copy of above order.)

## TESTIMONY.

## CAMDEN COMMON PLEAS COURT.

---

10 KATHRYN ROTHFUSS, *Plaintiff,* }  
v. } Action at Law.  
PUBLIC SERVICE RAILWAY COMPANY, *Defendant.* }

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March 7, 1922.

## APPEARANCES:

20 For the plaintiff, ALBERT S. WOODRUFF, ESQ.  
For the defendant, L. S. HOFFMAN, ESQ., and HENRY  
E. FRYLING, ESQ.

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Before KATES, J., and a jury.

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

Mr. Fryling opens the case for the defendant to  
the jury.

THE CASE FOR THE PLAINTIFF.

KATHRYN ROTHFUSS, SWORN.

By Mr. Woodruff:

Q. Miss Rothfuss, how old are you?

A. I am nineteen.

Q. You will have to speak louder so we can hear 10  
you back here.

A. Nineteen.

Q. Who do you live with?

A. My mother and father.

Q. Where do you live?

A. 2727 Hayes Avenue.

Q. That is out on the East Side or in Cramer  
Hill?

A. Cramer Hill.

Q. Where did you work before you met with the 20  
accident?

A. Hallahan's Shoe Store, Ninth and Market.

Q. Where is that?

A. Ninth and Market.

Q. Philadelphia?

A. Philadelphia.

Q. What kind of work did you do there?

A. Telephone operator and clerical work.

Q. How long did you work there?

A. I was hurt in February, and I had been there 30  
two years in May.

Q. How much were you getting just before the  
accident?

A. Fourteen dollars.

Q. Fourteen dollars a week?

A. Yes.

- Q. What hours did you put in over there?  
A. From nine to five.  
Q. What did you do with the money that you got?  
A. Gave it to my mother.  
Q. Used in the family, was it?  
A. Yes.  
Q. What was your condition of health while you were working there?  
A. Fine, I was never sick.
- 10 Q. Were you heavier than you are now?  
A. A hundred and eighteen pounds.  
Q. A hundred and eighteen you weighed when?  
A. During the Christmas holidays, right before February when I was hurt.  
Q. How much do you weigh now?  
A. A hundred and three.  
Q. Was a hundred and eighteen your average weight, your regular weight?  
A. Yes, sir.
- 20 Q. Now, where were you going the day that this accident occurred?  
A. To my sister's house at Sixth and Washington Streets.  
Q. And how did you go about getting there?  
A. Why, I came from Hallahan's at five o'clock, and came down in the L across the ferry, and it was about half-past five, between half-past five and a quarter of six that I reached this side of the ferry, and took the Broadway car.
- 30 Q. Speak a little louder, please; this room is bad for hearing. Then you got the car on this side of the ferry and came down Broadway, is that right?  
A. Yes.  
Q. Now, where did you get off of that car?  
A. Washington Street.  
Q. Did the car stop at the regular place on the near side of Washington Street?

A. Yes.

Q. What part of the car were you riding in?

A. In the end, at the rear end where I got on the car, where the conductor stands.

Q. Was the car crowded?

A. Yes.

Q. What part of the car did you get off, the front or the rear?

A. I got off the rear end of the car, because the conductor opened the door for me.

10

Q. Now, when you got off, what did you do?

A. I walked the full length of the car on the pavement.

Q. On which pavement did you walk?

A. On the near side.

Q. That is the side where the car had stopped?

A. Yes.

Q. And you went from the car step to the pavement?

A. To the pavement, yes.

20

Q. And walked the length of the car?

A. The full length of the car on the pavement.

Q. In which direction?

A. Toward the south.

Q. That brought you where?

A. That brought me right at that telegraph pole on Washington Street, as if I would walk across the street, I would be right in the middle of the pavement on the other side.

Q. The regular place where the Washington Street sidewalk goes across?

A. Yes.

Q. That is on the north or south side of Washington Street?

A. You mean where I was going across?

Q. Yes.

A. I was going on the far side.

Q. You were going on the far side of what?

A. Of Washington Street; I was on the near side and I walked across; I was going to walk across.

Q. I don't understand you; you were on the near side?

A. I was on the near side of Washington Street, yes.

Q. And you were going to cross which, Broadway  
10 or Washington Street?

A. I was going to cross Broadway and go over Washington Street.

Q. Now, when you got there you started across Broadway; what did you see in the street?

A. Well, up toward my left, I saw an automobile standing about—you know, a little way.

Q. Above the corner, about the middle of the block?

A. About two or three doors above the block.

20 Q. That was toward Federal Street?

A. That was toward Federal Street.

Q. And on the side that you had gotten off?

A. And on the side that I had gotten off; there was nothing only this car coming down Broadway.

Q. What could you see out in the street that might endanger you, anything?

A. Well, it was clear until my car went down Broadway; then I saw a northbound car, Broadway car, coming up Broadway.

30 Q. Where was it when you first saw it, this northbound car?

A. When I first saw it, it was right by that stop there, that pole that says, "Cars stop here"; it was almost nearing there.

Q. Well, I don't know where that is; which side of Washington Street is that?

A. That is the far side of Washington Street.

Q. That is the far side of Washington Street?

A. Yes.

Q. How far had you gotten out into Broadway when the car ——

A. I had gotten right in between the tracks; I had passed the first track, and stood in between the two tracks.

Q. In that little space that is between the northbound and the southbound track?

10

A. Yes.

Q. Now, when you got that far and paused, you say this northbound car was where?

A. Nearing that pole where it says, "Cars stop here."

Q. Is that the pole on the south side of Washington Street?

A. It is; that is the pole on the south side of Washington Street.

Q. And the east side of Broadway?

20

A. Yes, sir.

Q. What did you observe about the car, the northbound car?

A. Well, when I paused in the middle there, I noticed a man standing on the corner, and as the car was approaching I thought it would stop to leave this man get on the car, because he was standing there.

Q. What did the car do—what did you see the car do—how did that move?

30

A. Well, the car paused as if to leave this man on.

Q. Then what did you do when you saw the car pausing?

A. Well, I thought, "Well, if that car is going to pause to leave that man on, it will give me plenty of time to get across."

Q. What did you do?

A. Then instead of the car pausing, it came full speed, and I was confused; I didn't know whether to step across a couple of steps or step back, and I stepped back, and it hit me right on the side.

Q. How far had you gotten across?

A. Half-way in the track, on the north side.

Q. When you got confused?

A. Yes, sir.

10 Q. Now, it hit you on which side?

A. On the left side.

Q. On the left side?

A. Because I turned back in order to get away from the car.

Q. But the car was coming up toward the right side, was it?

A. Yes, the car came this way, see (indicating).

Q. Toward your right side?

20 A. If I hadn't looked it would have hit me this way, and as it was, I stepped back and it hit me on this whole left side.

Q. I see; well, was there anything done by the motorman to indicate that he wasn't going to stop when he slackened down his speed on that car?

A. No, there was not; when I was in the middle of the track the conductor was looking back, as though to leave the man get on the car, as if to turn around; you know how a motorman turns around to leave a man get on the car.

30 Q. You said "conductor" first; did you mean conductor?

A. I meant the motorman; he turned around as if to look to see if the man was getting on the car, and then I thought well, he was slowing the car, I could get across, and instead, he came full speed; then I saw him when he was almost upon me and then I don't remember anything.

Q. Now, when it struck you, did you lose consciousness?

A. I must have, because I don't remember anything until I woke up in the hospital.

Q. What hospital were you in?

A. Cooper Hospital.

Q. What injuries did you have when you woke up in this Cooper Hospital?

A. Well, I woke up, and they were stitching my head, and then they stitched it across my nose; then they felt all my ribs, and my ankle and my elbow. 10

Q. Where were they stitching, what part of your face?

A. My head up here (indicating).

Q. That is the left side over the temple, is it?

A. Yes.

Q. How much of a cut was there there?

A. I don't remember, but I think he took fourteen or sixteen stitches, something like that.

Q. And much of a cut did you have over your nose? 20

A. Well, he sewed it in two places; there was a scar here and a scar there (indicating).

Q. Have they left scars that show?

A. Yes.

Q. Won't you walk down here and take off your glasses so the jury can see the scar? Just point with your finger, please, to the scar.

A. Here (indicating).

Q. The scar that you point to here over the temple 30 is a scar from that injury?

A. Yes, and right there (pointing to the bridge of the nose) there are two scars.

Mr. Woodruff: Will you stipulate that that scar is V-shaped, a scar about an inch and a half long in all?

Mr. Fryling: Yes.

Q. Now, in addition to that, those cuts that you had on your face, what injuries were there to your body?

A. Internal injuries on that left side.

Q. Were you having any pain there in the hospital?

10 A. Yes, I had a lump in my side, but they never bothered with that.

Q. On which side was that?

A. On the left side, but they never bothered with that, never treated that.

Q. You had not had that before, until the accident?

A. No.

Q. Did that give you pain?

A. It gives me pain yet.

Q. Now, what other pain did you feel on your side?

20 A. A whole numbness of the whole side.

Q. The left side?

A. Yes.

Q. Were there any injuries to your right side?

A. No, none at all.

Q. All on the left side?

A. All on the left side where the car struck me.

Q. How long did you stay in Cooper Hospital?

30 A. Why, they took me there on Tuesday, and I stayed there Tuesday night and all day Wednesday and Wednesday night, and Thursday I begged to come home.

Q. And they let you go home?

A. Yes.

Q. When you went home what doctor did you have come in and take care of you?

A. Dr. Hammitt.

Q. Is he your regular family doctor?

A. Yes.

Q. And is his office out near you?

A. Yes, sir.

Q. Did you suffer pain after you got home?

A. Yes, sir.

Q. Just tell us, will you please, about what was the matter with you—what was it you suffered?

A. Well, when I got home, it was on Thursday night, and Dr. Hammitt came and he examined my head, and he decided — 10

Mr. Fryling: No.

Q. Just tell us what you saw and what you felt?

A. What I felt?

Q. Yes.

A. Well, I felt the whole swelling of my head, and my whole jaw, and my mouth was closed, and I was cut inside of the mouth, and my whole eye was all the way over my face. 20

Q. Could you see out of that left eye at all?

A. No, I couldn't; it was all black, and it hung over my cheek.

Q. Where you were cut over the eye, was that still bandaged right here?

A. Yes, it was bandaged, yes, sir, and on my nose it was still bandaged, and I had pains in the whole left side.

Q. Where you said a lump came on your left side, did that pain you? 30

A. It did, yes, it sort of moved all around, sort of the blood was clotted there, and it moved all around.

Q. What did Mr. Hammitt do for you—what kind of treatment?

A. Why, first he lifted up the stitches in my head, and he decided that blood poisoning had set it —

Mr. Fryling: Now, you mustn't say that; I object to that.

Q. Don't tell what the doctor decided; he will tell that. What did he do for that place?

A. He bathed it in alcohol, and I think he painted it with iodine. That is all they did at the hospital, painted it with iodine; they sewed it up and painted it with iodine; that is all they did to it; they never  
10 bothered with me any more until I came home, and he said that he would have to—

Mr. Fryling: No, you must not say what the doctor said.

The Court: No, the doctor will testify.

Q. What did they do about the cut on your head from then on, when Dr. Hammitt was taking care  
20 of you—what was done with the cut on your head?

A. He used to bathe it in alcohol, and then after the blood poisoning set in, he had a long eye tube and he would have to go in and out of each one of those stitches, and sort of pressed those so that the serum would go all up in my head and draw the blood poisoning out, and all the yellow pus would run down my face; then he would have to take a long stick with wadding on and iodine, and go in and out each one of those stitches.

30 Q. Did that give you a great deal of pain?

A. It did.

Q. How often did he have to do that?

A. Sometimes he came twice a day, and every time he came he did it.

Q. How long did he keep up that before it got better?

A. Oh, I think it was—oh, three or four weeks.

Q. That he had to do this?

A. It was a long time anyway.

Q. That he had to keep putting this swab in and cleaning it out?

A. Yes.

Q. What was done—did you take medicine internally?

A. Yes, for my nerves.

Q. Were you in a nervous condition?

10

A. Yes, sir; very nervous.

Q. Had you had any nervous symptoms before this accident, any nervous trouble?

A. No.

Q. And you had medicine for your nerves, you say?

A. Yes.

Q. What was done for your side?

A. Well, the doctor thought—he gave me something and it seemed that that blood clot went away. 20

Q. You say a blood spot?

A. A blood clot; it seemed like there was a blood clot in my side. Then he said —

Mr. Fryling: I object to the witness saying what the doctor said.

The Court: Yes.

Q. You can't say what the doctor said; what was done? 30

A. Well, he thought it would be best to wait until he got my head before he tried to start to treat my side.

Q. Was he taking care of your head first?

A. My head first, because he said that was the most important.

Q. And afterward he got that in pretty good shape, didn't he?

A. My head?

Q. Yes.

A. Yes, then he started doctoring me for my side.

Q. How long before you were able to go back and do any work at all?

A. Well, I was hurt in February, and I think it was in July.

10 Q. February of what year?

A. February, 1920.

Q. What day was it?

A. The 17th when I was hurt; then it was in July when I had thought I would try to go back to Hal-lahans, because they had been so good and kept my position open for me.

Q. That was the July following, was it?

A. That was the July following that I thought I would go back and try to see if I could work, and I  
20 think I worked three weeks, when one day I fainted, and they took me to the Jefferson Hospital, and after that the doctor said I couldn't work for a long, long time, because I was too nervous.

Q. Now, when you went back in July and worked those three weeks, did you do the same kind of work that you did before?

A. No, I didn't, I only did a little clerical work, like making out the pay envelopes and writing, checking records off, you know, just a little clerical  
30 work; they didn't give me anything really hard, because I couldn't stand it.

Q. Had you been able to take the telephone board?

A. No, I couldn't take it again as I took it before.

Q. You tried it, did you?

A. I tried it, but I couldn't, it made me too nervous.

Q. And did your nervousness get better or worse while you were working those three weeks?

A. It seemed I came home with headaches every night, and I complained of my nerves—I went to the doctor still while I was going to work for those three weeks, and he advised me to stay home, but I thought, you know, I would like to try to work, and after I had fainted and been taken to the hospital, then he told me I had better stay home, because I was not strong enough to go to work.

10

Q. What hospital were you taken to that time?

A. Jefferson Hospital.

Q. Do you know what brought on the faint—did you feel anything before it?

A. Well, I sort of got dizzy feelings in my head; I was over to the washroom and it seemed everything got black in front of me; then I didn't remember anything until I woke up again in another hospital bed.

Q. Then they brought you home from Jefferson, 20 did they?

A. Then they brought me home from Jefferson.

Q. How long after that was it before you were able to do any work?

A. February 21st of 1921.

Q. A year after you had been hurt?

A. Yes, sir; a year and two days.

Q. Except for those three weeks, did you do any work in that year?

A. No, none at all; no, sir.

30

Q. How much did you earn when you were working those three weeks?

A. The same, fourteen dollars.

Q. They paid you the same wages?

A. Yes.

Q. Now, before you went back after this faint and

you were taken to the hospital and went back home, did you suffer then?

A. Yes, sir; I suffered a long, long time afterward.

Q. And did Dr. Hammitt take care of you?

A. Dr. Hammitt still took care of me, yes.

Q. What was your trouble?

A. It seemed I got such headaches that I couldn't see, and the pain in my side just throbbled all the  
10 time.

Q. Did you have trouble with your eye where it had been hurt?

A. Yes, sir; I couldn't hardly see out of this eye.

Q. Had you had glasses when you went back to work in July?

A. I had got glasses, in April, I think it was.

Q. Before you went back to try to work?

A. Yes.

Q. Who did you get your glasses from?

20 A. Off of Dr. Howell.

Q. Have you had to wear glasses ever since?

A. Ever since; yes, sir.

Q. Have you had them changed?

A. No, sir.

Q. You have had the same glasses and worn them since?

A. I have had the same glasses; yes, sir.

Q. Now, when did you go back to work finally—in February, you said?

30 A. February 21st.

Q. Where did you go then?

A. R. M. Hollinshead Company.

Q. Here in Camden?

A. Yes.

Q. What kind of work did you take up?

A. Then I just took up clerical work.

Q. And are you still working there?

A. Yes, sir.

Q. And still doing clerical work?

A. Yes.

Q. Have you tried again to handle the switch-board?

A. I have and failed.

Q. You can't do it?

A. I can't stand it; it gets on my nerves, and it just seems every time I could scream, every time the phone rings. 10

Q. So that you are not able to do that?

A. I am not able to, no.

Q. What do you get in wages now?

A. Fourteen dollars, but I only got twelve dollars when I started there.

Q. When you started at Hollinshead's?

A. Yes.

Q. You got twelve, but you have been given a raise? 20

A. A raise, yes.

Q. Now, Miss Rothfuss, what trouble do you have now?

A. I suffer constantly with headaches and pain in the side.

Q. Are those headaches almost continuous?

A. Yes, it just seems as if my head is going to burst right open, and it comes down over the eye.

Q. Over which eye?

A. Over the left eye. 30

Q. The one where it was hurt?

A. Yes.

Q. What is the trouble you have with your side?

A. Well, it just seems that it pains all the time. The last time was about two weeks ago when I fainted down at Hollinshead's, and it just seemed the pain was all over my side.

Q. You did faint two weeks ago?

A. Yes.

Q. While you were at your work?

A. Yes.

Q. Where was your pain?

A. In my side.

Q. And is that the place you said the lump was?

A. Right over here, yes.

Q. Were you taken home that time?

10 A. Yes.

Q. Taken home again, were you? Were you out of work again?

A. Yes, I was out for a whole week.

Q. And then went back again?

A. Yes.

Q. Who took care of you that week?

A. Dr. Hammitt.

Q. And did you have any difficulty with your clothing on account of your injury to your side?

20 A. Well, I have never been able to wear tight clothing or corsets since I was hurt.

Q. Did you before you were hurt wear corsets?

A. Yes.

Q. And have not been able to wear them since?

A. No, sir.

Q. Can't wear them at all?

A. No.

Q. Why not?

30 A. Because it seems as if it was pulling my whole insides, just drops, feels as if it was coming out.

Q. Miss Rothfuss, how about your nervous condition, has that gotten well?

A. No.

Q. What trouble do you have about that?

A. Every time I get the least excited or anything, it just seems that all my nerves are on a jump, and

every time I go across the street or anything, I get all excited and nervous.

Q. Are you getting better from that?

A. I don't know; the doctor said I am.

(Objected to.)

The Court: No.

Q. How do you yourself feel about it—do you feel that you are getting better from your nervousness? 10

A. No, I don't.

Q. And your headaches, do you feel that you are getting better?

A. No, they are not any better; no, sir.

Q. How about the pain in your side, is that better?

A. Sometimes it is better, and sometimes it just pains terrible. 20

Cross-examination.

By Mr. Fryling:

Q. When were you nineteen years?

A. When was I nineteen years?

Q. Yes.

A. The last of May; I will be twenty this May.

Q. You say you were going to your sister's house, that she lived at 16 Washington Street? 30

A. No, at Sixth and Washington, 426 Washington Street.

Q. Are you sure the number is 426?

A. I am sure of it, 426.

Q. Now, which side of Washington Street is your sister's house?

A. Well, it is on the far side, a square down. It is right over top of a cigar store, Stringer's cigar store.

Q. Was it on the north side or south side of Washington Street?

A. On the north side.

Q. The car came to a stop so that the front of the car came up to the cross walk on Washington Street?

A. You mean the car going toward the ferry?

10 Q. The car from which you got off?

A. No, that car had gone all the way down.

Q. No, the car that you got off, you say the car stopped at Washington Street and you got off at the rear of the car?

A. Yes, sir.

Q. Now, was the front of the car up to the cross walk at Washington Street?

A. Was it up to it?

Q. Yes.

20 A. Well, you see, I got off the car, and then I walked on the pavement, see.

Q. No, when the car stopped which you got off of, was the front of the car up to the cross walk?

A. Oh, I don't know; I didn't look at that, I got up on the pavement and walked the full length of the car, and then the car had started down Broadway; I wasn't watching that car.

Q. When you got off the car, you walked to the sidewalk?

30 A. Yes, sir.

Q. Were there any wagons or trucks there?

A. There was one Ford automobile standing on the side I was on, about two or three doors up the street, but it was empty.

Q. Back of you?

A. That side, the left side of me.

Q. In back of the trolley car?

A. Yes.

Q. But it was along the curb?

A. It was up against the curb, and it was empty.

Q. And is that the only car that was there?

A. That was the only thing that was around; yes, sir.

Q. No trucks on the track behind the trolley car?

A. No, sir.

Q. Did you notice any coal wagons? 10

A. No, sir.

Q. Coal truck?

A. No, sir; the Ford car was the only one standing there.

Q. That is the only automobile?

A. Yes, sir.

Q. For what distance?

A. Well, as far as I could see; it was about two or three doors up on my side.

Q. You could see for a block or more, couldn't you? 20

A. Well, I saw that car, and I saw nothing was coming; I didn't bother with what was in back of that car.

Q. That car was standing still at the curb?

A. That car was standing still, yes.

Q. That was three or four stores back of you?

A. Well, say two or three, anyhow.

Q. Two or three?

A. Stores up the sidewalk, yes.

Q. And between that and you— 30

A. There was nothing.

Q. There weren't any vehicles on the street?

A. There was nothing; no, sir.

Q. Either on the trolley car tracks or between the curb and the trolley car, is that correct?

A. No, sir; nothing but that Ford car.

Q. And you walked to the sidewalk?

A. I walked to the sidewalk, the full length of the car; that would take me right directly on the other side of the pavement.

Q. Were there any people standing there?

A. There was a man standing on the other side of the car.

Q. No, you said where you got off—

A. No, sir; not a soul.

10 Q. Nobody standing there at all?

A. No, sir.

Q. Then you said that you walked up toward Washington Street?

A. Yes, sir.

Q. And is there a cross walk across Broadway?

A. Is there a cross walk, did you say? Yes, sir.

Q. You walked across this cross walk?

A. Yes, sir.

Q. Is that correct?

20 A. I walked, you know, the full length.

Q. Well, did you walk on the cross walk?

A. Well, I was on the sidewalk, if that is what you mean?

Q. Well, when you left the sidewalk, when you stepped down from the curb, is there a cross walk there going across Broadway?

A. Well, there is a place for you to walk across.

Q. Well, that is a cross walk, isn't it?

A. Well, then, I was on that.

30 Q. You were on that, is that correct?

A. I was on—listen, I was on the pavement, see, until the car had gone all the way down, see; the car was away past Washington Street.

Q. That is the car that you got off of?

A. Before I stepped out.

Q. The car that you got off?

- A. The car that I got off.
- Q. Were there any other passengers got off there?
- A. No, I was the only one got off.
- Q. Did anybody get on?
- A. No one got on.
- Q. And when did the car start?
- A. When did the car start? The car that I was on, you mean?
- Q. Yes.
- A. Well, as soon as I had gotten off, the car went 10 right down.
- Q. It immediately started, did it?
- A. It immediately started.
- Q. And when you got to the corner, where was the car?
- A. The car that I had got off of? It was away down the middle of the next square.
- Q. Had it passed Washington Street?
- A. Passed Washington Street; yes, sir.
- Q. And were there any vehicles of any kind? 20
- A. No.
- Q. Northbound?
- A. No, sir.
- Q. Nothing there at all?
- A. No, sir.
- Q. And when you left the curb to cross Broadway, where was the northbound trolley car?
- A. Where was the car that was going to the ferry? That was almost to that post that says, "Cars stop here." 30
- Q. And was it moving?
- A. It was moving; yes, sir.
- Q. Did it stop there?
- A. No, it didn't stop.
- Q. Didn't stop at all?
- A. Not at all.

Q. So that there was no stop of that northbound car at the near crossing?

A. No, sir.

Q. That is, the crossing south of Washington Street?

A. No, the car didn't stop.

Q. You are sure of that?

A. I am positive.

Q. You saw the car before it got to that point?

10 A. Yes, because there was a man standing on the corner; I thought surely it would stop to leave him—

Q. Where was the man standing?

A. Right there by the post, there where the cars stop.

Q. On which side of Broadway?

A. The north side of Broadway, the south side of Broadway, you know, right where they get on.

Q. The opposite side from the side where you got off?

20 A. Yes, sir.

Q. And on the opposite side of Washington Street from where you got off?

A. Yes.

Q. You saw that man standing there?

A. I saw that man standing there.

Q. And he was on the sidewalk?

A. He was on the sidewalk.

Q. On the pavement?

A. Yes, sir.

30 Q. And between the trolley car and you there were no other vehicles?

A. No, sir.

Q. And the car was coming along then at a pretty lively speed, was it?

A. Yes, sir; and I thought that it would stop.

Q. Never mind what you thought now, just answer my question.

A. Well, when it came—

Q. No, I didn't ask a question. You then went off and continued across the street?

A. Yes.

Q. And when did you next notice the trolley car?

A. When I was just between the northbound and southbound track, in the place between the two tracks.

Q. When you were between the northbound and southbound tracks?

10

A. There is a space there.

Q. Where was the trolley car then?

A. Why, then it was by the post.

Q. It was by the post?

A. By the post, yes.

Q. It was still on the opposite side of Washington Street?

A. Yes.

Q. And you were walking or running?

A. No, sir, walking.

20

Q. Walking?

A. Yes, sir.

Q. You continued across?

A. Yes, sir.

Q. How far did you go before you were struck?

A. Well, I was in the middle of the track, of the far side track.

Q. You were in the middle—

A. Between the two rails.

Q. Of the northbound track?

30

A. Yes, sir.

Q. You are sure of that?

A. I am sure.

Q. You remember distinctly what happened?

A. I remember, for I just put my foot over that rail of that far track.

Q. And what did you do then?

A. Well, then the car came full speed. The man didn't get on the car. You see, they slowed up as if to leave this—

Q. When you had your foot across the middle rail the car was still across the street?

A. No, sir; I hadn't put my foot across the rail when the car was coming up slowly, see.

10 Q. As I understood you to say, when you were between the northbound and southbound tracks, the car was the other side of Washington Street, and you continued on, is that correct?

A. No, see, I was in the middle of the track, between the two tracks, when the car—

Q. Where was the car then?

A. The car was past this stop, where it says, "Cars stop here."

Q. That was on the other side of Washington Street then, wasn't it?

20 A. That was on the other side of Washington Street; yes, sir; the car that hit me.

Q. And is that when you thought the car was going to stop?

A. That is when I thought the car was going to stop.

Q. When you were between the southbound and northbound tracks?

A. Yes, sir.

30 Q. And then you continued on—you were walking all the time?

A. No, I waited to see if the car was going to stop or not.

Q. Did you stop?

A. I stopped in between the two tracks.

Q. And you stood still?

A. I stood still.

Q. How long did you stand still?

A. Oh, only for a fraction of a second.

Q. Why did you stand still?

A. I wanted to be positive that this car was going to stop, see; it was slowing.

Q. The car was away at the other side of Washington Street then?

A. That is not very far, sir.

Q. But it was on the other side of Washington Street?

10

A. I know, but Washington Street is not far.

Q. Was it on the other side of Washington Street?

A. It was on the other side of Washington Street.

Q. Then, after stopping you concluded to go on?

A. Yes, sir; because I thought this man was going to get on the car.

Q. Then you got one foot over the rail?

A. Over the track, and the car came full speed, and I was confused—I didn't know whether to go right across—if I had, it would have killed me—and instead, I stepped right back, and it struck me on the left side.

20

Q. While you were doing that, the car came all the way across the street?

A. Came full speed, yes.

Q. When it struck you, what was your position?

A. This way (indicating).

Q. Where were you with respect to the northbound tracks?

A. Well, I pulled my foot back; I must have, or I would have got my foot cut off.

30

Q. You only got one foot across the rail, did you?

A. Yes.

Q. The nearest rail of the northbound track?

A. Yes.

Q. During all that time, you saw just what this motorman was doing, too, is that correct?

A. Yes.

Q. You were looking at the car all the time?

A. All the time.

Q. Do you think you would be able to recognize the motorman again if you saw him?

A. I don't know; two years is a long time.

Q. Now, you talked over the case with someone before you came here to testify?

A. Only my daddy.

10 Q. Only with your father?

A. Yes, sir.

Q. And you have gone over the whole story with him?

A. Yes, sir.

Q. When?

A. Well, for several nights we have gone over it.

Q. Several nights recently?

A. Yes, sir.

20 Q. Then you say after the accident you went to Cooper Hospital?

A. Yes, sir; they took me to Cooper Hospital.

Q. And as soon as you got there, were you examined by the doctor?

A. Well, I just remember waking up on that long operating table, and the doctor was fixing my head.

Q. You mean to say that you did not know where you were going when you were going to the hospital?

A. No, sir; I did not.

Q. You did not know what was going on?

30 A. After the car struck me, I didn't know a thing; no, sir.

Q. And when you first got there, the first thing you knew was the doctor examining you?

A. When I waked up as the doctor was examining.

Q. What doctor was that?

A. I don't remember the doctor; I didn't hear his name.

Q. Doctor Cowie or Dr. Kindley?

A. I don't remember.

Q. Then a doctor came there and examined you for the Public Service Railway, didn't he?

A. I don't think there was any doctor from the Public Service examined me; no, sir.

Q. There wasn't any doctor there?

A. Not that I know of, sir.

Q. Well, Dr. Smith?

A. Not that I know of; no.

10

Q. Do you remember talking to Dr. Smith at the hospital?

A. No, sir.

Q. About your injuries?

A. No, sir.

Q. About how you received your injuries?

A. No, sir.

Q. Dr. Smith—do you recognize Dr. Smith?

A. No, sir.

Q. You don't recognize him at all?

20

A. No, sir.

Q. You don't remember seeing him at any time.

A. No, sir.

Q. You don't remember seeing him at the hospital?

A. No, sir.

Q. Or talking to him?

A. No, sir.

Q. Do you remember the doctor examining you?

A. No; I remember a doctor, but it wasn't him.

30

Q. Well, what was the doctor that you do remember?

A. I don't know.

Q. You don't know whether it was Dr. Kindley?

A. No; he seemed to be a thin man with real reddish hair; I thought he was a southern doctor.

Q. Now, do you remember telling the doctor at the hospital that night, Dr. Smith, that you got off a trolley at Broadway and Washington Streets and that you walked around in back of the trolley to cross the street?

A. No; I remember some one asking me a question, but I was so confused I couldn't say what I answered, because I was half unconscious, and the pain was so great when they were sewing my head;  
10 I was lying on the operating table when they began asking me all those questions, and I couldn't think of anything.

Q. You don't remember who it was that was asking you the question?

A. I don't remember who it was; no, sir; but somebody was asking me questions, and I was lying on the table, and they were sewing my head, and between what they were asking and what they were doing to my head—

20 Q. Don't you recall that this was not at that time at all?

A. Not what?

Q. That they weren't doing anything to you at the time these questions were asked?

A. No, sir; one doctor was sewing my head when the other doctor was asking me questions.

Q. Now, you say there were fourteen or fifteen stitches; aren't you mistaken about that—weren't there four stitches?

30 A. In my head?

Q. Yes.

A. I don't think so.

Q. Now, you spoke of some time when you went back to work; when was that?

A. When did I go back to work? I think it was some time in July.

Q. Wasn't it in June—don't you recall it was on the 7th of June?

A. Was it? Well, I know it was one of the spring months, you know.

Q. And you stayed at work there until July 27th?

A. Did I? I know it was a short time.

Q. From June 7th to July 27th?

A. I know it was a short time.

Q. Well, it was longer than three weeks, wasn't it?

10

A. Was it?

Q. I am asking you.

A. Well, I don't recall; I don't remember; I didn't write it down.

Q. Don't you recall that you went back to work in the early part of June, on June 7th, and stayed there during the rest of June and most of the month of July, until the 27th of July?

A. No; I don't recall; I remember I wasn't there so very long when I was taken sick again.

20

Q. Do you remember that you worked there seven or eight weeks—do you remember that?

A. No, sir; I didn't think it was that long, sir.

Q. And you won't be sure that it was not that long, will you?

A. Well, I don't know; maybe my father could tell you that; I don't remember.

Q. Don't you remember?

A. No, sir.

30

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DR. LEE J. HAMMITT, SWORN.

(Testimony omitted because not related to subject of appeal.)

MILDRED IRENE GEESEY, SWORN.

By Mr. Woodruff:

Q. Mrs. Geesey, where do you live?

A. 2028 Arch Street, Philadelphia.

Q. You are a married woman?

A. Yes, sir.

10 Q. Where did you live in February, two years ago, when this accident happened?

A. On Benson Street; I just don't remember the number; we only lived there for a short time and moved from Camden.

Q. Here in Camden?

A. Yes.

Q. You were not married to Mr. Geesey at that time?

A. Not then.

20 Q. Were you on this car that struck Miss Rothfuss?

A. I was on the car; yes.

Q. Coming up Broadway?

A. Coming up Broadway.

Q. What part of the car were you seated in?

A. I was sitting back, near the back, as I always did; that is just a habit —

Q. Which side of the car were you on?

A. On the right side.

30 Q. On the right side of the car, back near the conductor?

A. Yes; back near the conductor.

Q. You knew who this conductor was, did you?

A. Yes, sir.

Q. Now, coming up Broadway, what did you notice about the operation of the car?

A. Why, it jerked when it stopped or when it started it jerked; the car was not running as it ought to.

Q. Had you worked yourself as a conductor at one time?

A. I had worked myself as a conductor.

Q. And on cars running up and down Broadway?

A. On the cars running up Broadway to Haddon Heights, and on all the lines.

Q. And as this car came up on Broadway, was it 10 crowded?

A. Yes; it stopped at several places and picked up people; some of the stops he didn't stop at; he just slowed down and went ahead; when he slowed down he went ahead.

Q. Did he wait for the conductor to give him the bell to go ahead?

A. He didn't always; no.

Q. In the ordinary operation of the cars under the rules that govern conductors and motormen and 20 conductorettes —

Mr. Fryling: I object to the question; we are not concerned with what happened at some other time. The whole point is what happened on this occasion at this time.

Mr. Woodruff: All right; we will get at that in another way.

Q. How many times did you notice that, that he would slacken down for a corner and then go ahead without waiting for the bell? 30

Mr. Fryling: I object to that on the same grounds, that we are not concerned —

The Court: I will admit it if it is for the purpose—I am not certain as to just the purpose of this line of testimony, but if it is for the purpose, this line of testimony, of indicating the condition of the car, I will admit it, but if it deals with the motorman's operation of the car, then I will confine it to Broadway and Washington Streets.

10 Q. Coming up Broadway, just before this accident, how many times had you noticed that?

A. Well, two or three times, from the time I got on.

Q. And when he would start ahead, how did the car operate—how did it feel?

A. Well, the car jerked; it was not good; the car jerked; it shook you.

Q. What did you notice about the car when it came up to Washington Street? You are familiar with the streets there, are you?

20 A. Yes.

Q. And you had worked along that same line?

A. Yes; it happened at safety stops, and when we were coming up Broadway, the car slowed down and the conductor turned around. I looked out when the car slowed down; I thought there was someone going to get on; I turned around and glanced out of the window, and there was a man standing right near the pole.

Q. What had the conductor been doing?

30 A. Why, the conductor was making up his report.

Q. How close to you was he standing?

A. Well, I was sitting almost in the end seat; he was standing there with his back up against the railing that held the fare box, or up against the fare box, I don't remember; and when the car slowed down for this man that I thought was going to get

on he put his pencil in his cap—I noticed it was always a habit of his to put his hand on the handle that was to turn the door, open the door, and before he turned around again, the motorman had started out without no bell; he didn't give no warning or no bell.

Q. And did the man actually step up and get into the car?

A. I didn't notice.

Q. But at any rate, the car didn't wait for him? 10

A. The car did not wait for him; it just slowed down, it didn't stop.

Q. And how much speed did it pick up?

A. Well, it went at full speed. It seemed that he could not run —

Mr. Fryling: I object; one minute, I object to that. (To the witness.) Just answer the question.

The Court: No, just indicate the character of the 20 operation of the car at Broadway and Washington.

Q. How far did he go at that full speed that you speak of?

A. It went, I guess, as far as the other side of the street, and it stopped with a sudden stop; he put on—he turned his reverse and stopped the car.

Q. Now, what happened when he stopped it with the reverse?

A. Well, he stopped it with the reverse, and the 30 car started to go back, and someone jumped on and stopped the car.

Q. Did you know then that somebody had been struck?

A. I knowed there was an accident of some kind; everyone was on their feet looking out of the win-

dow. I saw them pick up Miss Rothfuss and put her in this automobile.

Q. Where was she when they picked her up?

A. She was on the right.

Q. I mean, what part of the street was she in, what part of Broadway?

A. She was on the left side of the car.

Q. On the left side of the car?

A. On the left side of the car, yes.

10 Q. And which side of Washington Street?

A. On the south side of Washington Street, or the north side—it was the far side; after it had stopped, it was on the opposite side of Washington Street.

Q. The opposite side from where the man was standing?

A. Yes, sir.

Q. And you didn't get out of the car?

A. No, sir; I did not get out of the car.

20 Q. Did you hear any bell from the motorman after he had slackened up and when he went ahead?

A. Didn't hear no bell; I didn't hear nothing until the car had stopped; it almost threw everybody, I guess, out of their seat.

Q. And you say the conductor had given no bell to go ahead after the pause?

A. The conductor had given no bell; he still had his hand on the lever when the car started up.

Q. That is, the lever that opens the door?

30 A. The lever that opens the door.

Cross-examination.

By Mr. Fryling:

Q. What is your maiden name?

A. Foster.

Q. And your first name?

A. Mildred.

Q. When were you employed by the Public Service Railway Company?

A. Three years ago, during war times, from—I think it was from January to the first part of August.

Q. What line did you run on?

A. Beg pardon?

Q. What line did you run on?

10

A. I ran on all lines.

Q. Did you run in Camden here?

A. In Camden; I ran Haddon Heights, Broadway, Westfield, Cramer Hill, Crosstown and Fifth-Broadway.

Q. How did you come to separate your connection with the Public Service Railway Company?

A. Why, the Public Service cancelled my bond for no reason.

Q. They discharged you?

20

A. They must have, I guess, if they cancelled my bond, but they never gave me no reason.

Q. They never gave you any reason for discharging you?

A. They did not tell me why; no, sir.

Q. They told you that the bonding company would not bond you?

A. They said they cancelled my bond; that is what they told me.

Q. Didn't they say the bonding company would not bond you and that is the reason they would not employ you?

30

A. They didn't say that; they said my bond was cancelled, was all that was told me.

Q. And for that reason they could not employ you any longer—is that what they told you?

A. I suppose that was it.

Q. Did you know the conductor of this trolley?

A. I did know him; yes, sir.

Q. What was his name?

A. Why, Haywood.

Q. What other name did you know him under?

A. Why, Haygood.

Q. Haywood and Haygood—is that correct?

A. Hayward and Haygood.

Q. Any other name?

10 A. I believe that is all; there was lots of them that I knew that I didn't know their names.

Q. Did you know him under the name of Mc-Adams, too?

A. No, sir.

Q. When did you last see him?

A. I guess two years ago, almost two years ago.

Q. How long had you known him, this conductor?

20 A. I had just known him to see him a long time before I spoke to him; I don't think he had worked for the Public Service very long.

Q. You knew him before he worked for the Public Service, didn't you?

A. No, sir.

Q. You were sitting on the back end of the car talking to him?

A. I was not talking to the conductor; no, sir.

Q. You had not been talking?

30 A. I hadn't been talking, I spoke when I got on, but when I had been a conductor, it was always a habit I had formed, I suppose, of sitting in the back near the conductor. I was not talking to the conductor, because it is against the rules of the company to talk to the conductor or motorman.

Q. You were sitting back there with him, weren't you?

A. I was sitting back there in a seat that was unoccupied when I got on the car.

Q. And notwithstanding the fact that you knew him you did not talk to him because it was against the rules of the company to have anybody talk to the conductor?

A. I didn't have any occasion to talk to him, only to speak to him, that was all. I always sat back there whether I knew the conductor or not.

Q. Now, haven't you seen Haygood since he has been in jail? 10

A. I have not; I didn't know he was in jail.

Q. You didn't know that he was in jail in Pennsylvania?

A. I did not; no, sir.

Q. Have you had any communication with him?

A. No communication at all.

Q. How did you get in communication with the plaintiff in this case?

A. Why, I met her; I lived in Cramer Hill. 20

Q. You met her when?

A. Well, I went to her house to see her when I knew that she was sick.

Q. Did you recognize who she was at the time of the accident?

A. I did not; no, sir.

Q. You didn't know it was she that was hurt?

A. No, sir; I did not.

Q. When did you go to see her?

A. Why, I guess after she was out of bed I went to see her. 30

Q. When?

A. I couldn't say just the date.

Q. Can't you give me any idea of what time it was?

A. No, it was in the summer time.

Q. The summer time of what year?

A. In the year that she was hurt.

Q. Do you remember what year she was hurt?

A. 1919, I believe.

Q. When?

A. '20.

Q. When—what year was it?

A. It was two years ago the 17th of last March that she was hurt; it was in the summer of 1920.

10 Q. And you went to her house then?

A. I went to her house to see her; I lived in Cramer Hill.

Q. Why did you go to her house then?

A. Why, I went to see her because she was sick; I heard that—

Q. How did you know that she was sick?

A. Why, I met someone who told me; I met a friend of hers and they told me.

Q. When before that had you last seen her?

20 A. I had not seen her before that, before the accident, until that time.

Q. How long before the accident had you seen her?

A. Oh, I don't just remember.

Q. Can you tell us about how long?

A. Oh, a short time.

Q. Had you ever been to her house before?

A. I had not been to her house before, no.

Q. So that in the summer of 1920 was the first time you ever went to her house?

30 A. Yes.

Q. And did you talk about the accident then?

A. Why, I talked about the accident; I knew that she was hurt, when I got there she told me —

Q. When you went there did you know she had been hurt by the trolley car?

A. No, sir.

Q. You simply heard that?

A. That she was sick.

Q. And you went to her house?

A. And I went to see her.

Q. Then you talked about the accident?

A. Well, talked about it; she told me that she had been hurt; I didn't talk about it any further.

Q. She told you where she had been hurt?

A. She told me she had been hurt in town. The girl wasn't —

Q. She didn't tell you at what crossing or where the place of the accident was?

A. No, she did not.

Q. Did you tell her then that you were on the car?

A. I said I had seen an accident on Broadway.

Q. You told her that you had seen an accident at the corner of Broadway and Washington Street?

A. I didn't just say where; I said on Broadway.

Q. Well, then, there was nothing said between you and her at that time?

A. No, sir.

Q. To lead either Miss Rothfuss or you to believe that you knew anything about this accident?

A. No.

Q. Well, when was the first—when did it first come about that you told Miss Rothfuss that you could testify for her?

A. I told Mr. Woodruff, only Mr. Woodruff.

Q. When did you tell Mr. Woodruff?

A. May I have a drink of water, please?

Mr. Fryling: The witness would like to have a drink of water.

Q. Can you tell us when you talked to Mr. Woodruff?

A. I talked to Mr. Kisselman first, he is his investigator.

Q. Which one?

A. I beg pardon?

Q. Which one of the Kisselmans?

A. Kisselman?

Q. Yes.

A. Why, the old man; I just don't know what his name is.

10 Q. When was that?

A. Why, that was—I just didn't really write the date down; I guess it was in the summer.

Q. The summer of what year, 1919 or 1920?

A. The summer of 1920, yes.

Q. That was the same summer that you called on Miss Rothfuss?

A. Yes, that was later.

Q. How much later?

A. It was later in the summer.

20 Q. Well, about how long after you had been to Miss Rothfuss' house?

A. Oh, a month, I guess.

Q. Where did you see Mr. Kisselman?

A. Why, I met a man on Broadway, and he took me to his house.

Q. Who was the man you met on Broadway?

A. I believe it was Detective Fitzgibbons or Fitzgerald.

Q. Did you know him before?

30 A. I knowed him from riding on the car, the Public Service car.

Q. And you had a talk with him?

A. I didn't talk with him; he told me that I was wanted as a witness in this case, because I had given my name, I suppose. I don't know.

Q. Who had you given your name to?

- A. Why, Mr. Haywood knew me.
- Q. What, the conductor?
- A. I didn't give my name to the conductor; no, he knew me.
- Q. Who did you give your name to?
- A. I didn't mean to say I gave my name to any one.
- Q. But you did say that?
- A. Well, I didn't mean to say it.
- Q. Then you didn't give your name to anyone? 10
- A. I didn't give my name to any one.
- Q. How did he know that you wanted to see him, or that he wanted to see you?
- A. Well, I suppose Mr. Woodruff knew it through Mr. Haygood; Mr. Haygood knew that I was on the car.
- Q. Oh, then it was through Mr. Haygood that you got in touch with Mr. Woodruff, is that correct?
- A. Yes.
- Q. And it wasn't through Miss Rothfuss at all? 20
- A. No, it wasn't through Miss Rothfuss at all.
- Q. Did you ever go to visit Miss Rothfuss again after that trip in the summer?
- A. No, sir; I have been too busy; I couldn't get out. Then I moved out of town.
- Q. You went there but once in the summer of 1920?
- A. Yes.
- Q. Never been there before and never been there since—is that correct? 30
- A. That is correct; I moved out of town; I couldn't go to see her since.
- Q. And through this conductor Haygood Mr. Woodruff got hold of you?
- A. Yes.
- Q. When was that?

A. That was in 1920, after Mr. Kisselman had seen me.

Q. 1920—wasn't it after Mr. Haygood had been arrested and was in jail?

A. I didn't know he was in jail.

Q. You are sure of that?

A. I am positively sure of that; I didn't know that he was in jail.

Q. Well, it was in the summer of 1920?

10 A. 1920.

Q. That you saw Mr. Woodruff?

A. Yes.

Q. How long after you saw Mr. Kisselman?

A. Just a short time; Mr. Woodruff came to my house when I was sick.

Q. Mr. Kisselman came to your house?

A. Mr. Kisselman didn't; I went to Mr. Kisselman's office.

20 Q. You say you saw Mr. Kisselman about a month after you saw Miss Rothfuss?

A. I judge it was a month; it might have been more than that.

Q. Where did you see him?

A. I saw him in his office, in his home.

Q. In whose home?

A. In Mr. Kisselman's home.

Q. You went there?

A. Yes, sir.

Q. Why?

30 A. Because this man told me that he wanted to see me. I did not know at the time what he wanted to see me about.

Q. You mean Mr. Woodruff's office had gotten word through Mr. Haygood that you knew about this accident, so he sent word to you to come to Mr. Kisselman's office, is that correct?

A. He didn't sent word to me; this man met me on Broadway in Camden and told me Mr. Woodruff wanted to see me and took me to his investigator.

Q. You went with him to Mr. Kisselman's house?

A. I went with him to Mr. Kisselman's house, yes.

Q. At the same time you met him on the street?

A. At the same time I met him on the street.

Q. You went to Mr. Kisselman's house?

A. Yes.

10

Q. And then the same summer you saw Mr. Woodruff?

A. Yes.

Q. Where did you see him?

A. Why, I was sick in bed at the time when he came to my house.

Q. This detective that you knew, that told you that Kisselman wanted to see you, he is a city detective, isn't he?

A. I don't know what kind of a detective he was. I did not know he was a detective until he told me himself, but he used to ride out on the Haddonfield line every day.

20

Q. You knew him?

A. I knew him through riding on the car; yes, sir.

Q. That is the only way you knew him?

A. That is the only way.

Q. Have you ever been convicted of crime?

A. I have never been convicted of crime.

30

The Court: Hasn't this gone far enough? Let's get right down to the question of the accident.

Mr. Fryling: That is all.

DR. AARON HOWARD, SWORN.

(Testimony omitted because not related to subject of appeal.)

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ALFRED ROTHFUSS, SWORN.

10 (Testimony omitted because not related to subject of appeal.)

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KATIE ROTHFUSS, SWORN.

(Testimony omitted because not related to subject of appeal.)

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PLAINTIFF RESTS.

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THE CASE FOR THE DEFENDANT.

CHARLES L. JANNEY, SWORN.

By Mr. Fryling:

30 Q. Mr. Janney, where do you live?

A. 1236 North Thirty-second Street.

Q. And are you a motorman employed by the Public Service Railway Company?

A. I am.

Q. Were you in charge of the northbound car on Broadway on February 17, 1920?

A. I was.

Q. That was in this accident?

A. Yes, sir.

Q. How long had you been a motorman?

A. Since 1902, the nineteenth day of July.

Q. Twenty years?

A. The nineteenth day of the following July.

Q. Who was your conductor?

A. A man named Haywood or Haygood.

Q. Do you know where he is now?

A. I do not.

10

Q. Do you know whether or not he is employed by the Public Service Railway Company?

A. Not to my knowledge.

Q. Now, what was the condition of your car at the time of this accident?

A. The car was O. K.—all right.

Q. With respect to your motors?

A. There was two motors, what we term as cut out.

Q. Was there anything—what did that do?

20

A. That means that instead of the car operating on four machines it was operating on two machines.

Q. Did that have any effect on stopping your car?

A. Not in the least.

Q. Could you make as good a stop with the car in the condition in which it was as you could if those two motors that you speak of were not out?

A. Just the same.

Q. What was the effect of the motors—what was the purpose of the motors?

30

A. One of the machines in this car was what was known as a crippled machine, probably a grounded field, and for some reason it had been cut out at the car house before the car was sent out in the morning.

Q. Well, what were the motors used for?

A. The motors that was cut out?

Q. Yes.

A. They weren't used for any purpose then while they were cut out.

Q. Were the motors that you were using in good condition?

A. Yes, sir.

Q. And were they all the motors, the mechanism the car needed for operation?

A. Yes.

10 Q. Both in proceeding and in stopping?

A. Yes, sir.

Q. Can you tell us just what happened just before and up to the time of this accident?

A. I was northbound; I stopped on the near side of Washington Street to discharge two passengers. After receiving the bells from the conductor, I proceeded.

Q. Now, just a moment; what end of the car did the two passengers alight from?

20 A. The front end.

Q. That is, the end which you were on?

A. The end I was on.

Q. Yes; go on.

A. I proceeded; there was a southbound car standing on what would be the near side of Washington and behind the southbound car was two auto trucks.

Q. When you say the southbound car was on the near side of Washington Street, you mean its near side?

30 A. On its near side.

Q. That was the opposite side of the street from which you stopped?

A. Yes, that was the north side of Washington Street.

Q. And you stopped on the south side?

A. Yes, behind that car there was two large trucks.

Q. And where were they with respect to the tracks?

A. Right in the tracks.

Q. In which tracks?

A. Right in the southbound track behind the southbound car.

Q. All right; go on.

A. The first truck was close to the car, to the southbound car; between the first and the second truck there was a space of probably three or four 10 feet, and that is where the young lady came from that ran into the side of the car; the front of the car had passed her.

Q. The front of what car?

A. The front of my car, the car that I was operating, had passed her.

Q. Now, what kind of truck was it that stood behind the southbound trolley car?

A. Well, there was a truck that would remind me of the big ash trucks that they used to collect ashes; 20 it may have been a big coal truck, used for coal purposes.

Q. Could you see, as you were passing the truck, could you see behind the truck?

A. No, it was too high.

Q. Now, as you were passing the trolley car, the southbound trolley car and the truck, what, if anything, were you doing?

A. I was sounding my gong, and kept my eye to the left, looking behind the car. 30

Q. When did you first see Miss Rothfuss?

A. When I was about two foot, two and one-half foot away from between the two trucks.

Q. You mean that you had passed the car?

A. Yes, I had passed the car and practically passed the first truck, along about the rear wheel of the first truck.

Q. And when you first saw her, where was she?

A. In between the two trucks; she had just come out from between the two trucks.

Q. And what was she doing?

A. As I was going by, I could see her throw her hands up like that (indicating).

Q. At any time, was she on the rail of your track?

A. No, sir.

Q. Well, what did you do?

10 A. I stopped as soon as I heard the sound of the collision, I stopped and went back and hailed an automobile—after I seen what had happened, I hailed an automobile and had the young lady sent to the hospital.

Q. Where was she?

A. She was lying between the two tracks.

Q. Well, when you say between the two tracks, you mean between the northbound and southbound track?

20 A. Between the northbound and southbound track.

Q. What part of the car did she come in contact with?

A. The post at the corner, behind what we term the motorman's door; that is, the left-hand door of the car, behind the left-hand door.

Q. Which end of the car?

A. The front end.

Q. That is, the front end of the main body of the car, is that what you referred to?

30 A. No, sir; about five foot from the front of the car there is a post that the doors open and shut on, that the door swings on.

Q. And is that post behind where the motorman operates?

A. Just a trifle behind where the motorman operates on the left-hand side.

Q. That is back of the platform?

A. Yes, back of the platform on the left-hand side.

Q. Is that the post that you say —

A. That is where she hit.

Q. Well, where did you stop your car?

A. About fifteen feet from the time that I heard the collision until the car stopped.

(At this point a recess was taken until 1.30 P. M.)

10

Trial of the cause resumed after recess, in the presence of counsel for the respective parties.

CHARLES L. JANNEY, recalled.

By Mr. Fryling:

Q. Mr. Janney, when your car came to a stop and you got off, Miss Rothfuss was on the ground?

A. Yes.

Q. And what was her position then?

A. She was lying on the ground.

Q. You said between the northbound and southbound tracks?

A. Yes.

Q. How was she with respect to Washington Street?

A. She was about forty feet north of Washington Street.

Q. How far?

A. About forty feet.

Q. And how does that compare with the position of the truck that you say stood behind the southbound trolley car?

A. She was back probably ten feet from where she had come through between the trucks.

Cross-examination.

By Mr. Woodruff:

Q. Ten feet which way?

A. How is that?

Q. Ten feet which way?

A. Toward Washington Street.

10 Q. She came through, then she had gone ten feet toward Washington Street?

A. Yes, sir.

Q. And you had not seen her when she went over that ten feet?

A. Hadn't seen her when she went over it?

Q. Had you not seen her walk that ten feet?

A. She didn't walk that ten feet.

Q. How did she get there?

A. She fell.

Q. The car did not knock her backward, did it?

20 A. She was running on a diagonal course.

Q. But where she came through between the two trucks, as you say, from that point to the point where you found her body was ten feet, and that ten feet was toward Washington Street?

A. Yes, sir.

Q. And you did not see her go over that space at all?

A. No.

Q. You don't know how she got over that space?

30 A. No, I suppose she fell there.

Q. Well, she didn't fall toward Washington Street, did she, if your car was going the other way?

A. She did.

Q. She did?

A. Yes.

Q. And did she fall all the whole ten feet?

A. I couldn't say.

Q. Well, you saw her coming between the trucks, did you?

A. Yes, after she passed through the trucks, not while she was going through.

Q. Oh, you did not see her come through the trucks?

A. No, sir.

Q. You don't know where she came from then?

A. I know she came from between those trucks. 10

Q. If you did not see her come between the trucks, how do you know she came between them?

A. I know she came out that opening between the trucks.

Q. Then you took your eyes from her, did you?

A. As soon as I seen her, I attempted to stop at once.

Q. You attempted to stop?

A. Yes.

Q. And you were not looking at her when she was 20 walking over that ten feet?

A. I certainly was; my eyes were glancing right toward her.

Q. Then you know how she got over that ten feet, do you?

A. Got over the ten feet? She fell.

Q. She fell over the ten feet, did she?

A. I said she did; I wouldn't say positive how she got over the ten feet; she fell.

Q. She didn't get out in front of your car at all? 30

A. No.

Q. Never got out there?

A. No.

Q. And when she had gone ten feet and was alongside of your car, she put her hands up this way, and came in contact with the car, is that right?

A. No, that is not what I said.

Q. How did she come in contact with the car?

A. She came in contact with the car with her hands up like that when she came through from between the trucks.

Q. Do you mean she came right between the trucks, right straight on into the side of the car, with her hands up like that?

10 A. She came through from between the trucks with her hands up in that shape, as if to try to hold herself back.

Q. She had her hands in that position when she came through between the trucks?

A. When she came in contact with the car.

Q. Didn't you say that she had her hands in that position as if to hold herself back?

A. When she came from between the two trucks, she had her hands up as if to protect herself from hitting the car.

20 Q. After she got out where the car was?

A. Yes.

Q. Now, where she struck the car, according to your statement, was the back of that platform, was it?

A. The rear end of my platform.

Q. Had both hands bare and up in the air, did she?

A. Both hands like that (indicating).

Q. Where did she have her muff?

A. I didn't see any muff.

30 Q. You saw it afterwards, didn't you?

A. No, sir.

Q. Didn't you ever see the muff?

A. I did not.

Q. You didn't see a muff that was ground up by the car?

A. I did not.

Q. She came in back of one truck and in front of another truck, according to your statement?

A. Yes.

Q. Did that other truck strike her when she was between your car and that truck?

A. That truck was standing.

Q. Standing?

A. Yes.

Q. Did not move at all?

A. Not until after the accident.

Q. Stood there?

10

A. Yes.

Q. Do you know who was driving that truck?

A. I did know at the time; I don't know now.

Q. How about the truck ahead of that, was that moving?

A. No, sir.

Q. That was standing still?

A. Yes, sir.

Q. And the trolley car was still standing?

A. The trolley car was moving at that time, my car, I mean. 20

Q. Oh, your car—I mean the other car, the south-bound car?

A. I was past that.

Q. Was that still standing?

A. I don't know; I was past that.

Q. But the truck which was immediately in back of it had not gotten under way?

A. No, sir.

Q. And in some way, she had gone the full length of the truck and come around back of it, had she? 30

A. Between the two trucks, yes.

Q. How long a truck was that?

A. I judge the truck was about twelve or fifteen feet long.

Q. Coal wagon or ash truck, you say?

A. Something of that sort, similar to that, yes.

Q. Do you know who that was that had that truck?

A. No, sir.

Q. Now, you were moving all the time, were you?

A. Yes.

Q. And while the cars were still there, the truck was still standing, had not gotten away yet, she  
10 must have gone the full length of the truck and then come around in back of it and darted out in front of your car?

A. Yes, sir; not in front of it, on the side of it.

Q. Well, on the side—I beg your pardon.

A. Yes, sir.

Q. Now, she did get in front of the car, didn't she?

A. No, sir.

Q. Didn't you make a report to the Public Ser-  
20 vice immediately after this accident?

A. I did.

Q. And didn't you say to the Public Service, just as they have it in their answer to this case, that she went out into the pathway of your car, she entered the pathway of your approaching car at a time when the trolley car was so near as to endanger the safety of the plaintiff?

A. I did not.

Q. You did not make that kind of a report?

30 A. No, sir.

Mr. Fryling: Now, one minute; I object to that. I think counsel ought to read the whole clause, if he is going to put that to the jury in that form.

Mr. Woodruff: What do you mean, the other part of the answer?

Mr. Fryling: Yes, he has used it in examining the witness; now, it seems to me it would be fair to use the whole defense set up in the answer, if you propose to put that to the jury.

The Court: Well, this question was already answered.

Mr. Fryling: The witness answered the question very quickly; I didn't get a chance to put it in before he answered. 10

The Court: All right.

Q. You did not make any report to the company that she got in the pathway of your car?

A. I made a report to the company, just exactly how the affair happened.

Q. Do you know how they could have gotten that information to put in their answer? 20

A. I do not.

Q. You never heard that story before?

A. Never.

Q. The only story that you know is that she ran into the side of your car?

A. Yes, sir.

Q. The second truck, you say, was a standing truck—that had not moved?

A. No, sir.

Q. Neither one of those trucks had started to move? 30

A. Not until after the accident.

Q. Did you get the name of the truck drivers?

A. I got one of them, but I am not positive about the other.

Q. Did you get the names of the two passengers you had left off at the corner?

A. I did not.

Q. Why aren't you positive about the other truck driver?

A. Well, I don't remember whether the conductor got his name or not.

Q. You had worked twenty years for the company, hadn't you?

A. Not for this company.

10 Q. I understood you had; how long had you worked for this company?

A. Six years.

Q. Worked six years, you knew you ought to get the names of any witnesses, didn't you?

A. Yes.

Q. Why didn't you get the names of all of them, of those witnesses?

A. I done all in my power to get everything straightened up that was possible. My first aim was to take care of the young lady.

20 Q. Now, you say that she came right straight into the side of the car, do you, in that position?

A. In that diagonal position, like that (indicating).

Q. She did not turn?

A. No, she did not turn.

Q. Right straight into the side?

A. No, she didn't; she came on a diagonal course.

Q. Your car was coming north, wasn't it?

A. Yes, sir.

30 Q. And it was approaching her right-hand side, wasn't it?

A. Approaching her right-hand side?

Q. Yes, as she was crossing the street it was her right arm that was toward your car, wasn't it?

A. No, it was her left.

Q. Her left side?

A. Yes.

Q. What way was she crossing Broadway?

A. She was crossing Broadway to the right.

Q. Well, which way was she going, toward Cooper Hospital, in that direction?

A. In that direction, yes.

Q. Then your car was going toward Federal Street, wasn't it?

A. Yes.

Q. Then it was her right side that was toward your 10 car as she approached, wasn't it?

A. No, sir.

Q. It was her left side?

A. Her left side.

Q. She wasn't walking backward, was she?

A. No, sir, she was walking in diagonal course.

Q. Can't you tell us just how she got her left side toward your car, crossing Broadway in that direction?

A. The only way that I know of that she could get 20 there and get that way was coming through the trucks, her face like that, put her hands up to protect herself.

Q. You said before she came right up against the car this way, didn't you?

A. I said she came in a diagonal course, with her face facing like that.

Q. Didn't you tell me she did not turn before she was struck?

A. I didn't say she didn't turn.

30

Q. I so understood you; did she turn or didn't she?

A. No, she didn't turn; she had her face sideways. She was coming through sideways; her face was sideways and her hands up in front of her face.

Q. And you stopped to let two passengers off on the near side of Washington Street, did you?

A. I did.

Q. Then you didn't have very much speed up in crossing Washington Street, did you?

A. No, sir.

Q. Couldn't you stop while she was going over that ten feet alongside of the truck?

A. I didn't see her until she was about two feet and a half or three feet.

Q. Couldn't you stop then?

10 A. Well, I couldn't stop in a foot or two foot.

Q. As I understand, you went about fifteen feet after the impact, is that right?

A. About fifteen feet, yes.

Q. Couldn't you stop any quicker than that?

A. I made, as I consider, a good stop.

Q. Well, why was it that you couldn't stop in less than fifteen feet?

A. Well, when a thing is happening—it wasn't on my mind that anything was going to happen.

20 Q. You saw this girl coming out with her hands as if to save herself, right into the car, didn't you?

A. Yes, and that quick I applied the brakes and reversed the car.

Q. And you had the reverse on all the time she was going over that ten feet, did you?

A. I didn't see her going that ten feet; the car probably would have stopped before she went that ten feet, after the front of the car passed her. I didn't see her until I got off the car to pick her up.

30 Q. Then you don't know what part of the car she came in contact with, do you?

A. Yes, I know where she came, because when I first seen her, I turned my head like that.

Q. You had had your head turned the other way when the two men got off the front of the car, had you?

A. I seen those two men had got off safely, and I was looking ahead of me.

Q. That made you turn your head that way, didn't it?

A. Which way?

Q. Toward Cooper Hospital.

A. When those two men were let off, yes.

Q. And you were watching that they got safely down to the ground before you started?

A. Yes, I did.

10

Q. Then you put on your power?

A. Yes.

Q. What did you say was the matter with your car?

A. That car had two machines cut out.

Q. You had reported that, or your conductor had reported that from Clementon, hadn't you?

A. No, sir, I received the car in that condition.

Q. Didn't your conductor, Haygood or Haywood or whatever his name was, report from Clementon 20 that your car was bad?

A. No, sir, he had no occasion to report it.

Q. You say he did not?

A. No, sir, not to my knowledge; I was with him all the time.

Q. That is the way they gave you the car to make out that day, was it?

A. I did not take the car; I relieved the car on the street.

Q. Where did you pick it up?

30

A. On the relief at Broadway and Mickle Street.

Q. Oh, but you were not at Clementon with that conductor then?

A. Yes, I was at Clementon with him; I had just finished at Clementon.

Q. You went down to Clementon?

- A. Yes.
- Q. And came back?
- A. Two trips before this.
- Q. Had you gotten any bell to go ahead?
- A. Yes.
- Q. At Washington Street?
- A. Yes.
- Q. Had anybody gotten on?
- A. No, sir.
- 10 Q. How are you sure about that?
- A. Well, I don't remember of anybody being there to get on.
- Q. Just the two men that you say got off?
- A. That is all.
- Q. Why did you put your car in reverse?
- A. To stop, make a quick stop.
- Q. Isn't that the way you had been stopping all the way coming up?
- A. No, sir.
- 20 Q. When you stop that way it jerks your car pretty badly, doesn't it?
- A. Sometimes.
- Q. And it did this time, didn't it, when you stopped after Miss Rothfuss was hit?
- A. I don't know; I wouldn't say whether it did or whether it didn't.
- Q. Did your car start backward?
- A. No, sir.
- Q. And there is no question but what you had it
- 30 in reverse, is there?
- A. No, sir; I had it in reverse, but before the car stopped, I tried to cut the power off and put the brakes on to hold it.
- Q. Didn't some man get on the car and stop it for you, after you jumped off?
- A. No, sir.

Q. Where did you go immediately after the accident with your car?

A. After Miss Rothfuss was taken care of, I went to the ferry.

Q. How many days after that did you work as a motorman?

A. How many days after that? Well, up until the present time.

Q. Are you still working as a motorman?

A. Yes.

10

Q. And you have not been off the cars?

A. I was off three months.

Q. Then put you where to work?

A. Well, I wasn't working for that three months.

Q. Didn't work for the Public Service in their offices?

A. No, sir; not since then.

Q. In some other department?

A. Not since the accident.

Q. There was three months that you did not work? 20

A. Yes.

Q. How soon after this accident were you laid off?

A. The accident happened, if I remember right, in February, and it was the following year. Now, I don't remember whether it was previous to this or after the accident that I was off for three months.

Q. Wasn't it just after this accident?

A. No, sir, this accident had nothing in the least to do with it.

30

Q. I didn't ask you whether it had anything to do with it; I am asking you whether that was not just after the accident?

A. No, sir; if the attorney is satisfied, I will tell you why I was off for three months.

Q. How long had you known Haygood?

A. Why, I did not know him at all until this day that he started to work with me.

Q. Had you worked with him before?

A. No, sir; he was an extra man.

Q. When you came up to Washington Street, was that a safety stop?

A. Yes.

Q. If you didn't have any passengers to let off, it was your duty to pause there, wasn't it?

10 A. Yes.

Q. And you made that pause before you crossed Washington Street?

A. Yes, sir.

Q. And to get a bell from your conductor before you went ahead again?

A. Yes, sir.

Q. That would apply if you were not taking on or letting off passengers, wouldn't it?

A. It made no difference.

20 Q. You always had to make that pause, did you?

A. Yes, sir; I do yet.

By Mr. Fryling:

Q. Mr. Janney, why were you off for three months?

30 A. I am the man who started to organize the union among the trolley men in the City of Camden, and at that time the Public Service Railway was doing everything in their power to keep the union off of the Southern Division or off of this property. They got wind that—they got information that led them to believe that I was the man that was organizing the union in Camden, and for that reason I was suspended or fired, as they would call it, for three months.

Q. Had it anything to do with this accident?

A. Not in the least.

Q. And you are not sure whether that was before or after this accident?

A. No, I don't remember exactly when we were organized, when the trolley men were organized.

Q. Now, when you were coming north, Miss Rothfuss came from which side of you?

A. From the left side of me.

Q. And she was going from the left to the right side—that is, from the west to the east side of Broadway?

A. Yes.

Q. At the previous stops that you had made with your car on that trip, did you have any difficulty in stopping your car?

A. Not in the least.

Q. Were the stops made with any jerks, any extraordinary jerks?

A. No, sir.

20

Q. Now, when you got to the far side of Washington Street, that is, the north side, after you had crossed Washington Street, where was the south-bound car?

A. When I crossed Washington Street, the south-bound car was still standing, but after I passed, I couldn't tell whether he went on —

Q. Yes, I mean when you were in a position to see, when you had crossed Washington Street?

A. It was still standing.

30

Q. So that when you say—I will withdraw that. When your car was traveling north, Miss Rothfuss came from your left, so that if she had gone straight across the street, her right side would have been nearest your car in the direction that you were going, wouldn't it?

A. If she had been coming across the street straight, yes; I figured her face would be right facing to me.

Q. And why is it that you say that her left side was nearer the car?

A. When she went through—the first that I remember seeing the young lady, I could see two hands and her face like that (indicating).

Q. She had her left side turned around?

10 A. Facing toward Washington Street.

By Mr. Woodruff:

Q. Where did you see her with her face turned that way?

A. When she came between the two trucks, just as she came out clear between the two trucks.

Q. Now, which is right—did she come out between the two trucks with her hands this way, facing you, or did she come out with her face turned sideways?

20 A. When she came out between those two trucks, the first I seen her, she had throwed her hands up like that as if to protect herself.

Q. And is that when she turned her head?

A. Yes.

Q. She was in front of your car then, wasn't she?

A. No, sir.

Q. Wasn't she ahead of your car?

A. No, sir.

30 Q. Were you turned around to see her?

A. I turned my eyes like that.

Q. Turned your eyes around to see her?

A. Yes; to see what it was; I didn't know what it was for a second.

Q. Was she opposite where you were standing then?

A. Just about.

Q. Just about opposite where you were standing?

A. Yes.

Q. Looking right out at her, is that right?

A. Looking right out at her?

Q. Yes; looking right out of the door.

A. I turned my eyes to the left.

Q. The other trolley had not moved while you came all the way alongside of it?

A. Not until after I had passed it. Now, I don't know what he done or how soon he went after I passed him. 10

Q. I understand, but the front of his platform, after you came past the rear end of the other car, that car was still standing?

A. Still standing.

Q. How long did it stand there?

A. I don't know.

Q. How long had he been standing there before that? 20

A. Probably about thirty seconds.

Q. Did you see anybody but Miss Rothfuss get away from that car?

A. I did not.

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ELLA BAXTER, SWORN.

By Mr. Fryling:

30

Q. Mrs. Baxter, where do you live?

A. 436 Berkley.

Q. Do you recall February 17, 1920, this accident?

A. Yes.

Q. And at the time of the accident, where were you?

A. Broadway and Washington, on my way from work, about 5.45, it was.

Q. Were you walking?

A. Walking.

Q. In which direction were you walking?

A. South.

Q. Who was with you, if any one?

A. Mrs. Sanders, my shopmate.

Q. And on which side of Broadway were you?

10 A. On the south side of Broadway.

The Court: The south side of Broadway?

The Witness: Is this south?

Q. Was it your right side or left side?

A. The right side, going down.

Q. And you were going, you say, south?

A. Going home from work.

20 Q. Had you reached Washington Street yet?

A. Not quite to the corner, no; about to Jones' hardware store.

Q. Well, where is Jones' hardware store from Washington?

A. Why, next door to the corner; on the corner is Mutzer's confectionery and Jones' is next door.

Q. What did you see of this accident?

A. Well, I saw the southbound car coming down, and it stopped there, just as I got to Washington

30 street, and the defendant, she stepped off.

Q. You mean—

A. The lady.

Q. You mean Miss Rothfuss?

A. Yes; I couldn't think of her name; she stepped off of the trolley, and there were two trucks—I think there were two trucks back of it, and she went in

between the car and the truck, and the northbound car was coming up, and she ran into the northbound car. It was going at a low speed; it wasn't going fast.

Q. When she got off, what part of the car did she get off?

A. Why, the rear end, I guess they call it.

Q. The rear end? Now, when she got off from the trolley car, in which direction did she walk?

A. Why, she went across toward the other side 10 of Broadway, in between the car and the trucks.

Q. Did she go to the sidewalk at all?

A. No, sir.

Q. On the same side where you were?

A. She was not on the sidewalk; after she got off the car; she didn't cross to the sidewalk, just went right around the car and crossed the street.

Q. Was in back of the car?

A. Yes, sir.

Q. Or in front of the car?

20

A. Back of the southbound car.

Q. The car from which she got off?

A. Yes.

Q. And just tell us what you saw, what happened.

A. Well, she got off the car, and she turned and went around the back end, between the truck and the trolley car and crossed right across, and, you know, the northbound car was coming up, and she went right into the car that was coming. It wasn't coming at full speed; if it had, I guess it might have 30 killed her.

Q. Did she get on the northbound track—did she get that far?

A. Not quite to the track; no, sir; near it, not quite; just close enough that the car could hit her.

Q. What part of the car did she come in contact with?

A. Why, where the motorman is at the head of the car.

Q. Well, was it in front of the motorman or the side of the motorman?

A. Kind of the side of the car, like.

Q. And about how far—well, then, what happened?

A. Well, the car hit her and she fell.

Q. Now, when she fell, where was she lying?

10 A. Why, in the middle of the street.

Q. How was she lying with respect to the car tracks?

A. Well, it hit her and she fell this way (indicating).

Q. Well, that doesn't mean anything; did she fall toward the car or away from the car?

A. Well, she fell away from the car yes; it hit her and throwed her away from the car.

20 Q. And where was she lying with respect to the car tracks?

A. Well, I judge about as far from the car tracks—

Q. Well, you know there are two tracks, aren't there, the north track and the south track?

A. Yes; well she fell in between.

Q. Between what, between the tracks?

A. Between the two tracks, yes.

Q. And when she fell, about how far was that from the corner of Washington Street?

30 A. Well, I don't know just about how far; I judge from here to the corner there.

Q. Well, do you know how long the trolley car was that she got off of?

A. Well, it was one of these large trolleys.

Q. Where was that car stopped—where was the front of the car when Miss Rothfuss got off of it?

A. Why, this side of Washington Street; you know, it didn't stop right exactly at the corner.

Q. It stopped so that the front was on the near side of Washington Street?

A. Why, of course, the front of the car would be nearer Washington Street than the rear would.

Q. Now, have you any idea as to how long that car was?

A. No; I couldn't tell you how long it was; it was one of the big cars.

Q. Well, with respect to the length of the car, the distance of the car, how did that compare with the distance Miss Rothfuss was from the crossing of Washington Street?

A. Well, I judge about—I don't know; I judge about from here to there (indicating).

Mr. Woodruff: From there to where?

The Witness: The corner there.

Q. The stenographer, the gentleman who is writing there?

A. Yes.

Mr. Woodruff: Will you stipulate on the record now that that distance is about ten or twelve feet?

The Witness: Well, you know what a trolley car is; it wasn't a small car.

Mr. Woodruff: Wait a minute, please. (To Mr. Fryling.) Will you stipulate that that is about ten or twelve feet?

Mr. Fryling: Yes.

Q. Will you point out in the room about how long that trolley car was?

A. Well, I couldn't tell you how long the trolley car was, but one of these large trolley cars, it wasn't one of the small ones like the Fifth and Broadway; it was a larger car.

Q. In front of what store was she lying after she fell?

A. I judge she would just be facing Jones' hardware store.

Q. Where is Jones' hardware store?

A. Next door to the corner of Broadway and Washington.

Q. That is the second store from Washington Street?

A. Yes.

Q. You say that she was in front of that?

A. Would be, yes, when she was lying in the street after the trolley hit her.

20 Q. Well, wouldn't you say that that distance—

Mr. Woodruff: I object. The form of the question is objectionable.

Mr. Fryling: I will withdraw that.

Q. Would you say that where she was lying on the ground it was in front of the second store from Washington Street, is that it?

30 Mr. Woodruff: I object to that; she hasn't said that. This is his own witness. She said where the girl was lying her face was toward Jones' store.

Mr. Fryling: I will repeat the question I asked before.

Q. In front of what store was she lying after the accident when she fell—when she came in contact with the car and fell, where she was lying?

A. Why, in the middle of the street.

Q. I know, you said that before; in front of what store was she lying?

A. Why, it would be right in front of Jones' hardware store, only in the street.

Q. And that is the second store from Washington Street?

10

A. Yes, exactly.

Q. Now, will you point out if you can, a distance in the court room, how far that store is from the position where you are sitting, from the corner?

A. I judge it would be from the end of there to here.

Q. From the end of the Judge's bench?

A. Yes, it would be two stores, you know; Jones' has two windows, you know; his door is right in between two windows.

20

Q. Then the distance from the corner to the position where she was lying when she fell after the accident, you say, would be from about the end of the Judge's bench to where you are?

A. Well, Jones' store—she fell right that way; the car hit her and she fell this way; her head came this way, and her hat went one way and her hand-bag another way.

Q. Then you say she was lying in front of this hardware store?

30

A. Yes, she would be right facing the hardware store, Jones'.

Q. Well, what did you mean then about the distance that you referred to as from the stenographer to you?

A. Why, where the store would be; you asked me where Jones' store would be.

Q. I understood you to say that that was about the end of the Judge's bench from you, that distance from the corner?

A. Yes, two stores, that is, the end of the store; there is Mutzer's confectionery store, and then next to Mutzer's confectionery store in Jones' hardware.

Q. Now, what did you refer to when you said—when you were referring to the distance from the stenographer to you, what was there?

10 A. What was there?

Q. Yes.

A. I don't know as anything I said was there.

Q. What were you referring to when you spoke of the distance from the stenographer to you?

A. Why, from the trolley, the two trolley tracks, wasn't it, I said there?

Q. Well, I don't know what you meant.

A. Well, I can't tell you any more than I saw.

Q. Well, that is all we want.

20 A. I told you all I have seen and know.

Q. Now, Mrs. Baxter, you say that she walked behind this trolley car?

A. Yes, between the truck and the trolley, exactly.

Q. How soon after she walked behind the trolley car, did she come in contact with the other car?

A. Why, it wasn't very many minutes.

Q. After she crossed behind the trolley car did she immediately come in contact with the other car?

30 A. Yes, she did.

Q. Did she at any time walk to the sidewalk when she got off the trolley car?

A. No, I didn't see them pick her up, because I went on past.

Q. No, before the accident, when she got off the trolley car?

A. No.

Q. Did she walk to the sidewalk?

A. No, she didn't; she got right off the trolley and turned around and went across in between the trolley and the truck; that is all I can tell you and I don't know any more, just what I have seen.

Cross-examination.

By Mr. Woodruff:

10

Q. You mean, madam, that when you saw this girl knocked down and her hat going one way and her handbag the other, struck by the trolley car, that you walked on and did not bother to see whether she was hurt or not?

A. No, I did not.

Q. You weren't interested enough to stop to see?

A. No, because we were going home from work.

Q. And it was more important to you to get home 20 that day than to see whether this girl was hurt?

A. Why, certainly; suppose you worked hard all day, anyone would want to get home.

Q. Who was with you?

A. Mrs. Sanders.

Q. You were walking down Broadway, were you?

A. Yes, going home from work.

Q. How many trucks did you see there?

A. There were two I seen.

Q. And you say that she went right to the end of 30 the trolley car?

A. She surely did.

Q. In front of the first truck?

A. She did.

Q. The minute she stepped off?

A. Certainly, as soon as she stepped off the trolley, she went right there.

Q. Right around?

A. Exactly.

Q. How close was that truck to the trolley?

A. I don't know just exactly; I couldn't tell you; I wasn't paying any attention to that.

Q. Wasn't it right up close to the trolley?

A. Not up right close to the trolley.

Q. It was not?

A. No.

10 Q. She walked right straight into the side of the car?

A. Yes, she walked right in between.

Q. And did she come right on out and strike the car then?

A. She went right there, and as she got right there the car struck her, exactly.

Q. Did you see that?

A. Certainly I seen it, or I couldn't tell you.

Q. Where did you say you were?

20 A. Broadway and Washington.

Q. No, whereabouts on Broadway?

A. Right in front of Jones' hardware store.

Q. Where she had gotten out was not quite as far back as Jones' store, was it?

A. Sure, it was right there she went right in between.

Q. Well, was it right in front of you?

A. What, the trolley?

Q. Where she got out and went in.

30 A. Sure it was, she just got that far.

Q. Right in front of where you were?

A. Yes.

Q. Had the trolley car started off yet?

A. No.

Q. Still standing there?

A. Yes.

Q. Did anybody else get out?

A. I didn't see anybody else.

Q. Was there anybody got on?

A. No.

Q. The truck still standing?

A. I am sure it would stand if the trolley was.

Q. Was there a second truck standing, too?

A. I don't think any of them got away at all, went on past the car. They are not allowed, you know, to go past until the car starts. 10

Q. She didn't get off and walk back of that truck and go between the two trucks?

A. No.

Q. You are positive about that?

A. Yes.

Q. Where she went through, it was not between two trucks?

A. No.

Q. And you are sure she went right straight into the side of the car? 20

A. I say she did; she got out of the car and went between the car and the truck, one there, and the other one there (indicating).

Q. Why did you say she must have done that—have you some doubt in your mind?

Mr. Fryling: I object.

A. I didn't say she must have; I can't tell any more than I seen; I told you all I know. 30

Q. Did she walk right straight into the side of the car?

A. I told you all I can tell you.

The Court: Well, answer the question.

The Witness: I did, Judge.

The Court: Answer it again.

Q. Did she walk right straight into the side of the car?

A. Certainly, she walked right into it.

Q. Didn't look toward it before she ran into it?

A. No, I don't think she did, or I think she would have stopped.

10 Q. Walked right straight with her head right straight across the street, is that correct?

A. Yes.

Q. Did you see what part of her face was struck?

A. No, I didn't; she fell on the side of her face. I didn't stop to go over to her.

Q. Did you see what happened to her muff?

A. No.

Q. Wasn't it a muff instead of a handbag?

A. No, I am sure it was a handbag.

Q. You didn't see her muff?

20 A. No, seen her hat.

Q. Where do you work, madam?

A. I am not working anywhere particularly now.

Q. Where were you working at that time?

A. Seventh and State, the Hunt Pen Company at the time.

Q. And you were on your way home, were you?

A. I was.

Q. Did you give your name to the conductor at that time?

30 A. Sir?

Q. Did you give your name to the conductor or motorman at that time?

A. No, sir.

Q. How did they find you out, do you know?

A. I couldn't tell you that, couldn't answer you that question, for I don't know.

Q. Surely the detective didn't come and find you, did he? Who found you?

A. I don't know who it was, but there was a gentleman came to the house.

Q. You didn't give anybody your name?

A. No.

Q. And a gentleman came to your house and asked you about the case?

A. Sure.

Q. And then how many times— 10

A. They did know our names, but I don't know who gave it to them; I didn't.

Q. You hadn't given anybody your name?

A. No, sir.

Q. And somebody found you out and came to your house?

A. Yes.

Q. Then how many times were you up at the Public Service office?

A. Only—this is the second time. 20

Q. You were there this morning before you came to court?

A. Yes.

Q. And you were there once before, were you?

A. About a year ago, when it happened.

Q. Oh, when it happened?

A. I say, a year ago, when it first came up, I guess it was a year ago.

Mr. Fryling: When the case came up before. 30

Q. How soon after the accident was it that you went up the first time?

A. Not so awful long; I couldn't answer that question.

Q. Did you know the motorman, Mr. Janney?

A. No, sir.

Q. And you don't know how they could get your name?

A. No, sir; I do not; that is a mystery.

By Mr. Fryling:

Q. Did you know that Mrs. Sanders gave your name to the Public Service?

10 A. No, sir; she didn't know anything about it until the gentleman came to the house herself.

Q. Now, Mrs. Baxter, the other time that you were at the Public Service office was that the time the case was coming up for trial, about a year ago?

A. Yes.

Q. Now, when this accident happened, did you see that other people were taking care of Miss Rothfuss?

20 A. No, we didn't stay at all; we went right on home for Mrs. Sanders said, "Oh, come on. I am too nervous, I wouldn't want to stand and look any more."

Q. Did you see that somebody went over to take care of her?

A. There went somebody to her, these gentlemen went over to her.

Q. Then you went away?

A. Then we went away, went right on home.

30

MARY SANDERS, SWORN.

By Mr. Fryling:

Q. Mrs. Sanders, where do you live?

A. 436 Berkley Street.

Q. On the afternoon of February 17, 1920, were you on Broadway?

A. Yes, sir; coming home from work.

Q. What were you doing?

A. Coming home from work.

Q. Where did you work?

A. C. Howard Hunt Pen Works.

Q. Were you with anyone?

A. Mrs. Baxter.

Q. Did you see this accident? 10

A. Yes.

Q. On which side of Broadway were you walking?

A. On the lower side.

Q. Which was it, your right-hand side or left side?

A. Yes, sir; the right-hand side.

Q. Which direction were you going, north or south?

A. Toward Washington, south.

Q. Now, had you reached Washington Street yet? 20

A. No, sir.

Q. Just tell us what you saw of this accident?

A. Well, as far as—I think we were just below, right near the Five and Ten-Cent Store.

Q. How far is that from the corner?

The Court: Well, that is Jones' store, isn't it?

A. Yes, sir; I couldn't tell.

The Court: Answer my question; that is Jones' 30 hardware store?

The Witness: Yes, sir.

The Court: All right; go ahead.

The Witness: And I saw a young girl get off of

the trolley car and then back there there was trucks and automobiles—of course, I didn't pay attention to how many there were or nothing, but I seen her go past one of the automobiles, whether it was a truck or car I didn't take notice in such a short time, and she ran—it looked to me as though she was getting out of the way of another—her hat was kind of sideways, this way, and there was another car coming up, and it struck her, and she fell right in between the two tracks.

10 Q. Did she ever get in front of the trolley car that struck her?

A. No, sir; it hit her right at the side.

Q. What part of the car did she come in contact with?

A. Well, I know what part it is; it is the first of the car, where the windows is, past the fenders, the car part, you know, that struck her, the side of it.

20 Q. Now, did she come in front or behind of the car she got off?

A. Behind.

Q. Do you recall whether she walked directly behind that car?

A. No, sir.

Q. Or whether there was something between the car and her?

30 A. No, sir; there was another machine or a truck—now, I don't know which it was, but I know they were all lined up there, and her hat was sideways like this to my looking, and, of course, I don't know, I imagine she was watching these trucks, and she ran direct in front of this here trolley car, the side of it; it knocked her down.

Q. Did she walk to the sidewalk when she got off the trolley car?

A. No, sir; she just turned right around to get out of the way of a truck.

Q. Did she at any time before this accident walk up to the corner and go to the cross walk?

A. Not that I saw; I saw her when she got off the car, and positively, she just went between.

Q. You saw her from the time she got off the car?

A. Yes.

Q. Until the accident, did you?

A. Yes, until she got hit; then I didn't see nothing 10  
else.

Q. When she fell, after the collision, where was she lying?

A. She was lying between the two trolley tracks.

Q. Between the northbound track and the southbound track, is that what you mean?

A. Yes, sir.

Q. And about how far from the cross walk of Washington Street?

A. Oh, my, it was quite a distance; she was, I 20  
judge, right in front of Lee's hardware store, whatever it is there, I don't know; it is Broadway near Washington.

Q. Do you know how the Public Service got your name and address?

A. No, indeed I don't know. I said at the time, I said to my lady friend—

Q. Well, never mind that.

Cross-examination.

30

By Mr. Woodruff:

Q. You were with Mrs. Baxter, were you?

A. Yes.

Q. Is she the one you speak of as your lady friend?

A. Yes.

Q. Did you work together?

A. Yes, sir.

Q. Live together?

A. Yes, sir.

Q. You went on with her immediately after the accident?

A. No, sir; I went on ahead; I ran on ahead.

Q. As soon as the accident happened?

10 A. Yes, indeed.

Q. Had you ever seen the girl who got hit before?

A. No, sir.

Q. Where did the girl get hit that you saw—what part of her face was struck?

A. I didn't see what part of her face was struck.

Q. I thought you showed us a few moments ago how she got struck?

A. I thought that is where she got struck when she fell, because I seen her head this way, turned  
20 this way (indicating).

Q. Looking toward what?

A. Toward the machines there, as though she was getting out of the way of the machines.

Q. That is, looking up toward Federal Street?

A. No, sir; looking back; she had crossed this track and was looking back at the machines on this track.

Q. I don't understand; did that turn her face toward Federal Street, when she looked back at the  
30 machines?

A. Well, it turned her face toward the same side of the street I was on.

Q. Which way did she turn around, toward Federal Street or turn around—

A. She turned around this way (indicating).

Q. Toward Federal Street, did she?

A. No, sir; she was looking at these trucks; these trucks were not on Federal Street.

Q. In turning her head, did she turn her head toward Washington Street, or toward Federal Street?

A. She didn't turn it toward neither one of them; it looked as though she was looking at these trucks right alongside of her.

Q. After she got on out past the trucks, and started across the street, this girl that you saw, which way did she have her face turned? 10

A. When I saw her last, as the car struck her, her face was turned like that, sideways (indicating).

Q. That put her face toward the right-hand side of the car?

A. I couldn't tell you.

Q. You can't tell me, if you saw her face turned, whether it was the right side of her face turned toward the car or the left, can you?

A. It was this side of her face turned toward where I was standing, that direction. 20

Q. That put her right side toward the car?

A. Yes.

Q. When did this accident happen that you saw?

A. It has been so long ago—I know it was sometime in February.

Q. What day of the week did it happen on?

A. I just can't recollect that.

Q. How soon did the Public Service find you after you had seen the accident itself?

A. I think it was about three or four months 30 afterward.

Q. It was not for three or four months after you had seen the accident that somebody found you, is that right?

A. I don't know, I can't say; I didn't think I would have anything like that, and I didn't memorize it.

- Q. You never had seen the girl before?  
A. Never saw her before; no, sir.  
Q. Did you ever see her afterward?  
A. No, sir.  
Q. You don't know her?  
A. No.  
Q. All you saw was a girl get off that car and go around the end of it?  
A. Yes.
- 10 Q. She didn't go between two trucks?  
A. She went between one truck, and there was another one coming; she gets off the car and she waits for one truck; she gets off and starts to go across, and she waits for one truck and gets in between another one.  
Q. Oh, she let the car go on?  
A. No, the car didn't go on; the car was still standing, and she was running.  
Q. How did she wait for the truck?  
A. I don't know that.
- 20 Q. Where was the truck she waited for?  
A. Right back of the trolley car, right exactly back.  
Q. If the trolley car stood still, the truck did not run over it, did it?  
A. No, it didn't run over it.  
Q. How did the truck get past the trolley car which was standing?  
A. It didn't get past; it was still standing there
- 30 after she moved on and went between the other one, this other one. The engines were all going on the trucks.  
Q. Where was the other one moving, what part of the street?  
A. It wasn't moving at all.  
Q. I understood you that she was getting out of the way of a truck?

A. She was getting out of his way because they were all ready to go.

Q. You mean it was still standing and she was getting out in a hurry so it wouldn't run over her?

A. Getting out of the way of it, yes.

Q. But she did not go back between two trucks, did she?

A. She came off of the trolley car, and right up on to the trolley car as it stopped was a truck, and she went right between them two, and their engines were still going like when they are ready to start right off. 10

Q. Perhaps you don't understand me; I don't want to annoy you, but I want to find out this definitely—when she got off the steps—the girl that you saw, off of the step of the trolley car, did she turn right around to her right and go around to the rear end of the trolley car?

A. She walked a-ways.

Q. Walked a-ways? 20

A. Yes.

Q. Toward Federal Street?

A. Between that truck.

Q. All the way alongside of that truck?

A. She didn't walk, she ran.

Q. Ran alongside of the truck?

A. Yes.

Q. Toward Federal Street?

A. Yes.

Q. Ran between another one then, between that truck and another truck and right out in the street? 30

A. Yes.

By Mr. Fryling:

Q. I show you a statement, and ask you if this is the statement you made to the Public Service

some time after the accident—is that your signature?

A. Yes.

Q. Now, that statement is dated March 13, 1920.

Mr. Woodruff: I object; this is Mr. Fryling's own witness; he is telling her what date the statement is dated.

10 Mr. Fryling: I think I have a right to refresh the witness' memory.

The Witness: I have had death and everything; I can't remember anything.

The Court: Wait a minute.

Mr. Fryling: It seems to me I have a right to refresh the witness' memory as to the date when  
20 she made a statement.

The Court: I do not think it is vital, anyhow. She said it was two or three months after the accident; it don't make any difference whether it was a month or six months, I don't think.

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JOHN H. BEST, SWORN.

30 By Mr. Fryling:

Q. Where do you live, Mr. Best?

A. Philadelphia, Logan.

Q. And on February 17, 1920, were you a passenger on a trolley car traveling on Broadway, Camden?

A. Yes, sir.

Q. In which direction was the car going?

A. Which way was it going?

Q. Yes.

A. Well, I couldn't tell you the exact direction, but at that time I was in business at Haddon Heights, and I was going toward the ferry.

Q. You were going toward the ferry?

A. Yes.

10

The Court: It was northbound?

A. Northbound, yes.

The Court: All right.

Q. Is that the trolley car that this girl was injured by on the afternoon of February 17th?

A. I beg pardon?

Q. Is that the car that this girl was injured by? 20

A. Yes.

Q. And do you recall what the car did when it came to Washington Street?

A. Yes—was that the last street that it passed before the accident?

Q. Yes.

A. Yes, sir.

Q. Just tell us what the car did when it got to the near side of Washington Street?

A. You mean, the stop?

30

Q. Did you stop?

A. Oh, yes, to the best of my knowledge, yes.

Q. Well, don't you recall whether or not you did?

A. Yes, I think it did, because I was reading a paper, and while the car is going there is a jar, and I remember for a minute this paper standing still.

Of course, I was not conscious whether it stopped or not, because, of course, you wouldn't—but to the best of my knowledge—

Q. What did you first know about the accident?

A. Why, I heard a thud.

Q. And where was the car when that occurred?

A. Why, it was about one-third past a standing car on the left.

Q. A car bound in the opposite direction?

10 A. Yes.

Q. And the car that you were in, had that passed that street?

A. Passed what?

Q. Had it crossed over the street?

A. Oh, yes.

Cross-examination.

By Mr. Woodruff:

20 Q. What part of your car was one-third past the other car?

A. The front part; I was about one-third back, and as I heard the thud I looked out and saw the rear of the other car.

Q. Do you know who it was that got struck?

A. No, sir.

Q. Did you see her afterward?

A. Well, I looked just for a second, but I didn't  
30 want to look very much longer.

Q. You did not get out?

A. No.

Q. Didn't help pick the girl up?

A. No, sir; I was in the car.

Q. You did not get out of your seat?

A. Well, yes, I was on the right-hand side, and I got out to look, and I think they were carrying her

or holding her up or something, and she was hurt, what I thought, hurt pretty bad, and I did not care to look at it.

Q. Now, you have no real recollection about stopping on the other side of Washington Street, have you?

A. Well, yes, I think I am pretty sure we did.

Q. Do you remember anybody getting in or getting out?

A. No.

10

Q. The only way that you remember it is that the paper stopped shaking?

A. Well, yes.

Q. Is that the way you remember it now, two years ago?

A. No, because the customary, I think—I think we must have turned a corner—no, we didn't, no, we came straight on, and I remember pretty near positively of its stopping.

Q. How did you come over here today?

20

A. A machine.

Q. Did somebody bring you over?

A. No, in my own machine.

Q. Did they subpoena you?

A. I beg pardon?

Q. Were you subpoenaed?

A. Yes.

Q. Have you got your subpoena?

A. Yes.

Q. Have you got your subpoena with you?

30

A. I believe so.

The Court: Well, we don't want the history of how all these witnesses got in the court room; it takes too long. They are here and that is all we are interested in.

The Witness: I was here before, about a year ago.

Mr. Woodruff: Somebody else started the ball rolling.

The Court: Well, we will stop it now.

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10 WILLIAM R. HODGDON, SWORN.

By Mr. Fryling:

Q. Mr. Hodgdon, where do you live?

A. 720 Clinton Street.

Q. And on February 17, 1920, what were you doing—what was your business?

A. Driving a truck around Camden and Philadelphia.

20 Q. For whom?

A. For my own father.

Q. In what direction were you going?

A. South on Broadway.

Q. Did you see anything of this accident?

A. I did.

Q. Where were you with respect to Washington Street?

A. Where was I?

Q. Yes.

30 A. Between the two streets, Washington Street and Benson.

Q. Was there any trolley car bound in the same direction as you were?

A. It was.

Q. Where was the trolley car?

A. Stopped at Washington Street.

Q. Where did you first see the plaintiff—where did you first see the girl that was injured?

A. Where did I first see her?

Q. Yes.

A. As she got off the trolley car.

Q. And when she got off, how far were you from the trolley car?

A. Why, about twenty feet.

Q. What kind of a truck did you have?

A. A Ford truck.

10

Q. Well, what did she do when she got off the car?

A. She walked directly in back of the car, going on the opposite side of the street.

Q. Yes, then tell us what happened?

A. She wanted to get on the opposite side of the street, by walking half-way of the car, and then starting on a run.

Q. What do you mean, half-way of the car?

A. Why, about the middle of the car, the back of the car.

20

Q. You mean the width of the car or the length of the car?

A. The width of the car.

By the Court:

Q. Was your truck immediately back of the trolley?

A. Twenty feet in back of it, about.

30

By Mr. Fryling:

Q. Then what happened?

A. Why, the trolley car hit the lady.

Q. What car?

A. The car coming north.

Q. And about how far was she from the cross walk of Washington Street when the car struck her?

A. Well, just the length of the car.

Q. When she got off of the car did she go to the sidewalk at any time?

A. No, sir.

Q. Did she walk up to the corner and go across the cross walk?

A. No, sir.

10 Q. How close to the car that she got off was she when she crossed the track?

A. Repeat that question.

Q. How close was she to the car that she got off, when she went across the track?

A. I judge it was about a foot space between her and the car.

Q. How much?

A. About a foot.

20 Cross-examination.

By Mr. Woodruff:

Q. Any other truck ahead of you?

A. No, sir.

Q. Anything in that twenty-foot space?

A. No, sir.

Q. Were you going?

A. I was standing still at the time of the accident.

30 Q. Along the curb?

A. No, sir.

Q. In the car track?

A. Yes, sir.

Q. Southbound?

A. Yes, sir.

Q. There wasn't any reason she should be afraid of your car, was there?

A. No, sir.

Q. And yet you say that before she could see around that car at all, when she was still half-way across the rear end of it, she started to run?

A. Before she could see?

Q. Before she could see down Broadway?

A. Well, the other car would obstruct her view, the car that she had got off.

Q. That is what I mean.

A. Yes.

10

Q. Before that car had moved at all, before she got out out where she could see at all, she started to run?

A. She didn't start to run immediately; she walked half-way of the width of the car, and then started to run.

Q. She still could not see down Broadway at all?

A. No, sir.

Q. And you still were not moving?

A. No, sir.

20

Q. Nothing to make her hurry?

A. No, sir.

Q. And there she started to run?

A. Yes.

Q. Without looking anywhere at all, ran right on out into the side of the car?

A. Well, I couldn't say that.

Q. You saw it all, didn't you?

A. Yes, I saw it all, but I—

Q. Did she stop any more after she started to run? 30

A. When the car hit her.

Q. When the car hit her?

A. And threw her.

Q. Did you see when she came in contact with the car?

A. I did.

Q. Had she turned or changed her route at all?

A. I couldn't say.

Q. How?

A. I couldn't say.

Q. Well, weren't you watching her?

A. I certainly was.

Q. You could see this other car coming, couldn't you?

A. Yes, I could see the car from where I was.

10 Q. You were further back?

A. Yes, I was further back.

Q. And you can't tell us, seeing the car coming, and seeing the girl running in front of the car, you can't tell us just what she did?

A. I can't tell you the position she hit the car in or the car hit her, rather.

Q. Can't you tell whether she ran straight across?

A. I did tell you she did run straight across.

Q. Straight across?

20 A. Yes.

Q. Made no turn?

A. No, sir.

Q. And came right straight into the car, did she?

A. Direct.

Q. What part of the car struck her?

A. Well, I judge about right near the corner of the car.

Q. Right near what?

A. The corner of the car.

30 Q. Right near the front corner?

A. Yes.

Q. The front corner of the car?

A. Yes.

Q. She did not turn her head?

A. I couldn't say.

Q. Didn't you keep your eyes on her?

A. Well, I didn't take that much—that close a look.

Q. Did you go on down the street, too?

A. Before the accident?

Q. As soon as she got struck.

A. No, I stayed there until they had taken her away.

Q. But you can't tell us how the left side of her face got battered up?

A. No, sir.

10

By Mr. Fryling:

Q. Why were you standing still?

A. Why was I standing still? I seen that the girl was going to get hit with the trolley, and I thought it best to stop.

Q. Had the car that she got off started yet?

A. No.

Q. Now, when she was struck, had that car started yet?

A. I think the car had just started.

By Mr. Woodruff:

Q. Did you call to her?

A. Did I call to her? No; I was too far away from her.

Q. You were only twenty feet, weren't you?

A. Yes.

Q. And you saw she was going to get struck because you were back far enough to see the other car coming?

A. I was.

Q. And you didn't call?

A. I blew my horn.

30

Q. Oh, you blew your horn, did you?

A. Yes.

---

CHARLES BURNETT, SWORN.

By Mr. Fryling:

10 Q. What is your business, Mr. Burnett?

A. I am a team driver.

Q. And on February 17, 1920, what were you doing?

A. Driving a coal wagon.

Q. And were you driving a coal wagon on the afternoon of that day on Broadway in the vicinity of Washington Street?

A. I was.

Q. Did you see this accident?

20 A. Yes.

Q. Where was your truck at the time?

A. There was two machines standing between me and my wagon.

Q. What?

A. I had a wagon, I was driving a team, and there was two cars between me and the trolley car, two auto cars.

Q. And in which direction were you going?

A. I was going south.

30 Q. Tell us when you first saw the girl?

A. Well, I was going south on Broadway, and I was in front of the car. I pulled off of the track at Broadway and Stevens for the trolley to pass, and these two cars, they came in between me. Well, when they got to Benson Street, they stopped; that still left me behind the auto cars.

Q. All right; now, tell us what position you were in when the trolley car got to Washington Street?

A. Well, when the trolley car got to Washington Street, when she stopped, these two machines stopped. Why, then the lady, she came right around the car, came up toward the front end of the car—she wasn't walking—when she turned around the back of the car, she started in to run, and by that time—

Q. In which direction did she start to run? 10

A. She was going over, across the street; she went to cross Broadway behind the car.

Q. Behind the car?

A. Yes; she come around the car and she went to run across Broadway. At that time the north-bound car was passing the southbound car, and she seen she was going to run into the car, and she throwed her hands against the car, but the pressure of the car, she running into it, kind of throwed her around. I think it was on the left side she fell, right 20  
across the southbound track.

Cross-examination.

By Mr. Woodruff:

Q. You saw her get off the step of the car?

A. I didn't see her get off the step, but I saw her coming running down the side of the car.

Q. You saw her come running down the side of 30  
the car?

A. Yes.

Q. From the front to the back?

A. Yes.

Q. And then after she had run the length of the car, you saw her cut across in back of it?

A. I can't say she ran the length of the car, because I couldn't see her at the front end of the car.

Q. You saw her run some distance?

A. Saw her coming, yes, and she got off the car, but I don't know whether she got off the front end or the back end; I know she was running when I saw her.

Q. I thought you said she ran along the car?

A. She came right along; she was running across  
10 the street back of the car.

Q. Which way was she running when you saw her running?

A. Coming back this way (indicating).

Q. Back toward you?

A. Yes.

Q. How far did she run in that direction?

A. I don't know how far she ran in that direction; she came far enough to get around the car.

Q. Around the trolley car?

20 A. Yes.

Q. She ran some distance, did she, toward you?

A. Well, no; you can't say some distance.

Q. Well, she took enough steps so you knew she was running?

A. I knewed she was running all right.

Q. Then you saw her go in back of that car?

A. I did.

Q. Was she still running?

A. She was.

30 Q. And you saw her throw up her hands and go into the side of the car?

A. She did.

Q. What were these automobiles ahead of you—what kind of automobiles?

A. What say?

Q. What kind of automobiles were those ahead of you?

A. Now, I won't say for sure, it has been so long, but I think one of them was a Ford, and the other was a truck, had a red running gear on.

Q. The Ford had a top on it?

A. Yes; the other one didn't.

Q. You were in the tracks?

A. Yes.

Q. Both of the automobiles in the track?

A. Yes.

Q. And yet you saw this girl do all that, did you? 10

A. I did.

Q. Were these two automobiles in front of you?

A. Yes.

Q. One of them with a top?

A. Yes.

Q. Did the other one have a top, too?

A. No.

By Mr. Fryling:

Q. What kind of a seat did you have on your wagon? 20

A. Well, I had a pretty high seat on the coal wagon.

Q. And you could look over—from the high seat that you had you could look over the top of the Ford?

A. Oh, yes, there was no top at all on it; there is no hood on my wagon at all.

DEFENDANT RESTS.

30

## PLAINTIFF'S REBUTTAL.

JOHN O'BRIEN, SWORN.

By Mr. Woodruff:

- 10 Q. Where do you live, Mr. O'Brien?  
A. 844 Market Street, Camden.  
Q. Were you on this car that struck Miss Rothfuss?  
A. Yes.  
Q. Were you the one that got her in the automobile and took her to the hospital?  
A. Yes, sir.  
Q. Did you see the condition of the muff she had with her?
- 20 Mr. Fryling: One minute; I object to that; it is not rebuttal.
- Q. Mr. O'Brien, did you get off the car as soon as it came to a stop?  
A. Yes.  
Q. Do you know what had happened before that time as to the conduct of the car?  
A. No, sir.
- 30 Q. Now, when you got off the car and helped pick Miss Rothfuss up, who helped you?  
A. No one.  
Q. You picked up her up yourself?  
A. Yes, sir.  
Q. Where was she lying?  
A. Face downward on the southbound track.

Q. Whereabouts with regard to Washington Street?

A. I couldn't tell you.

Mr. Fryling: I object; this is not rebuttal; this is part of the plaintiff's own case.

The Court: Oh, yes; the talk about being sixty or forty feet down the street has not come in except in the defendant's case.

10

Mr. Fryling: But this plaintiff has testified herself where she fell.

The Court: No; I don't think the plaintiff testified that; the plaintiff testified she knew absolutely nothing after she was struck.

Mr. Fryling: She testified first where she crossed the track; she walked up to the corner and walked over the cross walk.

20

The Court: Yes. I will admit this; I think it is proper rebuttal. The question came up in the defense in this case as to where the plaintiff was at the time she fell, and I will admit it as bearing on that question.

(Exception noted for the defendant.)

Q. Regarding Washington Street, where did you pick her up?

30

A. I couldn't tell you how far north of Washington Street it was, or whether it was on the corner of Washington Street; the only thing I can recall, the car stopping suddenly and I looked out the

side—I was standing on the rear platform, and I seen the girl lying face downward on the west rail of the southbound track. I jumped off the car, turned her over, picked her up.

Q. She was on the west rail, was she?

A. On the west rail of the southbound.

Q. And you can't say now—you can't recollect how far she was or where she was?

A. No.

10 Q. And you do not know what had happened to the car before that time?

A. No.

Cross-examination.

By Mr. Fryling:

Q. That is the southbound track, you say?

A. The west rail of the southbound track.

20 Q. You were on which car?

The Court: You don't mean that—there is no use complicating the matter—the west rail of the southbound track?

The Witness: Yes, sir.

By Mr. Fryling:

30 Q. You mean that she was on the rail furthest away from the car which she came in contact with?

A. Yes, sir.

By the Court:

Q. You mean the rail that is nearest to the curbing on the west side of Broadway?

A. Yes, sir; that is what we call, railroading men, that is what we term it, the west rail.

The Court: Oh, I understand what the west rail is on the southbound track.

By Mr. Fryling:

Q. Now, Mr. O'Brien, wasn't she lying more than a car's length north of Washington Street? 10

A. I couldn't tell you that.

Q. Where did you get off the car?

A. I don't recall just exactly how many feet north of Washington Street, or whether it was right on the corner of Washington Street. The only thing I can recall is her lying on, as I said before, the west rail of the southbound track when the car came to a sudden stop, and I jumped off and picked her up.

Q. Do you recall making a statement March 3, 20 1920, about what you knew of this accident?

A. Yes.

A. And did you sign the statement?

A. Yes.

Q. I ask you if this is your signature (showing witness paper)?

A. That is my signature.

Q. You read that statement over, did you?

A. I did.

Q. At the time you signed it, you read it over, 30 before you signed it?

A. Yes.

Q. And that was the statement that you made to a representative of the Public Service Railway Company?

A. Yes.

Q. Now, do you recall stating when you made this

statement, that you saw a girl lying in the street between the tracks at a point a little more than a car's length north of Washington Street?

A. I don't recall it, or I don't say—I don't remember that.

Q. Well, it is in the signed statement that you made at that time, isn't it?

A. Well, it is there all right.

10 The Court: When was that statement signed?

Q. Did you sign this statement on March 3rd, the date that it is dated?

A. Well, I don't know whether it was on that date or not, but I recollect signing the statement.

Q. Well, do you recollect that it was a comparatively short time after the accident, a couple of weeks or so?

A. Yes.

20 Q. And that is the only statement you signed for the Public Service?

A. Yes.

By Mr. Woodruff:

Q. When did you see that statement last, Mr. O'Brien?

A. This morning.

Q. Where?

A. The Public Service office.

30 Q. Were you subpoenaed by them?

A. Yes, sir.

By Mr. Fryling:

Q. You were also subpoenaed by the other side, were you?

A. Yes.

KATHRYN ROTHFUSS, recalled.

By Mr. Woodruff:

Q. Miss Rothfuss, is it correct that you threw your bare hands up this way and went into the side of the car?

Mr. Fryling: I object; the witness has testified 10  
on direct examination just how this accident occurred, and it don't seem to me—

The Court: No; I think the question is relevant, Mr. Fryling, as to whether she put up her hands; I think that was brought out by the defense, namely, that she walked in back of the trolley or between two trucks, and that she put up both hands; it wasn't part of the plaintiff's case, nor does it belong with her conduct in that regard; it was 20  
brought out by the witnesses of the defendant that that was her conduct. I will admit it by way of rebuttal as far as it goes.

(Exception noted for defendant.)

Q. Did you do that?

A. No, sir; I had my hands in my muff.

Q. You had your muff with you and your hands in your muff? 30

A. Yes.

Q. Was your muff returned to you after the accident?

A. Yes; Mr. O'Brien took it over to the hospital; he put it in the car that he took me in to the hospital.

Q. You got it back?

A. Yes.

Q. Was the muff damaged?

A. It was.

Q. How much?

A. Well, it was all, you know, muddled up together, some of the hair torn away from the skin.

Cross-examination.

10 By Mr. Fryling:

Q. You saw the condition of this muff, did you?

A. I have the muff.

Q. You saw Mr. O'Brien put it in the automobile?

A. It was returned to me with all my —

Q. You saw Mr. O'Brien put it in the automobile, didn't you?

A. Well, so he said, he put it in with all my things.

Q. And when you got to the hospital, he gave it  
20 to you?

A. They took my clothes away from me at the hospital.

Q. Didn't you just say when you got to the hospital he gave it to you?

A. No, sir.

Q. Well, you say when you got to the hospital it was given to you?

A. It was put there with all my things, my coat, my hat, my purse and muff.

30 Q. Did you know that then?

A. Yes, sir; I wasn't blind; I could see it when I woke up there, all my things laid there.

Q. I thought you were unconscious?

A. After I woke up, I said.

BOTH SIDES REST.

## CHARGE OF THE COURT.

KATES, J.:

Ladies and Gentlemen of the Jury: This is what is termed a negligence case; the plaintiff claims that the defendant operated its car in a negligent manner, the result of which was the injury complained of by the young lady plaintiff. As I understand, negligence means the failure to exercise such care as ordinarily prudent persons exercise under like or similar circumstances. Now, if you find that the operation of this trolley car northbound on Broadway on the day in question, this particular car, was free of negligence, then there can be no recovery; that is very clear; in other words, the basis of the plaintiff's claim is the negligence of the defendant company, and if there was no negligence on the part of the defendant company in the operation of its trolley car, then there can be no recovery. And the operation of the trolley car is similar to any other conduct of any individual, namely, that it should be operated as a reasonably prudent person would operate under such circumstances as has been related to the jury by the various witnesses. So that the first deliberation, as I see it, that the jury should entertain, is whether the defendant was negligent in the operation of its car. If it was not negligent, in other words, if it is free of negligence in the operation of its car, there can be no recovery.

If you find that the defendant company was negligent in the operation of its car, and that the plaintiff young lady is free of negligence, then there can be a recovery for the injury complained of, but if

you find the defendant company was negligent in the operation of its trolley car and the plaintiff, the pedestrian crossing Broadway, was also negligent, then there can be no recovery. That is on the principle of what we call in the law contributory negligence, and I will read a definition of contributory negligence; it is such negligence on the part of the plaintiff as helped to produce the injuries complained of. If the jury find from the evidence in this case

10 that the plaintiff was guilty of any negligence that helped to bring about or produce the injuries complained of, then there can be no recovery. That is very reasonable when you think it out; if the defendant company in the operation of its trolley car was negligent, and the plaintiff, the young lady, in crossing Broadway was also negligent, and her negligence contributed even in the slightest degree to the injuries complained of, in other words, if they were both negligent, then there can be no recovery;

20 that is contributory negligence.

They are the two fundamental questions involved in this case, and they are involved in almost every negligence case. First deliberate upon the question as to whether the defendant in the operation of its trolley car was negligent; if it was not negligent, no recovery; if it was negligent and the plaintiff, the young lady, was free of any negligence on her part, then there can be a recovery. Thirdly, if you find the defendant company was negligent in the

30 operation of its trolley car and the young lady was negligent in her conduct in crossing the street, then there can be no recovery, where they are both negligent. Now, that is very clear; at least, I have endeavored to make it as clear as possible, and as I see this case, it is my suggestion that the jury in its deliberation just deliberate in the manner that I

have suggested, dealing with the question of negligence on the part of both the plaintiff and the defendant in the order in which I have given them to you. I think if you will do that, you will come to a proper solution of the case.

A pedestrian who crosses a public highway must use such precautions for her own safety as a reasonably prudent person would use under the circumstances, and must use her powers of observation to discover approaching vehicles, and a reasonable judgment to avoid collision. In other words, you cannot cross a modern highway without using the powers of observation that the Creator has given you; you must endeavor to observe and to avoid any collision or impending injury that you might sustain by reason of collision. 10

I will read another section: It is the duty of a foot passenger crossing a street containing car tracks to look out while in a place of safety for approaching cars, and a failure to do so will bar a recovery for an accident contributed to by such negligence. 20

Now, in this case, as I said, it is true there has been a conflict of testimony. There is nothing novel about that, because that is true in nearly every case, and I do not wonder at all that there is conflict of testimony, because you must bear in mind that this accident happened two years ago last month, in February of 1920, and we would not expect, and we would not have the right to expect that a number of witnesses could come here in this court room and tell exactly what happened in the minutest detail, and that they would all be uniform in their statements; we would not expect that. As a matter of fact, you have discovered, I assume, in your short stay in the court room, that an accident can happen and six or eight people will see the accident and they 30

will see different things in connection with the accident; they may not see everything that happened, they can see a great deal, and we take the testimony of the six, eight or ten witnesses, whatever it may be, and put it together and endeavor to ascertain as to just what did happen. I doubt very much if there is any one that is keen enough of observation and intellect that can see an accident and can go into a court room and tell everything that happened in  
10 connection with that accident. So we want to have a charitable view concerning all these witnesses, particularly in view of the fact that it happened two years ago. But you are to gather from all this testimony just what did transpire.

If this young lady left the trolley car that was southbound and walked to the sidewalk, as she says she did, and then walked on down to the crossover at Washington Street and crossed over into the northbound trolley track, and that there was nothing  
20 in her way to obstruct her view—she said that the trolley she left had passed on down Broadway and that she had observed this northbound trolley—and that as soon as she observed it and she had taken one step into the track, in a spirit of hesitancy, she faced about and the car struck her, why, then, I would say that she was entitled to recover. If, on the other hand, you find that she left the trolley in the rear—I think it is, without a doubt—that she left the car, the southbound car in the rear—and that  
30 she walked in back of either the trolley car, between the trolley car and the truck, or in between two trucks—it is altogether immaterial, as I see it; that is just a little diversity that there is in the case—if she walked on back, in back of the trolley car, and without using her powers of observation she walked into the northbound trolley, she cannot recover; the

jury would have a right to say that she was guilty of contributory negligence.

So there is the case as I see it; there is that conflict of testimony. Of course, the girl says that she left the car and walked to the sidewalk, walked to the crossover in Washington Street, and went out into the track, and her view was not obstructed, she saw this northbound car and it indicated it was going to stop there either for taking on or discharging passengers—I think she was under the impression it was going to take on passengers—and as she started across, and as she approached this track and perhaps took one step in the northbound track, the car came at a high speed and struck her—then she can recover. If, on the other hand, she left the car and walked in back of it, in between the rear of the car and the truck that was alleged to have been in the rear, and walked deliberately on the northbound track, she cannot recover; the jury would be justified in finding her guilty of contributory negligence.

Now, if you find that the defendant company is guilty of negligence and that the plaintiff is free of negligence, the measure of damages in this case, as far as the father is concerned, will be the monetary loss that he has sustained. I won't pretend to calculate that; that is for the jury to calculate. She made fourteen dollars a week, and we would deduct therefrom whatever her expenses were in going to and from her employment in Philadelphia; in other words, a young lady that lives in East Camden and had to go to Ninth and Market Streets in Philadelphia every day would have necessary expenses, so it would not be a clear fourteen dollars a week; it would be fourteen dollars a week less the necessary expenses of her trip back and forth to Philadelphia.

Whatever that monetary loss is would accrue to the father, as she is under age and he is entitled to her earnings, and in addition thereto whatever moneys he expended. The doctor, the family physician, testified that his bill was in the neighborhood of one hundred dollars, and the father testified that he had been buying medicines and tonics and surgical necessities that totalled fifty or sixty dollars. There is no testimony here as to the examination for her  
10 eyes or the cost of glasses, so you will eliminate that from your consideration as I see it.

As to the young lady herself, if you think she is entitled to recover, her recovery will be on the basis of her pain and suffering, and whether she is suffering any permanent physical impairment. In that connection I will say that frequently, particularly with the female citizenship, they come in the court room and they are always more or less nervous in the court room, and the fact that she is extremely  
20 nervous today does not necessarily indicate that that is a permanent condition. The doctor was very frank and honest—I rather admired him upon the stand—he was not so certain that it was a permanent condition, although it was responding very slowly to the treatment of the last two years. That is for the jury to say from all the circumstances in the case.

Now, the defendant has asked that I charge you certain requests, and number one is: If the plaintiff passed around behind the trolley car or a truck so  
30 that she could not see a car approaching from the opposite direction until too late to avoid being struck, she can not recover. I have so charged you.

2. A pedestrian crossing a street is required to exercise greater care elsewhere than at a crossing—that is, if you are crossing a street elsewhere than

at a properly designated cross over, then you are to exercise a greater degree of care. I so charge you.

3. If the plaintiff was negligent she cannot recover even if the motorman was negligent, if her negligence contributed—well, I don't know what that word is—contributed to the accident, I presume.

Mr. Fryling: Your Honor has charged it.

The Court: Yes, I have so charged you. That is the principle of contributory negligence, which I charge you. You may retire and deliberate upon your verdict.

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## DEFENDANT'S EXCEPTIONS.

Mr. Fryling: I desire to take an exception to that part of your Honor's charge wherein your Honor said that if this lady walked to the sidewalk, down to Washington Street and then over the cross walk and got to a position where she was between the  
10 northbound and southbound rail and made one stop on to the northbound track, the trolley car was then across the street, and she became confused and the car came along and struck her, she can then recover, or words to that effect.

(Exception noted for defendant.)

Mr. Fryling: Again I desire to take exception a little later on where your Honor practically repeated  
20 the same circumstances under which she could recover, it being my contention that even under those circumstances the plaintiff cannot recover unless the jury determine that the motorman was negligent in the operation of his car and negligent in the manner as alleged in the complaint. The jury might consider that even under those circumstances the motorman was not negligent, and if the motorman was negligent she was also guilty of contributory negligence.

30 (Exception noted for defendant.)

GROUNDS OF APPEAL.

(Filed May 2, 1922.)

NEW JERSEY SUPREME COURT.

KATHRYN ROTHFUSS, by her father  
 and next friend, ALFRED ROTH-  
 FUSS, and ALFRED ROTHFUSS in  
 his own right,  
*Plaintiffs-Appellees,*  
 v.  
 PUBLIC SERVICE RAILWAY  
 COMPANY,  
*Defendant-Appellant.*

Action at Law.  
 On Appeal from  
 the Camden  
 County Court  
 of Common  
 Pleas.

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20

To Albert S. Woodruff, Esq., attorney of Plaintiffs-Appellees.

Sir: TAKE NOTICE that the following are the grounds of appeal which the defendant-appellant will urge why the judgment heretofore rendered in the above-entitled cause should be reversed, set aside, and for nothing holden:

30

1. The Court, despite the objection of the attorney of the defendant-appellant, charged the jury as follows:

“If this young lady left the trolley car that was southbound and walked to the sidewalk, as she says she did, and then walked on down to the cross over

at Washington Street and crossed over into the northbound trolley track, and that there was nothing in her way to obstruct her view—she said that the trolley she left had passed on down Broadway and that she had observed this northbound trolley—and that as soon as she observed it and she had taken one step into the track, in a spirit of hesitancy, she faced about and the car struck her, why, then, I would say that she was entitled to recover.”

10

2. The Court, despite the objection of the attorney of the defendant-appellant, charged the jury as follows:

“Of course, the girl says that she left the car and walked to the sidewalk, walked south to the cross over in Washington Street, and went out into the track, and her view was not obstructed, she saw this northbound car and it indicated it was going to stop there either for taking on or discharging passengers—I think she was under the impression it was going to take on passengers—and as she started across, and as she approached this track and perhaps took one step on the northbound track, the car came at a high speed and struck her—then she can recover.”

20

Dated April 27, 1922.

Yours truly,

30

LEFFERTS S. HOFFMAN,  
*Attorney of Defendant-Appellant.*

(Endorsed): “Service of within notice is hereby acknowledged this twenty-eighth day of April, 1922. Albert S. Woodruff, attorney of plaintiffs-appellees.”

OPINION.

NEW JERSEY SUPREME COURT.  
JUNE TERM, 1922.

<p>KATHRYN ROTHFUSS, by her father and next friend, ALFRED ROTH- FUSS, and ALFRED ROTHFUSS in his own right, <i>Plaintiffs-Respondents,</i> v. PUBLIC SERVICE RAILWAY COMPANY, <i>Defendant-Appellant.</i></p>	}	<p>On appeal from the Camden County Common Pleas Court.</p>	<p>10</p>
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Submitted July 6th, 1922:  
Decided November 10th, 1922.

Before GUMMERE, Chief Justice, and JUSTICES  
SWAYZE and TRENCHARD.

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For the appellant, LEFFERTS S. HOFFMAN, LEONARD  
J. TYNAN and HENRY H. FRYLING.

For the respondents, ALBERT S. WOODRUFF.

## PER CURIAM:

This is an action for the recovery of damages for personal injuries to the plaintiff, Kathryn Rothfuss, and for the recovery for loss of services and expenses by her father, Alfred Rothfuss, resulting from an accident which happened February 17th, 1920, when the plaintiff, Kathryn Rothfuss, who was crossing Broadway, Camden, from west to east near the intersection of Washington Street, after she had  
10 left a southbound car on Broadway, upon which she had been a passenger, came into collision with a northbound trolley car of the defendant.

The trial resulted in a verdict in favor of Kathryn Rothfuss for \$2,500 and in favor of her father in the sum of \$1,000.

A rule to show cause why the verdict should not be set aside was granted the defendant. It provided that "all exceptions taken in the case be reserved." After argument the rule was discharged.

20 The respondents now deny the right of the railway company to prosecute this appeal. We can see nothing in this objection in view of the reservation in the rule.

The grounds of appeal relate to two propositions in the charge of the Court to which exceptions were duly taken. They are as follows:

(1) "If this young lady left the trolley car that was southbound and walked to the sidewalk, as she  
30 says she did, and then walked down to the cross-over at Washington Street and crossed over into the northbound trolley track, and that there was nothing in her way to obstruct her view—she said that the trolley she left had passed on down Broadway and that she had observed this northbound trolley—and that as soon as she observed it and she had taken

one step into the track in a spirit of hesitancy she faced about and the car struck her, why then I would say she was entitled to recover."

(2) "Of course the girl says that she left the car and walked to the sidewalk, walked south to the cross-over in Washington Street, and went out into the track, and her view was not obstructed she saw this northbound car and it indicated it was going to stop there either for taking on or discharging passengers—I think she was under the impression it was going to take on passengers—and as she started across, and as she approached this track and perhaps took one step on the northbound track, the car came at a high speed and struck her, then she can recover."

We think that both paragraphs of the charge were erroneous and prejudicial to the defendant.

In the circumstances stated therein both the negligence of the motorman and the contributory negligence of the young woman plaintiff become questions of fact for the jury and not questions of law for the Court. *Van Cott v. N. J. St. Ry. Co.*, 72 N. J. L. 229. It was therefore erroneous for the Judge to charge in effect that, in the circumstances stated, she was entitled to recover. The question should have been left for the determination of the jury.

The judgment will be reversed, with costs, and a new trial awarded.

## RULE OF REVERSAL AND REMITTITUR.

## NEW JERSEY SUPREME COURT.

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10	KATHRYN ROTHFUSS, by her father and next friend, ALFRED ROTH- FUSS, and ALFRED ROTHFUSS in his own right, <i>Plaintiffs-Appellees,</i>	}	Action at Law. On Appeal from the Camden County Court of Common Pleas.
	v.		PUBLIC SERVICE RAILWAY COMPANY, <i>Defendant-Appellant.</i>

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20 The Court having heard the arguments of counsel, and having inspected the judgment and proceedings removed by the appeal in this cause, and having duly considered the grounds of appeal—

It is, on this eighteenth day of November, nineteen hundred and twenty-two, ordered, that the said judgment or judgments be in all things reversed, set aside, and for nothing holden, and that the defendant-appellant have its costs to be taxed, and that

30 the said cause be remitted to the Camden County Court of Common Pleas to be proceeded in according to law.

Entered November 18, 1922.

On motion of

JOSEPH COULT, JR.,

*Attorney for Defendant-Appellant.*

Judgment of reversal was duly entered in the Camden Common Pleas.

(Leonard J. Tynan, Esq., was duly substituted as attorney of defendant-appellee.)

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GROUND OF APPEAL.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

KATHRYN ROTHFUSS, by her father and next friend, ALFRED ROTHFUSS, and ALFRED ROTHFUSS in his own right,

*Plaintiffs-Appellants,*

v.

PUBLIC SERVICE RAILWAY COMPANY, a corporation,

*Defendant-Appellee.*

} On Appeal.  
Ground of Appeal.

20

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*To Public Service Railway Company, and Henry H. Fryling, Leonard J. Tynan, its Attorneys or to Whom It May Concern:*

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TAKE NOTICE that the following is the ground of appeal which the plaintiffs-appellants will urge why the judgment heretofore rendered in the above-entitled cause by the New Jersey Supreme Court should be reversed, set aside, and for nothing holden:

1. That the New Jersey Supreme Court reversed the decision of the Camden County Court of Common Pleas, although it was error so to do.

Yours truly,

ALBERT S. WOODRUFF,  
*Attorney for Plaintiffs-Appellants.*

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[Endorsed.]

Service of the within Notice  
hereby acknowledged this  
day of December, A. D. 1922.

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NOTICE OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

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<p>KATHRYN ROTHFUSS, by her father and next friend, ALFRED ROTH- FUSS, and ALFRED ROTHFUSS in his own right, <i>Plaintiffs-Appellants,</i></p> <p style="text-align: center;">v.</p> <p>PUBLIC SERVICE RAILWAY COMPANY, a corporation, <i>Defendant-Appellee.</i></p>	}	<p>10</p> <p>On Appeal. Notice of Appeal.</p>
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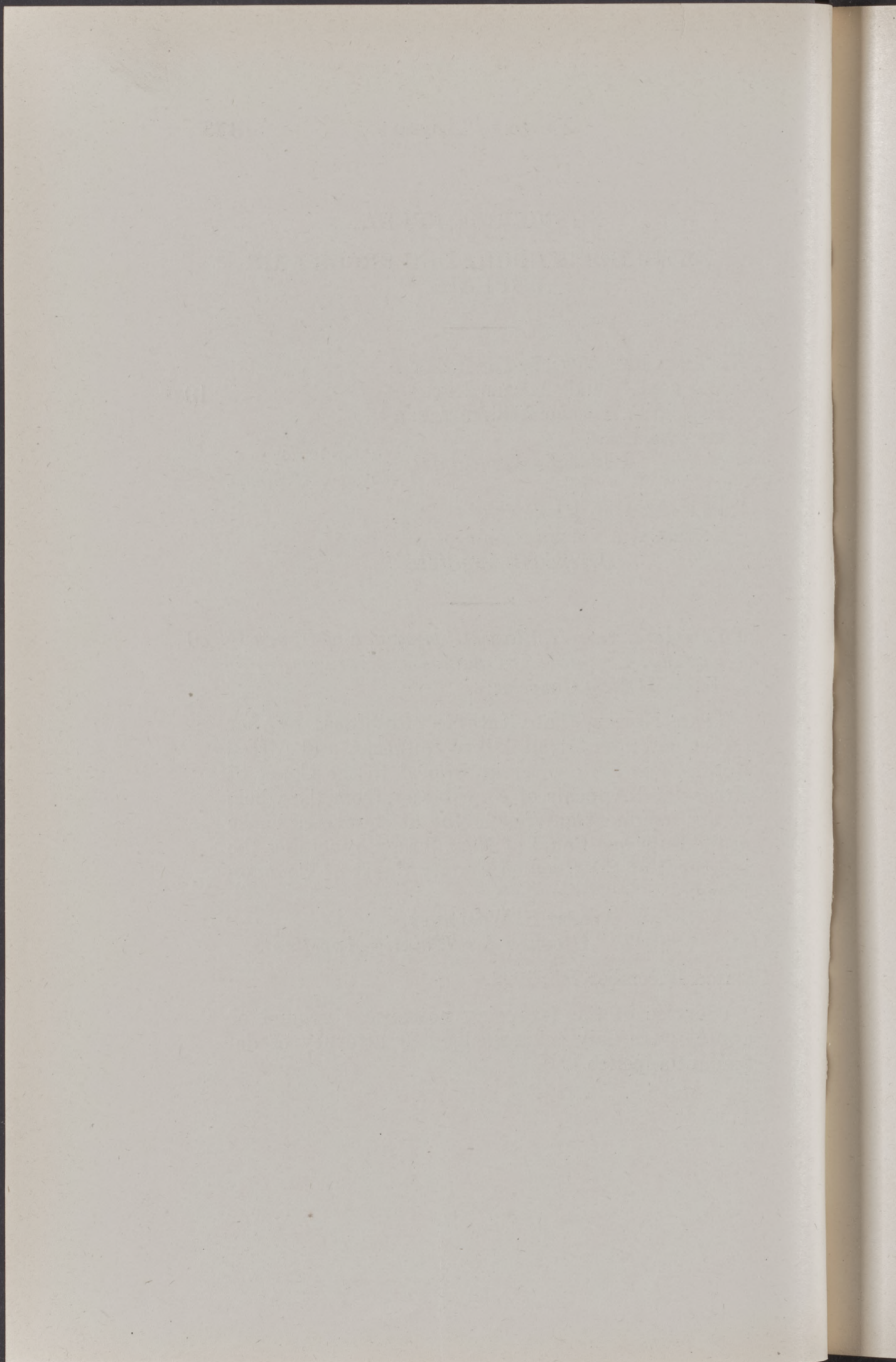
To Public Service Railway Company, and Henry H. 20  
Fryling, Leonard J. Tynan, its Attorneys, or to  
Whom It May Concern:

TAKE NOTICE that Kathryn Rothfuss, by her  
father and next friend Alfred Rothfuss, and Alfred  
Rothfuss in his own right, appeal to the Court of  
Errors and Appeals of New Jersey from the whole  
of the judgment entered in the above-named cause  
in the Supreme Court of New Jersey, reversing the  
judgment of the Camden County Court of Common  
Pleas. 30

ALBERT S. WOODRUFF,  
*Attorney for Plaintiff-Appellants.*

Dated December 7th, 1922.

(Service of the foregoing notice and ground of  
appeal were duly acknowledged by attorney of de-  
fendant-appellee.)



**NEW JERSEY COURT OF ERRORS AND  
APPEALS.**

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KATHRYN ROTHFUSS, by her  
father and next friend  
ALFRED ROTHFUSS, and  
ALFRED ROTHFUSS in his  
own right,

*Plaintiffs-Appellants,*

v.

PUBLIC SERVICE RAILWAY  
COMPANY,

*Defendant-Appellee.*

Action at Law.

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**BRIEF OF PLAINTIFFS-APPELLANTS.**

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**INTRODUCTORY.**

This was a negligence case tried at the Camden Common Pleas with a jury. A plaintiff's verdict for father and minor daughter resulted. Defendant then chose to apply for a rule to show cause why a new trial should not be granted. In thus asking the trial Court in its discretion to review the case, it did not intimate that it contemplated a subsequent appeal to this tribunal challenging, in two particulars, the Court's charge at the trial. In taking its rule, defendant asked for a stay of execution pending the hearing and in drawing that rule, which was

later presented and signed by the court, it added these words:

“And it is further ordered that pending the hearing of this rule execution be stayed and that all exceptions taken in this cause be reserved.”

Execution was stayed pending such hearing and in due course the rule was argued, considered by the Court and discharged. Defendant had exercised its option as between obtaining a rule and taking an appeal and failed. It now attempts to prosecute an appeal claiming that right to have been reserved to it by the wording of the rule as quoted.

#### DEFENDANT'S RIGHT TO APPEAL.

The general policy of the law exemplified in our decisions has been to limit litigation after a jury trial.

*Finley v. Handley*, 50 N. J. L. 503;  
*Haden v. Bamford Bros. Silk Mfg. Co.*, 73  
N. J. L. p. 308, 63 Atl. Rep. 7;  
*Hansen v. DeVita*, 76 N. J. L. 96, 68 Atl.  
Rep. 1062.

In conformity with this general policy of the law to limit litigation, this Court adopted Rule 129. Subsequently by legislative enactment that rule was formally made a rule of Court. Practice Act P. L. 1912, p. 399, rule 83.

That rule reads:

“Granting to a party a rule to show cause why a new trial shall not be granted, shall be a bar against him to taking or prosecuting an appeal, except on points expressly reserved in said rule.”

The reasoning used by the Court in *Meeker v. Boylan*, 27 N. J. L. 262, applies equally well here.

“The party applying for said rule cannot be permitted to select particular questions of law to be argued and decided on the motion for a new trial, and retain his bills of exceptions upon other questions to be argued and decided by a writ of error (appeal).”

A litigant is warned by the wording of Rule 83 that the “*granting*” of a rule to show cause automatically bars both the “*taking*” and “*prosecuting*” of his alternative review remedy.

A reservation by permission is excepted but that appeal privilege may not be general. The Court below is entitled to have “*expressly*” pointed out the particular questions to be reserved for an appeal and an opportunity to consider those questions and determine whether or not they are of sufficient importance to warrant the dual review which the law discourages and the rule prohibits.

The only evasion in the positive prohibition of the rule is “on *points* expressly reserved.”

Logically this indicates an intention to permit particular points of law, evidence or practice which may raise new or novel questions to be presented to the Court below and by that Court reserved for the decision of a higher tribunal if such decision be by the trial Court deemed reasonably necessary to avoid possible injustice. If upon every verdict below the unsuccessful party is to be permitted by an all embracing reservation, such as is here claimed, to hold his appeal in reserve the while he experiments with an application for a new trial, the exception defeats the rule.

By the phraseology used in the paragraph added to the rule in this case it would seem that the trial

Court was only holding this case in *statu quo* until the day of the hearing of the rule. "*Pending the hearing*" of the rule, the Court said, execution is to be stayed and up until the time of that hearing the defendant may still abandon its rule, and, its exceptions being all reserved it may appeal. If that was the intention of the Court, it was clearly going beyond the permission allowed by the exception to the rule because "*points*" were not "*expressly reserved*" and the "*granting*" of the rule effected the bar not the *hearing* thereon. Furthermore if the Court did intend that the defendant should have until the time fixed for the hearing on the rule to exercise its choice of remedies, it foreclosed its right to an appeal when it participated in that hearing.

*Gregutis v. Steinberg* (Sup. Ct. April, 1922), 116 Atl. Rep. (Adv. Sheets) 780.

Even if it be argued that defendant brought itself within the exception of the Supreme Court's rule against an appeal, after grant of a rule to show cause, a further proposition presents a bar to this attempt.

This suit was in the Common Pleas Court, a court of common law and constitutional jurisdiction. Unquestionably it had the right to review its own actions and control its own judgments. In doing that its action and determination would be discretionary. And no appeal can be had where the lower Court within its discretionary rights passes upon and determines a matter.

*Price v. N. Y. C. R. R. Co.*, 94 N. J. L. 10, 110 Atl. 126;

*Pariser v. Pastelnick*, 95 N. J. L. 261, 112 Atl. 187.

The granting of a rule to show cause, the reservation of exceptions for appeal, the order discharg-

ing the rule, the termination of the reservation or its continuance were all discretionary matters. The Court could grant the rule or refuse it; it could permit a reservation, or refuse it; it could continue the reservation (if points had been expressly reserved), after hearing on the rule, or dismiss the reservation with the rule. On hearing the rule could be made absolute or discharged; it could be made absolute or discharged upon or without terms.

Any such act of the Court of Common Pleas would be an act within its discretion and not reviewable.

In the instant case every question sought here to be reviewed was submitted to the Court below for review under its discretionary powers. The rule to show cause itself was general. Defendant thus submitted to the discretion of the Court the entire proceedings, including the charge and the judgment. The Court then ruled thereupon and the matter was concluded. Thus every point was submitted to the discretion of the Common Pleas Court and passed upon. The rule was discharged without continuance of reservations. The reservations existing only by virtue of the rule to show cause, necessarily came to an end with the termination of that rule.

When the rule to show cause was allowed the reservation was, in the wording of the court, a reservation only "pending the hearing of the rule." On hearing it was not further continued but the rule was discharged. Unquestionably this was an act of right in the Common Pleas Court acting under its discretionary powers.

The order of the Court absolutely and unqualifiedly discharged the rule to show cause. It was in these words:

"It is \* \* \* ordered that the said rule to show cause be and is hereby dismissed with costs and the judgment is hereby confirmed."

The Court of Common Pleas was not requested by defendant to continue its reservation of appeal. It did not continue that reservation. The reservation came to an end with a discharge of the rule. This order discharging is the final order now of record and the proceedings stand in that form with the rule, containing the reservation, absolutely discharged.

For these reasons it is submitted that defendant's attempt to appeal must be dismissed.

#### THE GROUNDS OF APPEAL.

As above argued, plaintiffs respectfully insist that defendant's appeal should be dismissed without the necessity of considering the grounds specified. The two reasons assigned are both directed at the charge of the trial Court. It is submitted they are without merit.

The plaintiff, Kathryn Rothfuss, was seriously injured when struck by a trolley car on Broadway in Camden. This street runs north and south, is double-tracked and is intersected by Washington Street. Miss Rothfuss, having descended from a southbound Broadway trolley car at the north side of Washington Street, was crossing Broadway from west to east when she was struck by a northbound Broadway trolley car. Two theories were presented to the jury by the proofs explaining the accident. Plaintiffs' theory is concisely shown in Miss Rothfuss' testimony on pages 11, 12, 13: 14, 15, 16:

Page 11, line 20: 25:

"Q. What could you see out in the street that might endanger you, anything?"

"A. Well, it was clear until my car went down Broadway; then I saw a northbound car, Broadway car, coming up Broadway.

“Q. Where was it when you first saw it, this northbound car?”

“A. When I first saw it, it was right by that stop there, that pole that says, ‘Cars Stop Here’; it was almost nearing there.

“Q. Well, I don’t know where that is; which side of Washington Street is that?”

“A. That is the far side of Washington Street.

“Q. That is the far side of Washington Street?”

“A. Yes.

“Q. How far had you gotten out into Broadway when the car —

“A. I had gotten right in between the tracks; I had passed the first track, and stood in between the two tracks.

“Q. In that little space that is between the northbound and the southbound track?”

“A. Yes.

“Q. Now, when you got that far and paused, you say this northbound car was where?”

“A. Nearing that pole where it says, ‘Cars Stop Here.’

“Q. Is that the pole on the south side of Washington Street?”

“A. It is; that is the pole on the south side of Washington Street.

“Q. And the east side of Broadway?”

“A. Yes, sir.

“Q. What did you observe about the car, the northbound car?”

“A. Well, when I paused in the middle there, I noticed a man standing on the corner, and as the car was approaching I thought it would stop to leave this man get on the car, because he was standing there.

“Q. What did the car do—what did you see the car do—how did that move?

“A. Well, the car paused as if to leave this man on.

“Q. Then what did you do when you saw the car pausing?

“A. Well, I thought, ‘Well, if that car is going to pause to leave that man on, it will give me plenty of time to get across.’

“Q. What did you do?

“A. Then instead of the car pausing, it came full speed, and I was confused; I didn’t know whether to step across a couple of steps or step back, and I stepped back, and it hit me right on the side.

“Q. How far had you gotten across?

“A. Half-way in the track, on the north side.

“Q. When you got confused?

“A. Yes, sir.

“Q. Now, it hit you on which side?

“A. On the left side.

“Q. On the left side?

“A. Because I turned back in order to get away from the car.

“Q. But the car was coming up toward the right side, was it?

“A. Yes, the car came this way, see (indicating).

“Q. Toward your right side?

“A. If I hadn’t looked it would have hit me this way, and as it was, I stepped back and it hit me on this whole left side.

“Q. I see; well, was there anything done by the motorman to indicate that he wasn’t going to stop when he slackened down his speed on that car?

“A. No, there was not; when I was in the mid-

dle of the track the conductor was looking back, as though to leave the man get on the car, as if to turn around; you know how a motorman turns around to leave a man get on the car.

“Q. You said ‘conductor’ first; did you mean conductor?”

“A. I meant the motorman; he turned around as if to look to see if the man was getting on the car, and then I thought well, he was slowing the car, I could get across, and instead, he came full speed; then I saw him when he was almost upon me and then I don’t remember anything.”

This theory was further developed in the testimony of *Mrs. Geesey*, a passenger:

Page ~~32~~<sup>42</sup>, line 37:17

“Q. What did you notice about the car when it came up to Washington Street? You are familiar with the streets there, are you?”

“A. Yes.”

Page ~~33~~<sup>42</sup>, lines ~~1~~<sup>21</sup> to ~~30~~<sup>36</sup>:

“Q. And you had worked along that same line?”

“A. Yes; it happened at safety stops, and when we were coming up Broadway, the car slowed down and the conductor turned around. I looked out when the car slowed down; I thought there was someone going to get on; I turned around and glanced out of the window, and there was a man standing right near the pole.

“Q. What had the conductor been doing?”

“A. Why, the conductor was making up his report.

“Q. How close to you was he standing?”

“A. Well, I was sitting almost in the end seat;

he was standing there with his back up against the railing that held the fare box or up against the fare box, I don't remember; and when the car slowed down for this man that I thought was going to get on he put his pencil in his cap—I noticed it was always a habit of his, to put his hand on the handle that was to turn the door, open the door, and before he turned around again, the motorman had started out without no bell; he didn't give no warning or no bell.

“Q. And did the man actually step up and get into the car?”

“A. I didn't notice.

“Q. But at any rate, the car didn't wait for him?”

“A. The car did not wait for him; it just slowed down, it didn't stop.

“Q. And how much speed did it pick up?”

“A. Well, it went at full speed. It seemed that he could not run ——”

Defendant's <sup>Motorman</sup>~~conductor~~, Janney, alone of all the witnesses, testified that he stopped at the near side of Washington Street before crossing. He admits having turned to look out the side of his car as Miss Rothfuss testified he did, but explained it by saying he had let off passengers.

Page 58, line 14: 3

“Q. That made you turn your head that way, didn't it?”

“A. Which way?”

“Q. Toward Cooper Hospital.

“A. When those two men were let off, yes.

“Q. And you were watching that they got safely down to the ground before you started?”

“A. Yes, I did.

“Q. Then you put on your power?”

“A. Yes.

“Q. What did you say was the matter with your car?”

“A. That car had two machines cut out.”

*This witness also admitted, line ~~28~~<sup>5</sup>, page ~~55~~<sup>72</sup>:*

“Q. When you came up to Washington Street, was that a safety stop?”

“A. Yes.

“Q. If you didn't have any passengers to let off, it was your duty to pause there, wasn't it?”

“A. Yes.

“Q. And you made that pause before you crossed Washington Street?”

“A. Yes, sir.

“Q. And to get a bell from your conductor before you went ahead again?”

“A. Yes, sir.

“Q. That would apply if you were not taking on or letting off passengers, wouldn't it?”

“A. It made no difference.

“Q. You always had to make that pause, did you?”

“A. Yes, sir; I do yet.”

The situation presented by this testimony is strikingly similar to the facts in the cases of *VanCott vs. N. J. St. Ry. Co.* (Er. & App. 1905), 72 N. J. L. 229, 62 Atl. Rep. 407; and *VanNess vs. N. J. St. Ry. Co.* (Er. & App. 1909), 77 N. J. Law, 551, 73 Atl. Rep. 509.

As in the *VanCott* case, so here, the operation of the car was such as to lead the party injured to believe it was safe to cross the tracks. Here, even stronger than in the *VanCott* case, is the inference of negligence on the part of the motorman.

According to the plaintiff's theory, defendant's car was approaching an intersecting street, on its near side of which was a regular stop to receive and discharge passengers. In addition, by a company rule, that was a safety stop requiring the motorman to pause and only go ahead upon receipt of a bell signal from his conductor, even though there were no passengers to be taken on or discharged. The testimony is in conflict as to whether or not the car stopped. Plaintiff and a passenger on the car, testified that it slackened its speed as if to stop but instead then went full speed ahead across to the other side of the street where Miss Rothfuss was struck. The motorman alone for the defense testified that the car actually stopped on the near side of the intersecting street. He admitted that, when his car was where passengers would have been taken on, he had his face turned toward the sidewalk where plaintiff and a passenger testified a man stood as if expecting to board that car. It was then, as if the motorman watching this man saw that he did not intend to become a passenger, threw on power and in a burst of speed crossed Washington Street.

Counsel for defendant argues that Miss Rothfuss, in admitting that she paused just before stepping over the northbound tracks and that she was confused when faced by imminent peril, so conclusively proves herself guilty of negligence contributing to the accident as to make it a matter of law for the Court. The person killed in the VanNess case paused more markedly, yet the Court of Errors pointed out that the trial Court would not have been justified in non-suiting. And, in the present case, there existed a circumstance stronger than any in either of these reported cases. This northbound car was approaching a "Cars Stop Here" post across the intersecting street from the plaintiff and at that

post stood a man as if wishing to board the car; the speed of the car was reduced as it came opposite to this man; a passenger, the conductor and the plaintiff were all led to believe that the motorman intended to stop. The conductor stopped checking up to open the door (p. ~~18~~<sup>42</sup>, l. ~~33~~<sup>32</sup>). The motorman turned his face toward the man on the sidewalk—a further circumstance to mislead the plaintiff. Miss Rothfuss, crossing Broadway at the further crosswalk of Washington Street, was trapped in the path of the car. She hesitated, judging whether it was best to go ahead or attempt to step back, attempted the latter as the safer and was struck. There had been no warning bell as the car almost halting speeded up and across this intersecting street; the conductor had not given the motorman the signal to proceed beyond the “safety stop” (l. ~~18~~<sup>44</sup>, p. ~~20~~<sup>20</sup>).<sup>27</sup>

Counsel also argues that a non-suit should have been granted. No such motion was made. The weight of the evidence is discussed. Clearly the proof presented a case for the jury under the VanCott and VanNess cases. And defendant has already submitted that matter to the trial Court on its rule and failed.

Defendant cannot now, even if permitted this appeal, question the legality of submitting this case to the jury. When the proofs were in it was not—“plaintiff’s story, standing alone in the face of the testimony of six witnesses”—as defendant’s counsel have erroneously stated but, as Justice Parker put it in the VanNess case “there were two theories open to the jury” and so here, as Justice Parker there concluded, “it was for the jury to say which version they believe. But even if deceased did not start until just after the power was applied, the Court would not be justified in non-suiting for contributory negligence” \* \* \* “The negligence of the

motorman and of the deceased were both questions for the jury.”

Defendant's witnesses had contradicted each other and themselves in vital particulars. Some of defendant's witnesses had testified to facts and circumstances so impossible as to be ridiculous. All this proof and every legitimate inference to be drawn therefrom was for the jury.

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The only question, assuming the Court holds that defendant has a right to this appeal, must be as to the correctness of the charge of the trial Court in the two particulars indicated in the grounds assigned.

These grounds quote only portions of the entire charge. In taking the exceptions made the basis of this appeal, defendant's counsel referred only generally to the proposition alleged to be erroneous:

“Defendant's exceptions.

“*Mr. Fryling*: I desire to take an exception to that part of your Honor's charge wherein your Honor said that if this lady walked to the sidewalk, down to Washington Street and then over the crosswalk and got to a position where she was between the northbound and southbound rail and made one step on to the northbound track, the trolley car was then across the street, and she became confused and the car came along and struck her, she can then recover, or words to that effect.

“(Exception noted for defendant.)

“*Mr. Fryling*: Again I desire to take exception a little later on where your Honor practically repeated the same circumstances under which she could recover.”

In informing the Court of the reason for such exceptions, counsel said:

“It being my contention that even under those circumstances the plaintiff *cannot recover unless the jury determine that the motorman was negligent in the operation of his car and negligent in the manner as alleged in the complaint.* The jury might consider that even under those circumstances the motorman was not negligent, and if the motorman was negligent she was also guilty of contributory negligence.”

Thus defendant's counsel in calling the attention of the trial Court to what he considered an error in the Court's charge, based his contention upon the ground that the Court had not properly instructed the jury that it must find defendant's motorman guilty of negligence and plaintiff, even then might be precluded from a recovery if she had been guilty of contributory negligence. This occurred immediately after the Court had covered the question of contributory negligence, using the words of defendant's counsel and immediately after defendant's counsel was interrogated concerning a written word which the Court could not make out and had replied, “Your Honor has charged it.” The Court in its charge had already covered the question of contributory negligence and, after counsel admitted that the charge had covered this point, the Court had concluded with the words, “Yes, I have so charged you. That is the principal of contributory negligence which I charged you” (p. <sup>133</sup>94, l. 36) / 0

Our Courts have repeatedly held that when an exception is taken the attention of the Court must be directed to the ground relied on. This is logical and reasonable. The Court below as in this case might otherwise easily be misled into allowing an

exception later to be made the basis of an appeal and to be argued on grounds other than those suggested to the trial Court.

*The Associates of the Jersey Co. vs. Davison*, 29 N. J. L. 418.

The reason for the rule concerning exceptions to admission of evidence declared in *D. L. & W. Ry. Co. vs. Daley*, 37 N. J. L. 526-529, applies with equal force here.

After the present charge had been delivered, including of course, the portions now challenged, defendant's counsel requested specific charges which requests were granted:

"Now, the defendant has asked that I charge you certain requests, and number one is: If the plaintiff passed around behind the trolley car or a truck so that she could not see a car approaching from the opposite direction until too late to avoid being struck, she cannot recover, I have so charged you.

"2. A pedestrian crossing a street is required to exercise greater care elsewhere than at a crossing—that is, if you are crossing a street elsewhere than at a properly designated cross-over, then you are to exercise a greater degree of care. I so charge you.

"3. If the plaintiff was negligent she cannot recover even if the motorman was negligent, if her negligence contributed—well, I don't know what that word is—contributed to the accident, I presume.

"*Mr. Fryling*: Your Honor has charged it.

"*The Court*: Yes, I have so charged you. That is the principle of contributory negligence, which I charge you. You may retire and deliberate upon your verdict."

In the instant case, even if the Court had not charged the rule respecting plaintiff's contributory negligence, by request, in the exact words of defendant's counsel, the law in that respect had, in the Court's own language been fairly presented to the jury. This is evident, from the comment of defendant's counsel already quoted, "Your Honor has charged it." As to the law, applicable to defendant's negligence, defendant, satisfied with the Court's charge, submitted no specific request. In this respect the Court was particularly careful to properly instruct the jury.

"Now, if you find that the operation of this trolley car northbound on Broadway on the day in question, this particular car, was free of negligence, then there can be no recovery; that is very clear; in other words, the basis of the plaintiff's claim is the negligence of the defendant company, and if there was no negligence on the part of the defendant company in the operation of its trolley car, then there can be no recovery. And the operation of the trolley car is similar to any other conduct of any individual, namely, that it should be operated as a reasonably prudent person would operate under such circumstances as has been related to the jury by the various witnesses. So that the first deliberation, as I see it, that the jury should entertain, is whether the defendant was negligent in the operation of its car. If it was not negligent, in other words, if it is free of negligence in the operation of its car, there can be no recovery."

And again:

"First deliberate upon the question as to whether the defendant in the operation of its

trolley car was negligent; if it was not negligent, no recovery.”

The weakness of defendant's position is that having led the Court to believe the charge unobjectionable as to instructions on contributory negligence and having submitted no requests on the proposition of defendant's negligence, it now seeks to isolate two statements as if they had been charged alone and totally disassociated from such careful admonitions of the Court as are quoted above and others in the same thought connection.

This Court through Justice Minturn in *Brown vs. Spence*, 79 N. J. L. 452, 75 Atl. 154, has already declared itself in this regard:

“The language of this excerpt and its effect upon the mind of the jury must be considered with reference to the charge in *toto*, and not as an isolated expression of opinion upon which they must base their conclusion.”

*Veader v. Veader*, 86 N. J. Eq. 441, 99 Atl. Rep. 309;

*Shoeffler vs. Phillipsburg Horse Car Co.*, 90 N. J. L. 235, 100 Atl. Rep. 199;

*Safer vs. Baker*, 104 Atl. Rep. 26 (Er. & App. 1918).

In conclusion, it is respectfully urged that defendant has neither right to this appeal nor grounds sufficient in fact or law to support it.

ALBERT S. WOODRUFF,  
*Attorney for and of Counsel with  
Plaintiffs-Appellants.*

## New Jersey Court of Errors and Appeals

KATHRYN ROTHFUS, by her father and  
next friend, Alfred Rothfus, and  
ALFRED ROTHFUS, in his own right,  
*Plaintiffs-Appellants,*

*vs.*

PUBLIC SERVICE RAILWAY COMPANY,  
*Defendant-Appellee.*

*Action at Law.  
On Appeal  
from the  
Supreme  
Court.*

### BRIEF OF DEFENDANT-APPELLEE.

The action was brought by Kathryn Rothfus, and by her father, Alfred Rothfus (hereinafter called the plaintiffs), as a result of said Kathryn Rothfus being struck by a trolley car of Public Service Railway Company (hereinafter called the defendant). Verdicts were returned (p. 6) in favor of Kathryn Rothfus for \$2,500, and in favor of Alfred Rothfus for \$1,000. On these verdicts, judgment was entered (p. 2). From this judgment the defendant appealed to the Supreme Court (p. 1), on exceptions (p. 125) to the charge of the trial judge. The Supreme Court, deeming the exceptions to the charge well taken, filed an opinion (p. 127) ordering the judgment reversed, whereupon (p. 130) a rule of reversal and remittitur was entered in the Supreme Court. It is from that rule that the plaintiffs take the present appeal.

Plaintiffs, in their brief, dwell much on the fact that, after the verdicts and before the appeal to the Supreme Court, the defendant asked for and obtained a rule to show cause, in which rule all its exceptions were reserved. This rule appears on page 8 of the Printed Book, and at the head of the page it is called just what it is,

to wit, "Rule to Show Cause Reserving Exceptions." The last paragraph of the rule reads:

"And it is further ordered that pending the hearing of this rule execution be stayed and that all exceptions taken in the case be reserved."

The rule to show cause was discharged (p. 9).

### **Defendant's Right to Appeal.**

The plaintiffs, in some manner getting the cart before the horse, seem to think that the reservation of exceptions in the rule to show cause could last only as long as the rule lasted, and that the discharge of the rule to show cause ended the reservation of exceptions because the rule was no longer there to support them. Such reasoning would, of course, rob of all value the right to reserve exceptions in a rule to show cause, for it is only after the discharge of the rule to show cause that the reserved exceptions become useful. If the rule to show cause is made absolute, naturally, the party holding the rule never needs to use his exceptions.

Rule 129 of the Supreme Court clearly is designed to make a rule a waiver of exceptions, with a proviso that exceptions which the trial court allows to be reserved shall not be waived. In other words, as to such reserved exceptions, the granting of the rule does not destroy the right of appeal. It, of course, follows that the discharge of the rule to show cause has no effect whatever upon the reserved exceptions. So far as they are concerned, the situation is as if there never had been a rule.

Plaintiffs (top of page 5 of their brief) are under the erroneous impression that the trial court, after allowing a rule with reservations, "could continue the reservation (if points had been expressly reserved), after hearing on the rule, or dismiss the reservation with the rule." The fact that the trial court had no control over reservations in a rule to show cause when dismissing the rule seems too evident to require argument.

At the top of page 3 of their brief, plaintiffs quote from the case of *Meeker v. Boylan*, 27 N. J. Law, 262, a case decided in 1858, long before Rule 129 in its present form was adopted. Rule 129, in cases approved by the trial court, allows exactly the course which *Meeker v. Boylan* forbade.

On page 5 of their brief, the plaintiffs make the following statement:

“In the instant case every question sought here to be reviewed was submitted to the court below for review under its discretionary powers. The rule to show cause itself was general. Defendant thus submitted to the discretion of the court the entire proceedings, including the charge and the judgment. The court then ruled thereupon and the matter was concluded. Thus every point was submitted to the discretion of the Common Pleas Court and passed upon.”

So far as the foregoing is a statement of alleged fact, we declare it to be untrue. No law point whatsoever was argued under the rule to show cause. That argument was confined to the weight of the evidence and the amount of the damages. So far as the above-quoted statement is based upon the record, we submit that it is baseless, for the only possible inference from the record is that the matters reserved in the rule were not argued upon the argument of the rule.

In the case of Ethelreda Brown, by her father and next friend, James F. Brown, and James F. Brown in his own right, Plaintiffs-Appellants *v.* Public Service Railway Company, Defendant-Appellee, a case before this court, with the same attorney for plaintiffs, which case is to be argued concurrently with this present case, exactly the same contentions are made by plaintiffs in their brief as to the effect of reservations in a rule to show cause as are here made. In that case, the rule was made absolute unless plaintiffs would accept reduced verdicts, which they did accept, resulting, as we see it, in a discharge of the rule. In the present case (p. 9) the rule

was simply discharged. The result, in each case, on exceptions reserved in the rule, would naturally be the same. In the other case (Brown) we have argued, at much more length, the legal principles concerned in the reservation of exceptions in rules to show cause, and we refer the Court to our brief in that case for a more detailed discussion. We refer there to *Ashhurst v. Atlantic Coast Electric Railway Co.*, 37 Vroom, 16; *Holler v. Ross*, 38 Vroom 60; and *Minichino v. Public Service Railway Company*, 35 N. J. L. J. 284, which cases demonstrate the true rule to be that points reserved on rule to show cause are no longer before the trial court, and therefore cannot be argued there.

Two of the foregoing cases are in the Supreme Court. They are of course, binding upon the Camden County Court of Common Pleas. The case of *State, Flaucher v. Camden*, 27 Vroom, 244, holds:

“A decision of the Supreme Court is to be considered the law of the State until reversed by the Court of Errors, and all judges and inferior courts are bound to so accept it.”

In the argument of rules to show cause before trial judges, formal reasons are seldom prepared, and none were prepared in the case at bar; but we aver as a fact that no point covered by an exception was argued at the hearing on the rule to show cause, and that said argument was confined to the weight of the evidence and the amount of the damages. Furthermore, it would have been unlawful for the trial judge to have heard argument on the reserved matters, so the presumption from the record is that he did not do so.

Obviously, the effort of the plaintiffs is to build on the fact that, in the last paragraph of the rule to show cause (p. 8) there is no comma after the word “stayed.” The resultant forced argument is that exceptions were only stayed “pending the hearing.” The effort is to force the case at bar into the position that arose in the case of *Gregutis v. Steinberg*, 116 Atlantic Reporter, 780, in

which case the party obtaining the rule was allowed in the rule to reserve the privilege of abandoning the rule and taking his appeal. It was there held that as he had not abandoned the rule, but had argued same, his right to appeal had been foreclosed. But in the case at bar, the reservation in the rule to show cause is a clear reservation of exceptions, and any effort to apply to that portion of the paragraph the words "pending the hearing" is absurd. Such a reservation of option as was allowed in the Gregutis case is unusual, and even its legality, in the face of Rule 129, is questionable. It should not, therefore, be held that such an unusual course was followed in the case at bar unless the words used compel such a conclusion, which, we submit, they are very far from doing.

The argument of plaintiffs as to that part of Rule 129 reading "points expressly reserved," and indicating that we do not come within it, seems to us to have no force. If only *some* exceptions were reserved, they would doubtless need pointing out with detail, but where "all exceptions taken in the case" are reserved, no further particularity seems required to make the meaning clear.

The Supreme Court, in its opinion in the case, said (p. 128, l. 16)—"A rule to show cause why the verdict should not be set aside" was granted the defendant. It provided that "all exceptions taken in the case be reserved." After argument the rule was discharged. The respondents now deny the right of the railway company to prosecute this appeal. We can see nothing in this objection in view of the reservation in the rule."

We are confident that this court will arrive at a similar conclusion.

### The Grounds of Appeal.

The trial court (p. 120, l. 15) charged the jury as follows:

"If this young lady left the trolley car that was south-bound and walked to the sidewalk, as she says she did,

and then walked on down to the cross-over at Washington street and crossed over into the northbound trolley track, and that there was nothing in her way to obstruct her view—she said that the trolley she left had passed on down Broadway and that she had observed this northbound trolley—and that as soon as she observed it and she had taken one step into the track, in a spirit of hesitancy, she faced about and the car struck her, why, then, I would say that she was entitled to recover.”

The trial court (p. 121, l. 4) further charged the jury as follows:

“Of course, the girl says that she left the car and walked to the sidewalk, walked to the cross-over in Washington street, and went out into the track, and her view was not obstructed, she saw this northbound car and it indicated it was going to stop there either for taking on or discharging passengers—I think she was under the impression it was going to take on passengers—and as she started across, and as she approached this track and perhaps took one step in the northbound track, the car came at a high speed and struck her—then she can recover.”

Exceptions to these charges were taken by the defendant (p. 124).

The grounds of appeal of defendant in the Supreme Court (p. 125) are based solely on these two charges.

Each of the foregoing charges has the same error. As the Supreme Court in its opinion said (p. 129, l. 20, of Book),—

“In the circumstances stated therein both the negligence of the motorman and the contributory negligence of the young woman plaintiff become questions of fact for the jury and not questions of law for the court. *Van Cott v. N. J. St. Ry. Co.*, 72 N. J. L. 229. It was therefore erroneous for the judge to charge in effect that, in the circumstances stated, she was entitled to recover. The question should have been left for the determination of the jury.”

The plaintiffs, in their brief on the facts, seem to be under the impression that if they can convince this court that the defendant was negligent and the plaintiff, Miss Rothfus, was free from contributory negligence, then that this court can take the place of the jury in passing upon these questions and adjudge the defendant guilty.

So long as there is any room whatever for debate as to the defendant's negligence, we feel that it is unnecessary to waste this court's time extensively on questions of evidence. This court, if it attempted to decide this case according to its opinion on the merits of the evidence, would commit the same error as the trial court undoubtedly did in charging that a certain state of facts, if found, would entitle the plaintiffs to recover, despite the fact that such suppositious state of facts would still leave room for differences of opinion in the minds of reasonable men, and despite the further fact that the supposed state of facts embodied so few elements of any complete proposition that it was not sufficient in itself from which to form any conclusion.

It is worthy of note that the first of the charges objected to does not embrace any activity, malign, negligent, or of any sort whatever, on the part of the motor-man of the trolley car. The suppositious state of facts on which plaintiff, Miss Rothfus, is to be permitted to recover damages includes only action on the part of the said plaintiff herself, except the single proposition that "the car struck her." It is difficult to perceive any ground for the recovery by her of damages on a found state of facts in which she herself was the only actor whose conduct is detailed, there being no detail on which to ground negligence of the defendant except the words—"and the car struck her"— If the only facts in the case were those contained in the objectionable charge under discussion, we believe that the plaintiffs should be non-suited for failure to prove negligence, and also, perhaps, for the negligence of the plaintiff, Miss Rothfus, herself.

The second of the charges objected to involves a suppositious state of facts which likewise includes much of what the plaintiff Miss Rothfus saw, and thought, and did, but it contains nothing of what the motorman saw or thought, and only inferentially, from the supposed action of the car, what he did. At best such a state of facts would present a jury question.

The two charges objected to were (in case certain facts were found) the equivalent, each of them, of a direction of verdict for the plaintiff on the supposition that defendant's negligence, in either of such states of fact, was too evident to require a jury to pass upon it.

The fact that general charges on the subjects of negligence of the defendant and contributory negligence of the plaintiff were given by the court cannot cure the error in the charges objected to, for in each of the objectionable charges the court in effect said,— In this state of facts the motorman *was negligent*, and the plaintiff *was not contributorily negligent*. No general statement to the jury that they must, to find for the plaintiffs, find negligence in the defendant and absence of contributory negligence in the plaintiff, could mitigate the evil in the court's statements *that certain states of fact allowed a recovery for the plaintiffs*. The court thereby in effect said that if either of the outlined states of fact were so, the jury should, finding either of such states of fact, waste no time on considerations of negligence or of contributory negligence.

In the case of *Schroeder v. Public Service Railway Company*, 118 Atlantic Reporter, 337, our Supreme Court, in speaking of contradictory charges, said:

“The instructions were therefore contradictory, and fall within the rule laid down in *Burnett vs. State*, 60 N. J. Law, 255; *State vs. Tapack*, 78 N. J. Law, 208; *State vs. Lionetti*, 93 N. J. Law, 24; *Niebel vs. Winslow*, 88 N. J. Law, 191.”

The above mentioned case of *Niebel v. Winslow*, 88 N. J. Law, 191, says:

“Nor is the injurious error of charging the plaintiff's request in anywise cured and rendered

harmless by the fact that the correct rule had been stated to the jury in the body of the charge; for, as was said by this court in the case of *State vs. Clayton*, 83 N. J. L., 673, 'It is argued that this error was harmless because in the body of the charge the degrees of murder had been accurately defined.' So they had, but how were the jury to know which was the law?"

In the case of *Foley v. Brunswick Traction Co.*, 37 Vroom 637, it was held to be an error to charge that the plaintiff can recover if the place at which the car stopped for a passenger to alight was not safe, as it eliminated the question as to whether the defendant was negligent in stopping at such a place.

In the case of *J. Albert See v. Public Service Railway Company* (unreported), decided by this Court in November, 1910, the Court said, It was also error for the Court to charge the jury: 'If you believe as he (plaintiff's driver) told you, it becomes your duty to find for the plaintiff.' Plaintiff's driver, Conklin, had testified that he thought he had time to drive across safely. The charge therefore amounted to telling the jury that if they believed that Conklin thought he could get across they should find for the plaintiff. Even if they believed this or all else that Conklin said the duty of the jury was to consider it with the rest of the testimony, not necessarily to give the plaintiff their verdict."

In the case of *Bliss v. Schaeffer Brewing Co.*, 38 Vroom 30, it appeared that at the trial the following request to charge was handed to the court:

"First. 'If the driver could have seen the boy by looking before turning the corner, and did not see him, then he is guilty of negligence.'"

On rule to show cause this court treated the request to charge in the following language:

"This was clearly an erroneous instruction. The special fault is that it selected a single circumstance from the many that bore upon the question at issue and presented it to the jury as sufficient of itself to warrant a verdict for the plaintiff; its gen-

eral vice was that it ignored the real issue, which was the lack of reasonable care on the part of the driver, and substituted for it a circumstance that might or might not have been the result of such culpable conduct. Coming in when it did as an isolated proposition, out of all setting with the rest of the charge, and purporting to state the law for the control of the jury, it must be deemed to have been given that weight by them in reaching their verdict." A retrial was directed.

In the case of *Krumholtz, Admx. v. Public Service Railway Company*, decided by this court in March, 1922, and not reported, it appeared that the defendant asked the trial court to charge as follows:

"If the jury find that plaintiff's decedent alighted from a moving car while it was coming to a stop, holding by his right hand, in the manner described by the witness Zarro, and that his action in so doing was the proximate cause of the injury that resulted in his death, then the verdict in this case should be for the defendant."

This court, in holding that the refusal to charge as requested was correct, said:

"But in the case of *Consolidated Traction Company vs. Chenoweth*, 58 N. J. Law 416, affirmed 61 ditto, 554, the late Chief Justice Beasley criticised as improper requests of this character wherein the trial judge is asked to tell the jury what inferences are to be drawn from certain states of facts, if they found such facts to exist. The opinion of the case cited dealt specifically with a request relating to contributory negligence in an accident case, and is controlling upon us."

Even in cases where the doctrine of *res ipsa loquitur* is applicable it is not for the court to say that there is negligence, but the court is merely led to *permit the jury, if the jury so chooses, to infer negligence* from the facts proved.

*Hughes v. Atlantic C. S. R. Co.*, 85 N. J. Law 212.

The rule that an error must be shown to have been prejudicial in order to justify a reversal presumably cast

the burden on the defendant, in the Supreme Court, to show the prejudicial effect of the errors complained of. In view of the Supreme Court's opinion and judgment, the burden is presumably, in this court, on the plaintiff to show that the errors were not prejudicial. In their brief they apparently attempt to do so, and we are therefore compelled to discuss the evidence, and particularly to show that the jury could in fact have found to exist either of the states of fact which the trial court outlined in the erroneous charges, thereby establishing in their minds a basis for finding for the plaintiffs without any consideration of the questions of negligence and contributory negligence.

The complaint (p. 3) sets forth that the "said plaintiff, Kathryn Rothfus, was crossing Broadway at said public crossing at Washington street in a careful and prudent manner and said accident was caused \* \* \* entirely by reason of the carelessness and negligence of the defendant's servants," &c.

The only testimony on behalf of the plaintiff as to how the accident occurred was that given by herself. She testified (p. 12) that on the day of the accident she boarded a Broadway car at the ferry and left it at Washington street; that the car stopped at its regular stopping place on the near side of Washington street (p. 12, l. 37), and she got off at the rear end (p. 13, l. 9); that (p. 28, l. 24) after alighting from the car she walked to the sidewalk and walked the full length of the car on the sidewalk and then the car had started down Broadway; that (p. 30, l. 15) she then attempted to cross Broadway at the crosswalk. From the time she started to cross the street she thus describes her movements (p. 14, l. 25): "Q What could you see out in the street that might endanger you, anything? A Well, it was clear until my car went down Broadway; then I saw a northbound car, Broadway car, coming up Broadway. Q Where was it when you first saw it, this northbound car? A When I first saw it, it was right by that stop there, that pole

that says, 'Cars stop here'; it was almost nearing there. Q Well, I don't know where that is, which side of Washington street is that? A That is the far side of Washington street. Q That is the far side of Washington street? A Yes. Q How far had you gotten out into Broadway when the car— A I had gotten right in between the tracks; I had passed the first track, and stood in between the two tracks. Q In that little space that is between the northbound and the southbound track? A Yes. Q Now, when you got that far and paused, you say this northbound car was where? A Nearing that pole where it says, 'Cars stop here.' Q Is that the pole on the south side of Washington street? A Well, when I paused in the middle there, I noticed a man standing on the corner, and as the car was approaching I thought it would stop to leave this man get on the car, because he was standing there. Q What did the car do—what did you see the car do—how did that move? A Well, I thought, 'Well, if that car is going to pause to leave that man on, it will give me plenty of time to get across.' Q What did you do? A Then instead of the car pausing, it came full speed, and I was confused; I didn't know whether to step across a couple of steps or step back, and I stepped back, and it hit me right on the side. Q How far had you gotten across? A Half-way in the track, on the north side. Q When you got confused? A Yes, sir. Q Now, it hit you on the side? A On the left side. Q On the left side? A Because I turned back in order to get away from the car. Q But the car was coming up toward the right side, was it? A Yes, the car came this way, see (indicating). Q Toward you right side? A If I hadn't looked it would have hit me this way, and as it was, I stepped back and it hit me on this whole left side. Q I see; well, was there anything done by the motorman to indicate that he wasn't going to stop when he slackened down his speed on that car? A No, there was not; when I was in the middle of the track the conductor was looking back, as though to

leave the man get on the car, as if to turn around; you know how a motorman turns around to leave a man get on the car. Q You said 'conductor' first; did you mean conductor? A I meant the motorman; he turned around as if to look to see if the man was getting on the car, and then I thought well, he was slowing the car, I could get across, and instead, he came full speed; then I saw him when he was almost upon me and then I don't remember anything."

On cross examination the plaintiff testified (p. 31, l. 26): "Q And when you left the curb to cross Broadway, where was the northbound trolley car? A Where was the car that was going to the ferry? That was almost to the post that says 'Cars stop here.' Q And was it moving? A It was moving; yes, sir. Q Did it stop there? A No, it didn't stop. Q Didn't stop at all? A Not at all. Q So that there was no stop of that northbound car at the near crossing? A No, sir. Q That is, the crossing south of Washington street? A No, the car didn't stop. Q You are sure of that? A I am positive. Q You saw the car before it got to that point? A Yes, because there was a man standing on the corner; I thought surely it would stop to leave him— Q Where was the man standing? A Right there by the post, there where the cars stop. Q On which side of Broadway? A The north side of Broadway, the south side of Broadway, you know, right where they get on. Q The opposite side from the side where you got off? A Yes, sir. Q And on the opposite side of Washington street from where you got off? A Yes. Q You saw the man standing there? A I saw that man standing there. Q And he was on the sidewalk? A He was on the sidewalk. Q On the pavement? A Yes, sir. Q And between the trolley car and you there were no other vehicles? A No, sir. Q And the car was coming along then at pretty lively speed, was it? A Yes, sir; and I thought that it would stop. Q Never mind what you thought now, just answer my question. A Well, when it came— Q No, I didn't ask a question. You then went

off and continued across the street? A Yes. Q And when did you next notice the trolley car? A When I was just between the northbound and southbound track, in the place between the two tracks. Q When you were between the northbound and southbound tracks? A There is a space there. Q Where was the trolley car then? A Why, then it was by the post? Q It was by the post? A By the post, yes. Q It was still on the opposite side of Washington street? A Yes. Q And you were walking or running? A No, sir; walking. Q Walking? A Yes, sir. Q You continued across? A Yes, sir. Q How far did you go before you were struck? A Well, I was in the middle of the track, of the far-side track. Q You were in the middle— A Between the two rails. Q Of the northbound track? A Yes, sir. Q You are sure of that? A I am sure. Q You remember distinctly what happened? A I remember, for I just put my foot over that rail of that far track. Q And what did you do then? A Well, then the car came full speed. The man didn't get on the car. You see, they slowed up as if to leave this— Q When you had your foot across the middle rail the car was still across the street? A No, sir; I hadn't put my foot across the rail when the car was coming up slowly, see. Q As I understand you to say, when you were between the northbound and southbound tracks, the car was on the other side of Washington street, and you continued on, is that correct? A No, see, I was in the middle of the track, between the two tracks, when the car— Q Where was the car then? A The car was past this stop, where it says 'Cars stop here.' Q That was on the other side of Washington street then, wasn't it? A That was on the other side of Washington street; yes, sir, the car that hit me. Q And is that when you thought the car was going to stop? A That is when I thought the car was going to stop. Q When you were between the southbound and northbound tracks? A Yes, sir. Q And then you continued on—you were walking all the time? A No, I waited to see if the car was going to stop or not. Q Did you stop?

A I stopped in between the two tracks? A And you stood still? A I stood still. Q How long did you stand still? A Oh, only for a fraction of a second. Q Why did you stand still? A I wanted to be positive that this car was going to stop, see; it was slowing. Q The car was away at the other side of Washington street then? A That is not very far, sir. Q But it was on the other side of Washington street? A Yes, sir; because I thought this man was going to get on the car. Q Then you got one foot over the rail? A Over the track, and the car came full speed, and I was confused—I didn't know whether to go right across—if I had, it would have killed me—and instead, I stepped right back, and it struck me on the left side. Q While you were doing that, the car came all the way across the street? A Came full speed, yes. Q When it struck you, what was your position? A This way (indicating). Q Where were you with respect to the northbound tracks? A Well, I pulled my foot back; I must have, or I would have got my foot cut off. Q You only got one foot across the rail, did you? A Yes. Q The nearest rail of the northbound track? A Yes. Q During all that time, you saw just what this motorman was doing, too, is that correct? A Yes. Q You were looking at the car all the time? A All the time."

Mildred Irene Geesey, testified (p. 40) that she was on the northbound car of the defendant and that (p. 41) the car did not appear to be running as it ought to, as it stopped and started with a jerk; that (p. 42) the car slowed down as it approached Washington street, and thinking there was someone to get on she glanced out the window and saw a man standing there at the pole (p. 43, l. 7). "Q And did the man actually step up and get into the car? A I didn't notice. Q But at any rate, the car didn't wait for him? A The car did not wait for him; it just slowed down, it didn't stop. Q And how much speed did it pick up? A Well, it went at full speed. It seemed that he could not run \* \* \*

Q How far did he go at that full speed that you speak of? A It went, I guess, as far as the other side of the street, and it stopped with a sudden stop; he put on—he turned his reverse and stopped the car. Q Now, what happened when he stopped it with the reverse? A Well, he stopped it with the reverse, and the car started to go back, and someone jumped on and stopped the car. Q Did you know then that somebody had been struck? A I knowed there was an accident of some kind.”

It will be seen by the foregoing evidence that the plaintiff's theory of the case was that upon leaving the car she desired to go to the east side of Broadway, but instead of taking the course which passengers alighting from the rear platform of cars ordinarily take of going directly behind the car, particularly when there is no traffic in the street or anything to prevent a person doing so, she walked to the sidewalk, walked south on the sidewalk the length of the car and attempted to cross the street at the crosswalk, the car she had alighted from (p. 14, l. 27) having gone *down* Broadway, after which she saw the car with which we are concerned coming *up* Broadway.

There is no evidence in the case tending to show that the street was in any way obstructed. Apparently the only vehicle other than trolley cars seen by the plaintiff in the street was an automobile standing a little way off (p. 14, l. 13). She said (p. 14, l. 25) “Q What could you see in the street that might endanger you, anything? A Well, it was clear until my car went down Broadway; then I saw a northbound car, Broadway car, coming up Broadway.”

The defendant's theory of the accident was very different from that of the plaintiff.

The defendant's evidence showed that at the time plaintiff alighted from the southbound car, immediately back of the car, and on the track, two trucks stopped; that after the plaintiff alighted, and before the southbound car had moved away, she ran between the rear of the car and either the first truck or between the two trucks in an attempt to cross the street, and practically

ran into the side of the northbound car at the side of the front vestibule thereof.

*Six witnesses testified to this, five of whom were disinterested.* See the testimony of Motorman Janney, who operated the car which was in collision with the plaintiff (p 56, &c.); Ella Baxter, walking south on the west side of Broadway toward Washington street (p. 77); Mary Sanders, walking with the last witness (pp. 89, 90); John H. Best, a passenger on the northbound car (p. 98); William R. Hodgdon, driver of an automobile truck stopped directly back of the southbound car (p. 101); Charles Burnett, driver of a coal wagon southbound, stopped back of the above automobile truck (p. 107).

Even though the jury found that the plaintiff's story, standing alone in the face of the testimony of six witnesses, were true, it would still be for the jury to say whether or not the motorman was negligent, and the jury could well have found that the motorman was free from negligence in proceeding when he saw the plaintiff standing between the tracks, evidently aware of the oncoming car and apparently waiting for it to pass..

The jury also could well have found, and had it been a fair and reasonable jury, and properly charged, probably would have found, that even on the plaintiff's own statement she was guilty of contributory negligence. She said she stopped between the tracks because she wanted to make sure that the car was going to stop for the man at the white post before she attempted to cross the track, yet despite the fact that the man at the white post was standing on the sidewalk (and there is no evidence that he moved from that spot toward the approaching car) and despite the fact that the plaintiff distinctly testified that the car did not stop, she attempted to cross the track. This would undoubtedly justify the jury in finding the plaintiff guilty of contributory negligence.

The court said (p. 120, l. 22) in describing the plaintiff's story of the accident, "and that as soon as she observed it (car) and had taken one step into the track,

in a spirit of hesitancy, she faced about and the car struck her, why, then, I would say that she was entitled to recover."

Under the quoted words, the jury should undoubtedly have had the privilege of finding contributory negligence on the part of the plaintiff. But the charge took that privilege from them.

What the court should have charged, in effect, was that if they believed the story of the plaintiff it was for the jury to say whether or not they thought she was guilty of contributory negligence, but that, if they believed the story of the defendant, then as a matter of law she was guilty of contributory negligence.

The plaintiff (p. 34, l. 34) stopped in between the two tracks. "Q And you stood still? A I stood still." She then went through the mental operation of deciding that the car was going to stop for the man who stood on the sidewalk at the white pole, this mental operation being based upon the fact that the car was slowing down. She thereupon determined to proceed and got one foot over the rail, or as she says over the track, when she became confused and stepped back and the car struck her on the left side. She took this step forward that led to her undoing despite the fact that the car in fact did not stop. (P. 35, l. 37) "Q During all that time, you saw just what this motorman was doing, too, is that correct? A Yes. Q You were looking at the car all the time? A All the time \* \* \* (p. 32, l. 30). Q And between the trolley car and you there were no other vehicles? A No, sir."

On the plaintiff's own story, the question of the motorman's negligence and the plaintiff's contributory negligence were at least for the jury. On the skeleton of the plaintiff's story outlined by the trial judge in the objectionable charges, the same is true.

Approximately this same state of facts was discussed in the case of *Vann Cott. v. North Jersey Street Rail-*

*way co.*, 43 Vroom, page 229, referred to by the Supreme Court in its opinion in the present case.

The defendant was seriously injured by the two charges objected to as set forth in the grounds of appeal in the Supreme Court.

We ask that this appeal be dismissed and that the judgment of the Supreme Court be affirmed.

Respectfully submitted,

LEONARD J. TYNAN,  
*Attorney of and of Counsel with*  
*Defendant-Appellee.*

