

1757-192

New Jersey Court of Errors and Appeals

THOMAS S. PANCOAST,
Plaintiff-Appellant.

vs.

DIRECTOR GENERAL OF
RAILROADS,
Defendant-Respondent.

On Appeal.

ON BRIEFS

STATE OF CASE.

BLEAKLY & STOCKWELL,
For the Plaintiff-Appellant.

BOURGEOIS & COULOMB,
For the Defendant-Respondent.

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NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

THOMAS S. PANCOAST,
Plaintiff-Appellant,

vs.

WEST JERSEY & SEASHORE
RAILROAD COMPANY,
Defendant-Respondent.

Action at Law.
Notice of Appeal.

10

To Bourgeois & Coulomb, Esqs., Attorneys for Defendant.

Take notice, that the appellant appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey from the whole of the judgment entered in this cause on the following grounds:

Trial Court directed a verdict against the plaintiff and 20
in favor of the defendant when thereunto moved by counsel for the defendant; whereas said court should have dismissed said motion and should have submitted to the jury the questions involved in the issues.

BLEAKLY & STOCKWELL,
Attorneys for Appellant.

30

NEW JERSEY COURT OF ERRORS AND APPEALS.

THOMAS S. PANCOAST,
Plaintiff-Appellant,

vs.

WEST JERSEY & SEASHORE
10 RAILROAD COMPANY,
Defendant-Respondent.

Action at Law.
On Appeal.

The above named plaintiff, Thomas S. Pancoast, assigns the following grounds of appeal from the judgment of the New Jersey Supreme Court in the above cause;

Because the trial judge, upon the trial of said cause directed a verdict in favor of the defendant and against the plaintiff, over the objection of the said plaintiff, whereas, said trial judge should have submitted the case to the jury

20 for its verdict.

Dated November 14th, 1919.

BLEAKLY & STOCKWELL,
Attorneys for Appellant.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

THOMAS S. PANCOAST,

Plaintiff,

vs.

WEST JERSEY & SEASHORE
RAILROAD COMPANY,

Defendant.

Action at Law.
Complaint.

10

The defendant in this cause was summoned to answer unto the plaintiff in an action at law upon the following complaint. (Summons issued February 26th, 1918.)

The plaintiff, Thomas S. Pancoast, of the City and County of Camden, State of New Jersey, says:

1. That on the 5th day of February, 1918, the West Jersey & Seashore Railroad Company, the defendant herein, was a common carrier and operated a line of steam railroad, running from the City of Camden, County of Camden, State of New Jersey, through the City of Woodbury, in the County of Gloucester, State aforesaid, to the City of Salem, in the County of Salem, State aforesaid, which said railroad crossed a certain public street or highway known as Mantua avenue, in or near the City of Woodbury, which public highway leads through and from the City of Woodbury to Mantua. 20

2. That on the day above mentioned, the plaintiff was the owner of a certain automobile truck and had in his employ one Harry Ballinger, operating said truck; that on the day aforesaid, the said employee of plaintiff was lawfully driving plaintiff's said truck and was lawfully proceeding along said street or public highway known as Mantua avenue, and approached the said railroad where it crosses over said street or highway, intending to drive said auto truck over said 30

public crossing.

3. That at the time and place aforesaid, as the plaintiff's automobile truck was being lawfully and with due care driven by plaintiff's employee over the said railroad crossing at Mantua avenue aforesaid, the defendant, negligently and carelessly operating one of its steam trains on said line of railroad caused it to approach said public crossing without the locomotive of said train blowing its whistle on its approach to said crossing, and without any other warning of
10 any kind being given to the employee of plaintiff and the driver of said truck of the approach of said train, and the said train then and there struck and wrecked the said automobile truck at said crossing and destroyed a large part of the contents of said car and threw the employee of plaintiff out of said car and to the ground. The defendant gave no warning of the approach of said train, either by the blowing of the locomotive whistle, the ringing of any bell or by safety gates, watchman or other means whatever.

4. Because of the circumstances aforesaid, and without
20 any negligence on the part of plaintiff's employee, the operator of said car, the plaintiff's automobile was destroyed and a large amount of candy and candy boxes and equipment in said car was destroyed.

Plaintiff, Thomas S. Pancoast, claims damages in the sum of \$5000.00.

BLEAKLY & STOCKWELL,
Attorneys for Plaintiff.

REPLY.
ORDER TO AMEND COMPLAINT.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

	THOMAS S. PANCOAST,	}	Action at Law.
	Plaintiff,		
	vs.	}	Reply.
10	WEST JERSEY & SEASHORE		
	RAILROAD COMPANY,		
	Defendant.		

The plaintiff, by way of reply to defendant's answer says:
1. As to the first ground of defense, the plaintiff denies the facts stated therein.

2. As to the second ground of defense, the plaintiff denies the facts stated therein.

20	BLEAKLY & STOCKWELL,
	Attorneys for Plaintiff.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

	THOMAS S. PANCOAST,	}	Action at Law.
	Plaintiff,		
30	vs.	}	Order.
	WEST JERSEY & SEASHORE		
	RAILROAD COMPANY,		
	Defendant.		

Application for this purpose being made, and counsel for the respective parties consenting hereto:

It is, on this _____ day of November, 1918,
 ordered that William G. McAdoo, Director General of Rail-
 roads, be and he is hereby substituted as defendant in said
 cause, in the place and stead of West Jersey & Seashore
 Railroad Company, the defendant therein named.

FRANK T. LLOYD,
 Judge.

We consent to the entering of the foregoing order. 10

BLEAKLY & STOCKWELL,
 Attorneys for Plaintiff.
 BOURGEOIS & CONLOMB,
 Attorneys for Defendant.

NEW JERSEY SUPREME COURT. 20
 CAMDEN COUNTY.

THOMAS S. PANCOAST, Plaintiff,	}	Order Amending Complaint.
vs.		
WEST JERSEY & SEASHORE RAILROAD COMPANY, Defendant.	}	

30

Application for this purpose having been made in open
 court by Bleakly & Stockwell, attorneys for plaintiff, in
 the presence of Bourgeois & Conlomb, attorneys for the
 defendant, and no objection being made thereto;

It is hereby ordered on this ninth day of October, 1919,
 that the complaint be and the same is hereby amended by

adding to paragraph 3 of the complaint the following:

“and defendant negligently caused said locomotive and train to approach said crossing at an excessive and high rate of speed, to wit, fifty miles an hour, within the city limits of Woodbury, N. J., and further negligently suffered and permitted the view of said approaching train to be obscured by a double line of poles upon its said right of way.”

10

FRANK T. LLOYD,
Judge.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

20

THOMAS F. PANCOAST,
(or THOMAS S. PANCOAST),
Plaintiff,

vs.

DIRECTOR GENERAL OF
RAILROADS.
Defendant.

Action at Law.
Postea.

30

This cause came on for trial before Honorable Frank Lloyd, Circuit Court Judge, and a jury, on the 9th day of October, 1919, and the Judge directed the jury to return a verdict in favor of the defendant, which was accordingly so done.

FRANK T. LLOYD,
Judge.

(A True Copy.)
ENOCH L. JOHNSON, Clerk.

Camden County Circuit Court

HARRY BALLINGER,
Plaintiff,
vs.

WEST JERSEY & SEASHORE
RAILROAD COMPANY,
Defendant.

10

Action at Law.

THOMAS S. PANCOAST,
Plaintiff,
vs.

WEST JERSEY & SEASHORE
RAILROAD COMPANY,
Defendant.

20

SEPTEMBER TERM. 10-9-'19.

APPEARANCES:

For the Plaintiffs, BLEAKLY & STOCKWELL, Esqs.

For the Defendant, GEORGE A. BOURGEOIS, Esq.

30

Before LLOYD, J. and a Jury.

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

The Court: Is this the track that crosses just below Woodbury running to Salem or to—

Mr. Bourgeois: Mantua; when you go to Mantua——

The Court: No, but is it the railroad that runs across that road just below Woodbury runs to Salem, doesn't it, in that direction, or does it run to Pennsgrove?

Mr. Stockwell: Yes, Mantua and then to Salem.

The Court: There are two crossings there, I think. Which one was this?

Mr. Stockwell: This is the Salem crossing.

The Court: Is the Salem one the lower one or the upper
10 one?

Mr. Stockwell: The lower one.

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

Mr. Bourgeois: Mr. Stockwell has consented that I may use these three photographs; I am going to introduce them in
20 evidence so as to give you a clear view, if we can, of the situation that is there.

Mr. Stockwell: From what direction are these taken?

Mr. Bourgeois: They are taken looking toward the direction in which the automobile was going and looking up the track over which the train was approaching.

The Court: Are there any signals at this crossing?

Mr. Bourgeois: No, no bell.

30 HARRY BALLINGER, Sworn.

The Court: Is the plea of contributory negligence against both?

Mr. Bourgeois: Yes.

By Mr. Stockwell:

Q. Where do you live, Mr. Ballinger?

A. 117 North Church Street, Moorestown.

Q. By whom are you employed?

A. T. S. Pancoast.

Q. And what is Mr. Pancoast's business?

A. Manufacturer of wholesale confectionery.

Q. Where is his place of business?

A. 228 Market street, Camden.

Q. How long have you been employed by Mr. Pancoast?

A. Sixteen years.

Q. In February, 1918, what were you doing for Mr. Pancoast—what was your line of employment? 10

A. Salesman, selling and delivering.

Q. Selling and delivering what?

A. Confectionery.

Q. Where was your territory, over the southern part of New Jersey?

A. Over the southern part of New Jersey, yes.

Q. And did you deliver by truck, auto truck?

A. Delivered by truck.

Q. On February 5th—that was the day of the accident, wasn't it? 20

A. The day of the accident.

Q. What kind of truck were you driving?

A. White.

Q. A White truck?

A. Yes.

The Court: February 5, 1918, I think you opened.

Mr. Stockwell: Yes.

Q. That day did you go through Woodbury?

A. Went through Woodbury.

Q. From Camden? 30

A. From Camden.

Q. Proceeding to what point?

A. Proceeding from Woodbury to Mantua.

Q. On what road?

A. On the Mantua Pike, from Woodbury to Mantua.

Q. In what general direction does that road run as it pass-

es over the right of way of the West Jersey & Seashore Railroad Company?

A. North, and south, I think; I wouldn't be sure.

Q. It does not pass at right angles, does it; it passes at a rather sharp angle?

A. Sharp, yes.

Q. Is that railroad a double or single track road?

A. Single track.

Q. February 5th was, of course, in the winter, 1918; what 10 was the character of the day?

A. Very cold, windy.

Q. What time did you approach that crossing on your trip from Woodbury through to Manotua?

A. Somewhere around one o'clock.

Q. One o'clock in the afternoon.

A. Somewhere around the afternoon, yes.

Q. Is that a macadam road?

A. No, it was stoned at times.

Q. Stoned at times?

20 A. Yes.

Q. Was there snow on the ground?

A. Snow, yes.

Q. Now, what was the condition of your car?

A. Good shape.

Q. On the front, how, if at all, was it closed in; you heard the statement it was closed in?

A. It wasn't 'closed in, no.

Q. Just what did it have in the way of curtains?

A. One curtain on the side of it, not enclosed, but one 30 curtain down the side of it.

By the Court:

Q. Which side?

A. On both sides.

Q. How about curtains opposite the driver, where were they?

A. Both the same.

Q. Yes, I know, but were they both closed so that you could not see out?

A. Oh, no, you could see out.

Q. Both open?

A. Yes.

By Mr. Stockwell:

Q. You mean to say that the entire front was closed in with curtains?

A. No.

Q. Well, how much was open?

10

A. Well, about two foot.

Q. How many curtains could be put up there?

A. Two on the side.

Q. That is two running all the way up and down?

A. Two running all the way up and down, I had one on.

Q. One running all the way up and down?

A. Yes.

Q. Was that one next to the front of the car or toward the back?

A. That was next to me, right aside of me on the seat.

20

Q. Then was it possible for you to see out around the curtain?

A. See very good, yes.

Q. Could you hear around that curtain?

A. Yes.

By the Court:

Q. Let me understand; do I understand, Mr. Ballinger, that the curtains in the front of the car were closed?

A. No, sir.

Q. That is to say, the curtains were on in such fashion that they shut out the light or view?

30

A. No, there are two curtains at the side, there can be, but there was only one curtain on, see, a curtain that came down right aside of me, just the same as an old fashioned buggy top, that shape, and, of course, here I sat here and could see right here, see, without interfering with your sight at all.

Q. On which side did the train come to you?

A. On the right.

By Mr. Stockwell:

Q. This was a right or left hand drive car?

A. A right hand drive car.

Q. You said there were two curtains up; you mean two on one side or one on either side?

A. One on each side.

10 Q. How much open space was there back of this curtain that was up?

A. There was about two foot and a half.

Q. Well, was that opposite you as you sat in the car, this open space on either side?

A. On both sides, yes.

By the Court:

Q. I don't understand, Mr. Ballinger. Suppose that is the side of your car and suppose that represents all the enclosure on the side of your car; now, just tell us on there—suppose that is your right hand side—what was closed there?

20 A. Look, the curtains run the same as this, the same as I am sitting right here, there is a curtain right there; then all of this is open. Then on here is another curtain and all of this was open on both sides.

Q. You were not sitting in the back of the car, you were sitting in the front of it?

A. In the front of the car.

Q. There were no curtains in front of you?

A. Only the windshield, that is all.

30 Q. Now, what I am talking about, you were sitting on the right hand side?

A. Yes.

Q. Now, there were curtains on the car that ran to the windshield, didn't they?

A. No, they wasn't to that.

Q. Where do they go to?

A. About that far from the windshield, as near as I can tell you, about two feet from the windshield.

Q. But they did not go to the windshield, neither top nor bottom?

A. No, neither top or bottom.

Q. Did they go to the rear of the seat you were sitting on?

A. Yes.

Q. When the car was closed in to the full extent, the curtain, you mean, came to the side you were on?

A. Yes, aside of me, yes, there was one curtain aside of me.

Q. And that ran clear to the windshield? 10

A. No, there is an open space between that and the windshield about two foot.

By Mr. Stockwell:

Q. The witness is shown what purports to be the picture of a White truck; I want to know whether that illustrates in any way the truck you were driving or the condition of the curtains?

A. Yes, you see this here was open here. 20

Q. Go ahead and explain.

By the Court:

Q. Was the curtain up just as it is there or was it down?

A. The curtain was down opposite me and an open place between here! these curtains were not down.

Q. That is what I say; the curtain opposite you—didn't you say this curtain here was down?

A. But these curtains wasn't down, see, there was an open space there. 30

The Court: I see, take that and show it to the jury, what he says about it.

Mr. Bourgeois: Yes, cut that out and offer it in evidence, why don't you?

By Mr. Stockwell:

Q. In other words, the curtain which was toward the rear of the driver's seat was closed?

A. That was down.

The Court: That is the little curtain.

The Witness: Yes, that is a little curtain.

10 Q. But the curtain which could be put down between that point and the windshield was open?

A. It was open, yes.

Q. On both sides?

A. On both sides.

The Court: You mean just as it is there?

The Witness: Yes.

20 Mr. Stockwell: Just as it is in this picture.

The Court: All right; this "opened" and "closed" is very deceptive when you come to curtains.

By Mr. Stockwell:

Q. Now, had you been over that road before, Mr. Ballinger?

A. Many times.

30 Q. How long have you been traveling that road?

A. Oh, as long as I have been working for T. S. Pan-coast, about sixteen years.

Q. Familiar with the crossing?

A. Yes.

Q. Now, tell me how you approached the crossing, what you did and what happened?

A. Well, I first looked to my right—

Q. Where, about—where did you look to your right?

A. Well, I suppose it was about—I don't know, about half a square from the railroad track; then I looked to my left, then to my right again, running very slow, then to my left again. As I dropped the wheels on the track, very slow, then I was struck, I suppose; I don't remember anything else.

Q. You don't remember anything after that?

A. I don't remember anything only the wheels going down on the track, running the car slow, and being I was on the road, the snow on the road, I dropped very easy, so I wouldn't break no springs. 10

Q. You dropped very easy so you wouldn't break the springs?

A. Dropped very easy; I was going about as fast a horse would walk.

Q. About how far from the railroad were you going that speed? As you approached the crossing, I want to know how fast you were going?

A. Oh, I suppose twenty-five feet back of the railroad, 20 anyhow.

Q. At the same speed?

A. At the same speed.

Q. Now, when was it that you looked to the right the last time?

A. I looked to the right just before I got close to the railroad, I suppose in the line of the telegraph poles then, then I looked to the left, kept on going slowly until I struck this, went down easy in this track, on the track.

Q. Was there any signal given by that engine or the train? 30

A. The whistle didn't blow.

Q. What?

A. The whistle didn't blow.

Q. Was there any ringing of the bell that you could hear?

A. I didn't hear no bell.

Q. Were you in a position to hear the whistle if it had blown?

A. I was.

By the Court:

Q. What about the bell. Were you in a position to hear that if it had rung?

A. Yes.

Q. Did you listen?

10 A. Yes.

By Mr. Stockwell:

Q. Did you see the train at all before it struck you?

A. I did not.

Q. The last thing you knew was when your truck went on to the rails?

A. The truck dropped on the rails, yes.

Q. Now, when did you next know anything?

20 A. Well, I couldn't tell that very well; I suppose the first thing I remember was when they came there to pick me up, and I said to the fellow who picked me up, "That train didn't blow." That is the first words I said.

Q. Were you taken to any hospital?

A. Cooper Hospital.

Q. Who took you there?

A. Took me up on the train, and they met me down at the Ferry and took me up on the ambulance.

Q. You mean the trainmen took you up?

A. The train took me up to the Ferry, yes.

Q. How long were you in the hospital?

30 A. Well, I couldn't tell you exactly how long, about an hour, I guess, or something like that, because they bandaged me up.

Q. You were not confined in the hospital?

A. No, I wasn't confined.

Q. You went home that night.

A. I went home that night.

Q. Now, what was your condition when you left the hospital. I mean, were you bruised at all?

A. Yes.

Q. How were you affected by the accident?

A. Bruised back, shoulders, wrist, and bruised up considerable and nerves all shaken up badly, very bad, and when I got home the next day I couldn't move, couldn't move for a week.

Q. You couldn't move?

A. I couldn't move for a week.

10

Q. Did you go home alone or were you taken home?

A. I was taken down to the Ferry and went home on the trolley.

Q. Then were you confined to your bed at all?

A. Yes.

Q. For how long?

A. For a week to my bed.

Q. How long were you confined to the house after that?

A. Nearly a week after that.

20

Q. During that time did you suffer from anything except the shock?

A. An awful lot of pain, yes.

Q. Where?

A. Back and shoulders.

Q. Were you attended by a physician?

A. Yes.

Q. By whom?

A. Dr. Powell, of Moorestown.

Q. Dr. Powell, of Moorestown?

30

A. Yes.

Q. Well, after the two weeks were up, then did you go back to work?

A. I went back to work with another man with me to show him the road and the stops, did no work, only rode on the car for three weeks.

Q. How long was it before you could resume your regular employment?

A. Well, it hasn't hardly got straightened around yet.

Q. In what way. What is the trouble now?

A. Nerves, my nerves.

Q. How does it manifest itself?

A. It kind of shakes me up a little bit, I suppose.

Q. What?

A. Shakes me up a little bit.

10 Q. I know, you say your nerves——

A. I can't seem to get around like I ought to; can't do the work I ought to do.

Q. Have you worked regularly since the time you mentioned, three weeks following the accident?

A. No, not regularly.

Q. Have you been driving the truck?

A. Driving the truck.

Q. For Mr. Pancoast still?

A. Mr. Mr. Pancoast still.

20 Q. But for several months you were not able to drive the truck alone, you took somebody along to drive it?

A. Had to have somebody to help me, yes, sir.

Q. You say your nerves have given you trouble; I want to know just how they have given you trouble?

A. Well, I can't rest at night, and it seems as if I can't work; I feel bad; it just seems as if I ain't got the push in me I used to have.

Q. You are gradually getting around all right, aren't you?

30 A. Yes, slowly.

Q. You don't claim that you are incapacitated for work now altogether, do you?

A. No.

Q. You haven't any such claim as that?

A. No.

Q. Now, what was in this truck that morning of the accident?

A. Confectionery.

Q. You had just come from the factory?

A. Come from the factory, yes.

By the Court:

Q. Was that lost? Did you lose the confectionery?

A. Lost a portion of it, yes.

10

Q. How much?

A. Now, that is what I couldn't tell.

By Mr. Stockwell:

Q. You didn't see what happened to the confectionery?

A. I didn't see what happened to it.

Q. And you didn't see what happened to the car?

A. I didn't see what happened to the car.

Q. Have you been down at the scene of this accident since the accident to find out what, if any, obstruction there is in the vision up and down that line of railroad from the pike?

20

A. Yes.

Q. That is, from the direction in which you were approaching?

A. Yes.

Q. Now, tell us just what you found out?

Mr. Bourgeois: Now, if your Honor please, I object to his testifying as to anything that is maintained there by other than the Railroad Company.

30

Mr. Stockwell: I am asking him to tell whether or not he can see up and down that railroad at certain specified points, then I will find out what it is that obstructs the

view. The charge against him is contributory negligence, as I understand it.

The Court: I see nothing wrong with the question.

(Question repeated.)

10 A. Well, I find out that it obstructs the view, this line of telegraph poles, and I was down, looking up the railroad, and the approach of a train coming to Woodbury. While I was standing there, that train went by, and I don't know how far, it wasn't very far, the train, you couldn't see it.

Q. Was anybody with you when that was done?

A. Mr. Allen.

Q. When was this?

A. Last Saturday week, whatever time that was.

Q. Mr. Allen from my office?

A. Yes.

20

By the Court:

Is there foliage there? Are there trees? Any foliage?

A. No.

The Court: That does not enter into it, does it, in this case?

30 Mr. Stockwell: The foliage? No; this was winter time, we all admit that.

The Court: No, but his view was the other day.

Mr. Stockwell: His view was the other day.

By Mr. Stockwell:

Q. For what distance could you not see that train after it went by the crossing? I don't mean what distance were you from the crossing; I will ask you that in the next question, but I want to know what distance up and down that train——

A. How far did the train go beyond the crossing, you mean, before you could not see it?

Q. Yes, after the train went over the crossing, when first did it disappear from view? How far from the crossing? 10

A. It must be about half a mile before it disappeared.

Q. No, you said you could not see it. The train was coming that day in the opposite direction, wasn't it going south or west?

A. Yes.

Q. Where couldn't you see it?

A. When it was coming toward me?

Q. No, after it passed.

A. After the bend, down to the bend; there is a bend there. 20

Q. A curve?

A. After it crosses the track, after it crosses the road.

Q. How far down?

The Court: Yes, could you see it then after it crossed the road, that is what Mr. Stockwell is asking you?

A. Well, you can see it, but I didn't notice anything like that; I don't remember anything, noticing anything like that at all, but they say you can see it for about three or four squares, four squares running down before it stopped. 30

By Mr. Stockwell:

Q. What do you mean by that?

A. Before the train stopped.

Mr. Bourgeois: I ask that it be stricken out; that is admittedly hearsay; he says, "they say."

The Court: You will have to give your own judgment on it.

The Witness: Well, I don't remember that train, you know.

10 Mr. Stockwell: But the witness says he went down there the other day and looked at it to see how far the train went.

The Witness: About four squares, that train.

Mr. Bourgeois: I thought he was talking about the train at the time of the accident.

20 Mr. Stockwell: No, he was talking about the train two weeks ago, how far he could see it after it crossed the road; is that what you are talking about?

The Witness: Yes.

Mr. Bourgeois: You could see it going south about four squares, is that the idea, or coming north?

The Witness: Coming up to the city, whatever that is.

30 By the Court:

Q. This train you looked at the other day was going in the opposite direction from the one that hit you?

A. Yes, going the opposite direction.

Q. The one that hit you came from your right hand as you were going south?

A. Yes.

Q. Now, I don't understand yet whether or not there is any obstruction to your seeing that train until it gets these four blocks away, as you speak of?

A. Yes, there was a line of poles.

Q? Well, did they interfere with your seeing there?

A. They did interfere.

By Mr. Stockwell:

10

Q. Now, what I want to know is whether you stood to the north of that crossing in about the same position you were when you approached that train on this pike and you looked toward the south up the line of the right of way of the railroad, and I want to know whether your vision was then obscured by the line of poles?

A. It was.

The Court: If that map is to be used we ought to have it so the jury can see it.

20

Mr. Stockwell: I don't want it to go in as my exhibit; that is all. It is probably correct, but I haven't had a chance to examine it.

The Court: Well, go on with your examination.

Q. Mr. Ballinger, did you notice whether there was anybody approaching that crossing from the opposite direction that morning?

30

A. There was.

Q. Of course, you did not see the train after it had struck you—you don't know the position of the train, or anything about that?

A. I don't know anything about that.

Q. Or the position of the car?

A. No.

CROSS-EXAMINATION.

By Mr. Bourgeois:

Q. Mr. Ballinger, I want to show you this map, see if you understand it. This is the railroad leading to Woodbury; Woodbury is up here at the right hand side; is that right?

A. Yes.

10 Q. And you were coming along the road—you were going south, weren't you?

A. Going down toward Mantua, yes.

Q. You were here, going down toward Mantua?

A. Yes, going toward Mantua.

Q. The train was coming up in this direction and you were going in that direction, that is right, isn't it?

A. No, I was going toward Mantua.

20 The Court: No, no, get this straight, Mr. Ballinger, you are wrong.

Q. This is Mantua here.

A. That is turned around wrong then.

The Court: Gentlemen, you are not being helpful to the Jury at all in using this map this way.

Mr. Bourgeois: I know, that is true.

30 The Court: Well, gentlemen, can't we get along?

Mr. Borgeois: In just a second; I am having this map marked so we won't have any confusion about it.

Q. Now, this road runs to Camden and this road runs to Mantua? (Indicating on map).

A. No, this road runs to Mantua, as I understand. Yes, that is right.

Q. This road runs down to Mantua, the train was coming in the direction of Camden, wasn't it, and you were going in the direction of Mantua?

A. Going toward Mantua?

Q. Now, when you went down there a week ago or two weeks ago, did you go to the same place you were when the accident happened on that same road?

A. The same road. 10

Q. And you didn't cross over the railroad, you stopped to make these observations before you came to the railroad?

A. Yes.

Q. And then you made observations looking to the right, that way, up to Camden, did you?

A. Looking to the right, toward Salem.

Q. All right, that is right, to the right toward Salem; that is Salem down here. Then I understand you to say there were obstructions to the vision?

A. Yes. 20

Q. And how far could you see? You said you could see a train about four squares, going about four squares that way.

A. No, not down this way; I don't know hardly how far that would go, about two squares; about four squares for the train this way, but about two squares the train was out of sight this way, by the obstruction of these poles.

Q. What do you mean by about two squares?

A. About two squares like they are in the city.

Q. I don't know what they are here—are they five hundred feet—does that mean a thousand feet? 30

Mr. Stockwell: About three hundred feet, I guess.

Mr. Bourgeois: If your Honor please, I think your Honor misunderstood what he said before. He said he could see

four squares down the opposite direction from that from which the train struck him, but he could see up the track from the direction in which the train came about two squares.

The Court: In other words, he could see toward Woodbury four squares and two squares south, or two squares to the right.

10 Mr. Bourgeois: But when he looked toward Salem from which this train was approaching, he could see about two squares. Now, he doesn't know how much a square is there; I would like to know what you mean by a square.

The Witness: I mean like a square here in the city, it was about that, you know, but just what the distance was, I can't hardly tell.

20 Mr. Bourgeois: Do you know, Mr. Smith, what the city squares are here?

Mr. Smith: They run from 400 to 450 feet usually.

Mr. Bourgeois: Then it would be from 800 to 900 feet.

The Court: Mr. Bourgeois, if you want to use that map, possibly it can be put here somewhere. The only easel we have seems to be in use in the other court room.

30 Mr. Bourgeois: I think it would be well if it can be hung up like that; I think the jury can see it plainly.

The Court: Now, that is north, is it, the top is north?

Mr. Bourgeois: The train, if your Honor please, was coming from Salem to Camden, and he was going from Woodbury to Mantua, so he crossed in that direction and the train was coming up in that direction. (Indicating on map).

By Mr. Bourgeois :

Q. Mr. Ballinger, I think you have been shown these photographs and they show the situation existing there, don't they?

A. No, that photograph wasn't with the situation right.

Q. What was the trouble with that photograph?

A. That should have been taken right where I was taken, understand, but this was taken a little different from that. 10

Q. The one I show you was taken 75 feet back from the crossing, that is, right at the point of this fence, if you remember, away from the track; that was where the camera was at that time and they took a view down 75 feet from here, taking the view around that way, down toward Salem. Just imagine yourself back there at a point in that fence 75 feet away from the track, then that shows the situation as it is there, doesn't it?

A. Yes.

Q. And the next one is taken from a distance of 50 feet away from the track and looking toward Salem? 20

A. Yes.

Q. That shows as it is there, doesn't it?

A. Yes.

Q. And that photograph shows all the poles there are there, doesn't it?

A. Well, I suppose all the poles, yes, I can't say.

Q. And I suppose this one I just showed you, the one taken seventy-five feet away, that shows the poles, too, doesn't it? 30

A. Yes.

Q. Now, I show you another that was taken thirty feet from the track; that shows the situation where it was taken, thirty feet from the track, doesn't it?

Mr. Stockwell: You say it was taken thirty feet from the track?

Mr. Bourgeois: Well, assume that it was taken thirty feet from the track, Mr. Ballinger, that shows the situation fairly, doesn't it?

The Witness: The picture shows, yes.

Q. And shows the telegraph poles that you speak of, doesn't it?

A. Yes, but that is not the right photograph yet.

10 Q. All right, I have got some more.

The Court: What was the third one—how far did you say that was taken back, thirty and seventy what, Mr. Bourgeois?

Mr. Bourgeois: Thirty, fifty and seventy.

Q. Now, there is one; assume that this was taken 20 feet from the track; that shows the situation fairly, doesn't it?

20 A. No, that does not show the situation right.

Q. What is there wrong about it?

A. That camera should set right back of these poles when it took the picture.

Q. Oh, but you weren't right back of the poles, were you, when you were struck?

A. I was coming right along here, right in line with these poles.

Q. I know, but you could not be back of the poles very long, because the pole is only a foot in diameter?

30 A. It wouldn't take me long to look there.

Q. You mean to say you looked right there?

A. Yes.

Q. Just when you were back of the pole?

A. I looked right there.

Q. Then you couldn't see anything else but the pole, could you?

A. Nothing else,, I suppose..

Q. Did you select that place purposely to look?

A. No.

Q. Do you mean when you were passing along there in the car on that cold day that you looked for the train when you got right back of these poles?

A. I looked for a train right along there, yes.

Q. And after you had looked and could not see on account of the poles, you did not look again, except you looked north?

10

A. Looked this way.

Q. In the opposite direction?

A. Didn't see nothing when I got right there, right close to the railroad, didn't see nothing; just how far it is I couldn't tell.

Q. If you had looked when you were just beyond these poles you could have seen, couldn't you? That is right, isn't it?

A. Well, no; of course, I had to look this way.

Q. I know, but if you had looked south just before you had passed those poles that you say we should place the camera behind, you could have seen, couldn't you? 20

A. Yes, but I had to look this way.

Q. Now, if you had looked just before you came to those poles, you could have seen, couldn't you?

A. I did.

Q. Well, you were 75 feet away when you looked for the first time.

A. I didn't see nothing.

Q. Couldn't see anything and you were 75 feet away the first time you looked, weren't you? 30

A. I couldnt say how far; no, I didn't say 75 feet.

Q. Did you so state to Mr. MacDonald a few days after this accident happened?

A. I don't remember that.

Q. You might have stated it and you might have been that?

A. Yes.

Q. I am going to show you a statement—it seems to be signed by you—I don't think there is any trouble about it. That is your signature, isn't it?

A. Yes.

Q. That is your signature to the other page?

A. Yes.

10 Q. Now, on the first page you said: "When I reached a point 75 feet from the track I looked both north and south for an approaching train and I did not see any, neither did I hear any whistle blown or a bell ring." That was correct at that time, wasn't it? That is what you understood at that time?

A. That is what I understood at that time.

Q. That was dated the 26th day of February—that is 21 days after this accident happened—that is right?

A. Yes.

20 Q. Then, Mr. Ballinger, at that time when it was fresh in your mind, your recollection was that when you were 75 feet away, you looked in both directions for an approaching train and didn't see any?

A. Yes.

At this point a recess was taken until 1.15 o'clock P. M.

Hearing of matter resumed after recess, in the presence of counsel for the respective parties.

30

HARRY BALLINGER, resumed in cross-examination.

By Mr. Bourgeois:

Q. Mr. Ballinger, I think I understood you to say that the 5th day of February was a cold day?

A. A cold day, yes.

Q. As a matter of fact, it was extremely cold, wasn't it?

A. Very cold, yes.

Q. And there was a strong wind blowing that day, too, wasn't there?

A. Not strong, no, it wasn't a strong wind.

Q. Wasn't it blowing twenty-six miles an hour, or don't you call that a strong wind?

A. I don't know hardly about that; it wasn't strong, it wasn't real strong.

Q. No, it wasn't a gale, but the direction of the wind was 10 northwest, wasn't it?

A. I think so, yes.

Q. So that—turn around so you can see this way if you will, please—so that while this train was traveling up this track and you were going down the Mantua road the wind was blowing the sound of the train off in that direction, wasn't it, toward the southeast?

A. Yes.

Q. Away from you?

A. Yes.

20

Q. How many curtains did I understand you to say you had down on your machine or, rather, had up on your machine?

A. Had two, one on each side.

Q. Now, when you say "down," you mean that they were lowered from the top?

A. Lowered from the top.

Q. One on each side?

A. Yes.

30

By the Court:

Q. You mean they were closed?

A. Down, yes, closed, pulled down.

By Mr. Bourgeois:

Q. That had a tendency to close the car as far as those curtains went, didn't it?

A. Yes.

Q. Did you have both curtains down on the left hand side of the car?

A. One curtain on each side.

Q. Now, how many times did I understand you to say you looked as you came to that crossing, four times?

A. Four times, yes.

10 Q. Twice in each direction?

A. Twice in each direction, maybe more, but I remember that much.

Q. Now, when you made this statement to Mr. MacDonald you undertook to tell him the truth, didn't you? You told him what you understood to be the truth?

A. As near as I could; of course, I couldn't tell him about the distance from the track, you know, I couldn't tell him that; that was his idea.

20 Q. Did you tell him all of it, tell him everything about the accident, as far as you then recalled?

A. As far as I could recall.

Q. You told him everything?

A. Everything that I knew.

Q. In other words, you didn't attempt to conceal anything from him?

A. No.

Q. Was there snow on the ground that day?

A. Snow, yes.

30 Q. I show you a little photograph here and ask you if that looks like the country did on that afternoon as you were driving along? This is the Mantua Road that you see right close to you, and you can see the track.

A. No, I can't tell anything about those photographs.

Q. Well, you can see, can't you, Mr. Ballinger, you can see the trolley track along here in the road and you can see the fence?

A. I can see it on this photograph, yes.

Q. And you can also see the railroad track as it leads up across the picture?

A. Yes, it looks like the rails.

Q. And you can see these corn shocks in the field there—they were there, weren't they?

A. I don't remember that.

Q. You don't remember that?

A. No.

Q. Well, as far as you recall, does that look about as it did that morning or that afternoon? [?] 10

A. I couldn't answer.

Mr. Bourgeois: If the Court please, I want to have marked for identification this statement of Mr. Ballinger's.

The Court: It may be marked.

(Said statement marked as Exhibit P 1 for identification.) 20

Q. Did you have ear tabs down over your ears that day as you were driving along?

A. I did not.

Q. But you were out exposed to the wind and the cold?

A. Yes.

Q. I want to read this to you and ask you some questions about it: "Statement of Mr. Harry B. Ballinger. I was driving"——

Mr. Stockwell: Are you reading it all now, Mr. Bourgeois? 30

Mr. Bourgeois: Yes.

Mr. Stockwell: Or just sections?

Mr. Bourgeois: No, I thought I would read it all, then

question him about some of it. (Continuing.) "117 North Church street, Moorestown, N. J."

Mr. Stockwell: One moment. Has Mr. Ballinger said he signed this?

The Court: Oh, yes. He said he signed both sheets.

Q. (Continuing.) "I was driving an auto truck owned
10 by Mr. Pancoast, February 5, 1918, the date this accident occurred." That is correct, I suppose?

A. Yes.

Q. "The accident happened about 1.20 P. M. The car is a right hand drive." Now, that made it, the car being a right hand drive, that you were on the side of the car next to the approaching train, didn't it?

A. Yes.

Q. "And the curtain was down on this side." Now, that would mean the right hand side?

20 A. Yes.

Q. Now, was the curtain down on the right hand side?

A. Yes.

Q. "But I could see very clearly toward the south, the direction from which the train approached. When I reached a point 75 feet from the track I looked both north and south for an approaching train and did not see any, neither did I hear any whistle blown for the crossing by the engineman of the train. After I reached a point 75 feet I could not see anything, and I was unable to see approaching train until
30 I got within ten feet of the track." Now, did I understand you to say in your testimony that after you had looked north and south when you were about 75 feet away that as you came nearer the track you again looked north and south?

A. Again looked north and south.

Q. And how far then were you from the track?

A. Well, I couldn't tell exactly. Not very far.

Q. Were you within the ten feet?

A. No, I don't think I was.

Q. Well, what was the object of looking north and south if you couldn't see anything?

A. On account of the sign up.

Q. I understand, but you say that when you looked at a point when you were seventy-five feet away then you couldn't see anything more until you got within ten feet. Now, what was the object of looking during that space if you could not see anything?

A. I always did. Always did watch the trains; always. 10

Q. Do you still contend that you could not see anything after you had come within seventy-five feet of the track if you had looked for it?

A. There is a place there, a certain distance you could not see anything. Yes.

Q. Do you mean to say that there was a space within this distance of seventy-five feet where you couldn't see an approaching train?

A. Yes.

Q. And you told me this morning that that space was 20 when you were right back of this telegraph pole?

A. I suppose it must have been.

Q. You suppose it must have been?

A. Yes.

Q. Now, you were on the opposite side of the trolley road from the telegraph pole, weren't you?

A. Yes.

Q. What trolley line is that that runs along there?

A. To Mantua.

Q. And that is on the right hand side of the Mantua road? 30

A. Yes, for a ways, then on the left.

Q. And you were about midway between the property line and the nearest trolley track, weren't you, in the Mantua road?

A. I was right in the middle of the road, yes.

Q. Then you mean to say that when you came down at

a point in the middle of this road back of this trolley pole that you were not able to see?

A. I do.

Mr. Stockwell: You had better look at the map, Mr. Ballinger. He is pointing to the map.

10 Q. I say, when you approached this crossing and came to a point in the middle of the Mantua road in back of this pole that you speak of, you were unable to see an approaching train?

A. A line of poles, it is.

Q. Now, which line of poles do you refer to as a line of poles?

A. The big poles.

Q. Well, are they telegraph poles or telephone poles?

A. Now, I couldn't answer that question. They are big poles, that is all I know. Whether they are telegraph or telephone I don't know.

20 Q. Can you tell from the looks of this photograph which poles you have reference to, either of these, any of them? Maybe that will assist you.

A. No, them photographs doesn't assist me.

Q. Well, maybe this one that you looked at this morning will help you. Maybe this photograph that you looked at this morning will help you. Now, can you tell me which pole it was that obstructed your view?

A. No, that doesn't set right at all.

Q. It doesn't?

30 A. No.

Q. How many cars were there in that train. Do you remember?

A. I don't know nothing about it. Didn't see the train.

Q. You didn't see the train?

A. No.

Q. This line of poles or this pole when you were within

ten feet, as I understand, that is as near as you got before you saw it or could see?

A. I don't know exactly the distance, couldn't say.

Q. Anyhow, you could not see the train because that telegraph pole interposed?

A. I could not see the train.

Q. Then you proceeded, and you say, "At that time I was unable to prevent the collision." That is when you were within ten feet?

A. Yes.

10

Q. "And the train ran into my machine." Now, where did the train strike your machine, and where did your machine strike the train, do you know?

A. My car was on the track. Took the first drop, the front wheels on the track. I remember that slow going down on the rail, that is all I remember.

Q. Now, don't you remember that your car struck the side of that locomotive?

A. No, sir.

Q. And didn't even strike the front of it?

20

A. No, sir.

Q. You don't remember that?

A. No, I remember being on the rail.

Q. And you don't recall that you never touched the pilot of that engine at all?

A. I don't know nothing about that.

Q. "The train struck the front of the machine. At ten feet from the track where I had my view I could see for about thirty yards down the track." Now, just what did you mean by that? At ten feet from the track that would bring you beyond the poles?

30

A. Well, I don't know exactly; he wrote that out, you know. I don't know exactly.

Q. I know, but then you read it over and you signed it?

A. I don't know exactly, for I never measured it, anything like that.

Q. Well, tell me, what did you mean?

A. That was guess work, that is all; that was only guess work.

Q. You don't mean to say that after you got inside of this line of poles, inside, nearer to the track, you know, that you could only see thirty yards, do you? You could see further down than that, couldn't you?

A. See further down the track when you got on the track, yes.

10 Q. "The engine did not blow any warning blasts." Now, do you mean that you know it didn't or do you mean that you didn't hear it?

A. He didn't blow.

Q. How do you know, now? There are only two ways to know.

A. Well, I was right there watching for it and didn't hear it and it didn't blow.

Q. Well, the wind was blowing in the opposite direction from you. It was blowing the sound from you?

A. Yes, but I was watching for it?

20 Q. And it was a strong wind. What do you mean by watching for it, listening for it?

A. Watching for the train and everything.

Q. You were not watching the steam come out of the whistle?

A. No.

Q. But you were listening?

A. I was listening and watching.

Q. Did you know that a train was due at that time?

30 A. Around that time. Just exactly what time I didn't know.

Q. But you knew there was a train due about that time?

A. There was a train came along there somewhere about that time, a little earlier than that, I think.

Q. And how long had you been traveling over that road?

A. About sixteen years.

Q. You were thoroughly familiar with the crossing?

A. Yes.

Q. Did you ever have any difficulty in seeing trains before?

A. Never.

Q. Then you proceeded and you say, "The engine bell was not ringing." How did you know that the engine bell wasn't ringing?

A. Because I didn't hear it.

Q. Now, then, you did not see the bell stationary, did you?

A. Didn't see nothing.

10

Q. Then all you know is you didn't hear it and the wind was blowing the sound from you, yet you didn't hear it?

A. Yes.

Q. "I didn't have any ear tabs on on the date in question while I was driving the car. The train ran about a quarter of a mile before it was stopped." Now, do you know how far the train ran?

A. I did not, only what I heard.

Q. Somebody told you that?

A. Yes.

20

Q. "Dr. Powell, of Moorestown, is attending me." Is the doctor here?

A. I don't think so. No.

Q. "For a strained back and a sprained shoulder and nervous shock. My doctor has seen me about ten times since the accident happened. The car was being driven about eight miles an hour." That is correct, isn't it?

A. Yes.

Q. "I can usually stop a car running at this rate within six feet."?

30

A. Yes.

Q. "And my brakes were in good condition?"

A. Yes.

Q. Then you could stop your car in six feet and your brakes were in good condition so it would stop?

A. Yes.

Q. And you did not see the train until you were within ten feet before you had the collision?

A. I did not see the train.

Q. Oh, I thought you said you saw the train when it was about ten feet away?

A. I didn't see the train.

Mr. Stockwell: He didn't say that. He said all along that he never saw the train.

10

Q. "And I was unable to see the approaching train until I got within ten feet of the track. At that time I was unable to prevent the collision, and the train ran into my machine." So you did say you saw the train, didn't you?

A. No, I didn't see the train. If I did I wouldn't have been here.

Q. Do you mean to say your recollection about that is clearer now that it was a year and a half ago?

A. Yes.

20 Q. Clearer now than it was a year and a half ago?

A. Yes, sir.

HARRY BALLINGER, Redirect Ex.

By Mr. Stockwell:

Q. Mr. Ballinger, is that statement which Mr. Bourgeois has referred to in your handwriting?

A. No .

30 Q. Did you write that out?

A. No, I did not.

Q. Who is the man that came to see you?

A. That is what I couldn't tell. I couldn't answer that.

Q. Where were you when he came to see you?

A. At the store.

Q. Well, who suggested these statements that have been put in here?

A. The man himself.

By the Court:

Q. Was the statement read over to you or did you read it first before you signed it?

A. No, "Take a sketch at it," he said, so I did; looked it over a little bit.

Q. But what I ask you is, did he read it to you or did you read it before you signed it?

A. He told me to read it.

Q. Did you read it?

10

A. Not all thoroughly, no.

By Mr. Stockwell:

Q. It is true you had no tabs on, isn't it?

A. Yes.

Q. And it is true the whistle did not blow as you stated in the statement?

A. Yes.

Q. And it is true the bell did not ring?

20

A. Yes.

Q. And it is true the train ran a quarter of a mile before—

Mr. Bourgeois: He said he didn't know that. I object to that and ask that it be stricken out, because he has said he didn't know only what was told him.

Q. And your brakes were in good condition?

A. Yes.

30

Q. And your car otherwise in good condition?

A. Yes.

Q. Now, I ask you whether or not you saw the train before it struck you?

A. No.

Q. When was your attention first called to any line of

telegraph poles or telephone poles along this right of way?
When did you first notice them?

A. I have noticed them since the accident.

Q. You have told us you have noticed them.

A. That is since, you know; I knowed the line of poles was there any everything, but not to notice them thoroughly like I did this time.

Q. What do you mean by "this time"?

A. After the accident.

10 Q. Well, you mean the time when you went down there with Mr. Allen?

A. Yes.

Q. And over the crossing?

A. Yes, I know there was a line of poles there and you could not see very far up the road, see?

Q. Is there any crossing bell at that crossing?

A. No.

Q. Are there any gates there?

A. No.

20 Q. Is there any safety device of any kind to protect the crossing?

A. Only a little sign, was all.

Q. A signboard marking the railroad crossing?

A. Yes.

Q. Along the railroad right of way toward Salem is there a house and other buildings?

A. Yes.

Q. Near the railroad tracks?

A. Yes.

30 Q. Visible in the picture?

A. Visible, those are in the picture.

Q. And beyond the house and outbuildings is there a patch of woods further down the road?

A. That is, away from the crossing?

Q. Yes.

A. Yes.

Q. Now, how far is it approximately from the crossing to that house, do you know?

A. About a hundred yards, isn't it?

Q. About a hundred yards? Well, how about the woods, are they clearly shown in the picture?

A. They are down back, back of the train.

By Mr. Bourgeois:

Q. Just one question, Mr. Ballinger: Do you mean to say that you drove down that track with a train coming almost directly toward you and never saw it until you got on the track? 10

A. That is what I say.

Q. Never saw it at all?

A. No.

Q. You were going down this Mantua road and the train was coming up here?

A. Yes.

Q. You were sitting on the right hand side right by the train? 20

A. Yes.

Q. And you came together and you never saw the train?

A. No.

Q. Well, were you asleep?

A. I don't think I was.

Q. Do you think it was possible for you to have gone up there with a train right in front of you and not see it until it struck you?

A. It was in this case. 30

Q. I suppose you were careful, weren't you, as you went along the road?

A. Yes.

Q. Careful to look and listen?

A. Always.

Q. And yet looking almost directly at the train when it was approaching, you did not see it?

A. No.

Q. Never saw it at all?

A. I did not.

Q. Now, what do you suppose induced you to say in this statement, "And I was unable to see the approaching train until I got within ten feet from the track; at that time I was unable to prevent the collision?" Now, there you told Mr. MacDonald or practically told him, "I saw the train when I was ten feet away and I could not then prevent the collision."

10 A. I never saw it.

Q. You never saw it?

A. No.

By Mr. Stockwell:

Q. Did you tell Mr. MacDonald that you saw the train?

A. I did not.

20

WALTER J. NOBLE, sworn.

By Mr. Stockwell:

Q. Where do you live, Mr. Noble?

A. Vineland, New Jersey.

Q. What is your business?

A. Hauling, motor hauling.

Q. Was that your line of business on February 5, 1918?

30 A. No, sir, I was working for a party, doing the same kind of work.

Q. Well, were you using a truck or any other kind of automobile on February 5, 1918?

A. Using a truck.

Q. And were you in the vicinity of the crossing of the West Jersey & Seashore Railroad with the road leading from Woodbury to Mantua on that day?

A. Yes.

Q. What time in the day, about?

A. I couldn't say, I haven't any idea exactly.

Q. You remember the day?

A. I remember the day.

Q. All right; from what direction were you approaching the crossing?

A. I was coming from Mantua to Woodbury.

Q. And did you see Mr. Ballinger that day?

A. Yes.

10

Q. Now, will you tell us just what happened at that crossing?

A. Well, I was waiting for the train to pass.

Q. One minute, where were you waiting?

A. At the crossing.

Q. Were you in or out of your machine?

A. I was out, standing in front of my machine, warming my hands on the radiator.

Q. With your back or your face toward the radiator?

A. With my back to the radiator, with my hands behind me, facing Mr. Ballinger, or facing the railroad.

Q. Now, you were on the opposite side of the crossing from Mr. Ballinger then?

A. Yes.

Q. Go ahead.

A. And I noticed this truck coming; it was coming very slowly. I was a little bit in doubt whether he was waiting for me or whether he was going to wait for the train, but just—it all happened within an instant—as his wheel came in contact with the track, that is the last I seen of him until the train had gone by, and I walked over to him and I asked him if he was hurt and I got no reply from him. I put my hands on him and raised him and he said, "That train never blew its whistle," which I did not hear either.

30

Q. Did the whistle blow?

A. No.

Q. Was there any kind of whistle, either danger whistle or ordinary whistle?

A. There was no whistle or signal of any kind.

Q. Were you in a position to hear it if it had blown?

A. Well, I was within five feet of the railroad at the time.

Q. And you were on the opposite side of the crossing?

A. On the opposite side.

Q. And if the wind had been blowing away from Mr. Balingier would it have been blowing toward you?

10 A. Yes, sir.

Q. Did the bell of the engine ring?

A. No, sir.

Q. Was there any signal of any kind that you heard?

A. No, sir.

Q. Did the train go by at a slow or rapid rate?

A. I should judge the rate that I travel when I am in a hurry, about thirty-five or forty miles an hour.

Q. And how far did it go before it was brought to a stop?

20 A. I should judge from a quarter to three-quarters of a mile?

Q. Did it go down to the patch of woods?

A. Yes.

Q. Toward Woodbury?

A. Toward Woodbury.

Q. And after it had stopped, the accident had occurred, did they bring the train back?

A. Yes.

Q. How long after did they bring it back, right away?

30 A. Well, they were a few minutes getting started back; I at first thought they weren't coming, then the conductor or brakeman or some of them, two of them, I believe, walked back part of the way.

Q. Did they have any difficulty getting the train started back?

A. Quite some, I presume, from the length of time they were coming back.

Q. You weren't there, I don't suppose—you don't know the reason for that?

A. No, I wasn't up there.

Q. There is no bell at the crossing and there is no flagman or gates?

A. No, sir.

The Court: There is no dispute about that.

Q. How did Mr. Ballinger approach that crossing—was he going at a rapid rate or was he approaching slowly or did he stop? 10

A. Slowly, because I was under the impression the roads were not open, it was only fit for one vehicle to go in these ruts, and traveling a distance—I came from Vineland and was going to Philadelphia—I presumed he was waiting for me to pull out and let him go by, therefore I was waiting for the train, and I thought he was waiting for me to come on, or he was slowing up for me to come on and pass him, therefore I know for that reason he was running very slowly. 20

By the Court:

Q. In what way did the collision take place—who was struck and how did that occur?

A. The train struck the car, just simply turned the car, started back from where it came from, very near in that position.

Q. Could you tell how it struck it, whether it struck it on the front or side or how? 30

A. As near as I can picture it, it struck his front wheel and just threw him sideways; it looked as though it was struck twice, by the center of the train or locomotive or some part of the train.

Q. What part of the train do you think struck the front wheel?

A. I imagine it must have been the step or cowcatcher or

something there. I should just say the front wheels of his truck turned sideways, running parallel with the locomotive.

Q. Had the automobile gotten on the track when the accident happened?

A. No more than that, I don't believe; the front wheels had just dropped. There was a gulley where the railroad had opened their line, and of course the snow had frozen and made a sort of a ditch.

10 Q. You mean right along the crossing, the track?

A. On the crossing of the track, and you had to drop that very careful.

Q. Could you tell us exactly where the wheels of his car were when the contact took place?

A. Well, I couldn't, not at the rate that locomotive was going, and I just could see him drop, and then of course the locomotive drove right on by.

20 By Mr. Stockwell:

Q. What became of the machine, where was that thrown?

A. It was thrown all over, practically, to the side of the road, that is, on the roadbed of the railroad; it was thrown off of the railroad.

Q. Look at this map; this is coming up the railroad from Salem and this is Mr. Ballinger going down toward the crossing; you are coming this way, see? Now, where was the machine thrown by the accident?

30 A. Right above there, in that little V-shape here off to the side.

Q. Right in here (indicating on map)?

A. Yes.

Q. Was it thrown over the crossing or was it left on the crossing?

A. No, it was just deliberately turned back; where his front would be his back was.

By the Court:

Q. But still on the road?

A. No, it was just off the main highway on to the little piece, the V in there where the railroads cross, just turned here right around, and of course the heaviest parts were left there.

By Mr. Stockwell:

10

Q. Did the whole machine remain intact or was it broken in pieces?

A. No, more like kindling wood.

Q. Were the pieces scattered or were they——

A. Yes, the pieces were scattered.

The Court: You claim the whole value of the machine?

Mr. Stockwell: Yes.

2)

The Court: Is there any dispute about that, Mr. Bourgeois?

Mr. Bourgeois: I don't think so.

The Court: Well, you need not multiply on things where they will not be controverted.

Q. You helped Mr. Ballinger up?

A. Yes.

30

Q. What was his condition when you left him?

A. Well, he was so he couldn't talk; the only two things he said was that, "That train didn't blow its whistle," and, "There is one thing I would like to have, that is my little red ledger." That is the only thing I heard from Mr. Ballinger until the time I left him.

Q. Then they took him on the train and you went away?

A. Took him on the train, and that was the last I seen him.

CROSS-EXAMINATION.

By Mr. Bourgeois:

Q. Can you see this map back here?

A. Yes.

10 By Mr. Stockwell:

Q. Just one minute; are you in a position to say whether or not the curtains on the front of Ballinger's car were opened or closed?

A. I could just see these half curtains as he himself spoke of them, being familiar with trucks I recognized them to be just as he spoke of them being.

Q. In the position as he described them?

A. Yes.

20

By Mr. Bourgeois:

Q. This is the railroad leading from Salem up to Camden?

A. Yes.

Q. This is the Mantua road leading from Woodbury to Mantua?

A. Yes.

Q. Now, you were coming up through Mantua from Vine-land, I understand?

30 A. Yes.

Q. You were on the same side of the road that Mr. Ballinger was on except you were on one side of the car track and he was on the other side—that is right, isn't it?

A. Yes.

Q. Now, was your car a right hand or a left hand drive?

A. I don't know, what is a Ford? Whatever a Ford is, I was.

Q. Then I take it it was a left.

A. I drive it so little I don't know.

Q. Now, you were coming practically in the same direction the train was coming, weren't you?

A. No.

Q. You had to turn very far around over your shoulder in order to see a train? You see that acute angle? You were coming up in that direction toward Woodbury from Mantua?

A. Yes.

10

Q. The train was coming up from Salem toward Woodbury?

A. Yes.

Q. Now, I want to know what it was that attracted your attention to this train coming on?

A. Nothing particularly; I seen the truck coming and I wanted an excuse to stop anyway, and I had to, first seeing the truck coming, then I noticed the train, and I got out and warmed my hands there while waiting for the train to pass me.

20

Q. Now, what was it that attracted your attention to the on-coming train?

A. The railroad crossing.

Q. Well, that wouldn't make you—— Did you look when you saw the crossing, look down to see the train?

A. Yes.

Q. How far down was the train at that time?

A. Well, it was very close, I couldn't say, roughly.

Q. Was it four hundred feet, would you judge? That is a city block.

30

A. I presume it was that, yes.

Q. Was it two city blocks?

A. Well, I couldn't say; I was standing there long enough for seven trains to pass me while on the crossing myself before this train came.

Q. Well, I thought you said you stopped there because you

wanted an occasion to stop, you saw Mr. Ballinger coming and therefore you stopped?

A. That was my principal thought and not the train.

Q. Then when you saw Mr. Ballinger coming you stopped and you waited there long enough for seven trains to have passed before this one came up?

A. Yes.

Q. Now, how long would you judge that to be, how many minutes, two or three?

10 A. Oh, no, it was all done within a few seconds.

Q. How much?

A. A few seconds.

Q. A few seconds? Do you think seven trains could pass you in a few seconds?

A. I am speaking of the length of time it took for the accident to happen.

Q. Less than a minute, you think; do you think it was less than a minute or more?

A. Oh, no, more than a minute.

20 Q. Then you stood here for more than a minute watching Mr. Ballinger coming toward you and seeing this train coming up toward you?

A. Yes.

Q. Now, what did you do when you saw the train coming and saw Mr. Ballinger coming to warn him that the train was coming?

A. I undertook to put my hand up; I didn't have time.

Q. Well, it wouldn't take a minute to put your hand up, would it?

30 A. No, sir.

Q. What was it—what did you do or why didn't you do something to warn Mr. Ballinger?

A. I seen the train and seen Mr. Ballinger both coming and I presumed they were both going to come together.

Q. Well, didn't you think Mr. Ballinger saw that train—didn't you think he was going to stop?

A. I don't know whether he seen it or not.

Q. Well, if you had thought he did not see it, wouldn't you have warned him?

A. I don't believe I would.

Q. You think you would have not?

A. I would have been too scared to try to.

Q. You think you would allow him to go right on into danger and get hurt probably rather than to warn him when you saw the train coming and saw him coming into it, would you?

A. If I had ample time probably I would have.

10

Q. Wouldn't a minute be ample time for you to do that? Don't you think a minute would be ample time—come, now, Mr. Noble?

Mr. Stockwell: Oh, he has answered.

Q. Wasn't the reason you didn't warn him because you thought he was going to stop? Isn't that the reason you didn't warn him?

A. No, I believed that he was waiting for me to pass; that was my belief and idea; I never thought of him—

20

Q. Then you thought he wasn't coming over the track; he was waiting for you to pass over?

A. No, I was stopped, he wasn't.

Q. I know, but you told me a moment ago or just now that you thought he was waiting for you to pass him?

A. I didn't say that, I don't believe, because I was already standing still, and his car was moving.

Q. Well, you thought he was going to come over and pass you?

30

A. Exactly.

Q. And you saw this train coming up at the same time?

A. Yes.

Q. And you did not make any effort to stop him?

A. No, sir.

Q. I understand you thought he was coming right on over that track?

A. Yes.

Q. And you thought the train was going to hit him?

A. That is right, both of them, yes.

Q. And you didn't say a word to him or didn't do a thing to prevent it?

A. No, sir, nor I couldn't; if somebody shot me I couldn't.

Q. Now, that was a cold day?

A. Yes, sir.

Q. The wind was blowing hard?

10 A. Not so terribly hard.

Q. How many miles an hour, have you any notion?

A. No.

Q. You say the wind was blowing toward you; the wind was northwest, blowing the sound toward you?

A. Yes, sir.

Q. Wouldn't the wind have blown that sound off from you all the time until the train got immediately abreast of you?

A. I don't think so.

20 Q. That is north and this is northwest (indicating on map)?

A. If it had blown loud enough I would have heard it.

Q. But you don't know whether it blew or not only you didn't hear it?

A. I didn't hear it.

Q. Did you look to see whether any steam came out of the whistle or not, or didn't you see the train at that time?

A. Well, because the trains as they run now—I just notice the safety valve.

30 Q. No, not as they run now; I want to know that particular train on that particular day.

A. I was picturing one as I see them, as I seen that.

Q. I don't want you to picture one as you see *them*; I want to know whether on that occasion you saw steam coming from that train?

A. No.

Q. You did not? Did you look or didn't you think——

A. I looked.

Q. Now, tell the jury why you looked for steam coming from that train?

A. I didn't say I looked for steam coming from that train.

Q. I thought you did?

A. No, you asked me if I did and I told you no.

(The testimony of the witness on this point was then read by the stenographer.)

Q. You say that you did look and you didn't see it? 10

A. Yes.

Q. Now, why did you look for steam or why did you look on that occasion?

A. I had no particular cause to look for anything, because I was perfectly safe myself.

Q. And at the time when you looked you saw both the train and also this man approaching the crossing?

A. Yes.

Q. Now, why did you take your attention from this man approaching that crossing or place of danger to look 20 for steam, if it was coming out of the whistle box?

A. I did not.

Q. Now, you made a statement, I suppose, didn't you, about this thing? That is your signature, isn't it?

A. Yes, sir.

Q. And that also (showing witness paper)?

A. Yes, sir.

Q. That was made on the 15th of February; that was ten days after it happened, wasn't it?

A. According to that, yes.

Q. Now, where were you when you made that state- 30 ment?

A. West Philadelphia.

Q. In the place of your employer?

A. No, sir; at my residence.

Q. What time of day or evening was it?

A. I believe it was in the evening.

Q. How long was the gentleman there that came to interview you?

A. Just long enough to fill that out, as I can remember.

Q. Then you read it over and signed it?

A. I didn't read it; he simply asked me questions and I answered them, is all.

Q. You mean to say that you signed that——

Mr. Stockwell: Wait a minute; he didn't complete
10 that. You did what?

The Witness: I answered them as he asked me.

Q. Do you mean to say you signed that statement without reading it?

A. Yes.

Q. Now, think?

A. He asked me to read it and I believe, if I remember
20 right, I told him it was all right, that what I told him
was the fact.

Mr. Bourgeois: I am going to mark this for identification Exhibit D 2.

(Said paper is so marked.)

Q. Now, I understand you to say that the train, the front part of the train struck the fore wheel of the car, the truck?

30 A. Yes, sir.

Q. Are you quite sure about that?

A. Only as I picture it, that is all, on that day.

Q. Didn't the automobile run into the side of that automobile or tender, as you pictured it?

A. I couldn't say, no, not to turn it the way it turned it.

Q. Tell me whether you did not tell this man the statement I am going to read to you and if it is not a fact:

"On February 5, 1918, I was driving a Ford truck car owned by Richard & Kelly, of Philadelphia, north on Mantua avenue, Woodbury, when an auto truck owned by T. S. Pancoast, of Camden, New Jersey, was struck by a north bound steam passenger train at the Mantua avenue crossing of the Salem branch of the West Jersey & Seashore Railroad Company."

A. Yes.

Q. That is all right that far, isn't it?

A. Yes.

10

Q. "I saw the train and came to a stop about thirty feet from the crossing, but the train did not whistle or ring its bell." That is right that far?

A. Yes.

Q. "This other truck that was struck was approaching the crossing at a speed of about ten miles an hour." Is that right that far?

A. I don't know whether I told him that or not; if I signed for it I must.

Q. You signed for it.

20

A. All right.

Q. "Just an instant before the train struck this truck it veered slightly to the left." Is that right? It turned a little to the left, did it?

A. Well, as I think of it. I thought no more of it at that time. The locomotive turned that truck instead of the car itself turning.

Q. I am asking you. This is the statement you made ten days afterward?

A. Yes.

30

Q. Now, I am asking you whether the car itself turned a little to the left just before it was struck, like this statement says?

A. Well, you see, that man asked me those questions.

Q. Yes?

A. And of course I answered them as near as I could tell at that time.

Q. Yes; then as near as you could tell at that time was that the car did veer a little to the left. Is that right?

A. He did, just an instant before the train struck, yes.

Q. The truck had veered slightly to the left. Is that right?

A. Yes.

10 Q. "I think the driver saw the engine just before he was struck." Is that right?

A. Yes.

Q. "It was not the engine that struck him, but it seemed to be the front part of the tender that came in contact with the truck." Is that right?

A. Yes, sir.

Q. "When the train struck the truck it turned it up the track." That is right?

A. Yes, running parallel with the railroad.

20 Q. "The truck had its windshield in place, but the sides were entirely open." That is as you understand it?

A. Yes.

Q. "This man had a good view to see the train if he had looked southward." That is right, too?

A. Yes.

Q. Now, you saw him coming. You could see him through the windshield, couldn't you?

A. I could see him if I had looked personally for him. I don't recall looking just for him exactly.

30 Q. Then you don't know. You didn't see him to remember whether he looked or whether he didn't look?

A. No, sir.

Q. But you think if he had looked he could have seen all right?

A. I don't know whether he could or not.

Q. Well, here you seem to have said so: "This man

had a good view to see the train if he had looked southward."

A. Well, that is my opinion of it; that is not his.

Q. No, I am not asking for his. I am examining you. That is all.

By Mr. Stockwell:

Q. That statement is not in your handwriting, is it?

A. No, sir.

10

Q. Have you seen it from the time he took it up until the present time?

A. No, sir.

The Court: He seems to assent to nearly all of it. He says it is correct. It don't make any difference whether it is in his handwriting or not then, does it, if that is a fact?

Mr. Stockwell: I wish to ask him about the speed of that train. 20

Q. I want to get your judgment now, Mr. Noble, as to the speed of the train.

Mr. Bourgeois: If your honor please, he asked him that on direct examination and he said it was going thirty-five or forty miles an hour.

Q. Before that statement was produced to you, did you say it was going ten miles an hour or thirty miles an hour? 30

Mr. Bourgeois: This statement don't say the train was going ten miles an hour. He said the automobile was going ten miles an hour.

Mr. Stockwell: Oh, I understand you to read it that the train was going ten miles an hour.

Q. There is a statement here to the effect that this man had a good view to see the train if he had looked southward. Well, what would have been his position if he had a good view southward? I don't see any statement here as to the place Mr. Ballinger was supposed to be. Where do you suppose Mr. Ballinger was at the time he
10 was supposed to have a clear view southward?

A. I would judge from the way I answered that when he asked me that question, as close to the railroad as I was.

Q. How close were you?

A. The statement says thirty feet.

Q. Is that correct?

A. About correct; yes, sir.

20

C. RICHARD ALLEN, sworn.

By Mr. Stockwell:

Q. Mr. Allen, you are in the office of Bleakly & Stockwell, aren't you?

A. I am.

Q. You didn't have anything to do with this accident?

A. No, sir.

30 Q. Were you requested by me to go with Mr. Ballinger down to this crossing in Woodbury here a few days ago or a week or so ago?

A. I was.

Q. And go over the crossing?

A. I was.

Q. And get the condition of the crossing?

A. Yes.

Q. Now, won't you please go to the map and indicate what, if any, obstruction is furnished by the lines of telegraph or telephone poles to a person who is approaching on this Mantua-Woodbury road from Woodbury? Now, explain that, will you?

A. I went down with Mr. Ballinger, and on the side toward Woodbury or going in the same direction in which Mr. Ballinger was traveling at the time of the accident, we stopped the car. A train was coming from Woodbury or Camden. A short space after it passed the highway crossing. I guess the train had gone possibly a hundred or a hundred and fifty feet over the highway. I ran back eight paces, measured that off at the time, and there was a line of poles formed possibly by any one of these poles, one that would be probably twenty feet back from the railroad crossing, coming in line with the double line of poles running parallel with the railroad crossing, and for a space of possibly two hundred yards that train was obstructed by two or three poles.

Q. You mean the view was obstructed?

A. The view of the train. In other words, the train traveled a couple of hundred yards before it came into view again while I was standing in that one position.

The Court: Where did he place himself then? (To the witness.) Where did you say you were?

The Witness: I was eight or nine paces from the track. I counted them off as I paced them.

By the Court:

Q. What hindered you from seeing?

A. The line of poles formed a blind angle.

Q. And how wide a space did that cover? By that I mean, how much freedom of movement had you before

you could see either past it or before you reached it in that situation?

A. If I had walked one foot in either direction or a total of two feet I could not have seen anything. But, of course, if I had gone out of that blind angle I probably might have been able to see the train. In other words, the blind angle covered at least two feet.

Q. Otherwise you could see?

10 A. Well, I stood there to see how long the train could go—

Q. Yes, but an automobile that is moving does not stand there. I want to know how long, whether you could see when you were not in that particular spot?

A. I imagine you could.

Q. Did you look to see?

A. No.

By Mr. Stockwell:

20 Q. Well, did you move along to see whether there was any other blind angle formed by another pole on the Mantua pike and those on the railroad?

A. I couldn't with that one train, because I stood watching that train; then I walked up and saw that there were other blind angles. I didn't try those with an actual test.

Q. Not with the train. The train had gone?

A. But there were other blind angles.

30 By the Court:

Q. Where did you stand, Mr. Allen, with respect to the road? What part of the road did you stand in?

A. In the middle of the road just where Mr. Ballinger told me he had stopped his truck.

Q. To the left of the street car track?

A. Yes.

CROSS-EXAMINATION.

My Mr. Bourgeois :

Q. Mr. Allen, your line of vision is a straight line, isn't it?

A. Yes.

Q. Won't you take a sheet of paper or anything with a straight edge that you want, I don't care what, and find a point, an angle in the middle of that street, that road where your view is obstructed by those poles as you have testified, and when you find that point put it on the map, any point you want? 10

Mr. Stockwell: You mean according to this map?

Mr. Bourgeois: We will show these poles are properly delineated on this map, of the proper size. I want you to take any point at all where you want to put it, where you stood, or any place else and show us how it is possible for those poles to obstruct a train for a distance of two hundred yards. 20

A. I don't know that it can be done with that map, but it was done with an actual test on the train.

The Court: Why don't you do it on these pictures, gentlemen? You have got the pictures in evidence.

Mr. Bourgeois: If he can do it on the picture, I would just as soon. 30

The Court: The picture would be far more distinct.

Mr. Bourgeois: Any place at all. You can't show a straight edge on a picture.

The Witness: No, but if you should stand at a point back here and look down that track you can see where there would be one blind angle formed.

Q. No, for a space of two hundred yards. I can see how you can get back on an angle with these poles close enough to them so you can't see anything, but I want you to show me how you can get in the middle of the road and get close enough to one of these poles to obstruct the view of that track for six hundred feet?

A. The poles running parallel with the railroad crossing are staggered to a certain extent. This other line of poles belonging to the Public Service, of course, runs at a dihedral angle. There would be one blind angle right in here. Do you want it marked?

Q. Yes, anywhere at all. Now, where are you going to stand?

A. Right over here.

20 The Court: Mr. Bourgeois, isn't that really a matter of argument?

Mr. Bourgeois: I want him to put a point there, wherever he wants it. If he will put a point there I think I can do the rest of the argument.

The Court: Well, put your point.

Q. Put a point in the middle of the road wherever you want it.

A. All right. That will show the theoretical thing. The lines are not quite straight.

Q. No, let me ask you. You have made a point in the middle of the Mantua road and you have drawn a line intercepted by two poles, one of the Delaware & Atlantic Telephone Company and the other a telegraph pole of the Railroad Company?

30

A. Yes.

Q. That brings you to what point? Extend that to the railroad track.

(Witness complies.)

Q. Why is that a blind angle? Why can't you see right in between the two? There is a space there that is apparently intercepted of about 150 feet?

A. You are standing directly behind that one pole. 10

Q. You are in the middle of the road?

A. But directly behind that one pole.

Q. No, you are not. You are only behind that pole as to one of the lines there.

A. But by looking at a straight line, even according to this map, there is a blind spot here. If you shift your eye to the other side there is your other line of vision. Any point between these two lines of vision is blank.

Q. Oh, is that so?

A. Yes. 20

Q. Then, if you were to stand, for instance, to stand here and if I look toward Mr. McDonald, my vision is obstructed. If I look beyond Mr. Neutze my vision is obstructed there, and therefore my vision is obstructed between the two, is it?

A. When the same converging point exists, yes. If there is one pole which is the beginning of the blind angle in either direction.

Q. Don't you know that is not true? Now, look. When you take that position you say your line of vision 30 is intercepted by the first pole there. That goes in a straight line. Then you take another line of vision of another pole, and don't you see another line will go right between the two right down there and give you a vision?

A. Mr. Bourgeois, according to your presumption there, you would have to be able to look through the first pole. The first pole would have to be transparent.

Q. No, it doesn't.

A. It absolutely does.

Q. You look to the side of the first pole; on this side of one pole and that side of the other?

A. If you are looking to the side of the first pole you are not looking in the angle.

Q. All right, we will let the jury have the map and illustrations. They will believe you if they can figure that out.

10 A. You would have to be looking through the first pole.

Q. Now, can't you find another place on it? Is that the only place you can find?

A. That is the only place I located.

Q. Twenty-four feet back. That is about where you locate it, wasn't it?

A. Yes.

Q. No, can't you find a place there in that twenty-four feet?

20 A. I think that is one, isn't it?

Q. Extend your lines all the way to the track, if you will?

A. Standing at the same point back of this pole I think the same condition would exist.

Q. You have extended both lines all the way to the track, have you?

A. All the way to the track.

30

FRANK W. BEIRNS, sworn.

By Mr. Stockwell:

Q. Where do you live?

A. 1908 Venango street, Philadelphia.

Q. What is your business?

A. Assistant sales manager, White Company, automobile trucks.

Q. You are in the automobile business?

A. Yes.

Q. Did you have knowledge of the car which Mr. Pan-coast owned in 1918, February of that year, a White car?

A. Yes, sir.

Q. Are you in a position to say what the condition of that car was in February, 1918?

A. Yes, sir.

10

Q. What year make was that car?

A. 1912 model. It was sold to him in the middle part of 1911, but it was a 1912 model, a model put out about half a year ahead.

Q. A new car?

A. Yes.

Q. What is the price of that car now?

A. Those cars sold for \$3,000 for the chassis and the type body he put on it would sell at that time for about \$475. I don't know what he paid for it. That was a different order, for the body.

20

Q. \$475 covered the special body that was on this car?

A. Yes.

Q. Do you know what condition the car was in in February, 1918?

A. In good running condition.

Q. Had it been over there for overhauling?

A. Some time previous to that, I think a few months, it had been over there and had a complete new rear assembly put in, a rear axle housing, rear gears of another type.

30

Q. In what other respects was the condition of the car?

A. As far as I know good.

Q. I want to know, if you know?

A. I only know from records on our books that he was continually replacing parts as they wore out.

Q. What was the life of that car?

A. The life of the car?

Q. What should it have been except for the accident?

A. They vary a great deal. We have some records of cars that have gone 300,000 miles. It is pretty hard to determine just what the life of the car was.

Q. Well, in the condition that car was in in 1918, what was the fair value of that car, in February, 1918?

A. I would say approximately \$2,500.

10

The Court: It was totally destroyed, was it? Had it no value?

Mr. Stockwell: I think that will be admitted. I was going to show that the Railroad Company took the car away on their own flat car. It has never been returned to us. They carted it away as junk.

CROSS-EXAMINATION.

20

By Mr. Bourgeois:

Q. Mr. Beirns, don't you have a regular fixed price for cars, used cars?

A. No, sir.

Q. Of different years?

A. No, sir.

Q. No trading-in value or anything of that sort?

A. No, sir.

30 Q. Do you want us to understand that a White car that has been run seven years that cost \$3,450 is still worth \$2,500?

A. Yes, sir, to the man that is using it.

Q. For the man that is using it?

A. Yes.

Q. Oh, I don't mean that. I mean in the market?

A. I don't know what it would bring in the market.

Q. What, in your judgment, would it bring in the market?

A. At a second-hand sale?

Q. Yes; at a second-hand sale, or as a second-hand car?

A. It all depends. If it is at a forced sale it is going to bring a low price. If a man finds a customer who wants that particular type of truck it will bring more money.

10

Q. No, I don't mean a forced sale; I mean what that truck is fairly worth in the market considering the fact that it has been run for seven years and cost \$3,450 new?

A. It would be worth \$2,500.

Q. In the market?

A. Yes?

Q. A second-hand car?

A. Yes, sir, in as good condition as that car was, and doing the work that that car was doing every day.

Q. Have you known any to sell for that price?

20

A. Yes.

Q. When and where, now, that have been run for seven years?

A. I can't tell you off hand.

Q. That have been run for seven years?

A. Yes.

Q. Well, will you tell me one, even a White, after it has been run for seven years that cost \$3,450 new and after seven years' wear the truck had sold for \$2,500?

A. I can't recall a case of particular people who bought or sold a truck, but we had such a case in our company about a year and a half ago or two years ago.

30

Q. One case?

A. Yes.

Q. And that places the value on cars, does it?

A. No, absolutely not. I told you before. I am plac-

ing my value primarily on the value to Mr. Pancoast. You have no way of judging in this court room just what the value of a second-hand car is. It all depends on how much a customer wants a second-hand car.

Q. You don't mean this jury to understand from your testimony that you individually went all over that car, do you?

A. No, sir.

10 Q. You don't know its condition, do you, except from the fact that it was overhauled?

A. Not from my own knowledge of seeing the car at the time of the accident.

Q. It has been overhauled in your shop?

A. It has been overhauled in our shop from time to time, replacements made from time to time.

Q. Do you know how many miles it had run?

A. Only from Mr. Pancoast's say so.

Q. That is hearsay?

A. Yes.

20 Q. Do you know if many cars run 300,000 miles?

A. Quite a few.

Q. Isn't it a fact that those few, after they have run that long distance, go to pieces. Go to pieces all at once?

A. No, sir, not the White.

Q. They don't go to pieces all at once?

A. No.

Q. Some parts wear out quicker than others?

A. Yes.

Q. What is the life of the White car?

30 A. Just what do you mean by the life of it?

Q. How many years do you consider a White car could—

A. You can't measure it in years.

Q. How many miles?

A. Well, it all depends on what you base the life of the car on.

Q. Well, I am asking you, how many miles do you base it on?

A. What do you mean by the life of a car?

Q. The number of miles the car will make, an ordinary car, not a special car?

A. It would run indefinitely if the replacements were made as the parts wore out.

Q. That is, a new car; to rebuild them, you mean?

A. No, I don't mean rebuild them; as the bushing wears out to replace it or any other part of the car wears out and it is replaced. 10

By the Court:

Q. Mr. Beirns, there is something known as the life of a car, isn't there?

A. Well, it is very indefinite, your Honor.

Q. That may be, but don't automobile men have some idea and don't they give some approximate life to a car?

A. The nearest that our engineers—if you will permit me to introduce them into this subject—have ever come in a logical way to determining the life of a car is until such time as you have spent in repairs and replacements the original price of the car. That is as near as they can determine the life of the car. 20

Q. Isn't the life of a car until it no longer pays to repair it? Isn't that the life of the car?

A. Your Honor, the question of it being repaired rests solely with the owner. The fact is if it is repaired the car will run just as many miles a day— 30

Q. It is a commercial question whether it will pay to repair it?

A. It is a commercial question whether it will pay to put so much money in repairs or buy a new car.

Q. Isn't that the life of the car, when it reaches a point where it does not pay to repair it?

A. No, in our opinion it is when you have spent in replacements as much as the original price of the car.

Q. You mean it is longer than that?

A. It all depends.

Q. Well, won't you answer me, please. I am trying to get somewhere. Won't you answer?

A. Longer than what, your Honor?

Q. Longer than it pays to repair it?

A. Yes, I would say so.

10 Q. Is seven years constant usage a good life of a truck?

A. Depending on its mileage, your Honor. If he has only run 12,000 miles it is not very much.

Q. You understand what I said, constant usage, regular usage, just such use as a truck gets?

A. That is not a long life for a car.

Q. What is it?

A. As I—

Q. Well, if you are here as an expert, give us something definite?

20 A. Well, you may call constant usage of a car fifteen miles a day.

Q. You know what I mean, don't you?

A. I am trying to differentiate between mileage and years.

Q. A truck that goes on the street is intended to be used, isn't it?

A. Yes.

Q. And it is used regularly, as a rule, isn't it?

A. Yes.

30 Q. And there is some custom about it, isn't there?

A. Yes.

Q. And regularity?

A. Yes.

Q. Now, based on that, what is the life of a truck?

A. I would say ten to twelve years.

Q. All right, that is something definite, and this car had seven of them?

A. Yes.

By Mr. Stockwell:

Q. Would you say that the life of the car was from ten to twelve years when the replacements had been made which had been made on this car?

A. I am just figuring as a sort of proposition that twelve years is a good life for a car to live, but in twelve years the car has usually, if it has been given customary usage, run its one hundred and fifty to two hundred thousand. 10

Q. With the replacements that have been made on this car, the condition in which it was in 1918, how long was that fit to run?

A. I would say that would have been fit to run quite a few years more, because the replacements he had made on that car had nowhere near come up to the original price of the car.

Q. Was there any advance in the price of cars between the time at which this was purchased and 1918? 20

A. Yes.

Q. How much?

A. On that particular model—that is on the chassis?

Q. Yes. How much on the body?

A. Well, I presume the body would have cost about \$150 more.

Q. About \$450?

A. Yes.

30

By Mr. Bourgeois:

Q. How many miles a day does a truck usually used in business commercially run?

A. Sixty or eighty. It varies between sixty and eighty miles.

Q. Each day?

A. Yes.

Q. Eighty miles would make 24,000 miles a year and 200 miles would make eight years instead of twelve.

A. Two hundred miles?

Q. Yes, you said the life to be about one hundred and sixty to two hundred thousand, and a hundred and sixty thousand miles would make a little less than seven years.

A. Yes.

10

THOMAS PANCOAST, sworn.

By Mr. Stockwell:

Q. You are the plaintiff or one of the plaintiffs here?

A. Yes.

Q. You are the owner of the White truck in question?

A. Yes.

20 Q. And Mr. Ballinger was employed by you?

A. Yes.

Q. Now, tell me what was the condition of this White truck in February, 1918?

A. Well, the condition was very good, as any parts of the truck which had improperly worn, we would have it sent over to repair and fix. I tried to keep the car in pretty good condition, because if you leave one little part go, why, it will take more, and I always tried to keep it in good condition.

30 Q. Well, I want to know whether it was in good running order at that time?

A. It was in good running order, yes.

Q. Was the body in good condition?

A. The body was in good condition, yes.

Q. Was it a special body?

A. A special body, yes.

Q. Not the regular stock body?

A. No, no stock body.

Q. What is Mr. Ballinger's condition now?

A. Well, Mr. Ballinger is sort of nervous. He isn't like he used to be.

Q. Well, how does that show itself? Interfere with his business at all?

A. Well, some, in the way of his getting around. He doesn't seem to be able to quite cover the ground he used to.

Q. Well, going back to the time of the accident, was 10
he laid off for some period?

A. Yes, he was off for about two weeks, quite two weeks, then I put a Mr. Eldredge on to run the car and take him around. That is, I felt that he would have to have somebody, that he was in that condition; yet I had no man that knew the route, so he went along.

Q. To show the route, you mean?

A. To show the route and carry in the goods and practically do the work for about three weeks.

Q. Was he in a condition to run the truck himself? 20

A. He didn't run the truck himself, no.

Q. I say, was he in a condition to run the truck?

A. I was afraid not, and I didn't leave him run the truck, but at the end of three weeks Mr. Eldredge left me and Mr. Ballinger thought he could take the truck and go ahead, which he has done since.

Q. Has he covered the entire route he covered before?

A. No, he doesn't get all over it; he is doing better lately than he did. He doesn't get all over it.

Q. Now, you weren't there at the time of the accident, 30
were you?

A. No, sir.

Q. When did you get down to the crossing?

A. The next morning. I don't just know. I suppose somewhere nine or ten o'clock.

Q. How soon did you get word of the accident?

A. The same afternoon.

Q. The same afternoon?

A. Yes.

Q. Did you send somebody down to salvage the candies?

A. I sent two men down for the candy, yes.

Q. Who did you send?

A. Mr. Eldredge and Mr. Ballinger. Ballinger's brother.

10 Q. And did they recover any considerable portion of it?

A. Well, they got very near all of it.

Q. How much candy was lost?

A. I think about—I counted seventy-one dollars and something.

Q. What was the value of the candy in the car?

A. What was the value?

Q. Yes.

A. I think three hundred and some dollars. Now, I can't just remember.

20 Q. I am showing you a memorandum—

The Court: Is there any dispute, Mr. Bourgeois, as to the loss of the candy?

Mr. Bourgeois: No.

The Witness: I think we did pretty good with the candy. I collected all but seventy dollars' worth.

30 Q. When you got down there the next morning, where was the truck—what was left of the truck?

A. The truck was removed.

Q. Where was it? Did you see it?

A. I saw the body in the yard and the chassis, the wheels, part of it I think on the side of the track up by the yard, the Woodbury yard.

Q. Was any part of the car on a flat car?

A. Yes, the body was on a flat car.

Q. Of the Railroad Company?

A. Yes, in the yard.

Q. Did you get possession of any part of the car?

A. No.

Q. Was it in any condition to produce any value at all?
Was it a total wreck?

A. Yes, I would consider it was a total wreck.

Q. What in your judgment was the value of the car at
the time of this collision? 10

Mr. Bourgeois: I object to that. He is not competent
to testify to that.

The Court: I am afraid he can't tell us that. You are
not in the car business, are you, Mr. Pancoast?

The Witness: No, only just in the way I kept it up,
that is all. 20

NO CROSS-EXAMINATION.

ALBERTUS WILSON, sworn.

By Mr. Stockwell:

Q. Where do you live, Mr. Wilson?

A. Mantua avenue, Woodbury. 30

Q. Near the crossing of the West Jersey & Seashore
Railroad?

A. Yes, sir.

Q. Just look at the map over here, will you, and tell
us about where you live? This is the railroad running
from Salem. This is the highway leading to Mantua.

Whose property is this over here? This is north, this points north, in this direction. This is Mantua avenue going to Camden this way. (Indicating on map.)

A. Oh, you have got it upside down.

Q. To you? Well, is that your property over there?

A. It must be there; yes.

Q. Assuming it is the other side up?

A. Yes, it is up-side down.

Q. Did you see this accident?

10 A. No, sir.

Q. Where were you when it occurred?

A. In the yard.

Q. Of your house?

A. Yes.

Q. The back or the front of the house?

A. Back of the house.

Q. Did you hear the collision?

A. Heard the impact.

Q. Then what did you do?

20 A. The train was crossing the crossing. I just waited to see—it hid my vision, you know. I waited for the train to pass, then I saw what it was.

Q. Then did you go over to the crossing?

A. Yes.

Q. Who picked Mr. Ballinger up? Did you pick him up?

A. I think I did.

Q. You picked him up?

A. Yes.

30 Q. What was his condition when you picked him up?

A. He was dazed, stupid, couldn't move hand nor foot. He just seemed to be like a man knocked cold.

Q. Where was he lying when you picked him up?

A. Within three feet of the northbound track, of the north track.

Q. That is, the north rail?

A. The north rail.

Q. Of the track. Did you notice where the train was?
Where did it come to a stop?

A. Up near the woods.

Q. Approximately how far from the crossing?

A. I should judge a quarter of a mile.

Q. Did you go up there?

A. No.

Q. Did it take any length of time for the train to come
back. 10

A. Considerably, yes.

Q. Do you know why?

A. Well, I imagine the brakes were on tight.

Mr. Bourgeois: I object to that.

Q. Do you know, or are you simply giving us what
some one else told you?

A. Well, I have seen considerable railroading.

Q. Well, what was the reason? 20

A. I guess they were on too tight, a cold day. It was
a cold day and they couldn't get them loose.

Q. Jammed the brakes on tight, had they?

A. Yes.

Q. Where was the automobile?

A. Along the side of the road.

Q. On the road or off the road?

A. I imagine part on the road and part off the road.

Q. What was its condition, intact or—

A. Demolished, pretty well demolished. 30

Q. Candy scattered about?

A. Oh, it laid all around there.

Q. Did you hear any whistle?

A. I didn't hear any whistle.

CROSS-EXAMINATION.

By Mr. Bourgeois :

Q. Mr. Wilson, you didn't see—you knew nothing about this accident until you heard the impact, did you?

A. No, sir.

Q. You didn't see the accident at all?

A. No, not until afterward.

10 Q. You weren't listening for any whistle?

A. No.

CLEMENT WILSON, sworn.

Br. Mr. Stockwell :

Q. Where do you live, Mr. Wilson?

20 A. The same place, Mantua avenue.

Q. Is this man your brother who just left the stand?

A. Yes.

Q. You live together?

A. Well, yes.

Q. In the same property?

A. The same property, yes.

Q. About how far from the railroad are you?

A. Well, 150 feet. More than that, maybe.

Q. Did you see the accident we are talking about?

30 A. No.

Q. Where were you at the time?

A. I was in the house at the time.

Q. Well, did you hear the collision?

A. Yes.

Q. The impact?

A. Yes, something to attract my attention outside of the ordinary noise of the train.

Q. Well, what did you do then?

A. I looked out of the window.

Q. Then did you go down to the crossing?

A. I went out, yes.

Q. And what did you find there?

A. I found an automobile.

Q. Was Mr. Ballinger still on the ground?

A. No, he was on his feet then. We had helped him up.

Q. And what was his condition?

A. Why, he was nervous or shivering from cold, I **10**
don't know which. He was shaking all over.

Q. Where was the machine?

A. Why, it laid on the side of the road, turned around.

Q. Where was the train?

A. The train stood up the track.

Q. How far?

A. About a quarter of a mile.

Q. Did it come back immediately?

A. Well, not immediately, no.

Q. Well, did the train men come back without the **20**
train, or did they wait for the train to come back?

A. The conductor of the train came back before the
train got there.

Q. He did not wait for the train?

A. No.

NO CROSS-EXAMINATION.

30

Mr. Stockwell: I want to put this picture of the White
truck in evidence.

(Said picture is marked Exhibit P. 1.)

PLAINTIFFS REST.

THE CASE FOR THE DEFENDANT.
JOHN KENNEDY, sworn.

By Mr. Bourgeois :

10

Q. Mr. Kennedy, you are in the employ of the West Jersey & Seashore Railroad Company or rather the Railroad administration, aren't you?

A. Yes.

Q. On the West Jersey & Seashore Railroad Company line?

A. Yes.

The Court: I notice this case is against the West Jersey ;
20 is that right?

Mr. Stockwell: Subsequently changed after the Director took charge ; it was started before that.

Q. You are an engineman?

A. Yes.

Q. How many years experience have you had?

A. Thirty-seven.

Q. Do you remember the day of this accident?

30

A. Yes.

Q. How fast were you traveling when the accident occurred?

A. Well, only about thirty miles an hour, as near as I can get to it.

Q. Did you see this automobile that was struck before you struck it?

A. No, sir.

Q. Did you see it after you struck it until you came back there?

A. I seen it at a distance; I didn't go back all the way.

Q. When did you first know that anything had been struck?

A. I heard a racket as we passed over the crossing; I called to the fireman, "What was that," and for the noise I couldn't distinctly understand, but he replied, "We struck—" I suppose he said a wagon or an automobile.

Q. But you heard it strike?

10

A. Yes.

Q. And then you stopped your train?

A. Yes.

Q. How much train were you pulling that day, how much of a train was it?

A. An engine and three cars.

Q. An engine, and I suppose a tender?

A. Yes.

Q. That would make about how many feet in all, two hundred or two hundred and forty?

20

A. About two hundred feet, I guess.

Q. About two hundred feet in length?

A. Yes.

Q. Do you know whether or not the whistle was blown as you approached that crossing?

A. Positively I do; the whistle was blown, the proper signal for the railroad crossing.

Q. Who blew it?

A. I did.

Q. Do you know whether or not the bell was being rung? 30

A. The bell was being rung, yes, sir, continuously.

Q. And who did the ringing of it?

A. The fireman.

Q. It was ringing when it passed over the crossing?

A. Yes, sir.

Q. How was it that you didn't see this automobile?

A. My view was obstructed, being on that side of the en-

gine, and coming at the crossing at the angle we were, I couldn't see on that side any distance up the road.

Q. Were you on the right hand side of the locomotive?

A. Yes.

Q. And the automobile was on the left hand side?

A. Yes.

Q. And you could not see across the boiler?

A. No, sir.

Q. What damage was done to the locomotive?

10 A. The side rod or parallel rod, the rod between the two wheels, connecting the two driving wheels, the engineer and fireman's step on the locomotive, and also the step on the engine tender.

Q. Now, which end of the tender, next to the locomotive or the other end of it?

A. The tender is——

Q. No, which step?

A. Excuse me, the front end.

Q. The front end of the tender?

20 A. Yes.

Q. What sort of a rod is this parallel rod that you speak of—how large is it?

A. It is a rod I suppose will weigh five or six hundred pounds; it is about eight or nine feet long.

Q. How much was it bent?

A. The indenture was about two inches off of parallel, the straight line.

Q. Out of the straight?

A. Yes.

30 Q. Was there any injury done to the boiler?

A. No, sir.

Q. Had anything struck the boiler?

A. No, sir.

CROSS-EXAMINATION.

By Mr. Stockwell:

Q. I didn't understand you to say what happened to the side rod?

A. The side rod was bent, an indenture from the truck.

Q. And what happened to the two steps?

A. The two steps were broken off by the truck, that is by—

10

Q. Are you a little hard of hearing?

A. Just a trifle.

Q. You have been running, been an engineman for thirty years?

A. Thirty-seven years to-morrow.

Q. And you think you were going about thirty miles an hour, is that it?

A. About thirty miles an hour, I guess about thirty miles an hour.

Q. As you approached the crossing had you the throttle open or closed? 20

A. I had closed the throttle before we came to the crossing.

Q. And was it down grade or on the level or up grade as you approach the crossing?

A. It is a little on an incline.

Q. A little on the down grade?

A. Yes, a decline. I mean.

Q. A decline going toward Woolbury?

A. Yes, sir.

30

Q. Why did you shut off the steam so early? You were some distance from the station, were you?

A. I was approaching the yard limit, and it was necessary always to begin to slack up speed coming into the terminal here, the yard limit.

Q. Where did you throw off your steam?

A. Just before I got to the crossing, maybe a hundred feet

or in the neighborhood of a hundred feet before I got to the crossing.

Q. You are familiar with the location around there, aren't you, Mr. Kennedy?

A. Yes.

Q. And with the view and the condition of the track toward Salem from Woodbury, from the crossing?

A. From the crossing toward Woodbury?

Q. Yes?

10 A. Yes, sir.

Q. There is a house and some outbuildings along the railroad on the north side, are there not?

A. At a great distance on the north side.

Q. Well, I show you one of these photographs; see the buildings here, do you recall those?

A. Well, I couldn't see these buildings, being over the crossing there.

Q. That is the crossing, isn't it? (Indicating on photograph).

20 A. This is the crossing.

Q. And you are looking now toward Salem, aren't you?

A. Yes, sir.

Q. And you see the dwelling, the outbuildings there on the right hand side?

A. Yes, sir, on the north side of the track a distance below the wagon road crossing.

Q. They are on the north side of the track, that is the right hand side going down toward Salem?

A. Yes.

30 Q. Now, just beyond those houses there is a patch of woods, isn't there?

A. Yes, sir, there is a road there?

Q. Quite a patch of woods there?

A. Yes.

Q. Now, what is the distance between that house and the crossing?

A. Well, it is about, over a thousand feet.

Q. Over a thousand feet?

A. About.

Q. And what is the distance between the building and the patch of woods?

A. It is about—really about the same distance, as near as I can judge.

Q. About another thousand feet?

A. About that, I should judge, about as near as I can come at it at a rough estimate.

Q. Well, when you get beyond that house, it is difficult for you to get any view of this Mantua road, isn't it? 10

A. You can't get a very good view; you could see cars just a few feet up the road.

The Court: That is coming north, is it, or south?

Mr. Stockwell: Yes, coming north.

Q. As your train is coming north?

20

The Witness: No, I mean as people are coming up the Mantua road toward the crossing.

The Court: The house is on the south side or west side, isn't it, of this?

Mr. Stockwell: On the north side.

The Court: Oh, yes, I see; I thought it was the other side.

30

Q. So as your train was approaching that crossing from Salem you first passed the patch of woods, didn't you?

A. Yes.

Q. And when you were in line with that patch of woods you couldn't see what was happening on this crossing, could you, or very many feet away from the crossing?

A. You couldn't on account of this house down there.

Q. You couldn't see because of the house?

A. No, and the woods.

Q. Could you get any view of the crossing or the road north of the crossing when your train was between the patch of woods and the dwelling?

A. Yes, sir.

Q. Well, could you get a view of the road any distance away from the railroad?

A. You could a short distance up.

10 Q. What do you mean, forty or fifty feet?

A. Forty or fifty feet, or more than that, possibly.

Q. But not a hundred or two hundred feet?

A. No, I don't think you could.

Q. Now, after you left the dwelling and still approached the crossing, you see there a line of poles, don't you?

A. Yes.

Q. A double line of poles?

A. Yes.

20 Q. Do you think you could get a clear view at all points there of this Mantua road coming toward Camden?

A. You could get a fair view of it.

Q. You think you could at all points, notwithstanding the poles?

A. I don't think the poles would interfere with my view of it.

Q. Now, Mr. Kennedy, when you passed that dwelling which you said was about a thousand feet from the crossing, could you see the crossing?

A. Yes, sir.

30 Q. The boiler did not obstruct your view of the crossing then, did it?

A. No, sir.

Q. And couldn't you see the road north of the crossing as well?

A. Some distance.

Q. What distance could you see north of the crossing along the public road?

A. A couple of hundred feet, I guess.

Q. Two or three hundred feet?

A. A couple of hundred feet.

Q. And when was it that you were not able to see, say, a couple of hundred feet north of the crossing because of the boiler on the engine?

A. Excuse me, I don't understand this.

Q. I don't want to confuse you, but my understanding was that you said you could not see this truck approaching because you were on the right hand side of your engine and the boiler would naturally obstruct your view? 10

A. I meant the truck was not in sight for me to see it there.

Q. You mean you did not see it?

A. No, I didn't see it.

Q. Well, what distance could you see up and down on that road, that is, north of the road?

A. A couple of hundred feet up and down the road, about.

Q. You say it wasn't in sight then?

A. It wasn't in sight that I could see it. If it was in sight 20 I could have seen it, I should think.

Q. What distance did you run beyond the crossing after the accident?

A. Well, I should judge I ran about three hundred feet, maybe, or more.

Q. Didn't you run clear up to that patch of woods?

A. No.

Q. Not the patch I have been speaking about, but another patch of woods toward Camden or Woodbury?

A. I ran pretty well up toward that, not to it. 30

Q. That is about a quarter of a mile, isn't it?

A. I didn't just exactly take notice of the woods, but I didn't get quite to the woods.

Q. Did you jam your brakes down tight as soon as the accident occurred?

A. I did as soon as I heard the impact, I put the emergency brake on.

Q. That was after the accident?

A. After I heard the noise, yes.

Q. You never saw the car at all until after you struck it?

A. No, sir.

Q. And you put the brakes down so hard then that you had difficulty in getting your train to back up?

A. Well, they wouldn't release instantly; it took a short time for them to release, before we could back up.

Q. This was a very cold morning, wasn't it?

10 A. Yes, sir, a very cold day.

Q. Any steam flying from the front of your engine, any steam in front?

A. No, sir.

Q. Didn't have any steam around outside of your engine? You usually have a little, don't you?

A. Well, some times there was a little, but there wasn't anything to obstruct my view in front.

Q. You think your windows were absolutely clear of frost, do you?

20 A. I don't believe there was any frost on them.

Q. Were your windows in the cab closed on your side?

A. The windows were closed.

Q. Closed tight, weren't they?

A. Yes.

Q. Were the fireman's windows closed tight?

A. I believe they were, as far as I know.

Q. Can you say positively whether there was any frost on those windows?

A. I don't think there was; I don't remember seeing a bit.

30 Q. You don't remember seeing any? Now, Mr. Kennedy, where was it you said you blew the whistle?

A. The whistle post south of the crossing.

Q. How far from the crossing was it?

A. I guess it was more than nine hundred feet.

A. Was it beyond this house?

A. It was in the neighborhood of that house on the other

side; on the south side of the track, in the neighborhood of where the house was located.

Q. Well, could it have been between the house and the patch of woods?

A. No, it was right about where the house was, somewhere in that neighborhood, possibly a little mite north of the house.

Q. You are not quite sure where it was?

A. Not quite sure; I couldn't locate the post right in front of the house, but it is in the neighborhood of the house. 10

Q. Well, how many blasts of your whistle did you say you gave?

A. Four blasts of the whistle, two long blasts and two short blasts, the customary railroad crossing signal.

Q. Were they long blasts, the first ones?

A. Yes, I make a practice of blowing for that crossing.

Q. Not what the practice was; I want to know what you did then?

A. Yes, I did.

Q. Are you speaking now, Mr. Kennedy, from what your practice was or what you actually recall happened that morning? 20

A. What happened that morning; I always blow my whistle when I come across that crossing, and blow it loud.

Q. I know you always intend to, but the question is whether you did it this morning?

A. Yes, I did it that morning, or that afternoon.

Q. Well, this afternoon?

A. Yes.

Q. You didn't ring the bell yourself? 30

A. No, I didn't ring the bell.

Q. Your fireman—how do you know he rang it?

A. I seen it and heard it.

Q. You saw the bell moving, you mean?

A. Seen him pulling the rope and heard the bell ringing.

Q. Where did he begin to ring the bell?

A. About the time I blew the whistle, as near as I could judge.

Q. You didn't give any danger signal, did you? There was no danger signal?

A. No danger, because I didn't see any danger.

Q. You knew this was a crossing where there were no gates and no flagman and no bell. You knew that, didn't you?

A. Yes.

10 Q. You knew it was within the city limits of Woodbury?

A. I don't know where the city limits extends to there.

By the Court:

Q. I understand you to say the bell was rung all the way from the whistling post to the crossing?

A. Yes, sir.

Q. Was it rung before that, or don't you know?

20 A. About that time. I don't just exactly remember when he started, but he started to pull the bell about the time I started to blow the whistle, about that time.

By Mr. Stockwell:

Q. Well, Mr. Kennedy, in what direction were you looking as you approached that crossing after you left the house?

A. Straight ahead.

30 Q. Straight ahead?

A. Yes.

Q. Were you looking up and down that public road to see whether any vehicle was approaching?

A. I could see just looking straight ahead. I could see almost—

Q. Did you see automobiles around that crossing at all?

A. No.

Q. Didn't see any automobile on either side of the crossing?

A. No, sir.

By Mr. Bourgeois :

Q. What kind of engine were you driving?

A. The engine is known as a D-16 type.

Q. And how long a boiler has that engine, that type 10 of engine or that particular engine?

A. I don't just exactly know, but it is in the neighborhood of forty feet.

Q. Extends out in front of the cab?

A. Yes, sir.

Q. You were in the cab?

A. Yes, sir.

Q. Now, how wide is that window that you looked through? I mean, how much further out at the side does that window extend than the boiler? 20

A. Well, I should judge about three feet.

Q. Then you would have a line that you could see drawn from a point three feet to forty feet. That would be the vision you would get across the end of the boiler?

A. Yes.

Q. You could not see over the top of the boiler?

A. No, sir.

WILLIAM HOPKE, sworn.

30

By Mr. Bourgeois :

Q. Mr. Hopke, you live where?

A. 1037 Cooper street, Camden.

Q. How long have you lived in Camden?

A. About twenty years.

Q. You were employed by the Railroad Administration on the 5th of February, 1918?

A. Yes, sir.

Q. On the West Jersey & Seashore division?

A. Yes.

Q. As fireman?

A. Yes, sir, fireman.

10 Q. Do you remember on the north side of the railroad as you approached the Mantua road crossing a farm house?

A. Yes, sir, there is a farm house.

Q. After you pass that farm house can you see what there is going on or what is on the road, the Mantua road, that is within the limit of seventy-five feet of the track?

A. Yes, sir.

20 Q. Are there any telegraph poles or telephone poles that intercept your view so that you can't see a wagon on that road?

A. I don't believe there is any along there that intercept it.

Q. Do you remember the day of this accident?

A. Yes, sir.

Q. Do you know how fast you were traveling?

A. Going a fair rate of speed. I guess about thirty miles an hour along there.

Q. Do you know whether or not the engine whistle was blown as you approached that crossing?

30 A. Yes, the whistle was blown.

Q. Who blew it?

A. Mr. Kennedy, the engineer.

Q. Do you know whether or not the bell was rung as you approached that crossing?

A. Yes, sir, I was ringing it.

Q. And when did you begin to ring it?

A. Just as he blowed the whistle I began to ring the bell.

Q. How long did you continue to ring the bell?

A. Up until we came to the crossing.

Q. Were you ringing at the time you struck this wagon?

A. Yes.

Q. You had hold of the bell rope at that time?

A. I had hold of the bell rope at that time.

Q. Did you see this automobile?

10

A. No, sir.

Q. How was it that you didn't see it?

A. I was down off the box just as we come to the crossing, the seat box.

Q. What do you mean by the hox?

A. That is the fireman's seat.

Q. And when you are on that box you can see out of the windows?

A. Yes.

Q. And you got down or were down off of that?

20

A. Yes.

Q. Now, can you ring the bell when you are down off the box?

A. Yes.

Q. And you were ringing it at that time?

A. I was ringing the bell, yes.

Q. What damage was done to the locomotive by this collision?

A. The first mark I could see was a little scratch on the upper end of the butting block and the side rod was bent. 30

Q. What is the side rod?

A. It is the parallel rod connecting the two driving wheels.

Q. What other damage beside the side rod?

A. The steps gone off the engine, the steps gone off the tank, the water connection broke between the engine and the tank.

Q. Was there any evidence of the collision on the boiler?

A. No mark on the boiler at all.

Q. No mark on the boiler at all?

A. Not a scratch.

CROSS-EXAMINATION.

By Mr. Stockwell:

10

Q. Where was the first scratch on the engine toward the front?

A. On the upper end of the butting block.

Q. The butting block. What is that?

A. Well, you know the pilot sets down here, the cow-catcher.

Q. What do you mean by the butting block?

A. The butting block is that heavy stick of wood across there that the pilot is connected on to.

20

Q. Near the cylinder, is it, back of the cylinder?

A. It is just ahead of the cylinder.

Q. Between the cylinder and the pilot?

A. Yes.

Q. It is pretty close to the front, isn't it?

A. It is right on the front.

Q. What was the damage there?

A. There was a faint scratch there. Whether it was from this accident or not—

Q. It looked like it, did it?

30

A. I couldn't say it did.

Q. You assumed it came from the accident, didn't you?

A. It might have come from the accident.

Q. You knew this crossing had no flagman?

A. Yes.

Q. And no gates and no bell, didn't you?

A. Never saw any there.

Q. You didn't see the automobile as it approached the crossing, did you?

A. No, sir, there was nothing on the crossing as I got—

Q. Did you see anything on either side of the crossing as you came near the crossing?

A. No, sir.

Q. Are you able to say whether or not there was any frost on the windows on your side of the cab?

10

The Court: He didn't see anything. Nobody saw it. It don't make any difference; they might have been blind.

Q. You were not looking out of the window as you approached the crossing, were you?

A. Not as we came right on the crossing, no, sir.

Q. After you left the house were you looking out for the crossing?

A. Yes.

Q. When did you take your eyes off of the crossing? 20

A. I think it was three or four car lengths to the crossing when I started to get off the box.

Q. When you started to look out?

A. I was looking out until then. Then I started to get off the box.

Q. Until the time you got off the box you didn't see anything at the crossing or either side of it?

A. No, sir.

Q. Where was it the whistle was first blown?

A. Quite a ways from the crossing, back there at the 30 whistle post.

Q. Back there at the house?

A. I don't know whether the house was alongside of the whistle post or not.

Q. Might it have been between the house and the patch of woods?

A. Back there, it was this side of the patch of woods, toward the Mantua road.

CHARLES MAIER, sworn.

By Mr. Bourgeois:

10

Q. Mr. Maier, you are a road foreman of engines or round-house foreman, what?

A. I am engine-houses foreman.

Q. Did you see this locomotive that was in the collision on the 5th of February, 1918?

A. I did.

Q. What damage was done to it?

A. The left side rod was bent about two and a half inches, the left back engine step was broken, the left front tank step was broken and the water connection between the engine and tender was broken.

20

Q. Was there any damage done to the boiler?

A. No, sir.

Q. Were there any marks on the front of the car from that collision, the front of the locomotive from that collision?

A. I didn't see any.

Q. If the car or if the locomotive had run into that automobile, would there have been marks there?

30

A. Yes, sir.

NO CROSS-EXAMINATION.

THOMAS R. SHINN, Sworn.

By Mr. Bourgeois:

Q. Mr. Shinn, you were the conductor of the train that had this accident, weren't you, in 1918?

A. Yes, sir.

Q. At what rate of speed was the train traveling?

A. I suppose between thirty and thirty-five miles an hour.

Q. Did you see the locomotive after the accident happened?

A. Yes.

10

Q. What damage was done to it?

A. The side rod was bent, the step broken off the engine and tender, and the water pipe broken.

NO CROSS-EXAMINATION.

FRED WALKER, Sworn.

20

By Mr. Bourgeois:

Q. Fred, where do you live?

A. 10 Stewart street, Woodbury.

Q. How old are you?

A. Eleven years old.

Q. Do you remember the accident that happened down at Mantua crossing in February of last year?

A. Yes, sir.

Q. Where were you?

30

A. I was up on Mantua Pike skating.

Q. How near to the railroad track?

A. I was about a square from it.

Q. As the train came along there, did you hear anything?

A. I heard a whistle blowing, but I didn't notice whether the bell was ringing or not.

Q. But you did hear the whistle blown, did you?

A. Yes.

CROSS-EXAMINATION.

By Mr. Stockwell:

Q. Where were you standing, Fred?

A. I was skating up there by a man by the name of
10 Mr. O'Neal's house, Stephen O'Neal's.

Q. Where is that, on the way to Camden or to Salem?

A. Camden.

Q. On the way to Camden?

A. Yes.

Q. And how far away from the crossing?

A. I was about a square.

Q. About a square?

A. Yes.

20 Q. Mr. O'Neal's house?

A. Yes.

Q. Did you see the train coming?

A. Yes, sir; I saw it.

Q. Well, what attracted your attention to the blowing of the whistle or the absence of a whistle?

A. Well, I was out on Mantua Pike skating and I started down by the railroad when this automobile passed me and the train hit the automobile. I turned around to go back and took my skates, and when I came back they had took the man, taken him somewhere.

30 Q. Well, were you playing in the road or were you going somewhere?

A. I was out there playing.

Q. Playing, doing what?

The Court: He said he was skating.

Mr. Stockwell: Had been skating or were you skating in the road?

A. I was skating.

Q. Right then in the road?

A. Yes.

Q. At the time you say you heard the whistle?

A. Yes.

Q. Who was skating with you?

A. Nobody. The other boys there had gone off some- 10
where and I was out there by myself.

Q. In what direction were you skating, away from the crossing or toward the crossing when you heard the whistle?

A. I was skating toward the crossing.

Q. How long before the accident was it, Fred, that this whistle was blown?

A. I don't know.

Q. Well, a minute, two minutes or three minutes. How long? Can't you give us some idea? 20

A. I guess it was about two minutes.

Q. Did you notice from what direction the sound came?

A. The sound? I didn't notice that.

Q. Well, you were up toward Camden, weren't you?

A. Yes.

Q. Come around here a minute. This is supposed to represent the railroad coming from Salem up to Camden this way, and this is the Mantua Pike going from Mantua to Woodbury this way. Then this is the crossing 30
right here (indicating on map.) Now, you were toward Camden from the crossing, weren't you?

A. Yes.

Q. Now, just tell us on that map about where you were?

A. I was up about here (indicating).

Q. Up this way.

A. Yes.

Q. You heard a whistle blow?

A. Yes.

Q. Well, do you know what train it was?

A. No, sir, I don't.

By Mr. Bourgeois:

10 Q. After you heard that whistle blow did the collision take place?

A. Yes, sir.

Q. Was it the train that came up that had the collision that did the blowing, do you know?

Mr. Stockwell: He said he didn't know.

A. No, sir, I don't know.

20 Q. Well now, was there any other train around there at that time except that one?

A. I don't know.

Q. You didn't see any other, did you?

A. No, sir.

IRA L. BROWN, Sworn.

By Mr. Bourgeois:

30 Q. Mr. Brown, you are in the employ of the administration, the railroad?

A. Yes, sir.

Q. And you are a draftsman?

A. Yes, sir.

Q. Did you go down to this crossing of Mantua Road

and the Railroad and make some measurements and observations?

A. Yes.

Q. When, do you recall?

A. The 28th of February in the afternoon.

Q. What year?

A. 1918.

Q. That was 23 days after the accident happened?

A. Yes.

Q. What was the condition of the country at that time— 10
any leaves, anything of that kind there on the ground or trees?

A. I don't know; there was no snow on the ground that day.

Q. Well, were there any leaves on the trees?

A. I didn't notice them.

Q. You didn't see any, eh?

A. No, there may have been; we wasn't down there to make an examination of the bushes.

20

The Court:

Q. There were no green leaves anyway, were there?

A. No.

Mr. Bourgeois:

Q. I mean, no leaves to interfere with your view?

A. No, sir.

Q. Now, from what points did you make an observation? 30

A. Twenty, thirty and seventy-five.

Q. At a point twenty feet from the crossing, how far could you see?

A. See forty-five hundred.

Q. How many feet are there in a mile?

A. 5,280.

Q. That is four-fifths of a mile or more?

A. Yes.

Q. At thirty feet how far can you see?

A. See forty-two hundred feet.

Q. That is four-fifths of a mile, a little more. At seventy-five feet, how far can you see?

A. See 954 feet.

Q. Do you know how far down the farm house is on the north side of the road?

A. No, I don't; it is right near that whistling post..

10 Q. All right, I can prove it by someone else.

CROSS-EXAMINATION.

By Mr. Stockwell:

Q. Did you make any other measurements than those you mentioned?

A. No, sir.

Q. Did you make any tests, say at 25 feet?

20 A. No.

Q. Or 35 feet?

A. No, sir.

Q. Or at 50 feet?

A. No, sir.

Q. Or 60 feet.

A. No, sir.

Q. Nothing between 30 and 75 feet?

A. No, sir.

Q. You don't know what would be the outcome there?

30 A. No, but it was practically a plain view.

Q. Did you make your tests at these points then? Now, I ask you whether you did or whether you did not?

A. Which points?

Q. I want to know whether you made any tests at 25 feet?

A. No, sir.

Q. Or any test between 20 and 30 feet?

A. No, sir.

Q. Or any test between 30 and 75 feet?

A. No, sir.

By Mr Bourgeois :

Q. Is there any point along that road from which you can't see as far down the track as the house?

A. No, sir.

10

By Mr. Stockwell :

Q. Of course, you refer now to a clear track—you did not consider a moving train, did you?

A. No.

ERNEST E. LENGEL, Sworn.

20

By Mr. Bourgeois :

Q. Mr. Lengel, are you an employee of the Railroad Administration?

A. I am.

Q. And were you in February, 1918?

A. Yes.

Q. As draftsman?

A. Yes.

Q. Did you accompany Mr. Brown and make some measurements and observations at the Mantua crossing?

30

A. I did.

Q. At what distance did you make those observations, from what distance along the Mantua Road?

A. Twenty feet from the track, thirty feet and seventy-five.

Q. At twenty feet from the track you could see how far down the track?

A. Forty--five hundred.

Q. At 30 feet from the track you could see how far down the track?

A. Forty-two hundred.

Q. And at seventy-five feet from the track you could see how far down the track?

A. 954 feet.

10 Q. Was there anything to intercept the view down as far as that house is located on the north side of the track?

A. Nothing whatever.

CROSS-EXAMINATION.

By Mr. Stockwell:

Q. There were some telephone or telegraph poles along the right of way, weren't there, a double line?

20 A. There were.

By Mr. Bourgeois:

Q. Was there any point unless you got right up in front of a telegraph pole from which you could not see some part of a train?

A. There was none.

By Mr. Stockwell:

30 Q. Did you make any tests between twenty and thirty feet from the crossing?

A. No, sir, I did not.

Q. Or between thirty and seventy-five feet?

A. I did not.

Mr. Bourgeois: I want to offer in evidence those photographs.

Mr. Stockwell: First show from what point they were taken.

GEORGE C. SMITH, sworn.

10

By Mr. Bourgeois:

Q. Mr. Smith, you were in the employ of the Administration, the Railroad Administration, in February of 1918?

A. Yes, I was.

Q. As what?

A. I was civil engineer.

Q. Did you prepare and make the map that is on the easel or on the wall here?

20

A. Yes, sir.

Q. Does that show the angle at which the Mantua road crosses the railroad?

A. Yes, sir.

Q. And the mark which you have here in pencil, "To Mantua," the arrow pointing in a southeasterly or southwesterly direction, is that the road toward Mantua?

A. Yes.

Q. Does this map show all the poles there are along that road and railroad in that vicinity?

30

A. In that vicinity, yes, sir.

Q. I show you three photographs and ask you if you were present when they were taken?

A. Yes, sir, I was.

Q. At what distance from the railroad track was the camera placed in the photograph I now show you and marked Exhibit D-3?

A. Thirty feet.

Q. (Showing witness another photograph.) I will have this one marked D-4.

By the Court: It was placed on the road, was it, in each case?

A. The center of the road.

Q. In each case?

10 A. Yes.

Q. And in what part of the road was it?

A. In the center, about the center of the wagon road.

By Mr. Bourgeois:

Q. I show you an Exhibit marked D-4 and ask you what distance from the track the camera was set in that instance?

A. That is fifty.

20 Q. Now, I show you D-5 and ask you what distance the camera was set from the railroad track in that instance?

A. Seventy-five feet.

Q. Now, in D-3, how far is the train from the railroad crossing or from the crossing?

A. 150 feet.

Q. And in D-4 how far is the train from the crossing?

A. 202 feet.

Q. And in D-5 the train is how far from the crossing?

30 A. 337.

A. Three hundred and thirty-seven.

Q. Now, assuming that the train was running at 35 miles an hour and the automobile was running at 8 miles an hour, would the train on the track be in the same location. No, would the train where it is now on the track be in location to collide with this automobile running at 8 miles an hour from the point you set the camera?

A. Yes, sir.

Q. And in Exhibit D-5 would the train have been in the location shown on the picture here so it would have collided with the automobile from a point 75 feet if the automobile was 75 feet away, running at 8 and 35 miles an hour?

A. Approximately, yes.

Q. And the same with the first one?

A. Yes, sir, approximately.

Q. Thirty and 150?

10

A. Yes.

Q. Now, Mr. Smith, was there any point along that road where the view would be less distinct than thirty feet distant, from where you took this Exhibit D-4?

A. Less distinct?

Q. Where it would be less distinct than it is now, where you can see less than you can here?

A. Yes, it would be.

Q. Where?

20

A. Well, possibly nearer the track there.

Q. Will you show me where? I want you to show on this map. Now I mean the whole train, not just one particular part of it. Is there any point there along that map where you can't see a train approaching the crossing?

A. No, I don't think there is.

Q. There is not?

A. No, not where you couldn't see some part of the train.

Q. Now, I want to call your attention to this point that Mr. Allen made. You notice that his lines cross, his two straight lines, to show that you couldn't see. I want you to scale the distance between those lines at the place he makes the point and tell me how wide that point would be on the map?

30

A. As he has it shown here?

Q. Yes, it looks to me as if it would be about seven feet.

A. Not quite that, about five, between four and five.

Q. Between four and five feet?

A. Yes.

Q. A man's eyes would have to be that far apart in order to make those lines?

A. According to this line, yes.

Q. Now, Mr. Smith, I want to ask you this question:

10 Taking the point furthest from the railroad track that Mr. Allen made, he has drawn two lines, one through two telegraph poles and one through another telegraph pole, and I ask you if the line of vision wouldn't go past the first pole, between the two lines and be able to see a train between the two lines that he has drawn on the map?

A. I think it would, yes.

Q. What is the distance between those two points where the tracks come together?

A. Between the lines he has shown?

20 Q. Yes, where they intersect the track.

A. 114 feet.

Q. Then if the train was 200 feet long there would be 86 feet under his contention that the view would not be intercepted?

A. Yes, sir.

Q. What is the distance, Mr. Smith. I didn't ask you. What is the distance from the crossing down to this house on the north side of the track?

30 A. Why, that little crossing there is 856 feet. I remember that. This house here you mean?

A. Yes.

A. That house here is 70 feet back from that.

Q. Practically 800?

A. Practically 800 feet, yes, in round numbers.

CROSS-EXAMINATION.

By Mr. Stockwell:

Q. Did you make any tests on a moving train?

A. No. Yes, we had this train down with us that day.
The train in the picture.

Q. Did you have a train going by that crossing from
Salem to Woodbury at thirty miles an hour?

A. No, sir; not thirty miles and hour.

10

By Mr. Bourgeois:

Q. Can't you see a train if it is moving?

A. You certainly can.

By Mr. Stockwell:

Q. When it is running along the line of telephone poles
can you see it as distinctly as you can when it is sta- 20
tionary?

A. Well, very nearly, yes.

Q. Have you tested it out?

A. Yes.

Q. Did you test it out at that particular point?

A. Not at that particular point; no, sir.

By Mr. Bourgeois:

Q. Now, Mr. Smith, I am going to show you anotheer pic- 30
ture that I will prove in just a minute, that was taken
at a point thirty feet from the crossing. Oh, you have
got it here in this picture. Are there any telegraph poles
to intercept a view of a train when you are within thirty
feet of the track?

A. No, sir; not to obscure it, just as shown there.

By Mr. Stockwell:

Q. I understand you made your tests at 30 feet, 50 feet and 75 feet?

A. Yes.

Q. That is the place from which you shot the pictures or somebody with you shot the pictures?

A. Yes.

Q. And you made no pictures or any tests between
10 those distances?

A. No. Made no pictures.

ARTHUR P. TURNBULL, sworn.

By Mr. Bourgeois:

Q. Mr. Turnbull, I ask you if you took some photo-
20 graphs on the 28th of February, 1918?

A. They were taken under my direction.

Q. You were present?

A. Yes.

Q. I show you Exhibit D-6 and ask you if that shows a view of the railroad track northerly of the Mantua road crossing?

A. It does.

Mr. Stockwell: Just point it out on the map, won't you
30 please, where you stood.

Q. At what point did you stand to take that picture?

A. The camera stood 75 feet on the Mantua road, that is, in the direction of Woodbury, and pointing as our tracks go toward Woodbury.

Mr. Bourgeois: I offer that to show that there was nothing in that direction that would obscure a person's view and thus confuse him.

Mr. Stockwell: As I understand it, this is the view toward Camden, not in the direction of the approaching train. I do not see that that has anything to do with it.

The Court: Don't you think it would only add confusion?

10

M. Bougeois: All right, let's not have it. I will withdraw it. Now, I show you a photograph marked Exhibit D-7 and ask you if that was taken while you were there and correctly shows the surrounding country?

A. Yes, it does.

Q. At what distance from the track was the camera set?

A. Twenty feet.

20

Mr. Bourgeois: I will offer that.

By the Court: On the road?

A. Yes, sir.

NO CROSS-EXAMINATION.

THOMAS J. McDONALD, sworn.

30

The Court: Is this on these statements?

Mr. Bourgeois: Yes.

The Court: They admitted most of them, you know.

Mr. Bourgeois: I know, but I want to ask about—

The Court: If there are any qualifying conditions about it just direct their attention to it.

Mr. Bourgeois: I want to offer in evidence Exhibit P-1 for identification and ask you whether or not that statement made by Mr. Ballinger was read over by him before he signed it?

10

A. Positively.

Q. I show you Exhibit D-2 and ask you whether or not the statement signed by Mr. Noble was read over by him before he signed it?

A. It was taken by another operative of our department.

CROSS-EXAMINATION.

20 By Mr. Stockwell:

Q. Are you an operative of this office?

A. Of the Claim Department, yes, of the Legal Department of the Pennsylvania Railroad.

Q. Connected with the claim department?

A. Yes.

Q. This is in your hand writing, isn't it; the statement of Mr. Ballinger?

A. The statement of Mr. Ballinger is in my handwriting, yes.

30 Q. Where did you see him?

A. Moorestown.

Q. Saw him at Moorestown?

A. Yes.

Q. Was it during the day or at night? Was he sick at the time?

A. Yes, he was complaining at the time.

DIRECTION OF VERDICT AGAINST PANCOAST.

Q. Was he in bed?

A. No.

Q. In the house?

A. Yes.

DEFENDANT RESTS.

10

BOTH SIDES REST.

Mr. Bourgeois: I move for a direction as to the automobile. The act of 1909 prevents us from having a nonsuit as to personal injury, but that doesn't apply as to personal property. That is, I think the law stands as it stood before the act was passed, and I move a verdict be directed as against Pancoast on the ground of contributory negligence of his agent. 20

At this point a recess was taken until Friday morning, October 10th, 1919, at 9 o'clock A. M.

Camden, New Jersey, October 10, 1919. Trial of the cause resumed at 9 o'clock A. M. in the presence of counsel for the respective parties. 30

The Court: (After lengthy argument.) Gentlemen, I regret very much that both of these questions cannot be submitted to the jury, in view of the statutory direction

submitting one, but it seems to me my duty is entirely clear. This was a view that was perfectly plain of an approaching train, and a man cannot approach a crossing, especially in an automobile that is controllable, as against a horse which has its own mentation, and animal action. He could have stopped his car anywhere, and I cannot see how it is possible that I should regard that as showing anything but contributory negligence sitting as a Court. With respect to the claim for the truck a ver-

10 dict will have to be directed.

(Exception noted for the plaintiff.)

CHARGE OF THE COURT.

LLOYD, J.: Gentlemen, the only claim that presents itself for your consideration now is that of Ballinger for

20 personal injuries. Fortunately the injuries which he received were not permanent in the sense that they won't get well, and fortunately, also, they were not as serious as they might easily have been, apparently. He was incapacitated for a time so that he could not do his work, and when he went back he was not fully up to the normal of his previous condition. In addition to that he says that he still is sometimes nervous and that he can't get out the full amount of work that he did before. The damages, gentlemen, in this case, represent pain and suffering and any loss in a

30 money way. It has not appeared whether he was paid his salary or wages or not; all that does appear is that he lost a certain amount of time and that part of the time after he came back he had a helper on his truck.

Gentlemen, this case presents the anomaly of the Court having declared to you as a matter of law that Mr. Pancoast, through his man Ballinger, was careless and negli-

gent in the manner that he approached this crossing, and having to leave it to you to say whether Ballinger, the offender, as the Court has found in the other case, is guilty of negligence himself. In other words, the results of his negligence in a property damage the Court is obliged to take care of and charge that you must find a verdict for the defendant in that case; in Ballinger's case it is a question for you.

Now, gentlemen, this is a public highway and a public line of transportation meeting each other; one operates with movable vehicles going anywhere that the road is available; the other is devoted to a railway service and is limited to its tracks, and that railway service has a right of way across the railroad over a user of this highway. In other words the user of the highway is obliged to give way to the steam railroad train, because you can see at once it it were otherwise, if the trains had to stop at every crossing, there would be no such thing as train service effective in this country; and therefore the law has exacted of railroad companies that when they approach highways they have a right to cross them at any speed they please, but they must give notice of the approach in one of two ways. They must either do it by sounding a whistle at intervals for a distance of nine hundred feet before and until the crossing is passed, or they must give warning by a bell of specified dimensions and weight in like manner until it is crossed, except that the bell is required to be rung continuously, while the signal of the whistle is only required to be at intervals. There is evidence in this case from which you could find that the railroad company defaulted in that obligation in this case; there is evidence in the case from which you can find that it performed that duty with respect to the bell, at least, and that question therefore becomes a fact for your consideration, and it is a fair question for the jury whether or not the signals or either of them were given in accordance with the legal requirements. If they were not, then you have a

perfect right to infer negligence in the method of approach to the crossing by the railroad company. When, however, gentlemen, they have done that, when they have given either one of the statutory signals, the law says that it is under no further obligation; it is not obliged to stop, it is not obliged to slow down, because, as I have already indicated to you, that at once would annul the very utility for which railroad travel is intended.

- 10 But, gentlemen, there comes into this case another question, and that is, how you shall regard the conduct of Ballinger in this case. Ballinger was on a truck where he declares his view was open; he had the curtain on his side open, he was sitting on the right hand side of the truck next to the approaching train; there were a few telephone poles and a tree as the only obstructions to his vision for a distance of several hundred feet up the track, and for a very considerable distance on the highway before he reached the railroad crossing. Now, how can you declare that to be
- 20 reasonably careful conduct on the part of a traveler approaching a railway track? It is true there was another truck waiting on the opposite side of the track, but it was waiting there for the train to pass, and the plaintiff, instead of waiting, went across, or attempted to. Now, there are possibly one or two places where if you get in the exact spot you couldn't see a train, the whole of it, or possibly any part of it, but you will see yourself the view that one approaching that track could have. Of course, if you say under the circumstances that Ballinger was not guilty of
- 30 negligence under those circumstances, then his own negligence does not preclude him from recovery, but if on the other hand, gentlemen, it appears to you that he neglected the reasonable precaution of ordinary prudence in approaching that track, then it is your plain duty to render a verdict in his case as well for the defendant.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THOMAS S. PANCOAST, Plaintiff-Appellant,	}	Brief.
vs.		
DIRECTOR GENERAL OF RAILROADS, Defendant-Respondent.		

This appeal brings to this Court for review a judgment by direction of the Court for the defendant at the Camden Circuit.

STATEMENT:

Plaintiff was the owner of an automobile truck which was used in the distribution of confectionery throughout the towns in the southern part of New Jersey. The car was driven by one Ballinger employed by the plaintiff for that purpose. Ballinger was the only occupant of the car at the time of the accident. Plaintiff's truck being driven by Ballinger, was proceeding from Woodbury southward toward Salem on the Mantua Road and was struck by a train of defendant, which was coming northward from Salem to Woodbury. The angle made by the highway from Woodbury toward Salem and the railroad

of defendant as it approaches Woodbury from Salem is an obtuse angle. There were no gates, bell or flagman at the crossing. The only warning sign was the ordinary signboard placed some distance from the crossing.

According to plaintiff's witnesses, the engine bell was not rung, nor was the engine whistle blown as the train approached the crossing and no other warning of the approach of the train was given.

Plaintiff's witnesses showed that to a person approaching the crossing as Ballinger was then approaching it in the automobile, the view of the track to the south was obscured.

1. The Court held that Chapter 278 of the Pamphlet Laws of 1910, page 490 (Compiled Statutes, page 4238, Sec. 36-C) does not apply to **injuries to property**, but is applicable solely to **personal injuries**; and that it was, therefore, within the province of the Court as a legal question to determine whether the defendant under the testimony offered was guilty of contributory negligence; and

2. The Court then determined that it was bound to find under the testimony that plaintiff's employee, Ballinger, was guilty of contributory negligence and that there was no evidence to go before a jury on that question.

We respectfully submit that the Court erred in both of these determinations:

I.

Chapter 278 of the Laws of 1910 is as follows:

"An Act concerning the liability of railroads for

injury to persons or property caused by running cars across public streets and highways, at which crossing no safety gates, bell or other device to give warning to the traveling public have been installed."

"Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. In any action against any steam railroad company brought to recover damages for injuries or death occurring at any crossing of the right of way of such steam railroad company, where such company has not installed any safety gates, bell or device usually employed to warn and protect the traveling public at such crossing, which injuries or death are alleged to be due to the negligence of said railroad company or its agents, the plaintiff in such action shall not be non-suited on the ground of contributory negligence on his own part or on the part of the person for whom such suit is brought, but in all such cases it shall be left to the jury to determine whether the person injured or killed was exercising due and reasonable care under the conditions existing at said crossing at the time of such injury or death, and if the jury shall determine that the person injured or killed was not exercising due and reasonable care under the conditions existing at the time of such injury or death, the verdict shall be against the plaintiff and in favor of the defendant.

2. All acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

3. This act shall take effect immediately."

The title of this statute does not appear in the Compiled Statutes to which reference was made by the Trial Judge.

(a) The word "injuries," (lines 2 and 7) and the word "injured" (line 13) and the word "injury" (lines 15 and 19), in the mind of the Trial Court, referred merely to injuries to **persons**.

We feel that this construction is unwarranted, even if the body of the act alone be considered. The word "injury" or "injuries" refers primarily to both persons and property unless otherwise qualified.

In *N. Railway of France vs. Carpentier*, 13 How. Pr. (N. Y.) 222, the Court cites with approval Webster's definition as follows:

"In general, any wrong or damage done to a man's person, rights, reputation or goods."

And to the same effect, *Hitch vs. Edgercombe*, County Com. (N. C.) 44, S. E. 30.

Nicholas vs. City of Minneapolis, 16 N. W. 410:

The Minnesota Act incorporating City of Minneapolis provides that no action shall be maintained against the city on account of any injuries received by means of any defect in the condition of any bridge, etc., and held that injuries applied to property injury as well as to personal injury.

In *January vs. State*, 38 S. W. (Tex.) 179, where

—Code Criminal Proceeding, 1895, Art. 606, provided that no judge should sit in any case where the

party injured may be connected with him by consanguinity; it was held:

“included party injured either as to his person or property.”

McCarthy vs. Guild, 53 Mass. 29.—

Here the same rule was applied to a statute which provided that

“any person injured by a dog may recover,” etc.

(b) All doubt as to the meaning of the word “injury” is removed, however, upon reading the title of the act. In express terms that title makes the act apply to both “persons or property,” thereby showing clearly the intention of the Legislature to make the act applicable to injuries to both persons and property.

(c) It is a rule of statutory construction that, where any ambiguity or uncertainty appears in the language of the body of the act, the title should be considered to discover the intentions of the Legislature.

Everham vs. Hult, 45 N. J. L. 53:

“The title of an act of the Legislature will not supply defects or omissions in the enacting part, but may be resorted to in ascertaining the legislative intent where the meaning is uncertain by reason of the use of general language of uncertain signification, as of words of doubtful import, especially since the Legislature is required by constitutional provision to frame a title for every act, and to express in the title the object of the enactment.”

To the same effect is Hendrickson vs. Fries, 45 N. J. L. 563.

—Dobbins vs. Northampton, 50 N. J. L. 499:

“The constitutional mandate that the object of every law shall be expressed in its title, has given the title of an act a two-fold effect. It has added additional force to the title as an indication of legislative intent in aid of the construction of a statute couched in language of doubtful import, and it also operates as a constitutional limitation upon the enacting part of the law.”

Slocum vs. Neptune, 68 N. J. L. 597:

“If possible, every legislative act must be given effect by construction; and, aided by the title, to which for this purpose resort may properly be had, we find no difficulty in so construing this one.”

(d) We find no case in which any construction of this act has been given by this or any New Jersey Court which would limit its application to personal injuries.

The act was also considered in the cases of Waibel vs. S. S. R. R. 87 N. J. L., 577; Bradley vs. C. R. Co., 84 L. 358; Spargo vs. C. R. R. 84 L. 251; James vs. D. L. & W. R. R. 92 L. 150; P. R. R. Co. vs. Ortleby, 204 Fed. 273, and N. Y. R. Co. vs. Thierer, 209 Fed. 316.

If that rule is here followed, we must conclude that the act cited applies to injuries both to **property** and **persons** and consequently to the present case.

The Court was, therefore, manifestly wrong in directing a verdict against the plaintiff on the basis of this statute. Its statement to the jury (p. 117, line 32, etc., p. 118, line 34, etc.) on such direction of verdict shows that the direction was based solely on the Court's er-

ronous construction of this statute.

Furthermore, if the jury, under a proper construction of this statute, was the sole judge of the contributory negligence of the plaintiff, there was then no possible justification for the removal of the case from the jury.

Witness Ballinger (p. 17, l. 33) who drove the automobile and witness Noble (p. 48, l. 3) who was standing within thirty feet of the crossing and on the opposite side thereof in the middle of the public road as the train approached, both testified that the engine whistle did not blow nor did the engine bell ring as the train approached the crossing. It is true that this was denied by the engineer and fireman, but the fact of defendant's negligence being established *prima facie* made this a jury question.

II.

Even if the Court were not, by the 1910 Statute above recited, precluded from removing from the province of the jury the question of contributory negligence, yet the evidence adduced on this point made it clearly a question for the jury.

The facts brought out by the testimony of plaintiff's witnesses or by cross-examination of defendant's witnesses are as follows:

—The defendant's railroad, approaching the crossing from Salem and the Mantua Road, approaching the crossing from Woodbury, make an obtuse angle; therefore, plaintiff in looking to the right would be looking nearly parallel with the railroad itself.

—In this obtuse angle was a field in which appar-

ently the only obstructions were stacks of corn.

—The field and road were covered with snow and the snow was so deep that in the Mantua Road that road was blocked except right in the middle of that road. (Noble, p. 49, l. 13).

—It was intensely cold and the wind was blowing hard. (Ballinger, p. 12, l. 11).

—As Ballinger approached the crossing from Woodbury in plaintiff's truck, another automobile was approaching the crossing from the opposite direction, which automobile he was bound to pass. This could not be done without one of the machines pulling out into the heavy snow and allowing the other machine to pass. (Noble, p. 47, l. 26.)

—Ballinger's machine was a right-hand drive; he sat on the right hand side of the car and was the only occupant of the car. The glass wind shield was up and the curtains were open. (Ballinger, pp. 14, 15, 16.)

—There was a line of big poles along the road on Ballinger's right as he approached the crossing, and also two lines of heavy poles along the railroad right of way from the crossing toward Salem, both of these lines of poles being between the railroad track and the Mantua Road. At the point of approach by Ballinger these two lines of poles were so placed as not to be opposite each other. A person, therefore, approaching the crossing from Woodbury and looking to the right across the obtuse angle towards the right of way of the railroad would look through first the line of poles along Mantua avenue and then the two lines of poles along the far side of this obtuse angle, that is, on the right of way of the defendant railroad. (Allen, pp. 62 to 78.)

—The engineer, according to his testimony (p. 84, l. 37) was in his position in the cab all of the time and looking toward the crossing and up and down the Mantua Road. He did not see plaintiff's truck at any time, not even just before his engine struck the truck. He knew that he had struck an object only by the noise which it made.

He said (p. 87, l. 22) he had shut off the steam before he reached the crossing and the train was gliding toward the crossing on a down grade and with no steam issuing from the engine.

—The fireman was on his box in the cab and on the side of the engine toward plaintiff's truck and looking toward the crossing and the Mantua Road until he got within 200 feet of the crossing. He then got down from his box and could not see the crossing. (Hopke, p. 97, l. 14.)

The fireman, although looking straight toward this crossing and the Mantua Road as it approached the crossing from Woodbury did not at any time see plaintiff's truck and the only knowledge of the collision was brought to him by the noise which it made. (p. 97, l. 10.)

—Ballinger (p. 18, l. 37, etc.) approached the crossing very slowly—at "a horse's walk" or possibly eight miles an hour. As he approached the crossing, about "one-half square" from it, he began to look up and down the railroad watching for trains. He looked first to the right and then to the left and then to the right and then to the left again and he could not see the approaching train, all the time gradually and slowly approaching the crossing. He did not hear any signal from the locomotive. He was going very slowly and when he got to the crossing there was a drop down from the public road to

the railroad because of the accumulation of the snow, etc., on the public road.

—Witness Ballinger also states (p. 22, l. 8) that since the accident he has visited the crossing and found that to one approaching the crossing as he did that day a view of an approaching train from Salem toward the crossing is obscured by the three lines of poles, one line on Mantua Road and two lines on the right of way of the railroad, so that at various points along the Mantua Road you cannot see a train at all.

—The testimony of witness Allen is to the same effect and as follows:

Direct, p. 63, l. 7 to 35 and 64,—l. 1 to 8—

“A. I went down with Mr. Ballinger, and on the side toward Woodbury or going in the same direction in which Mr. Ballinger was traveling at the time of the accident, we stopped the car. A train was coming from Woodbury or Camden. A short space after it passed the highway crossing. I guess the train had gone possibly a hundred or a hundred and fifty feet over the highway. I ran back eight paces, measured off at that time, and there was a line of poles formed possibly by any one of these poles, one that would be probably twenty feet back from the railroad crossing coming in line with the double line of poles running parallel with the railroad crossing, and for a space of possibly two hundred yards that train was obstructed by two or three poles.

Q. You mean the view was obstructed?

A. The view of the train. In other words, the train travelled a couple of hundred yards before it came into view again while I was standing in that one position.

The Court: Where did he place himself then?
(To the witness.) Where did you say you were?

The Witness: I was eight or nine paces from the track. I counted them off as I paced them.

By the Court:

Q. What hindered you from seeing?

A. The line of poles formed a blind angle.

Q. And how wide a space did that cover? By that I mean how much freedom of movement had you before you could see either past it or before you reached it in that situation?

A. If I had walked one foot in either direction or a total of two feet I could not have seen anything. But, of course, if I had gone out of that blind angle I probably might have been able to see the train. In other words, the blind angle covered up these two feet."

Witness Ballinger on the same point says:

(P. 22, lines 8 to 20.)

"A. Well, I find out that it obstructs the view, this line of telegraph poles and I was down, looking up the railroad and the approach of a train coming to Woodbury. While I was standing there, that train went by, and I don't know how far, it wasn't very far, the train, you couldn't see it.

Q. Was anybody with you when that was done?

A. Mr. Allen.

Q. When was this?

A. Last Saturday week, whatever time that was.

Q. Mr. Allen from my office?

A. Yes."

(P. 25, lines 2 to 18.)

“Q. Now, I don’t understand whether or not there is any obstruction to your seeing that train until it gets these four blocks away as you speak of?

A. Yes, there was a line of poles.

Q. Well, did they interfere with your seeing there?

A. They did interfere.

By Mr. Stockwell:

Q. Now, what I want to know is whether you stood to the north of that crossing in about the same position you were when you approached that train on this pike and you looked toward the south up the line of the right of way of the railroad, and I want to know whether your vision was then obscured by the line of poles?

A. It was.

(P. 27, lines 18 to 30.)

Q. All right, that is right, to the right toward Salem; that is Salem down there. Then I understand you to say there were obstructions to the vision?

A. Yes.

Q. And how far could you see? You said you could see a train about four squares, going about four squares that way.

A. No, not down this way; I don’t know hardly how far that would go, about two squares; about four squares for the train this way, but about two squares of the train was out of sight this way, by the obstruction of these poles.

Q. What do you mean by about two squares?

A. About two squares like they are in the city."

—The train as it approached the crossing was going from 30 to 35 miles an hour (p. 87, l. 18). Under the testimony of witnesses, Ballinger, Noble and Allen, for the plaintiff, and the admissions of the engineer and fireman of the defendant, it was at least a jury question whether or not plaintiff's truck in charge of Ballinger approached the crossing with reasonable care.

—The statements of plaintiff's witnesses respecting the obscurity of the view of the railroad is confirmed by the admissions of the engineer and fireman. Although the engineer was on the right hand side of the engine and Ballinger was approaching the crossing from his left, yet the engine boiler could not have obscured the vision of the engineer for more than a short distance south of the crossing. The fireman, however, was on the left side of the engine and looking directly towards the Mantua Road and the plaintiff's approaching truck. He did not see this truck at any time although manifestly it was there and approaching the crossing, nor did the engineer see that truck or the other automobile of witness Noble, which was on the opposite side of the crossing. There is but one explanation of the testimony of plaintiff's witnesses when considered in the light of the admissions of the engineer and fireman, and that is: To one approaching the crossing from Woodbury along the Mantua Road there was at least a confusion in the view of any train approaching from Salem. Certainly if the engineer and fireman, who, on defendant's theory of the case had a clear view of this approaching automobile, did not see it although they were looking straight toward it, it was reasonable to assume that Ballinger was telling the truth when he says he looked carefully in the di-

rection of the approaching train and could not see that train.

All of these elements are easily explained if we consider the following:

The morning was very cold. The snow was deep across the track, the road and the open field. The wind was blowing quite hard. There must have been snow blowing across the field and also around the train as it approached. The three lines of poles were so located that to one approaching along one side of this obtuse angle and the view down the railroad track was at various points absolutely destroyed and at all points in that approach obscured under the weather conditions then prevailing.

If we are to say as a matter of law that Ballinger was negligent because he looked toward the approaching train and did not see it, we must assume that both the engineer and fireman were not testifying truthfully when they said they were looking at the crossing and the road as they approached the crossing and did not see the approaching automobile.

The pictures produced by the defendant were taken at a time when there was no snow in the air and at points to serve the defendant's purposes.

Ballinger approached this crossing carefully with his car not only under control, but just creeping along. He could not approach the crossing and keep his eye on the right hand side of the road at all times. He was entitled to look to the left as well as to the right to see if any train was approaching from the left and the angle at the left is very sharp. He was entitled to manage his car and the conditions under which he was then driving were

difficult. He had to avoid skidding; he must calculate on passing the Noble car which was approaching from the opposite direction. There is nothing to indicate that he did not do what a prudent and careful man would do under like conditions, and that is all that the law requires of him.

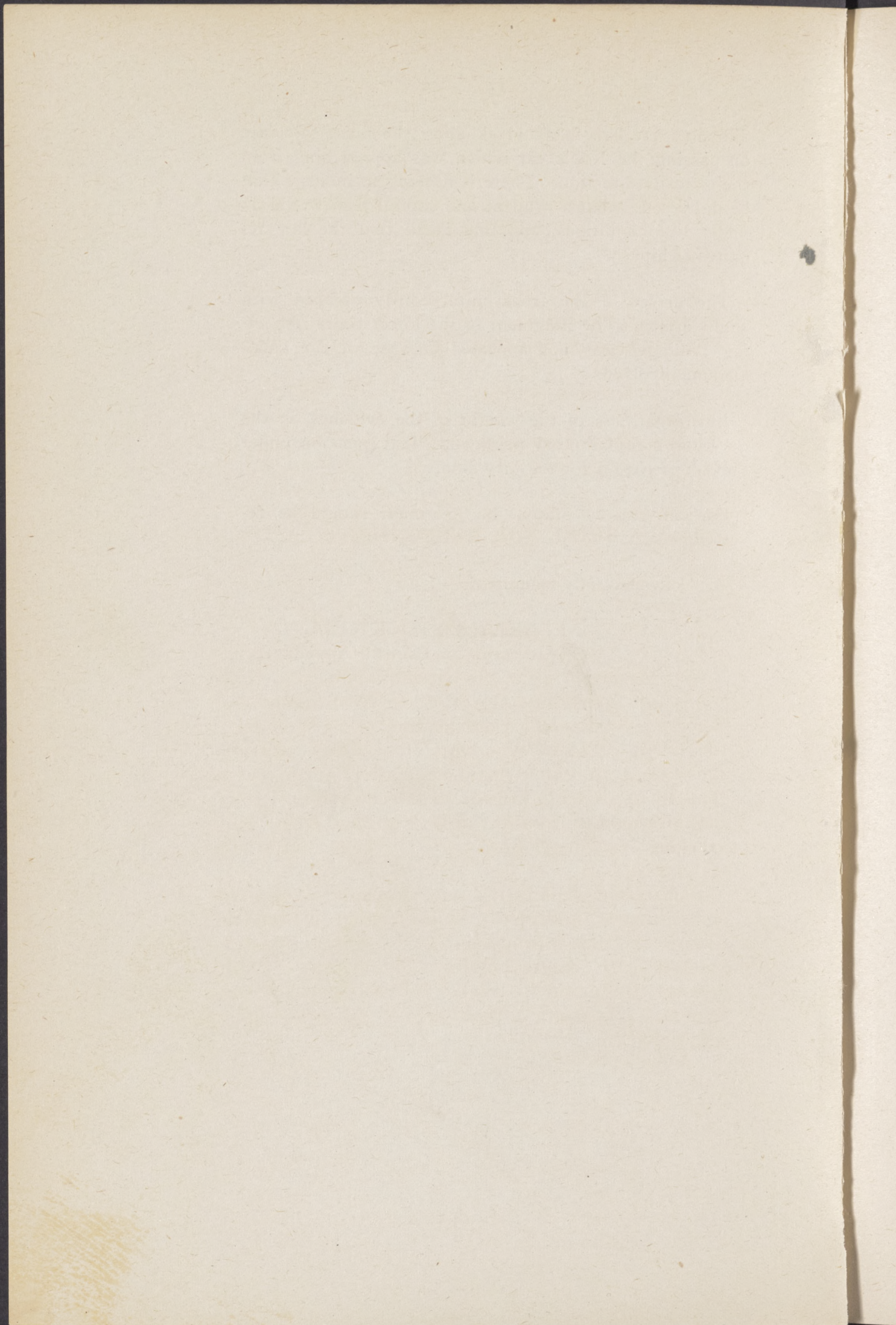
The driver of the truck miraculously escaped with slight injury. The judgment of the lower court respecting Ballinger was not appealed because of the small amount involved.

But, regardless of the weight of the evidence on the question of contributory negligence, that question under the Act of 1910 is for the jury alone.

For the reasons stated the judgment should be reversed.

Respectfully submitted,

BLEAKLY & STOCKWELL,
Attorneys for Plaintiff-Appellant.



NEW JERSEY COURT OF ERRORS AND
APPEALS.

THOMAS S. PANCOAST,
Plaintiff-Appellant,
VS.
DIRECTOR GENERAL OF RAIL-
ROADS,
Defendant-Respondent.

On Appeal.

BRIEF FOR RESPONDENT.

FACTS.

On February 5, 1918, the Director General of Railroads was operating as part of the West Jersey and Seashore System the road leading from Woodbury to Salem. Below Woodbury there was a grade crossing at an obtuse angle of about 135 degrees, so that an approaching driver was required to barely turn his head to the right to look up the track. This crossing was not protected by bells, gates or watchman.

Pancoast, the plaintiff, was a manufacturer of confectionery, his factory being located in Camden, and on the day in question he sent his automobile stocked with confectioneries and driven by his servant, Ballinger, to make deliveries to his customers. His route took him over the crossing in question.

The testimony shows that there was no curtain on the automobile on the side from which the train was approaching at the end of the seat on which Ballinger, the driver, was seated, so that there was nothing to prevent his looking and seeing the train in the direction from which it came. The testimony shows the train was traveling at the rate of 30 miles an hour and that the automobile was traveling at the rate of 8 miles an hour (page 84, line 30; page 96, line 25). When Ballinger, the driver, arrived at a point 75 feet from the crossing, he had a clear view up the track in the direction from which the train was approaching for a distance of 954 feet (page 106, line 5; page 108, line 8). When he was 30 feet from the crossing, he had a view up the track in the direction from which the train was approaching of 4,200 feet (page 106, line 2; page 108, line 2). At 20 feet from the crossing he had a clear view up the track in the direction from which the train was approaching of 4,500 feet (page 105, line 30; page 108, line 1). The photographs and map offered in evidence showed that there was no point between the crossing and a point distant 75 feet therefrom at which the view of the train could not be had. Plaintiff selected one point where there was a telegraph and a telephone pole close together, where, if the train had been standing still, a partial view of the train would have been obstructed, but the point thus selected was 24 feet distant from the crossing (page 68, line 15).

Ballinger, apparently without looking for the approaching train, drove his automobile in front of it, resulting in the practical destruction of the automobile and some injury to Ballinger, the driver. Both Pancoast and Ballinger instituted suits against the Director General, and by consent the two suits were tried together. Against Pancoast, the owner of

the automobile, the Court directed a verdict for the defendant. As to Ballinger, the Court sent the case to the jury and the jury returned a verdict in favor of the defendant. No appeal was taken by Ballinger, and just why the charge of the Court in the Ballinger case, delivered after a verdict had been directed for Pancoast, is printed in the book is not clear to us.

ARGUMENT.

Two points are argued by appellant for reversal in the Pancoast case. The first is that the Statute of 1910 (page 490) was improperly construed by Judge Lloyd before whom the case was tried. Plaintiff's contention is that inasmuch as the title of the act applies to injuries to property as well as to persons, that the act must be construed as applying to property as well as persons, notwithstanding the body of the act contains no reference whatever to property. That portion of the act which precludes the direction of a non-suit against the plaintiff reads:

“The plaintiff in such action shall not be non-suited on the ground of contributory negligence on his own part or on the part of a person for whom such suit is brought, but in all such cases it shall be left to the jury to determine whether the person injured or killed was exercising due and reasonable care under the conditions existing at said crossing at the time of such injury or death, and if the jury shall determine that the person injured or killed was not exercising due and reasonable care, etc.”

Plaintiff cites the case of *Evernham vs. Hulit* as authority for the proposition that the title of an act

may be resorted to to aid in ascertaining the legislative intent where the meaning is uncertain by reason of the use of general language of uncertain significance or of words of doubtful import. We admit that the case cited so establishes the law in this State, but we contend that it has no application in the case at hand because there is no language in the Act of 1910 where there is general language of uncertain significance or of words of doubtful import. The language is perfectly clear and the import of the language is not in doubt. The difficulty arises over the fact that the title of the act is broader than the body of the act, and citing the same case cited by appellant, to wit, *Evernham vs. Hulit*, 45 L. 53, at page 55, we contend that the title of an act of the Legislature will not supply defects or omissions in the enacting part. Such is the situation in the case at hand. The body of the act clearly limits the power of the Court in directing a non-suit to those cases where a person has been injured or killed. Suppose in the case at hand that Ballinger had not been injured at all, but that the automobile had been demolished. In such case could it have been fairly contended that the Judge was precluded from directing a verdict for the defendant if contributory negligence had been clearly shown.

The act may be valid although its title is broader than the act itself.

36 *Cyc.* 1032, Par. 7.

In the case of *People vs. MacBride*, 234 Ill. 146; 84 N. E. 865-868; 123 Am. St. Rep. 82, under a constitutional provision similar to ours where there were two subjects expressed in the title but only one subject expressed in the act, at page 868 the Supreme Court of Illinois said:

“An act may contain many provisions and details for the accomplishment of the legislative purposes and if they legitimately tend to effectuate that object, the act is not contrary to the constitution. * * * * The constitutional prohibition against more than one subject not being directed against the title but against the act itself. The question now being considered is to be determined by the body of the act, and there is in the act but one general subject. That subject is the determination by the legal voters of a certain district whether the sale of intoxicating liquors shall be prohibited therein.”

At page 869, the Court said:

“If the title of an act fairly indicates a general subject and reasonably covers all the provisions of the act and is not calculated to mislead the Legislature or the people, it is a sufficient compliance with the constitutional requirement. The generality or comprehensiveness of the title is no objection providing the title is not misleading or deceptive and fairly directs the mind to the subject legislated upon. It is not required that the title should be an abstract, a synopsis or an index of the contents of the act.”

and held that the surplusage of the title might be disregarded.

The second point urged for reversal is that the Judge should not have directed a verdict, but should have allowed the case to go to the jury.

As previously stated, the driver at 75 feet distant from the crossing had a clear view along the track for 954 feet. When he was 30 feet from the crossing he had a clear view of 4,200 feet, and when 20 feet from the crossing he had a clear view for 4,500 feet.

Photograph D3 shows a train distant 150 feet from the crossing with the camera set 30 feet from the crossing (testimony, page 110) and at the respective speeds claimed, the collision would have occurred on the crossing in question. D4 shows a train 202 feet from the crossing with the camera set 50 feet from the crossing, which at the speeds claimed would have collided on the crossing. D5 shows a train 337 feet from the crossing, with the camera set 75 feet from the crossing, which at the speed claimed, would have collided on the crossing.

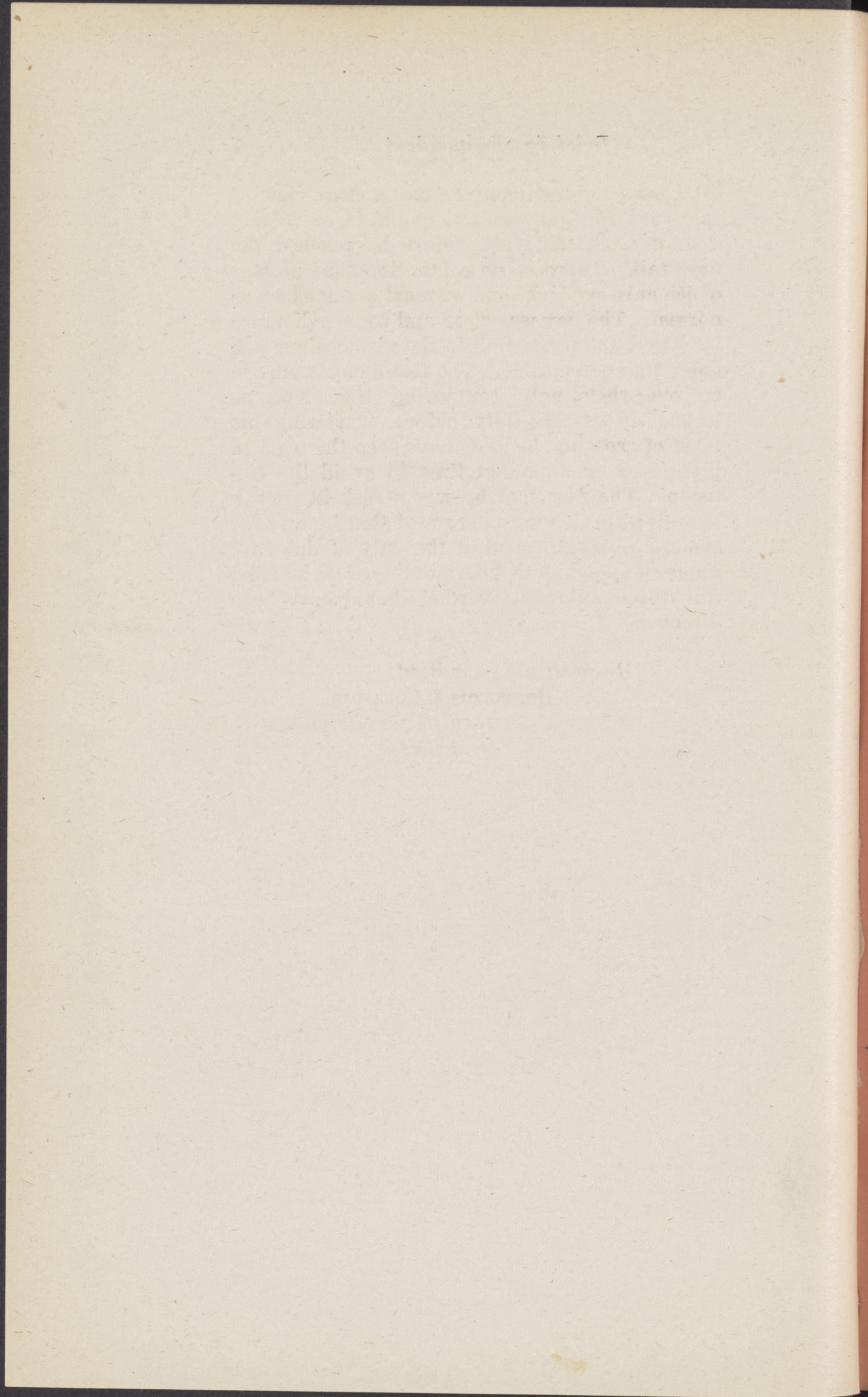
The testimony of plaintiff's witness Allen showed conclusively that his statement about the obstruction of his view was inaccurate, and according to his statement the worst he could make it only obscured a portion of the train when he was 24 feet distant from the track, and from 20 feet distant from the track there was no obstruction whatever. Under these circumstances, it is submitted, the Judge was clearly right in directing a verdict for the defendant.

Richter vs. Pennsylvania R. R., 42 L. 190;
Lynch vs. Pennsylvania R. R., 88 L. 408;
Shoemaker vs. Central R. R., 89 Atl. 517;
Schnackenberg vs. D. L. & W. R. R., 86
L. 517.

In the case of *Robbins vs. Hines, Director General*, decided at the June Term, 1920, the Supreme Court said:

“Under the testimony he had a clear view of the track for 700 feet at a point 15 or 20 feet distant from the track before he reached the first rail. There is no contention that he was deficient in eye sight and we must assume he was normal. The day was clear and for the distance indicated no obstruction to the vision along the track was perceptible. The testimony seems to be overwhelmingly convincing that had he looked, as was his duty before exercising his right of crossing, he must have seen the train in plain view in abundant time to avoid the collision. The fact that he was struck in such a situation furnishes ample proof that he was for some reason neglectful of the duty of due care imposed upon him by law, and therefore he must fail in his action. A verdict should have been directed.”

Respectfully submitted,
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Respondent.*



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