New Jersey Court of Errors and Appeals

RACHEL ANN LANGE and JURGEN P. LANGE, JR., Executors, etc., under the last will and testament of JURGEN P. LANGE, *Plaintiffs-Appellants,* *against* NEW YORK, SUSQUEHANNA and WESTERN RAILROAD COMPANY, *Defendant-Respondent.*	On Appeal from Supreme Court.

BRIEF ON BEHALF OF PLAINTIFFS-APPELLANTS.

Abstract of Case.

This is an appeal by the plaintiffs as executors under the last will and testament of Jurgen P. Lange from a general verdict returned in favor of the defendant in the above entitled action. The cause was tried before Hon. George S. Silzer and a jury at the Passaic Circuit on December 1st, 1914, and subsequent days.

This action is brought by the plaintiffs, as executors against the defendant for damages resulting from the death of plaintiff's ~~in~~testate, caused through negligence of defendant.

The defendant railroad corporation is engaged in the business of railroading, and on September 27, 1913, operated a steam railroad running across a public highway in Paterson, New Jersey, known as East 27th Street. The street crossing over

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the railroad at this point was at grade. The railroad at the point in question runs generally east and west and the highway north and south. Adjacent to the right of way of the defendant and the said highway there were certain buildings and fences so constructed as to obstruct the view of persons approaching the right of way of the defendant from the north. The defendant maintained a crossing bell at the point in question as a means of warning travelers approaching the railroad crossing.

On Saturday, September 27th, 1913, Joseph Lange, son of the deceased Jurgen P. Lange, being then the owner of a Cadillac car licensed in his name under license No. 44,936, and having a driver's license No. 34,205, decided to take a trip to Haskall, New Jersey, to visit his brother, the plaintitff Jurgen P. Lange, Jr., at what is known as the Haskall Quarry, a corporation which was chiefly owned by the plaintiff's testate. Joseph, the driver of this car was twenty years old (Case, p. 95, fol. 30). He had had a large experience in the operation and construction of automobiles, having driven one since 1910 under a license, and prior to that time, for an entire period of seven years (Case p. 96, fol. 20). The reason his father went with him was that he simply asked his father to go along (Case p. 97, fol. 30). His father did not go up on business of the Company. He transacted no business that day (Case p. 104, fol. 20; p. 105, fol. 30).

The driver and owner of the car, Joseph Lange, chose his own course. He took this 27th street road through Paterson. It was his custom to go by a different road on other occasions. He had only been over this crossing once before (Case p. 108, fols. 20-30). He did not consult his father about trying that road (Case p. 108, fol. 30). On the return trip from Haskall he brought back his grandmother, Mrs. Pierce, and his father. They

both sat in the rear seat. The plaintiff's testate, the driver's father, was on the left hand side in the rear seat and alongside of him was Mrs. Pierce, the grandmother (Case, p. 98, fol. 30). It was a clear day and the accident happened in daylight (Case, p. 110, fol 10). It happened shortly before six o'clock (Case, p. 134, fol. 20). They left Haskall at twenty-five minutes to five and came back over the same road. The owner of the car was driving, sitting alone on the front seat on the right hand side. As he came down 27th street he was going about 12 or 15 miles an hour until he got within one hundred feet or so of the crossing. Then he slowed down to around eight miles an hour, and he received no warning from any bell or any whistle or otherwise of the approach of an engine or train. He listened for one and he heard none. He looked towards the left, the direction in which the train came, and could see nothing because of the fence. He looked towards the right and watched to the right and as he turned to the left to look again in that direction he was hit. He was then on the track (Case, p. 98, fol. 30; p. 99, fol. 1). The distance from Haskall to that railroad crossing was between 12 and 14 miles (Case, p. 98, fol. 10).

As Joseph Lange approached this railroad crossing he could see a sign board "Railroad Crossing" or something to that effect (Case, p. 110, fol. —). He knew he was approaching a railroad crossing. He does not know whether his father said anything to him at the time or not, but says the chances are his father said something to him because he almost always warned him. He does not recall as to what he did on this occasion (Case, p. 110, fols. 20-30). His father was talking with Mrs. Pierce as he sat on the rear seat as they came down from Haskall, and might have been talking with Mrs. Pierce as they approached the crossing.

In the collision the father was killed.

Grounds of Appeal.

1. The trial court erroneously submitted to the jury the question of contributory negligence upon the part of the owner and driver of the car as imputable to the testator.

Upon this question the Court charged as follows:

> "If you find that they (Railroad Company) did not give the necessary signal, then of course, you must go to the next stage of the case, and see whether there was any contributory negligence.
>
> "Now, in that, you would naturally take up first, the boy Joseph, what his actions were, and, then, what the actions of the father were.
>
> "This is the law with reference to contributory negligence, if you find there was such on the part of the boy:
>
> > " 'Where a person receives an injury by collision with a railroad while riding by invitation and without hire in a carriage driven and owned by another, the negligence of the driver is not imputable to him.'
>
> "In this case, as I recall the testimony—you will have to trust to your recollection, however—the son Joseph said that he owned the car, that it was licensed in his name and that he drove it, that he chose the course they were to take, that he selected this particular road to go, and that it was his car and he was driving it.
>
> "The Court has also stated the law in this way:
>
> > " 'If the relation of master and servant, or principal and agent or mutual responsibility in a common enterprise, did not in fact exist between the deceased and the driver, the negligence of the driver is not imputable to the deceased. The fact that the deceased was a guest did not relieve him from exercising ordinary care. One who while riding in the private conveyance of another is injured by

> the negligence of a third party, may recover against the latter, notwithstanding that the negligence of the driver of the conveyance, in driving his auto, contributed to the injury, where the person injured is without fault and had no authority over the driver.'

"So you see, gentlemen, if the deceased, Mr. Lange, had no authority over the driver, and was not negligent himself and *the relation of master and servant or principal and agent or mutual responsibility in a common enterprise did not exist,* then it does not make any difference how negligent the boy was, and that negligence could not be imputed to the father.

"Now, as to the duty of the father—"

> "THE FOREMAN: Would that be true if the boy were under 21?"

"THE COURT: It does not make any difference. I charge you that it does not make any difference. If he was under 21, if he was the man in charge of that car, if he owned it, *and these relationships which I have indicated to you did not exist,* and the deceased had no control over the car, *then* the negligence of the son is not imputable to the deceased, any more than the negligence would be imputable to him, if the driver was somebody who was not his son (Case, pp. 425 and 426)."

Objection and exception were noted to this by plaintiffs as follows:

> "I desire to except to your Honor's charge * * * in which you stated the rule of the relationship existing with the boy Joseph, either of master and servant, or agent or engaged in a common enterprise. I think as a matter of law none of them existed."

Exception allowed (Case, p. 435).

2. That the Court left to the jury to determine whether or not the questions of whether master and servant, principal and agent, or engagement in joint enterprise, existed, without instructing the jury as to the legal principles upon which either or any of said relationships must be established.

ARGUMENT.

POINT I.

The charge of the Court upon the question of imputing the negligence of the son, who was driver and owner of the car, to his father, the deceased, was erroneous.

The above quoted excerpts from the charge clearly show that the Court left to the jury to find whether *"these relationships which I have indicated to you"* exist, and he left it to them as a question of fact which they might find, for he says:

> "If the relation of master and servant, or principal and agent, or mutual responsibility in a common enterprise, *did not in fact exist* between the deceased and the driver, the negligence of the driver is not imputable to the deceased."

And again he says:

> "If the deceased, Mr. Lange, had no authority over the driver, and was not negligent himself, and the *relation of master and servant, or principal and agent or mutual responsibility in a common enterprise* did not exist, then it does not make any difference how negligent the boy was," etc.

The appellants here contend that this was error for the reason that under the proof in the case the Court should have charged as a matter of law that the relation of master and servant did not exist; that the relation of principal and agent did not exist and that the father and son here were not engaged in common enterprise.

Not only is the vice of his charge to be found in the fact that he left this as a question of fact to be determined by the jury, but he likewise fail-

ed to indicate to them when the relation of master and servant might arise; when the relation of principal and agent might arise and when the relation of mutual responsibility in a common enterprise might arise. The jury were left unguided on the law controlling these relations and were left to speculate, (as is indicated by the question of the foreman

"Would that be true if the boy were under twenty-one?")

that the father had control over his son because he was his son under twenty-one and that if the boy was negligent the father had to be charged with it.

The law of this State and all other states is very clear upon the question as to when the negligence of a driver of a vehicle is chargeable and imputable to the occupant in the car.

Indeed we need go no further than the charge as made (fol. 10, p. 425) by the trial court in this very case. There was a correct exposition of the law, and the Court should have charged as matter of law that the father here was not bound in any respect by the negligence of his son Joseph because there was no relation of master and servant between them, there was no relation of principal and agent between them and they were not engaged in any common enterprise.

The facts in this case are undisputed that the son Joseph was a student at Stevens Institute; that he had native abilities as a mechanician and that he and his brother had constructed an automobile while he was still under age. He owned his own car; the license was his and he was a licensed driver to operate. He asked his father upon this particular occasion to take a ride with him to go up and see his brother, since he was going and he thought that his father would enjoy the pleasure of going along to see his other

son at the same time. It was a mere invitation to have a drive out in the country. Joseph chose his own course, selected this particular road, and as is pointed out (fol. 20, p. 425), it was his car and he was driving it. He sat in the front seat and his father sat in the rear seat, with the grandmother and they both left the operation and control of the car to Joseph.

The relation of master and servant did not exist.

Lewis v. L. I. R. R., 162 N. Y., 52, 66;
Engle v. Eureka Club, 137 N. Y., 100, 103;
N. Y. L. E. & W. R. R. Co. v. Steinbrenner, 47 N. J. L., 161;
Horandt v. Cent. R. R. Co. of N. J., 83 Atl. Rep. 511;
Cons. Tract. Co. v. Hoimack, 60 N. J. L., 456;
Cons. Tract Co. v. Behr, 59 N. J. L., 477;
Harrison v. Kansas City Elec. Lt. Co., 195 M. O., 606;
Butler v. Newman, 116 Ill. App., 546;
United R. & E. Co. v. Biedler, 98 Md., 564;
Weldon v. Third Ave. R. R. Co., 3 App. Div. (N. Y.) 370;
Murray v. Dwight, 161 N. Y., 301.

The fundamental proposition controlling the relation of master and servant is one which is too often overlooked.

In *Lewis v. L. I. R. R.,* (supra) the infant plaintiff was in a coach which had been hired and its driver was run down by a train belonging to the defendant. In that case, commenting upon the question as to whether the relation of master and servant arose between the driver and the occupant of the vehicle, the Court says:

"The only other question that need be specially considered arises upon the defendant's exception to the refusal of the court to charge that the relation of master and servant existed between the plaintiff and his associates and the driver and helper; that the former were responsible for their competency, and that their negligence, if there was any, was imputable to the plaintiff and his associates. In order to establish the liability of one person for an injury caused by the negligence of another, it is not enough to show that the latter was, at the time, acting under an employment by the former; it must be shown in addition that the employment created the relation of master and servant (*Hexamer v. Webb,* 101 N. Y. 377; *King v. N. Y. C. & H. R. R. R. Co.,* 66 N. Y. 184; *Butler v. Townsend,* 126 N. Y. 105). In the latter case Judge Finch said that the relation of master and servant exists where the employer selects the workman, may remove or discharge him for misconduct, and may not only order what work shall be done but the manner and mode of performance.

"The plaintiff in the case at bar did not hire or pay the driver or attendant, and had no voice in the selection of either, which was an important element in determining the relation between them. The fact that the driver may have received from the plaintiff or his associates orders when to go forward and stop, did not make the plaintiff the servant of the defendant (*Johnson v. N. A. S. N. Co.,* 132 N. Y. 576). No farther discussion of the question is necessary at this time, as we have recently had this subject under consideration. (*Murray v. Dwight,* 161 N. Y. 301). It is manifest that under the principles established by the decisions of this court the relation of master and servant did not exist between the plaintiff and the driver or helper, or either of them."

In *Murray v. Dwight* (supra) the Court says in defining the relation of master and servant, at page 305:

"The relation of master and servant is often confused with some other relation. *The mere fact that one person renders some service to another for compensation, expressed or implied does not necessarily create the legal relation of master and servant.* There are many kinds of employment which are peculiar and special, where one person may render service to another without becoming his servant in the legal sense. **A servant is one who is employed to render personal services to his employer otherwise than in the pursuit of an independent calling.** The truckman who transports the traveler's baggage, or the merchant's goods to the railroad station, though hired and paid for the service by the owner of the baggage or the goods, is not the servant of the person who thus employs him."

Again it is said:

"The relation of master and servant cannot be created, but by a contract express or implied."

Stevens v. Armstrong, 6 N. Y. 435, 442; *Driscoll v. Towle,* 181 Mass. 416.

In *Butler v. Townsend* cited supra, the Court says:

"One may be employed without being a servant, and have an employer who is, nevertheless, not the master."

Butler v. Townsend, 126 N. Y. 105, 108.

And again it is said:

"The relation of master and servant is often confused with some other relation."

Murray v. Dwight (supra).

Here it is apparently attempted to be confused with the relation of father and son which under the facts of the case can have nothing to do with the cause of action being sued upon. Indeed it has been generally held in cases of hiring that the

right of the hirer to control the driver as to where to go and when to stop, and even generally as to the rate of speed, as where the hired driver of an ambulance was told "to make time." (*Kellogg v. Church Charity Foundation,* 203 N. Y. 93) is not sufficient ground for holding the hirer liable as master.

So likewise the relation of principle and agent did not exist.

The son was not the agent of the father. The son was pursuing an independent right. He was the owner of property; that property was an automobile. He was going for a drive and he asked his father to come along. There was no relation of principal and agent between them. There was no agency whatever. The son was guiding the machine and transporting the father. The father was not exercising any control and was not directing him, and the relation of principal and agent did not exist.

The father and son in this case were not engaged in a common or joint enterprise within the rule of imputed negligence, for to constitute such a common or joint purpose there must be a joint interest or community of interest in the object or purpose of the undertaking and an equal right to direct and govern the movements and conduct of each other in respect thereto. Each must have some voice and right to be heard in his control and management.

Elyton Land Co. v. Mingea, 89 Ala. 521;
Adams v. Thief River Falls, 84 Minn. 30;
Cunningham v. Thief River Falls, 84 Minn. 21;
Kinmouth v. McDougall, 19 N. Y. Supp. 771.

It has been held that a master and servant cannot be said to be engaged in a joint enterprise.

Brush Elec. Light etc. Co. v. Lefevre, (Tex. Civ. App. 1900) 55 S. W. 396.

The relation of husband and wife of itself does not create a common enterprise.

Bailey v. Centreville, 115 Iowa, 271.

The relation of joint enterprise is not created by the mere fact that two persons are doing something together.

See

Barnes v. Marcus, 96 Iowa, 675;
Schoenfeld v. Met. St. R. Co., 40 Misc. 201;
Lane v. Atlantic Works, 111 Mass., 136.

Indeed it has many times been held that the negligence of the husband cannot be imputed to the wife in actions wherein she seeks to recover for the injuries which she has received.

Koehler v. Miller, 21 Ill. App. 557;
Louisville etc. R. Co. v. Creek, 130 Ind. 139; 14 L. R. A. 733;
Miller v. Louisville etc. R. R. Co., 128 Ind. 97;
Bailey v. Centreville, 115 Iowa, 271;
Street v. Holyoke, 105 Mass. 82;
Hedges v. Kansas City, 18 Mo. App. 62;
Platz v. Cohoes, 24 Hun, 101; 89 N. Y. 219;
Davis v. Guarnirti, 45 Ohio St. 470;
Penn. R. Co. v. Goodenough, 55 N. J. L. 577;
Lewin v. Lehigh Valley R. Co., 41 App. Div. (N. Y.) 89.

Certainly if negligence is not to be imputed to the wife from the mere relation of husband and wife, negligence is likewise not to be imputed from the mere relation of parent and child. And indeed it has been so expressly held.

Buckler v. Newman, 116 Ill. App., 546;
Hennessey v. Bklyn. C. R. Co., 6 N. Y. App. Div., 206;
St. Clair S. R. Co. v. Eadie, 43 Ohio St. 91;
Cent. Texas &c. R. Co. v. Gibson, 83 S. W., 862;
Kowalski v. Chicago, 84 Fed., 586;
Griffith v. Balt. &c. R. Co., 44 Fed., 574;

In Consolidated Traction Co. v. Behr, 59 N. J. L. 477, the facts were these: The father was the owner of a market wagon which was being driven by him to market. His nineteen year old daughter was in the wagon accompanying her father upon his journey to market. She was asleep in the wagon upon an improvised couch at the time of her injury. While the father was driving to market he left the wagon temporarily in the night time to search for a loosened and missing wheel nut and just after crossing but when not quite clear of a street railway track. While he was looking for the missing nut a trolley car negligently ran the wagon down, threw the daughter out and injured her. It was held that the negligence of the father was not imputable to the daughter. The underlying principle which controls the disposition of this case could not be better expressed than as by this Court in the case of *Paterson v. Erie Railroad Co.,* 78 N. J. L., 592, in which this Court lays down this principle as the determining principle governing this class of cases.

> "A person whose negligent act produces injury to another cannot escape liability therefor merely by showing that the injury was contributed to by the careless act of third persons. In order to relieve him from such liability it must also appear that the act of the third person was one for which the

injured was responsible under the doctrine of *respondent superior*. In the absence of proof of that fact the injured person is entitled to compel *both or either* of the wrong-doers to compensate him for his injuries."

In *N. Y. L. E. & W. R. R. Co. v. Steinbrenner* (supra) the disclosed facts were that plaintiff was injured in collision with defendant's train while he, with his four nieces, was riding in a coach owned by one Merkins, and driven by a driver who was employed by Merkins. The coach, horses and driver were hired by the plaintiff of Merkins for the journey in the course of which the collision occurred. In discussing the case in this Court, Mr. Justice Depue said:

> "In this case there were no special circumstances which would make the driver's negligent act the act of the plaintiff. The plaintiff hired the coach to carry himself and four nieces to a particular place. The journey was along a public road not specially dangerous except in the fact that it crossed the defendant's railroad. The coach was an ordinary closed coach, with two seats inside and a driver's box in the front, and a window on each side. The plaintiff testified that he told the driver before starting, to be careful about crossing the railroad; that the driver slackened up as he approached the crossing; that he (the plaintiff) listened all the time, and made it his particular business to look and see whether any train was coming; that he did not hear any whistle or bell, or the approaching train, and was not aware of the approach of the train until it was right upon them."

At the trial, the Judge refused to charge that the negligence of the driver of the coach was imputable to the plaintiff, *and did not submit the question of the driver's negligence to the jury.* (47 N. J. L., p. 162). To his refusal to submit this question to the jury the defendant took an exception which was the basis for the review of

this Court. This Court affirmed the judgment and held:

> "That the relation of master and servant did not exist between the plaintiff and the driver, and that the negligence of the driver, co-operating with that of the persons in charge of the train which caused the accident, was not imputable to the plaintiff as contributory negligence to bar his action."

In the case at bar, the person to whom this negligence is sought to be imputed was dead at the time of trial and consequently his evidence could not be taken to show whether or not he was looking or listening, but in other respects the facts are very similar with the exception of the family relationship between the driver and passenger.

If it was not error to refuse to submit the question of imputable negligence to the jury for its determination in the Steinbrenner case, then it was error to submit such question to the jury in the case at bar and especially.

POINT II.

It was error to submit such question to the jury without defining what would constitute the legal status upon which such imputability could be rested.

The Court should not have left the jury, without guide, to speculate upon whether the son Joseph was the agent of the father in the situation described, whether the father was the principal; and should not have left them to arrive, by surmise or guess, at the conclusion that they were engaged in a common enterprise because that is a broad term, having one meaning to a layman and an entirely different meaning under the law of imputed negligence.

The jury may have said that they were engaged in a common enterprise because they were going on a pleasure trip. That was not the test of responsibility for the action of the driver in the circumstances of this case, so that, even if the Court had the right to submit these questions to the jury as matters of fact (which we deny), he had the duty at the same time to instruct the jury upon the law governing these relations and not let them conclude what results should be reached under the evidence, without legal rules for their guidance.

POINT III.

The above errors were harmful to the appellants.

Where there has been a general verdict, as in this case (Judgment, p. 13) and it is impossible to say that the verdict was not based upon this judgment of imputed negligence, the judgment will be reversed and a new trial granted.

Ives v. Ellis, 169 N. Y. 85, 93;
Bank of State of N. Y. v. Southern N. Bk., 170 N. Y. 1, 5;
Muench v. Terry, 154 App. Div. 856;
Genovesia v. Pelham Op. Co., 130 App. Div. 200;
Jennings v. Degnon Cont. Co., 165 App. Div., 248;
Conklin v. Cent. N. Y. Tel. & Tel. Co. 130 App. Div., 308;

In *Ives v. Ellis* (supra) the Court says at p. 93:

> "The Court submitted to the jury two questions, as to which it instructed them that if they found in favor of the defendants on either question their verdict should be

> for the defendants * * *. As the verdict of the jury was general we are not advised whether the jury found in favor of the defendants upon the first or the second question submitted to them; and in such case it is the duty of an Appellate Court to reverse the judgment for substantial errors on the part of the Court in either receiving or rejecting evidence bearing upon either of the issues submitted to the jury, *or for errors of substance in the charge as to either of such issues.*"

Of course, the charge of the Court was the law of the case and necessarily the jury followed the Court's direction upon the law and drew their own conclusions in this case upon the question of imputed negligence without any guidance from the Court as to how they should do it except by their own general and untutored impressions when these respective relations arose.

The verdict if sustained at all, must be sustained upon the theory on which the case was submitted to the Court.

Marks v. Railroad Co., 146 N. Y. 181, 188;

The presumption is that an erroneous instruction to a jury which is duly excepted to is prejudicial to the party excepting.

Quinlivan v. Buff. R. & P. R. R. Co.,
52 App. Div., 1;

For the foregoing reasons, we respectfully submit that the judgment below should be reversed.

WARREN DIXON,
Of Counsel with Appellant.

JAMES F. DONNELLY,
(Of the New York Bar)
Of Counsel.

New Jersey Court of Errors and Appeals

RACHEL ANN LANGE and JURGEN P. LANGE, JR., Executors of Jurgen P. Lange, *Appellants.* *vs.* NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY, *Respondent*	On Appeal from Supreme Court.

BRIEF ON BEHALF OF RESPONDENT.

After judgment entered in favor of the respondent (hereinafter called the defendant) on a verdict returned by a jury in its favor at a trial in the Passaic Circuit, the appellants (hereinafter called plaintiffs) appealed to this Court on certain grounds involving the admissibility of evidence and various portions of the charge of the trial judge. According to the brief served in behalf of the plaintiffs, all the grounds of appeal are abandoned except a part of Ground No. 5 dealing with the court's charge to the jury (see p. 3, l. 10, to p. 4, l. 30). This brief will therefore be limited to the ground stated and argued in said brief.

In the "Abstract of Case" in the brief of plaintiffs, we find certain erroneous statements of fact, and shall first call attention to these before dealing with the legal point therein argued.

Plaintiffs' brief states that the railroad at the point of the accident runs east and west and the highway north and south. This is not strictly

accurate; according to the compass point on the map that was offered in evidence, while the highway runs *nearly* north and south (crossing the railroad tracks at an angle) the railroad tracks run nearly southeast and northwest (see map as testified to by the surveyor, Kalaher, Ex. D-1, p. 195). There is some confusion in the testimony of the witnesses as to the points of the compass, as it is the practice of the railroad employes to describe the movement of trains towards Jersey City as eastbound and the movement of trains from Jersey City as westbound. In this case the automobile in which the plaintiffs' testate was riding at the time of the accident was moving in a southeasterly direction (according to the compass) along East 27th Street and was struck by a light engine moving backward westbound (or nearly northwest according to the compass) on the westbound main track. At the point of the accident there are two tracks known respectively as westbound and eastbound, and in the direction from which the automobile approached the crossing it first reached the westbound track, and the accident happened on that track.

Plaintiffs' brief is also inaccurate in so far as it states that adjacent to the defendant's right of way and the highway there were certain buildings and fences so constructed as to "obstruct" the view of persons approaching the right of way from the north. The inaccuracy of this statement is found in the fact that it does not state the entire truth. It is true that there were certain houses which would obstruct the view of the train under the circumstances named, but they were located several hundred feet from the crossing. Adjacent to the right of way on the north and to the highway on the east is the coal yard of J. H. Dederick. A picket fence 9 feet in height extends along the easterly side of the highway and meets another similar fence which extends along the edge of the

right of way and on the northerly side thereof for a distance of about 219 feet (see map, Ex. D-1, and the various photographs offered in evidence as Exhibits D-5 to D-11 inclusive). *But the distance from the corner where these fences intersect from the nearest rail of the westbound track, measured at right angles is thirty feet and one inch, and the distance from the board fence projected across the highway to the said rail, as measured in the line of the highway, is approximately forty-five feet* (p. 196, ll. 1-20). The map and photographs and the testimony of the surveyor show that after passing the fences there is no obstruction whatever to the view of an approaching westbound train—indeed, John Lange, one of the sons of plaintiffs' testate, who was riding in an automobile following that in which his father was riding, admitted that after passing this fence there was nothing to prevent a view down the track in the direction from which the engine came (p. 91, l. 35, to p. 92, l. 15).

The views of an approaching westbound engine, taken from a position in the centre of the highway and on the northerly side of the tracks (being the side from which the automobile approached), based upon actual measurements of the surveyor, were as follows:

Distance from Nearest Rail.	Extent of View Eastward.
25 feet	2,037 feet
42 "	1,770.5 "
45 "	1,770.5 "
47 "	1,098.4 "
50 "	461 "
55 "	260.7 "
60 "	170.6 "
75 "	100 "
100 "	74.3 "

(p. 200, ll. 20-40.)

It will therefore be seen that up to a distance of 45 feet from the nearest rail there was an unobstructed view of over 1700 feet (see Ex. D-7).

The assertion in the brief of plaintiffs that the driver of the car, Joseph Lange, when he looked towards his left—the direction from which the train came—could see nothing because of the fence, is likewise inaccurate. It is true that this witness said: "Then I looked towards the left and could not see because of the fence. I looked towards the right and watched to the right and when I turned back I was hit" (p. 89, ll. 1-5). But counsel have omitted to call attention to the fact that on cross-examination this witness said that he looked only *once* to his left and that that observation was at a time when his view was cut off by this fence; and *he did not look again in that direction until he was actually on the track and was hit by the engine approaching from his left* (p. 111, l. 10, to p. 112, l. 15). Furthermore, while it is true that this witness had only been over this crossing on one other occasion prior to the accident, it is also true that he *knew* that he was approaching a railroad track. The witness said that he slowed down "because I knew I was coming to a railroad" (p. 110, ll. 10-22).

Counsel therefore correctly say that *at the time this witness looked* he could not see the engine because of the fence, but the undisputed evidence shows that if he had looked to his left at any time after his first observation in the direction from which the engine came, he could have seen it at any point 45 feet from the nearest rail of the track on which the engine was running.

The statement in counsel's brief as to what the plaintiffs' testate did or failed to do, as the automobile approached the crossing, is likewise inaccurate, as it does not state the whole truth. The plaintiffs' testate was riding in the rear seat on the left-hand side of the automobile. This was the side from which the engine approached (p. 91, ll. 20-30). The top of the car was down (p 94, l. 25). A person sitting in the car could see plainly

on either side or in front (p. 24, l. 20). He made no attempt to leave the car, and so far as was observed by his son John, who was riding another car a short distance behind, he made no effort to stop the car, but merely sat in it until the collision (p. 94, l. 30, to p. 95, l. 15); the driver of the car, Joseph, said he could not tell whether or not his father said anything to him about slowing down (p. 110, ll. 20-30). He was talking with Mrs. Pierce (p. 112, l. 25).

The son Edwin Lange, who was riding in the automobile with his brother John, a short distance behind the car in which the plaintiffs' testate was riding, said that his father was in plain sight. He did not observe whether he looked to the right or left.

> "Q. *Was he looking straight ahead?* A. *It seems to me he did*" (p. 120, ll. 30-40).

It is likewise inaccurate for counsel to state that as the automobile came to the crossing it was moving at the rate of about 8 miles an hour. It is true that the driver Joseph fixed this as the rate of speed (p. 99, ll. 20-30), claiming that he had slowed down to that rate at a distance of about 100 feet from the crossing—his rate prior to that time having been 12 to 15 miles an hour (p. 98, ll. 30-40). But other witnesses fixed the rate of speed considerably greater and say that the driver did not slow down.

Thus, BOYLE, a witness called in behalf of the plaintiffs, said that he saw the automobile in which the plaintiffs' testate was riding pass him as he, the witness, was sitting in an automobile about 450 feet from the crossing, and facing towards the crossing. It was in the range of the vision of the witness until it was struck by the locomotive.

> "Q. Did it slow up? A. In my judgment they kept right on the same rate of speed.

"Q. About what was that rate of speed? A. Somewhere in the neighborhood of twelve or fourteen miles an hour" (p. 71, ll. 20-25).

The witness CURZON, who was walking along East 27th Street, says that he saw the automobile and he hollered that a train was coming; that the driver of the car turned his head half-way and drove right on at the same rate of speed (pp. 155, 6). The automobile was moving 15 or 20 miles an hour (p. 158, l. 20).

GASS, school-boy, was walking along the track and saw the automobile coming when it was about 50 feet away. It was going "quite" fast, about as fast as the engine (pp. 185, 6).

Counsel also assert in their brief that Joseph, the driver of the car, received no warning from any bell or any whistle or otherwise of the approach of an engine or train. While it is true that this was Joseph's statement, counsel omit to call attention to the testimony of other witnesses, including the testimony of Joseph's own brother (p. 119, ll. 1-10; p. 121, ll. 10-35; p. 124, ll. 20-35; p. 126, ll. 10-20), that the bell was ringing Numerous other witnesses testified to the fact that the engine bell was ringing; that the engine whistles were blown, and that the crossing bell was ringing.

Thus, we find the following testimony:

DAVIS was driving south along East 27th Street in an automobile; heard the crossing bell above the noise of his automobile when he was about 50 feet from the crossing; slowed up almost to a stop and when he was 25 feet from the track saw the approaching locomotive when it was 400 or 500 feet away, and started on across the track and got across safely (pp. 146, 7). The crossing bell was ringing all the time while passing over the tracks (p. 148, l. 20).

CURZON was walking south on East 27th Street

towards the railroad; at 18th Avenue heard the crossing bell ring and when about 275 feet from the crossing heard the engine whistle blow (p. 155, ll. 30-40; p. 156, ll. 20-30; p. 164, ll. 5-35; p. 167, ll. 20-30).

MRS. CRAWFORD was sitting on her front porch at her home on 27th Street on the south side of the railroad about 600 feet from the crossing; heard the crossing bell; it was ringing when Mr. Davis crossed; heard a shrill whistle from the engine (pp. 176-8).

JOHN GASS, school-boy, was walking along the track with a friend towards the crossing; saw engine moving backwards toward Paterson; heard several whistles when engine was about 100 feet from crossing (p. 185, ll. 10-20).

MERSELES, employe of Pennsylvania Coal Company, was walking along the track and heard of the accident; was at the crossing when another westbound train came; crossing bell rang for that train (p. 190).

POST heard of the accident and went to crossing; was there when another westbound train passed a few minutes after accident; crossing bell rang for that train (pp. 215-7).

GARRET KEYSER was in his back yard on 27th Street about 625 feet from crossing; heard the engine blow at 31st Street, then heard a blow for 27th Street; the latter was near Dillistin's lumber yard; heard the crossing bell and the engine bell; also heard crossing bell ring for another westbound train after accident (pp. 237-9).

LAWRENCE KEYSER was sitting on front porch; heard of the accident; went to crossing; the crossing bell rang for a westbound train (p. 245).

LORD, Sergeant in Paterson Police Department, went to crossing after accident; another westbound train came; bell rang (pp. 247-9).

MURPHY, police officer, heard crossing bell for west-bound train after accident (p. 252).

WHITE, police officer, went to crossing after accident; crossing bell rang for westbound train (p. 256).

LUDDY, police officer, went to crossing after accident; crossing bell rang (p. 257).

HENNESSY, police officer, went to crossing after accident; crossing bell rang (p. 259).

HAMMOND, agent of defendant company at Maywood; lives on East 27th Street about 600 or 700 feet from crossing; was at home when accident happened; heard engine blow at 31st Street and again near Dillistin's lumber yard; also several short blasts; heard the bell ring as engine passed; could see the engine and the bell; saw the bell moving (pp. 260-2); went to crossing after accident; heard the crossing bell ring for the next westbound train (p. 263).

STEELE, trainmaster of defendant; was at Paterson when accident happened and on being notified of it went to crossing in his automobile; other trains passed west; crossing bell rang (pp. 270-2).

JOSEPH B. BUSH, former employe of Dederick Coal Co.; was at the stable about 300 feet distant; heard the crossing bell ring and then a crash; also heard the crossing bell for another train after accident; passed over the crossing between 4 and 5 o'clock on day of accident when a westbound train passed and the bell rang (pp. 284-6).

JOSEPH C. BUSH went to crossing after accident; bell rang for westbound train (p. 293).

HOSFIELD, clerk employed by Erie Railroad, went to crossing after accident; bell rang for westbound train (p. 294).

DAGELMAN, watchman for Dillistin; heard whistle blow, and bell was ringing at the crossing (pp. 295, 6).

MRS. SALISBURY lives about a block from crossing on south side; heard a noise and her husband made a remark as they were walking along the

street (pp. 299, 300); heard the crossing bell (p. 300, l. 40); this was before the noise of the accident; heard the engine blow and the bell ring on the engine (p. 301, ll. 20-30).

VAN BUSKIRK, engineer in charge of the engine that caused accident; was on the way from Passaic Junction and North Paterson running backwards; bell was turned on just after leaving Coalberg and was not turned off until after accident (p. 311, ll. 30-40). Blew the regular standard crossing whistle for 31st Street and 27th Street (p. 312).

MELVIN, fireman, regular crossing whistles were sounded; engine bell was ringing (pp. 326, 7).

MURRAY, brakeman, riding on engine; whistle was blown and bell ringing (p. 336); noticed the crossing bell for another westbound train; it was ringing (p. 338).

STORMS, went to crossing after accident; crossing bell rang for other trains westbound (p. 342, 3).

THOMPSON, brakeman riding on engine; crossing whisle was blown; engine bell was ringing (p. 344).

GROVER, was riding on engine; crossing whistle was blown and engine bell was ringing (p. 355).

LUCE, operator in signal tower at Park Avenue about 1400 feet west of crossing saw the engine coming; heard the whistle blow; also another whistle (p. 367).

CAFFREY, telegraph operator at Dundee Lake; saw light engine pass the station; bell was ringing (p. 369).

PAULISON, conductor in charge of westbound passenger train 917; train was flagged and he got out and walked to the crossing; at that time the crossing bell was ringing (p. 373).

HAVENS, engineer of train 917; crossing bell was ringing for that train (p. 375).

CASE, baggagemaster on 917; crossing bell rang for that train (p. 375).

HENRY, collector on 917; crossing bell rang for that train (p. 376).

CLEVELAND, towerman at Passaic Junction; heard the whistles of the engine (p. 397).

PISCE, laborer in employ of defendant; kept record of condition of crossing bell; bell rang O. K. on the day of accident (pp. 398, 9).

CAVANAGH, signal repairman; inspected crossing bell three days before accident cleaned and tested it; bell was all right (p. 402).

MRS. CARR, one of plaintiffs' witnesses; went to crossing after accident and heard a bell when a train was coming from New York (p. 34, l. 30 to p. 35, l. 25).

There are 7 witnesses who testified that the crossing bell was ringing for the engine by which the accident was caused; 9 witnesses who testified that the bell of that engine was ringing, and 14 witnesses who testified that the crossing whistles were blown; there were 3 witnesses who testified that the bell rang O. K. before the accident (one of them within an hour or two of the time of accident), and 20 witnesses who testified that the crossing bell rang for another train that approached the crossing a few minutes after the accident in the same direction and on the same track as the engine in question. Besides these witnesses, one of the decedent's sons, Edwin Lange, said that he heard what he "thought" was the engine bell, and on cross-examination admitted that he had said to the Grand Jury when questioned that he "thought" he heard that bell; the clerk of the Grand Jury, Mr. Bergen, by reference to his notes taken at the time when Edwin Lange testified, swore that that witness had testified "I heard bell" (p. 395, ll. 10-20).

As against this, there was the testimony for

the plaintiffs of Mr. Rogers, who was talking with a friend about 450 feet from the crossing (p. 16, l. 20). He said that he heard no bells or whistles, but admitted he was not paying any attention to the crossing and had no interest in it and was busy talking with his friend Boyle (p. 21, ll. 1-30); he further admitted that he could not say that the crossing bell did not ring (p. 25, l. 25).

There was also the testimony of Mrs. Carr, of her son Henry, of Mr. Paxton, and of Mr. Boyle, to the effect that they did not hear the signals. These witnesses, however, were a considerable distance from the crossing and were not paying any particular attention to the approach of the engine.

Thus, Mrs. Carr lived 525 feet from the crossing with a number of houses between her house and the crossing (p. 32, ll. 1-10), and she was busy in the kitchen cooking her dinner (p. 33, ll. 1-10), and she knew nothing of the accident or of the approach of the engine until she heard a crash (p. 30, l. 10). Her son Henry was sitting on the porch of the house and was obviously not paying any attention to conditions as he did not even hear the crash and knew nothing of the accident until his brother told him about it (p. 39, ll. 1-10).

Paxton lived 500 feet from the crossing next to Mr. Rogers with several houses between his house and the crossing and was talking with a physician who had called to attend his boy for an accident. He admitted that he was not watching for the engine and was paying no attention to it and knew nothing about it until he heard the crash (p. 44, ll. 1-20). His son, Harry Paxton, was standing in front of his house watching the automobiles go by (p. 49, ll. 1-10).

Boyle was sitting in an automobile 450 feet

from the crossing, talking with a friend about automobiles. He was interested in this conversation and did not expect the engine; did not listen for it and did not know it was coming until it reached the crossing (p. 70, ll. 10-40).

PHILLIPS another witness for plaintiffs said he did not pay any attention and that he could not tell whether the signals were given or not (p. 77, ll. 20-35). He was paying no attention to the engine and was not listening for bells or whistles or anything else (p. 78, ll. 25-35).

Of course, John and Joseph Lange, sons of the decedent, say they did not hear any bell or whistle, but aside from their testimony, there is nothing in the case upon which to base the assertion that there was no warning of the approach of this engine. On the contrary, as appears from the foregoing summary, there was a cloud of witnesses whose testimony demonstrated that all the proper signals were given.

Counsel in their Abstract of Case also omit to mention that the car in which the plaintiffs' intestate was riding was equipped with two brakes, one known as the foot service brake, the other as the hand emergency brake; that both of these brakes were in good condition; that at a speed of 8 miles an hour (the rate fixed by the driver), the car could be stopped in 12 feet (pp. 107, 8); and that at 10 miles an hour the auto could be stopped in a distance of 5 feet 8 inches, and at 15 miles an hour in 16 feet and 9 inches—as shown by actual tests (p. 220, ll. 10-30; p. 229, 1-10; p. 232, ll. 10-30).

We therefore have a situation where there was a clear view of the approaching engine for a distance of over 1700 feet up to the point 45 feet from the nearest rail of the track on which the engine is running; the driver of the car in which the plaintiffs' testate was riding looked

only once in the direction from which this engine approached, and at the time that he looked his view was cut off by a picket fence and when he again looked in that direction he was already on the track and was about to be struck.

The plaintiffs' testate, the father of the driver of the car, was riding in the rear seat on the same side from which the engine approached. He made no effort to leave the car or to cause it to be stopped or to exercise any control whatever over the driver, although the railroad tracks and the crossing sign were in plain sight—he did not even look in either direction for a train but looked straight ahead; he was probably talking with Mrs. Pierce, who was riding on the seat next to him in the rear of the automobile; there was evidence from which the jury could infer that the car was travelling at least 12 to 15 miles per hour and probably even faster, and that it did not slow up as it drew nearer the tracks, or if it did, that it was still moving not less than 8 miles an hour at the moment of the accident; the jury could also find (and indeed, as we shall later urge, were bound to find) that warning of the approach of the engine was given to the driver and the other occupants of the car by the usual signals of bell and whistle of the engine as well as by the sounding of a crossing bell; the jury could also find that at a rate of 15 miles an hour the auto could have been stopped within a space of 16 feet and a fraction, and at the rate of 8 miles an hour within a space of 12 feet.

It is undisputed that the engine was moving at the rate of from 12 to 15 miles an hour (p. 312, l. 40; p. 327, l. 3; p. 344, l. 2). It was therefore moving at about the same rate of speed as the automobile—just as stated by the boy Gass (p. 186, ll. 1-5). The automobile and the engine collided with each other squarely on the crossing.

If they were both travelling at proximately the same rate of speed it will be seen that when the automobile was 75 feet from the nearest rail of the track the engine at that time must have been about the same distance from the crossing, but the measurments show that at 75 feet from the track the engine could have been seen for a distance of 100 feet from the crossing. The engine must therefore have been in sight when the automobile was about 75 feet from the rail. The view increased rapidly as the automobile approached the track until at a distance of 50 feet from the track the engine could have been seen up to a point about 460 feet from the crossing, and at 45 feet from the track and engine could have been seen approaching when it was 1700 feet from the crossing. Of course, when the automobile was 45 feet from the crossing the engine was not 1700 feet distant, but only about the same distance from the crossing as the auto was from the track. A situation is therefore presented in which the engine was in plain sight of the occupants of the automobile when the latter was about 75 feet from the crossing. It could have been stopped in 16 feet, if moving at the rate of 15 miles an hour, and yet neither the driver nor the decedent made the slightest effort to stop the automobile; and according to the driver's testimony he did not even see the engine until he was actually on the track. Under this evidence an honest jury could not do otherwise than exactly what was done in this case, namely, to find a verdict in favor of the defendant.

Having pointed out the errors both of commission and omission in the Abstract of Case submitted in the plaintiffs' brief, we will now discuss the legal point upon which counsel for plaintiffs rely for a reversal.

BRIEF OF THE ARGUMENT.

I.

That part of the charge of the trial judge upon which error is assigned was merely a comment upon evidence; and therefore does not constitute ground for reversal.

Counsel quote certain excerpts from the charge which they say constitute error for the reason that under the proof the court should have charged as a matter of law that the relation of master and servant did not exist; that the relation of principal and agent did not exist and that the father and son were not engaged in a common enterprise. It should first be noted that at the trial, counsel for plaintiffs refrained from submitting to the trial judge any requests to charge on these points or any of them. The only way in which this subject was called to the attention of the trial judge was at the conclusion of the charge wherein plaintiff's counsel said:

> "I desire to except to your Honor's charge in which you stated the rule of the relationship existing with the boy Joseph, either of master and servant, or agent or engaged in a common enterprise. I think as a matter of law none of them existed" (p. 435, ll. 5-15).

The exception as stated in this form, we submit, did not clearly present to the trial judge the point of which counsel were complaining, and therefore should not be considered at this time.

> *State v. Kroll,* 93 Atl., 571;
> *State v. Lovell,* 96 Atl., 36.

> "If counsel conceived that a pertinent proposition of law had been omitted, he should have specifically requested the desired instruction and excepted to a refusal."

Newark Passenger Ry. Co. v. Block, 55 N. J. L., 605, at p. 613.

But assuming that the point which is now argued by counsel for plaintiffs in this court was fairly presented and may therefore now be considered, we nevertheless submit that the remarks of the trial judge on this subject were nothing more than comments upon the evidence. Comments of the trial court upon the evidence, which do not mislead the jury, are not legally erroneous even though the comments amount to an expression of opinion by the court upon the weight of evidence.

Bruch v. Carter, 32 N. J. L., 554;
Castner v. Sliker, 33 N. J. L., 96, affirmed Id. 507;
Engle v. State, 50 N. J. L., 272;
Camden & Atlantic R. R. Co. v. Williams, 61 N. J. L., 646;
Faulkner v. Paterson Ry. Co., 65 N. J. L. 181.

That part of the charge, which purported to state the rule of law with reference to contributory negligence on the part of the boy Joseph was as follows:

> "This is the law with reference to contributory negligence if you find that there was such on the part of the boy:
>
> > " 'Where a person receives an injury by collision with a railroad while riding by invitation and without hire, in a carriage driven and owned by another, the negligence of the driver is not imputable to him.' " (p. 425, ll. 10-20.)

This statement of the law was correct.

See *Noonan v. Consolidated Traction Co.,* 64 N. J., L., 579; also cases cited on the brief for counsel for plaintiffs. After stating this principle, the

trial judge took pains to point out (as he had the right in his discretion to do) that under the testimony Joseph said that he owned the car; that it was licensed in his name; that he drove it; that he chose the course they were to take; that he selected the particular road; and that it was his car and he was driving it (p. 425, ll. 20-30). Up to this point we apprehend that counsel for plaintiffs do not seriously urge that there was any error in the charge, although the portions thereof just quoted are included by them in their statement of the grounds of appeal. So far the charge was nothing more nor less than a statement of a general principle of law which, it is possible, may not have been applicable to the case at bar, but taken in connection with the remarks of the trial judge wherein he pointed out to the jury that under the evidence this principle had no application, there surely was no prejudicial error. It may not have been *necessary* for the trial judge even to state this general principle, but certainly it was not inappropriate for him to do so in view of the fact that there was evidence as to the actions of the driver of the automobile, as he approached the crossing.

After charging as above stated, the trial judge then continued with a quotation taken in part from the decision in the case of *Mittelsdorfer v. West Jersey & Seashore R. R.*, 77 N. J. L., 698, at p. 700. Considered as an abstract legal proposition there can be no doubt that this statement of the legal principles was absolutely correct. The trial judge then pointed out by way of comment upon these principles that if the relation of master and servant, etc., did not exist, then it made no difference how negligent the boy was, and that negligence could not be imputed to the father; and he then stated in answer to a question from the foreman of the jury that it made no difference in the application of these principles whether or

not the boy was under the age of 21 (p. 426, ll. 1-25).

So far as concerns these comments upon the evidence, they are not ground of error; the trial judge may make such comments as he thinks necessary or proper.

> "The matter is entirely one of judicial discretion which is not subject to review in error."
>
> *Delaware, etc., R. R. Co., v. Toffey,* 38 N. J. L., 525.

We submit that the legal principles stated in the part of the charge which is now criticized are correct; possibly they were surplusage under the particular facts of the case, but certainly they were not misleading in view of the remarks of the trial judge relative to the relations that were shown to exist between the boy Joseph and the plaintiff's testate.

II.

The charge as a whole correctly stated the law and properly left to the jury the issues presented by the evidence.

In their argument counsel for plaintiffs have taken certain excerpts from the charge and have urged that these constitute reversible error, but they have omitted to call the attention of the court to other parts of the charge dealing with the same subject matter. We submit that the case is one that calls for the application of the principle stated in the case of *Redhing v. Central R. R. Co.,* 68 N. J. L., 641, wherein this court held that although sentences in a charge may, if read apart from their connection, need some qualification to render them accurate, yet if the qualification be given in the context so that the jury cannot rea-

sonably be thought to have been misled by the charge, *taken in its entirety,* there is no error.

In order to determine whether there is reversible error, it is necessary to consider the charge as a whole. After a trial that had continued for four days the trial judge gave a most complete and careful charge on all of the numerous points involved. He did not undertake to summarize for the jury the actions of the boy Joseph, the driver of the car, as he approached the crossing; but, after stating the legal principles applicable to the case of an injury received by a person while riding by invitation and without hire in a carriage driven and owned by another, he then discussed in considerable detail the question of the defense that there was contributory negligence on the part of the *decedent,* saying:

> "Now, then, as to the duty of the father: The duty of the father under the circumstances was to use that care which a reasonably prudent man would use under those circumstances. So you see, you have to take into consideration what were the circumstances You can readily see that if a man was driving in a car and he saw that the driver was going recklessly onto a crossing and into a train, and he sat there and made no effort whatever to save himself, if he had an opportunity, for instance, to jump out in time, or if he had an opportunity to stop the driver, and did not do it, of course, he would be guilty of contributory negligence. Because a man could not take advantage of his own carelessness and then charge it up to somebody else. But, as I stated to you before, you have to take into consideration the situation of the man at the time. Here was a man riding in the back of the car, apparently talking with a lady sitting next to him—I think you will recall what the evidence is—approaching a crossing; there is no evidence whether he had gone over that before or not; and he must exercise that care which an

ordinarily prudent man would under the circumstances in which he found himself.

"Now, if, under the circumstances in which he found himself, he did all that any ordinarily prudent man would do, then he would not have been guilty of contributory negligence and you could not charge it against him." (p. 426, l. 25, to p. 427, l. 18.)

It will be observed that the attention of the jury was directed specifically to the question of whether there was contributory negligence *on the part of the father,* and there was no reference whatever to contributory negligence on the part of Joseph, the driver of the car, except as the court stated the legal principles applicable to the relations existing between Joseph and his father, the decedent. Under this charge the jury could not possibly have been misled into thinking that the verdict should be for the defendant *if there was contributory negligence on the part of Joseph;* on the contrary, the whole emphasis, so far as this phase of the case is concerned, was placed by the trial judge upon the alleged contributory negligence of the decedent himself.

But in order to avoid any possible question about the matter the trial judge, by way of extra precaution, near the end of his charge, and before dealing with the question of the measure of damages in the event of a recovery for the plaintiffs, summarized the questions which the jury should consider (so far as related to the liability of the defendant to respond in damages to the plaintiffs) in the following language (italics ours):

"That brings you down to this, gentlemen: if you find that the railroad company exercised the care which the law casts upon it and that it was not guilty of negligence, then that ends the case; then your verdict will be no cause of action; or, if you find, gentlemen, that the railroad company was negligent, and that the *deceased* was also negligent, and

> that *his* negligence contributed to the injury, then, of course, the plaintiff cannot recover; because, if *Mr. Lange himself was negligent*, and the company was negligent also—that is, the *father* I am speaking of now—then, of course, the plaintiff cannot recover; because a man cannot be negligent himself and then have people recover for him." (p. 429, l. 18, to p. 430, l. 3.)

Counsel for plaintiffs argue that the trial judge should not have permitted the jury to speculate upon whether the son Joseph was the agent of the father or whether they were engaged in a common enterprise, etc. But this argument loses sight of the fact that in the above quoted summary this question was not submitted to the jury at all; in the final analysis the trial judge left to the jury two questions, and only two; First, whether the defendant had exercised the care which the law cast upon it; Second, whether the negligence of the decedent contributed to the injury. Surely no complaint can be made of the charge on that score, especially when the trial judge had pointed out in detail the specific evidence upon which the contributory negligence of the decedent depended.

Counsel further argue that the trial judge should have *defined* what would constitute the legal status upon which imputed negligence would depend (see p. 15, Point II of Brief).

Such argument is fallacious, as it would only tend to confuse the issues, and the trial judge had already stated the legal rules applicable to a case of imputed contributory negligence; not only had he stated the legal rules but he specifically pointed out to the jury (cautioning them, however, that they must trust to their own recollection on the subject) that Joseph said that he owned the car; that he drove it, etc. (p. 425, ll. 20-30.) If the trial judge had undertaken to do what counsel now says he should have done, it

might be that then there would be ground to urge there was legal error because he had done so. However that may be, we submit that the charge taken as a whole stated the law accurately, and that the jury were not and could not have been misled by any incidental discussion of the relations between the decedent and the driver of the car.

III.

That part of the charge of the trial judge upon which error is assigned, even if construed to permit the jury to impute the negligence of the son as the driver of the car to his father as a passenger therein was not erroneous.

The argument of counsel for plaintiffs is based entirely upon the claim that, *as a matter of law,* the relationship between Joseph, the driver of the car, and his father is master and servant or principal and agent, or mutual responsibility in a common enterprise, did not exist. They quote certain excerpts from the charge in which this point is mentioned by the trial judge. See (p. 6 of Brief; p. 425, ll. 30-35; p. 426, ll. 20-25 of Case). But in their argument they omit to quote that part of the charge wherein the trial judge, after quoting the law from certain decisions, said:

> "So you see, gentlemen, if the deceased, Mr. Lange, *had no authority over the driver,* and was not negligent himself, the relation of master and servant * * * did not exist," etc. (p. 426, ll. 1-10).

It will be observed that the charge qualified the general statement of the rule as to the *relations* between the son and his father by adding the limitation if the father "had no authority over the driver." As thus qualified, we submit that

this part of the charge was not legally erroneous—even if it be considered separate and apart from the other portions of the charge quoted by us under Point II. The question of whether or not the negligence of the driver of a vehicle is imputable to another occupant thereof does not depend necessarily nor entirely upon the *relation* that may happen to exist between them. True, the fact of the existence of the relation of master and servant or of principal and agent or of an engagement in a common enterprise may have an important bearing upon the question of whether the negligence of the driver is to be imputed to other occupants of the vehicle, but in the last analysis that question does not depend merely upon the particular relation that may exist but rather upon the *nature of the control or authority* exercised by the master or the principal, as the case may be, over the acts of the driver. Of course, in the ordinary case of master and servant, it would be assumed, and perhaps necessarily so, that the master was exercising control over the servant; hence, the negligence of the latter would be imputed to the former. But the answer to the question of whether the contributory negligence of the driver is to be imputed to the occupant of the automobile depends upon what control, if any, was or could have been exercised by such occupant upon the driver.

Under the evidence in the present case, we submit that the jury might properly have come to the conclusion that the father of the driver of the automobile did in fact have authority over the driver even though the latter claimed to be the owner of the automobile, and even though there was no common enterprise. The evidence shows that Joseph, the driver of the car, asked his father to go with him on a trip to Haskell; at that place there was located the plant of the Haskell Quarry

Company. The father was the president of the company (p. 87, ll. 1-15); and was the "real owner" of it (p. 104, l. 18). The active managers of the company were John Lange (p. 87, ll. 20-25) and Jurgen Lange, Jr., the latter at the time of the accident being the superintendent (p. 127, ll. 20-30). The boy Joseph was not connected with it (p. 127, l. 32). It was the custom for John to spend the week at Haskell, and on Saturday Joseph would go after him in the automobile and bring him home to Passaic (p. 104, ll. 10-20). Joseph denied that on the day when the accident happened his father went to Haskell in connection with the company's business, but his denial was somewhat qualified. The father, on arriving at Haskell, spent two and a half hours working on an automobile (p. 104, ll. 20-30). In view of the fact that the father was the president and financial backer, it is preposterous to assume that when he met the superintendent—his own son—at Haskell they did not to some extent discuss the company's affairs. This son (John) gave no testimony on this subject. But however that may be, the point which we are now urging is that the jury could have found that on the trip back from Haskell the father did in fact *have* control or authority over the minor son, whether or not he attempted to exercise it. This son lived at home and was supported by his father. At the time of the accident his father was paying for his education at Stevens Institute and made him an allowance for personal expenses, including sufficient money to run the automobile in question—indeed, his father had bought and paid for it and made him a present of it prior to the accident (p. 100, l. 30 to p. 101, l. 25). Under these circumstances, we submit that the jury might well have found as a matter of fact that the father did have control over this son.

Counsel for plaintiffs argue that negligence is not to be imputed from the mere relation of parent and child and then they say: "And indeed it has been so expressly held." Then follow references to certain cases which counsel seem to think sustain their statement (see pp. 12 and 13 of Brief). But an examination of the cases cited by counsel show that they are not in point at all. All of them (with one exception) are cases wherein the *parent* was driving, and the question for consideration was whether the negligence of the parent would be imputed to the child, and *not* whether the negligence of the child would be imputed to the parent when the child was driving. We grant that the mere existence of the relation of parent and child would not be decisive of the question, but that relation is one of the facts from which the jury might reasonably find that the father had sufficient control over the acts of the child to make the father chargeable with the negligence of the latter.

The only case cited by counsel for plaintiffs, wherein the child was driving, is *Buckler v. Newman,* 116 Ill. App. 546. This held that the *mere* fact that the driver was the son of the other occupant of the vehicle, his mother, did not render the negligence of the son imputable to the mother. But in the opinion the court pointed out that the test of such imputed negligence depended upon whether the mother had the *"right of control"* over the son so as to constitute the relation of master and servant between them; and the court further said that whether there was such "right of control" *was a question of fact for the jury.* The judgment of the trial court in favor of the plaintiff was reversed because the trial court had charged that as a *matter of law* the jury should find in favor of the defendant if there was negligence on the part of the driver. This case is

really an authority for the defendant because under the plaintiff's own argument, all that was done in the present case was to leave to the jury the question of whether the father had control over the driver.

We find a case in Massachusetts which is direct authority for our present proposition.

In *Peabody v. Haverhill, etc. Ry. Co.*, 200 Mass. 277, 85 N. E. 1051, the court said:

> "Nor is the mere relation of parent and child decisive upon this question. Undoubtedly, if a father is driving his young child, or if a child is driving his parent while under the general control or the special supervision of the latter, the negligence of the one who was driving would be imputed to the other. And undoubtedly the relationship of parent and child would make it easier to infer the existence of supervision and control than if the question arose between mere strangers; and this is especially so if the child is a minor."

In that case the court was of the opinion that it was a question for the jury to say whether the negligence of the plaintiff's son, who was driving the vehicle, should be imputed to the plaintiff.

Counsel also attempt to point out an analogy between the relation of parent and child and the relation of husband and wife so far as relates to the doctrine of imputed negligence, and they cite the case of *Pennsylvania R. R. Co. v. Goodenough*, 55 N. J. L. 577, as authority for holding that the negligence of the husband cannot be imputed to the wife in an action where she is seeking to recover for injuries received by her (p. 12 of Brief). But the analogy which counsel seek to draw is somewhat unfortunate so far as it depends upon the *Goodenough* case, as that case decided exactly to the contrary of what counsel suppose. It held that in an action by husband and a wife for a

personal injury to the wife, the negligence of the husband would defeat the action. The charge of the trial judge that the negligence of the husband could not be imputed to the wife was held to be erroneous and a judgment for the plaintiff was for that reason reversed. Of course, we do not claim that there is any necessary analogy between the relation of husband and wife and the relation of parent and child so far as concerns this doctrine of imputed negligence. But we do urge that the question depends not so much upon the relation between the parties as upon the fact of the existence *vel non* of control or authority. We submit that in the present case there was evidence from which the jury might properly have found that the father did have such control or authority over his minor son in the driving of the automobile—or to put it another way, that this question was not so clear that the plaintiffs were entitled to have the trial judge rule, as a matter of law, that the father did not have or exercise any control whatever over the minor son.

Plaintiffs cannot complain of the charge on this subject because the trial judge stated that the fact that the boy was under 21 did not make any difference (p. 426, l. 15). At the trial counsel for defendant objected to this part of the charge (p. 434, ll. 1-10), and we still think it was erroneous. But however that may be, counsel for plaintiffs are certainly not in a position to complain thereof.

We therefore submit that even if this part of the charge be considered without regard to the other portions of charge to which we have called attention under Point II, nevertheless the charge in this respect was not erroneous.

IV.

The alleged error in the charge did not injuriously affect the substantial rights of the plaintiffs.

Section 27 of the Practice Act of 1912 provides as follows:

> "No judgment shall be reversed, or new trial granted, on the ground of misdirection, * * * unless after examination of the whole case, it shall appear that the error injuriously affected the substantial rights of a party."

Under this section there is no presumption that an erroneous instruction is prejudicial. The New York authority cited by counsel for plaintiffs on page 17 of their brief may be good law in the State of New York, but it is not the law in New Jersey in view of this provision of the Practice Act of 1912; on the contrary we submit the burden is on the party complaining of error, to show not only that there is error, but also that such error "injuriously affected" his substantial rights.

In the present case the summary of the evidence which we have given in our criticism of the "Abstract" in brief of the plaintiffs demonstrates that (if there was any question of fact for the jury to consider at all with respect to the alleged negligence of the defendant or the contributory negligence of the plaintiffs' testate) a verdict different from that which was in fact rendered could not have been sustained—in other words, a righteous result has been reached; and indeed, as we submit, the only possible result under the evidence. To change this result on a mere technical objection on a point concerning which no request was made to the trial judge, would be contrary to both the letter and the spirit of the Practice Act of 1912.

The evidence hereinbefore summarized shows

that if a verdict had been rendered in favor of the plaintiffs on the ground that there was negligence on the part of the defendant with respect to either the crossing bell or the engine signals, such verdict could not have been sustained.

Eissing v. Erie R. R. Co., 73 N. J. L. 343;
Holmes v. Pennsylvania R. R. Co., 74 N. J. L. 469;
Weiss v. Central R. R. Co., 76 N. J. L. 348;
Stetson v. Baltimore & O. R. Co., 77 N. J. L. 121;
Howe v. Northern R. R. Co., 78 N. J. L. 683;
Blauvelt v. Erie R. R. Co., 81 N. J. L. 142.

A verdict in favor of the plaintiffs would have to be set aside on the further ground that there was contributory negligence on the part of the plaintiff's testate. The authorities are clear that a guest who is riding in a vehicle must exercise the duty of reasonable care on his own part entirely independent of the question of whether or not the negligence of the driver of the vehicle is imputable to the guest. The following are a few of the many cases that might be cited on this point:

Mittelsdorfer v. West Jersey & S. S. R. R. Co., 77 N. J. L. 698;
Clarke v. Connecticut Co., 76 Atl. 523;
Davis v. Chicago etc. R. Co., 159 Fed. 10;
Brommer v. Pennsylvania R. R. Co., 179 Fed. 577;
Erie R. R. Co. v. Hurlburt, 221 Fed. 907;
United Railways Co. v. Crain, 91 Atl. 405;
Tousley v. Pacific Ry. Co., 137 Pac. 31;
Noakes v. New York Cent. R. R., 106 N. Y. Supp. 522; (affirmed 195 N. Y. 543);

Read v. New York Cent. R. R., 107 N. Y. Supp. 1068;
Caminez v. Brooklyn etc. R. Co., 111 N. Y. Supp. 38;
Pouch v. Staten Island Ry. Co., 126 N. Y. Supp. 738;
Lake Shore & M. S. Ry. Co. v. Bouts, 45 N. E. 812;
Brickell v. New York Cent. R. R., 120 N. Y. 290;
Marsh v. Kansas City Ry. Co., 78 S. W. 284.

If there is error on the part of the trial judge in submitting a question to the jury, such error does not entitle the party complaining thereof to a reversal if, upon all the evidence, a verdict in favor of the complaining party could not lawfully have been sustained. Under such circumstances an error in the charge may be disregarded as it could not have prejudiced the unsuccessful party.

Mallery v. Erie R. R. Co., 86 N. J. L. 210;
Aetna Indemnity Co. v. Coal Co., 154 Fed. 545;
Robinson v. Denver City Co., 164 Fed. 174;
Brobst v. Brock, 10 Wall. 519;
West v. Cambden, 135 U. S. 507.

If "the whole case" be examined, we submit that it will appear that a verdict in favor of the plaintiffs could not have been sustained. It follows that the technical error of which complaint is made, if it be error, has not injuriously affected the substantial rights of the plaintiffs. They have had their day in court and after an exhaustive trial the jury brought in a verdict in favor of the defendant. That result should not be dis-

turbed merely because counsel for plaintiffs imagine that there may have been some technical error which by a process of ultra-refined reasoning may be tortured into prejudice.

V.

The judgment in favor of the defendant should be affirmed.

COLLINS & CORBIN,
Attorneys of Defendant.

GILBERT COLLINS,
GEO. S. HOBART,
Of Counsel.

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Notice of Appeal.

COURT OF ERRORS AND APPEALS.

RACHEL ANN LANGE AND JURGEN P. LANGE, JR., Executors &c., under the last will and testament of JURGEN P. LANGE, *Plaintiffs-Appellants,* *vs.* NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY, *Defendant-Appellee.*	Notice of Appeal.

To Messrs. Collins & Corbin, Attorneys of Defendant:

TAKE NOTICE, that the plaintiff appeals from the whole of the judgment entered in this cause on the following grounds:

The following questions were overruled:

1. To the witness Peter J. Rogers:

"Q. If you are positive that you saw your friend approaching at twenty miles an hour or less and the bell was ringing, don't you think your attention would have been attracted to it?

"Q. Would it or not?

The following questions were admitted:

2. To the witness Edwin Lange:

"Q. Did you say before the members of the September panel of the grand jury when

you went before them in reference to this very matter that you did hear the crossing bell?"

3. To the witness John Schmidt:

"Q. Did he testify on that occasion before the grand jury when deposing about the accident, the collision between the engine and the automobile in which his father was riding that day and was killed, that he heard the crossing bell? A. He testified yes, but I do not remember what to. What was that question again?

"Q. That he heard the crossing bell? A. I could not remember every testimony that took place there. I do not know as I could testify. I took a constitutional oath.

"THE COURT: That does not make any difference what you think about it. The Court rules that you must, that is the law of our State.

"THE WITNESS: I have sworn that I would not disclose what took place.

"THE COURT: We won't argue about it that is the ruling of the Court.

"THE WITNESS: Alright. Will you repeat that question.

"Q. Did he testify that as he approached that crossing in an automobile that he heard the crossing bell?

"Q. Did he on that occasion testify that as he approached the crossing he heard the engine bell?

"Q. Did he testify that he heard some bell?"

4. To the witness, Joseph A. Bergen:

"Q. You are clerk of the Grand Jury of Passaic County?

"Q. And were you such clerk for September, 1913.

"Q. Did that grand jury have before it the matter of the investigation of this accident at Twenty-seventh Street?

"Q. Do you recollect Father Edwin Lange being called as a witness?

"Q. You took notes at the time, did you?

"Q. Please refer to your notes.

"Q. He was one of the witnesses before the grand jury?

"Q. Did he testify as to this accident?

"Q. Did he, in his testimony, before the grand jury say that he heard a bell ringing?

"Q. Yes; look and see if you have any record of his having testified on the subject of the bell?"

The Court charged the jury:

"If you find that they did not give the necessary signal, then, of course, you must go to the next stage of the case, and see whether there was any contributory negligence.

"Now, in that, you would naturally take up first, the boy Joseph, what his actions were, and, then, what the actions of the father were.

"This is the law with reference to contributory negligence, if you find that there was such on the part of the boy:

" 'Where a person received an injury by collision with a railroad while riding by invitation and without hire, in a carriage driven and owned by another, the negligence of the driver is not imputable to him.'

"In this case, as I recall the testimony,—you will have to trust to your recollection, however,—the son Joseph said that he owned the car, that it was licensed in his name, and that he drove it, that he chose the course that they were to take, that he selected this particular road to go and that it was his car and he was driving it.

"The Court has also stated the law in this way:

" 'If the relation of master and servant, or principal and agent, or mutual responsibility in a common enterprise, did not in fact exist between the deceased and the driver, the negligence of the driver is not imputable to the deceased. The fact that the deceased

was a guest who while riding in the private conveyance of another is injured by the negligence of a third party, may recover against the latter, notwithstanding that the negligence of the driver of the conveyance in driving his auto contributed to the injury, where the person injured is without fault and had no authority over the driver.'

"So you see, Gentlemen, if the deceased, Mr. Lange, had no authority over the driver, and was not negligent himself, and the relation of master and servant or principal and agent or mutual responsibility in a common enterprise did not exist, then it does not make any difference how negligent the boy was, and that negligence could not be imputed to the father—

"Now as to the duty of the father—

"THE FOREMAN: Would that be true if the boy were under twenty-one?

"THE COURT: It does not make any difference. I charge you that it does not make any difference. If he was under twenty-one, if he was the man in charge of that car, if he owned it, and these relationships which I have indicated to you did not exist and the deceased had no control over the car, then the negligence of the son is not imputable to the deceased, any more than the negligence would be imputable to him if the driver was somebody who was not his son."

* * * * *

"MR. HOBART: The defendant excepts to that part of your Honor's charge which dealt with the question of the provisions of the Crossing Statute, from which the jury might infer that there is any statutory duty on the part of the company to blow the whistle in cities. That is not required at all by the Statute.

"THE COURT: Well, I don't think I said that, but I say this, Gentlemen, as Mr. Hobart says, there is no duty upon the railroad company to blow a whistle when the train

approaches a crossing; what I do say, if I have not already said it, is, that if they did blow that in place of the bell, that then they did perform their duty. I think that is what I said before."

Dated, June 26, 1915.

WARREN DIXON,
Attorney of Appellants.

Judgment Record.

IN THE
NEW JERSEY SUPREME COURT.

RACHEL ANN LANGE AND JURGEN P. LANGE, JR., Executors &c., under the last will and testament of JURGEN P. LANGE,

Plaintiffs-Appellants,

vs.

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY,

Defendant-Appellee.

New York, Susquehanna & Western Railroad Company, the defendant in this cause, was summoned to answer unto Rachel Ann Lange and Jurgen P. Lange, Jr., Executors &c., under the last will and testament of Jurgen P. Lange, deceased, the plaintiffs therein, in an action at law upon the following complaint:

Complaint.

Plaintiffs, residing at Lakeview, Passaic County, New Jersey, say that:

1. At all times herein stated, defendant was, and still is, a railroad corporation, engaged in the business of railroading within the County of Passaic, and State of New Jersey aforesaid.

2. On the 27th day of September, 1913, defendant operated, controlled and managed a certain railroad, railroad tracks, railroad steam locomotives, running thereon, across a certain public highway in Paterson, New Jersey, which said highways is commonly called East 27th Street, and is crossed by said right-of-way operated and controlled by the defendant, at grade.

3. Said right-of-way, with the tracks thereon, at said time, ran in a generally easterly and westerly direction, and said public highway ran in a generally northerly and southerly direction, and adjacent to said right-of-way and to said highway on the northeast corner of said intersection were buildings and erections so constructed as to obstruct the view of persons approaching said right-of-way along said highway from the north as to trains or locomotives traveling along the tracks in said right-of-way in a westerly direction until the said persons so traveling on said highway were close to or upon the said westbound track, and by reason of said obstruction and erections, the said crossing was of an unusually dangerous character.

4. In order to warn persons traveling upon said highway, and about to cross said tracks, defendant installed and maintained in connection with the operation of its said railroad, a certain crossing bell, intended to be rung so as to give reasonable notice to travelers on said highway

of the approach of locomotives and trains to said crossing, in order to avoid injury to said travelers, which said system of signalling had been for a long time prior to said 27th day of September, 1913, so maintained by said defendant.

5. On and prior to said 27th day of September, 1913, said defendant permitted said system of signalling by crossing bell to become and be out of repair, so that the said signal bell would not ring in time to notify pedestrians about to cross said right-of-way, of the approach of locomotives or trains on the westbound track, and failed to post notice or otherwise notify the traveling public that said system was so out of repair.

6. On said 27th day of September, 1913, said defendant operated, propelled and ran a certain locomotive under the management of its servants and agents along said westbound track, in a westerly direction, over said grade crossing, at an unusual and dangerous rate of speed, without giving any warning by bell upon said locomotive or by whistle, or by crossing bell or by signal, or by other means, so as to notify travelers upon said highway of the approach of said locomotive to said crossing

7. On said 27th day of September, 1913, one Jurgen P. Lange, was traveling and being transported in an automobile along said East 27th Street, which automobile was proceeding in a southerly direction across said right-of-way on said westbound track of the defendant, and when upon said track, said automobile was struck by the said locomotive proceeding westerly upon said westbound track in the manner set forth in the proceeding paragraph, and the said Jurgen P. Lange was thereupon struck by said locomotive, and was then and there injured in such manner that he thereupon died.

8. Said collision between said locomotive and said automobile was produced solely by the negligence of the defendant in the operation of its said locomotive along said track and over said crossing, at a dangerous rate of speed, without giving reasonable notice by bell or whistle upon its said locomotive or by said crossing bell or by signal, or flagman or other guard or reasonable warning of the approach of said locomotive to said crossing.

9. Said collision and injury to said Jurgen P. Lange was occasioned without any negligence upon the part of said Jurgen P. Lange, in any manner contributing thereto, and without negligence upon the part of the plaintiffs, or either of them, in any manner contributing thereto.

10. Said Jurgen P. Lange died from said injuries so caused through the negligence of said defendant on the 27th day of September, 1913, leaving him surviving his widow Rachael Ann Lange, one of the plaintiffs herein, and Jurgen P. Lange, Jr., a son, one of the plaintiffs herein, and Edwin Lange, Joseph Lange, Dorothy Lange and Martha Bowker, sons and daughters, all of whom were dependent upon the said deceased for their support, maintenance and education, and have suffered great damage by reason of the death of said Jurgen P. Lange.

11. Said Jurgen P. Lange died on the date aforesaid in the City of Paterson, leaving a last will and testament, duly admitted to probate on the 8th day of October, 1913, by the surrogate of the County of Passaic, New Jersey, wherein and whereby he appointed plaintiffs, Rachael Ann Lange and Jurgen P. Lange, Jr., his executors, and thereafter and prior to the commencement of this action letters testamentary were duly issued by the surrogate of Passaic County to the plain-

tiffs, and they duly qualified as executors of said Jurgen P. Lange, deceased, and assumed the duties of their said office.

12. Said plaintiffs, bring this suit for the benefit of the said widow and next of kin of said Jurgen P. Lange, deceased pursuant to the statute in such case made and provided.

Plaintiffs demand $150,000 damages.

The defendant answered as follows:

Answer.

New York, Susquehanna & Western Railroad Company, a corporation of the States of New Jersey and Pennsylvania, having its principal office in New Jersey on Pavonia Avenue, Jersey City, New Jersey, says that:

1. It admits the allegations of paragraph one.

2. It admits the allegations of paragraph two.

3. It admits that said right of way and tracks ran in a generally easterly and westerly direction and that said public highway ran in a generally northerly and southerly direction; it denies that adjacent to said right of way and to said highway on the northeast corner of said intersection there were buildings and erections so constructed as to obstruct the view of persons approaching said right of way along said highway from the north as to trains or locomotives traveling along the said tracks of said right of way in a westerly direction until the said persons so traveling on said highway were close to or upon the said westbound track; it denies that by reason of said alleged obstructions and erections or otherwise the said crossing was of an unusually dangerous character.

4. It admits the allegations of paragraph four.

5. It denies the allegations of paragraph five

except that it admits that it did not post notices or otherwise notifying the traveling public that said system of signalling was out of repair and says that it did not so post notices or otherwise notify the traveling public for the reason that on said date the said system was not out of repair.

6. It denies the allegations of paragraph six except that it admits that on September 27th, 1913, it operated, propelled and ran a certain locomotive under the management of its servants and agents along said westbound track in a westerly direction over said grade crossing.

7. It admits the allegations of paragraph seven except that it denies that the locomotive by which said automobile was struck was operated at an unusual and dangerous rate of speed, and except that it denies that said locomotive was operated without giving any warning by bell upon said locomotive or by whistle or by crossing bell or by signal.

8. It denies the allegations of paragraph eight.

9. It denies the allegations of paragraph nine.

10. It admits that said Jurgen P. Lange died from said injuries but denies that the said injuries were caused through the negligence of this defendant; it has no knowledge or information sufficient to form a belief as to the remaining allegations of paragraph ten.

11. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph eleven.

Second Defense.

The accident alleged in the complaint was due to contributory negligence on the part of the decedent, Jurgen P. Lange, in failing to take reasonable care to look or listen or otherwise inform himself of the approach of the locomotive by

which said automobile was struck; and in failing to hear, or to take reasonable care to hear, the signal given by said locomotive as it approached said crossing; and in failing to see, or to take reasonable care to see, said locomotive as it approached said crossing; and in failing to hear, or to take reasonable care to hear, the crossing bell when it rang at said crossing shortly before said locomotive approached said crossing; and in failing to alight, or to make reasonable effort to alight, from said automobile at a time and place when he knew, or with reasonable care, should have known that the same was about to be struck by said locomotive.

Third Defense.

The accident alleged in the complaint was due to negligence on the part of one Joseph Lange, in that the said Joseph Lange failed to take reasonable care to look or listen or otherwise inform himself of the approach of the locomotive by which said automobile was struck; and also in that said Joseph Lange failed to hear, or to take reasonable care to hear, the signal given by said locomotive as it approached said crossing; and also in that the said Joseph Lange failed to see, or to take reasonable care to see, said locomotive as it approached said crossing; and also in that said Joseph Lange failed to hear, or to take reasonable care to hear, the crossing bell when it rang at said crossing shortly before said locomotive approached said crossing; said negligence of said Joseph Lange is imputable to the said Jurgen P. Lange and therefore bars recovery on the part of the representatives of said Jurgen P. Lange.

Fourth Defense.

So far as relates to any right of recovery for the benefit of Joseph Lange as one of the next of kin of the decedent, Jurgen P. Lange, said

right is barred by the negligence of said Joseph Lange in that the said Joseph Lange failed to take reasonable care to look or listen or otherwise inform himself of the approach of the locomotive by which said automobile was struck; and also in that the said Joseph Lange failed to hear, or to take reasonable care to hear, the signal given by said locomotive as it approached said crossing; and also in that the said Joseph Lange failed to see, or to take reasonable care to see, said locomotive as it approached said crossing; and also in that the said Joseph Lange failed to hear, or to take reasonable care to hear, the crossing bell when it rang at said crossing shortly before said locomotive approached said crossing.

The plaintiffs replied as follows:

Plaintiffs deny every allegation in the answer:

Judgment.

This action was tried before Judge George S. Silzer, with a jury, at the Passaic Circuit on December 1st, etc., 1914.

The cause having been heard and submitted to the jury, they return their verdict as follows: They find a general verdict in favor of the defendant and against the plaintiffs.

Whereupon it is adjudged that the complaint of the plaintiffs' be dismissed and that the defendant recover of the plaintiffs its costs which are taxed at $.

Dated,

Testimony.

NEW JERSEY SUPREME COURT.

PASSAIC COUNTY.

RACHEL ANN LANGE, et al., Executrix, &c.,

Plaintiff,

vs.

NEW YORK, SUSQUEHANNA & WESTERN RAILROAD COMPANY,

Defendant.

Before Hon. George S. Silzer, Judge, and a Jury.

Paterson, N. J., December 1, 1914.

APPEARANCES:

WARREN DIXON, ESQ., JOSEPH F. FARMER, ESQ., for the Plaintiff.

MESSRS. COLLINS & CORBIN, by Hon. Gilbert Collins, George S. Hobart, Esq., for the Defendants.

A Jury being empanelled and found satisfactory, they were sworn.

PETER J. ROGERS, sworn as witness on behalf of the plaintiff, testifies as follows:

DIRECT EXAMINATION BY MR. DIXON:

Q. Where do you live? A. 756 East Twenty-seventh Street, Paterson.

Q. What is your business? A. Building contractor.

MR. DIXON: The plaintiff offers in evidence the will of the deceased and the letters testamentary issued thereon.

Admitted and marked "Plaintiff's Exhibit P-1" of this date.

Q. How long have you lived in that vicinity? A. Four years.

Q. On which side of East Twenty-seventh Street did you live? A. I live on the west side.

Q. Is that place where you live near the railroad crossing of the Susquehanna Railroad? A. It is four hundred and fifty feet from there.

Q. And in which direction do you live from the railroad? A. North.

Q. The railroad there runs in about what direction? A. East and west.

Q. And the street you live on runs north and south? A. Yes, sir.

Q. Have you frequently crossed that crossing since you have been there? A. Almost daily.

Q. On the east side of East 27th Street and on the north side of the railroad tracks or right-of-way are there any erections there, buildings or fences? A. Yes, sir; there is a fence there.

Q. Where does that fence run from and to? A. It runs from Eighteenth Avenue to within a very short distance of the railroad track.

Q. That is, up to the railroad track, that parallels East 22nd Street? A. Yes, sir.

Q. Is there any fence paralleling the railroad from that? A. Yes, sir.

Q. About how far does that run? A. It runs down to the end of that coal yard, I should judge eight or nine hundred feet.

Q. Have you ever crossed that track at that place in an automobile? A. Yes, sir.

Q. In a southerly direction, going south? A. Yes, sir.

Q. As you approach the tracks in an automobile which is travelling about how near must you get to the tracks before you can see in an easterly direction up the track? A. Well, I should judge a man in an automobile would be almost upon the tracks or not more than twenty feet away before he could see, unless he was leaning way out of his car and trying to get the first view; but driving in a natural position in a car he would get within ten or fifteen or twenty feet away from the tracks.

Q. On the twenty-seventh day of September, 1913, in the afternoon, were you on East 27th Street? A. I was standing there talking to a friend; yes.

Q. Where were you standing? A. In front of my driveway.

Q. That would be about four hundred and fifty feet away from the crossing? A. Yes, sir.

Q. About what time were you standing there? A. I was standing there about half an hour, until about a quarter to six.

Q. As you stood there did you observe any automobiles travelling along that street in a southerly direction? A. Yes, sir; three.

Q. About what time was that? A. About twenty minutes to six, as near as I can remember.

Q. How many did you see go by? A. Three.

Q. Did you observe them as they approached the railroad tracks? A. I did.

Q. Did anything unusual occur to any of the automobiles as they got on the track? A. Why, yes; I was standing looking up, talking to Boyle, who was in his machine, looking south towards the crossing.

Q. Just describe to the court and jury what you observed at that time and at that place? A. Without hearing any noise of an engine approach, whistle or bell, I heard a crash as though two

freight cars had collided, and I looked down the track and I saw the third automobile pulling up in the act of getting out and running in a westerly direction along the track; so I realized that something had happened to the second automobile because the first automobile was in the distance up the street.

Q. Beyond the track? A. Yes; the first automobile was probably forty or fifty feet beyond.

Q. When you saw this crash or heard this crash, did you look in any direction? A. Yes; I looked towards the crossing.

Q. What did you see there? A. I saw nothing.

Q. What did you do? A. I left Boyle and ran up to the track and looked westerly, where I seen the two people lying, and I found about two hundred and fifty feet up the track—we measured it afterwards—an engine with the tender first with an automobile at right angles across the track, the track pretty well torn up, showing where the machine had been dragged, and it was wedged up the tonneau of the car. The man at the throttle, we asked to back down, but it seems his brakes were locked and we could not push it, so Boyle arrived then and I went for a crowbar. We tried to get the woman out and we could not get her out. She was wedged in between the car and the sleepers of the track from having been dragged along. While I went for the crowbar Boyle had arrived and Boyle took the young man in his machine up to the armory. I got back with the bar and reached the woman and carried the woman out to the Twenty-seventh Street crossing, and Doctor McAllister had been visiting in the neighborhood; his machine was standing there, and he volunteered to take the woman to the hospital and I held the woman and drove to the hospital.

Q. You took the boy to the hospital? A. Mr. Boyle took the boy and Dr. McAllister and I took the woman to the hospital.

Q. She was living then? A. Yes.

Q. Was there any other passenger of the car there at that time? A. The old gentleman was in the car, but he was dead.

Q. Where was he lying? A. He was lying in the back seat of the car, in the tonneau of the car —it was a demi-tonneau; he seemed to have been sitting on the left; he was lying half-way across the old lady.

Q. Did you know who he was? A. No.

Q. Do you know now who he was? A. Yes.

Q. Who was he? A. Mr. Lange.

Q. Then, I understand you did not see this engine at all until after you got around— A. (Interrupting.) No; I did not see the engine.

Q. How long did you stay around there? A. The scene of the accident?

Q. After the accident? A. It was probably fifteen or twenty minutes before we got the old lady released, and then I went to the hospital and came right back in Boyle's machine.

Q. How long did it take you to go to the hospital? A. The way we went it took about four minutes.

Q. What is that? A. About four minutes.

Q. When you came back where did you go? A. To the Twenty-seventh Street crossing of the accident.

Q. Was the engine there then? A. They had backed the engine down below the crossing, about twenty-five feet east of the crossing.

Q. They had backed it east of the crossing? A. Yes.

Q. When you got back and the engine was backed twenty-five feet east of the crossing, did

you observe whether the crossing bell was ringing? A. The bell was not ringing.

Q. The engine was standing within twenty-five feet of the crossing? A. I should say twenty-five feet east of the crossing.

Q. Where was the automobile? A. Two hundred and fifty feet west of the crossing.

Q. Still there, or had it been taken down the track? A. Yes, it was still there, and they were working, rolling it, because I believe there was a passenger train due at that time.

Q. At your house can you hear the crossing bell on that crossing when it is rung? A. Yes.

Q. Do you hear it from your house, as far as your house? A. Yes.

Q. Do many automobiles pass that place, along that road? A. Oh, yes; considerable of them.

Q. What? A. Yes, sir; quite a number, a large number.

Q. A large number? A. Yes.

Q. On this day were there any crossing gates erected? A. They had started to erect some stanchions some weeks before that, and they had not finished them; I believe there were some stanchions but no gates. The stanchions were left there three or four—yes, five—weeks before the gates were erected.

Q. Are there gates there now?

MR. HOBART: Objected to as immaterial.

THE COURT: I overrule the question.

Q. Were there gates on the ground at that time? A. I don't think so; I am not sure; I have not seen any.

Q. At that time was there any flagman at the crossing? A. No.

Q. Do you know where the bell is, the bell that we call the crossing bell, in what part of the road-

way it is? A. Yes; it is on the northeast corner of the crossing.

Q. Whereabouts on the ground? A. Between the railroad tracks and the fence, on posts.

Q. On posts? A. On posts; yes.

Q. Is that post within the line of the fence in the roadway or is it to the east of the fence, do you know? A. Why, as near as I can judge it lines up with the fence.

Q. About where? A. It may be a little west of it.

Q. How tall is that post? A. Above the ground I should judge eight feet—ten feet.

Q. Where is the box located? A. The box.

Q. The box with the bell? A. The box is on top of the post; it is a sort of a cast iron enclosement around the bell tapper.

CROSS EXAMINATION BY MR. HOBART:

Q. You lived on the northerly side of the crossing, Mr. Rogers, did you not? A. Yes.

Q. On which side of the street? A. On the westerly side.

Q. Is that part of the city built up with houses? A. Yes.

Q. How many houses are there between your house and the Twenty-seventh Street crossing? A. Six.

Q. Are they all on the same side of the street as your house? A. Yes.

Q. And, then, on the other side of the street, are there houses? A. There is one directly opposite mine, and then there is none until you come to the coal yard.

Q. The coal yard has several buildings there, has it not? A. Yes.

Q. There is also a fence west of the coal yard, is there not? A. Yes.

Q. So that as you stand at your house and look toward Jersey City you cannot see an approaching train coming from that direction, can you? A. No.

Q. You cannot see it until it gets practically on the crossing? A. From my house, you mean?

Q. That is, from your house. A. Yes.

Q. On this occasion, as I understand you, you were talking to a friend by the name of Mr. Boyle? A. That is right.

Q. You were standing in front of your house, were you not? A. Yes.

Q. You were facing away from the crossing, were you not? A. Facing east, at right angles to the crossing.

Q. In other words, you were not looking at the crossing? A. No.

Q. You were not paying any attention to the crossing? A. I was not.

Q. You had no interest in it at that time? A. None.

Q. Do you recollect seeing three automobiles pass shortly before the crash? A. There were three, yes.

Q. Do you know who was in the first one? A. Why, yes; it was Davis.

Q. Mr. William T. Davis? A. Yes.

Q. You know him? A. I know him well.

Q You spoke to him as he went by? A I don't think so. I may have nodded, but my recollection is that I did not.

Q. After Mr. Davis, was there a second automobile? A. Yes.

Q. Do you know who was in that machine? A. I know now that they were the Lange family.

Q. The man who was killed? A. Yes.

Q. And also the old lady who was hurt? A. Yes.

Q. And afterwards died? A. Yes.

Q. Did you notice in which side of the car Mr. Lange, who was killed, was riding? A. Yes, he was in the rear.

Q. Did you observe on which side? A. No; but from the position we found him, I judge he was on the left side.

Q. On the left side? A. On the left side going south.

Q. That would be the side from this engine approached, would it not? A. Yes.

Q. Was there anyone in the front seat except the driver of the car? A. The young man who was hurt.

Q. You did not know him at that time, of course? A. I did not.

Q. You afterwards found that it was Mr. Lange's son, did you not? A. Yes, sir.

Q. And how far behind Mr. Davis's automobile was the second automobile, when it passed you? A. About one hundred feet, I should say.

Q. Did you observe about how fast Mr. Davis was going in the first auto? A. Yes.

Q. About how fast? A. About twenty miles.

Q. And the second automobile? A. About fifteen miles.

Q. A little slower? A. Yes, sir, he was going a little slower.

Q. There was also a third car, was there not? A. Yes.

Q. In which some relatives of Mr. Lange were riding? A. Yes; I found out afterwards.

Q. About how fast was that going? A. About the same rate as the second, twelve or fifteen miles.

Q. How far behind the second one was the third one? A. About seventy-five feet.

Q. Was any other automobile on the street at

that time, that you saw? A. Not at that time; no.

Q. Were there any other wagons or carriages on the street at that time, as far as you saw? A. I did not see any.

Q. When I speak of "that time" I am referring to the time that you saw these three automobiles coming. A. Yes.

Q. That is what you understood? A. Yes.

MR. DIXON: He said that Boyle was sitting in his machine at that time.

MR. HOBART: I understand that.

Q. Boyle's car was there? A. Yes.

Q. Which way was Boyle's car headed? A. Boyle's car was headed south.

Q. That would be towards the crossing? A. Towards the crossing; yes.

Q. You and he were chatting? A. Yes.

Q. And you had been for some time before the crash? A. Yes; for some time.

Q. About how long? A. At least half an hour.

Q. Do you recollect what you were talking about —business matters? A. Yes; we were talking about automobiles, we were both automobile enthusiasts and we were talking automobiles.

Q. You were swapping experiences in the automobile line? A. Something like that.

Q. And you had no interest in approaching engines or trains while you were talking about automobiles? A. None whatever.

Q. After these autos passed you, I mean the three that you have spoken of—Mr. Davis's and the other two, did you look at them as they approached the crossing? A. I probably followed them with my eyes as far as Eighteenth Avenue but not as far as the crossing.

Q. Eighteenth Avenue is how far from the crossing? A. About two hundred feet, I should judge.

Q. Then you paid no further attention to them, of course? A. I paid no further attention to them.

Q. Eighteenth Avenue was between you and the crossing? A. Yes, sir.

Q. Did you observe what kind of a car the second automobile was? A. Yes.

Q. What kind of a car was it? A. It was a Demmeneau-Cadallac.

Q. For those of us who do not have or understand about automobiles, what kind of an automobile is that? A. It is a baby tonneau, the tonneau is comfortable in the rear to seat two persons and two in the driver's seat.

Q. It was not covered? A. There was a cover on it but it was down.

Q. A person sitting in the automobile could see plainly on either side and in front? A. Yes, sir.

Q. I want to call your attention to this paper on which your name appears and ask if that is your signature here, "Peter J. Rogers"? A. Yes; that is my signature.

Q. And also on the second sheet of paper which I show you? A. Yes, sir.

Q. You signed these papers, Mr. Rogers? A. Yes, sir.

Q. And what you stated therein was true, was it not? A. I think so; yes.

Admitted and marked "Defendant's Exhibit D-1 and D-2 for identification.

Q. And according to the date which appears on this paper, marked Exhibit D-2 for identification, it was signed on September 19th, 1913, was it not? A. I don't know.

Q. It was a few days after the accident? A. I don't remember.

Q. It was within a week or two—within a month? A. I have no knowledge; I cannot place the time.

Q. Now, calling your attention to the statement that appears on the first sheet, Exhibit D-1 for identification, and quoting from Exhibit D-1, I find this: "I didn't pay any attention to the automobiles after they passed me until I heard the crash," is that true? A. Yes, sir.

Q. "I was interested in my conversation with Boyle and do not know whether the crossing bell was ringing or not"? A. I don't know; I think I meant to say that I did not hear the crossing bell ringing.

Q. You were interested; you have told us that to-day? A. Yes; I was interested.

Q. Yes; you say here, "I didn't hear it ring," meaning the crossing bell? A. I didn't hear it ring that I remember.

Q. And continuing the statement you say, "I cannot say that it did not ring." A. No; I cannot say that it did not ring at that time.

Q. The first thing, then as I understand it is, that the first thing out of the ordinary, that called it to your attention is when you heard this crash by freight cars coming together? A. Yes, sir.

Q. You could tell from the sound where it was? A. Yes; I realized it was near the crossing.

Q. Then you rushed down with your friend Boyle? A. Yes; I got there ahead of him. He had to get out and crank up his automobile, and I ran right down and was there before he got there.

Q. Do you recall whether when you got to the crossing the engine of the automobile that had been hit was still running? A. It was running, yes.

Q. And was the auto, at that time, tight up against the tender of the locomotive? A. Yes, sir.

Q. It was going backwards? A. Yes, sir; tender first.

Q. Going in the direction of North Paterson? A. Going west; yes; in the direction of North Paterson.

Q. That is all.

RE-DIRECT EXAMINATION BY MR. DIXON:

Q. Mr. Rogers, you noticed the first automobile and knew the passengers in it—knew the driver? A. Yes.

Q. And recognized the driver as he passed you? A. Yes.

Q. If the crossing bell had been ringing you could have heard it? A. Yes.

Q. You are positive that if it had been ringing you could have heard it? A. Yes.

Q. If you are positive that you saw your friend approaching at twenty miles an hour or less and the bell was ringing, don't you think your attention would have been attracted to it?

Question objected to.

Q. Would it or not?

Question objected to.
Question overruled. Exception.

Q. Your conversation with Boyle was not so engrossing as to have prevented you from hearing the bell if it rung? A. No, sir.

Q. And you knew that these three automobiles were approaching the crossing? A. I did; yes.

Q. And then when your eyes were on them and they were that close to the track you heard no bell, did you? A. I did not.

Q. And you heard no whistle before the crash? A. There was no whistle.

CROSS EXAMINATION BY MR. HOBART:

Q. Were you expecting that engine; did you know it was coming before the crash? A. No, sir.

Q. You did not know what time it was due there or what time it should be there or anyone should be there that day? A. No, sir; I did not.

Q. You knew nothing about it? A. No, sir.

Q. You had no interest in it? A. Positively none.

Q. Is your friend Mr. Davis here to-day? A. I don't know that; I don't see him.

Q. Was he here yesterday? A. I did not see him.

ELIZA A. CARR, sworn as a witness on behalf of the plaintiff, testifies as follows:

DIRECT EXAMINATION BY MR. DIXON:

Q. Where do you live? A. 743 East 27th Street.

Q. How long have you lived there? A. Since the 29th of April, 1913.

Q. Is your house on the east or west side of East 27th Street? A. On the east side.

Q. How far about from the Susquehanna Railroad crossing is it? A. Why, I should judge it to be about five hundred and twenty-five feet.

Q. Have you ever crossed that crossing? A. Recently.

Q. As you approach that crossing going south along 27th Street and on the east side of the street and near the crossing what erections are there? A. Well, there are two houses beyond my residence, the houses are not close together; I should judge about thirty-five feet between my house and the next and fifty feet between that house and the third, and then the coal yard fence, and then the little coal.

Q. How far does that extend along East 27th Street about? A. Well, really I could not say.

Q. A considerable distance or not? A. Well, as near as I can judge, I should say—you see the public service had their logs there then.

Q. Their what? A. Their poles, their telephone poles, and I should judge it takes up fifty feet, of course I would not swear to the definite measurement.

Q. Is it a considerable distance the fence runs along? A. Well, yes; it does, it obstructs the view of the railroad, on our side, the fence does.

Q. About how close do you have to get before

you can see toward the east—how close to the track, if you were in an automobile, for instance? A. Well, I have very rarely taken any observation in an automobile, but I generally cross on foot, you know, that crossing, and then there is quite a slope going toward the railroad, and as I say, you would have to be very near to the railroad to see, the curve comes some ways further down.

Q. Do you remember the evening of September 27th, I think it was Saturday, 1913? A. Yes, Mr. Dixon, I do.

Q. When an accident happened there at that crossing? A. Well, I was in my home at the time.

Q. You remember that occasion? A. Yes; it was very clear—may I describe it?

Q. Well, you may after we get the particulars—where were you then? A. In my kitchen preparing my dinner.

Q. What kind of a day was it? A. A very pleasant afternoon.

Q. Was it warm or cold? A. Well, rather warm, all the windows were open, and the doors, and the screen doors.

Q. You say you were in your kitchen? A. Yes, sir.

Q. In what part of the house is your kitchen? A. Well, in the back; our house is built in an odd way; the length comes on the street instead of the width of the house. It is an unusually big house, and the house is narrow. What I mean is, the kitchen is very near the front door. There is not twelve feet from my kitchen door to my front door. It is a peculiarly built house.

Q. Who lives there with you? A. My family, my husband and my children.

Q. How many children have you? A. Well, I have nine.

Q. How many of them live there with you, how many are living with you? A. I have two married, all the rest were residents.

Q. Were any of them with you there on that day? A. Only two sons, one taking his bath and one on the side porch, which I did not know at the time, my youngest child.

Q. On that afternoon was your attention called to anything by hearing any cry? A. Well, the only thing I can say I heard, like a crash it sounded to me, like two freight cars when they bunk together, or perhaps two automobiles; but I did not pay any attention to that. I went on with my dinner and my son come downstairs; he was partially dressed; he had gone to his room for his razor. He said, "Mother, there has been an accident." "Why," I said, "how is that? Was it an auto, or what happened?" He said, "Why on the railroad." "Well," I said, "the bell did not ring." Because it was so clear that I could distinctly hear the bell; I was accustomed to it. I have lived 22 years in the vicinity of railroads so I was accustomed to the bells. He said, "Yes; there is an engine on the track." I had not heard the engine and I did not hear the bell, so that was why I spoke.

Q. Did you hear any whistle? A. No, sir; I did not. I was completely surprised when I heard the crash.

Q. From where your house it or at your house can you hear the crossing bell if it is rung? A. Very distinctly.

Q. Have you heard it? A. Often; frequently; I heard it a few minutes after the accident.

Q. You did hear it after the accident? A. Yes, quite a number of bells.

Q. Can you hear the locomotive bell from your house? A. Yes; all summer, but when the windows are closed; except at night time.

Q. How about the whistle of a locomotive, if sounded, can you hear it at your house? A. You can generally tell when a train is coming, in fact you know, we can hear almost down from the Vreeland Avenue station. I have, if you will pardon me, I have laid in bed and heard the train touch Dundee Lake across the river and at the Vreeland Avenue station and come on and I was so accustomed to it in all the years I have lived near a railroad, not only there but at other places.

Q. If an engine bell had been rung, or a whistle sounded, or the crossing bell rung on that day, immediately preceding that crash, were you in such a position as to have been able to hear it?

MR. HOBART: Objected to as argumentative.

Objection overruled. Defendant excepts.

A. Certainly.

Q. Will you state whether or not the bell did ring? A. I will positively swear the bell did not ring.

Q. Or the whistle blow? A. No. I had nothing to interfere with my hearing that afternoon.

Q. Will you say whether or not the whistle did blow before the accident? A. No, I did not hear it.

CROSS EXAMINATION BY MR. HOBART:

Q. On which side of East 27th Street do you live? A. On the easterly side.

Q. That is on the side opposite to where Mr. Rogers lives? A. About fifty feet nearer to Seventeenth Avenue, in a northerly direction.

Q. It is on the opposite side to Mr. Rogers? A. Yes, sir.

Q. How far are you from the railroad crossing? A. I should judge from his house, as I say, I have no dlstinct measurements; I should judge I was five hundred and twenty-five feet from the crossing.

Q. You were further away, then, than Mr. Rogers was? A. Yes, sir.

Q. Are there any houses between your house and the railroad crossing? A. Yes, a few large houses, separated, though, they are not close together.

Q. On the same side of the street with your house? A. Yes, sir.

Q. Are there any buildings of the lumber company? A. Only the coal office, a little low building, and then a little shack, I don't know what it is, I don't know what it is; I don't think it has been occupied in two years.

Q. And then there is a fence around the coal yard, isn't there? A. Yes, sir.

Q. After you get by the corner of that fence there is nothing to interfere with your seeing a train coming, is there? A. I would not swear positively.

Q. If there is, what is it? A. Well, it is the coal yard fence that is the only thing to bother us.

Q. That is the only thing, is it not? A. And the slope, it is not an even road.

Q. As soon as you get by the coal yard fence there is nothing to interfere with your seeing a train coming from New York? A. No; I don't think so.

Q. And there was not at that time? A. Not that I know of.

Q. And you have been there frequently? A. Frequently I walk over there.

Q. On this occasion, as I understand, you were

preparing a dinner at your home in the kitchen? A. Yes, sir.

Q. I presume you were interested in preparing your dinner? A. Yes; because I was cooking on a gas stove and you cannot leave that.

Q. You have to pay pretty close attention to the gas, don't you? A. Yes, sir.

Q. To see that it is cooking properly? A. Yes, sir.

Q. That is what you were thinking about at that time? A. That was my duty.

Q. That is your duty as a good wife and a mother? A. Yes, sir.

Q. I am not sure whether you told us whether your kitchen was in the rear of the house or on the side? A. It is in the rear.

Q. On which side? A. On the southerly side.

Q. That would be towards the crossing? A. Towards the crossing, yes, sir. We have four or five doors in that house. As I say it is a very peculiarly built house, one window and a door in the kitchen and then there is a little door there and you go three steps down to the cellar entrance and a door there, a wired door, you know, they were all wired for the summer and a front door right opposite the kitchen, well, a little sideways.

Q. You spoke of your two sons who were the only ones who happened to be home at that time? A. Yes, sir.

Q. How old were they? A. One was in his thirtieth year and the other was in his thirty-fifth year.

Q. What are their names? A. William A. and Henry Park.

Q. Are they here to-day? A. No. One is away far out on the seas, and the other one is in court.

MR. DIXON: One went to what?

THE WITNESS: My oldest son is in the

employ of the Standard Oil Company's boats. He is out on the ocean now.

Q. Which one of the sons of these two is it that was out on the porch? A. My youngest son, Park.

Q. Did you go down to the crossing after you heard this crash? A. Well, I did, to tell the truth; I was nervous, one of my sons was out and I thought perhaps he was on my brother-in-law's automobile. Mr. Dunn had taken him out the Saturday preceding and I naturally, as a woman, wanted to see.

Q. You went down to the crossing? A. I went down to the crossing.

Q. Right away? A. In a few minutes, as soon as my son came downstairs I turned the gas off and shut my doors, there was nobody else in the house, and I went out bareheaded, just like a woman, just to see what was the trouble.

Q. Just like a man, too, there were a lot of men around there, weren't there? A. It was crowded when I got around there. There was quite a lot of automobiles.

Q. Do you recollect when you got there if the automobile had been moved away from the engine? A. I think they were trying to remove the bodies, but I did not go near. I did not wish to see any suffering.

Q. You said you heard a bell a few minutes after the accident. Was that when you were on the crossing or before you got there? A. When I got to the crossing. There were quite a number of bells because the next train then was due and they had men with their flags and policemen there.

Q. You heard the bell then, did you? A. Oh, I distinctly heard the bell, I heard the train bell and the other bell. I heard them both.

Q. You heard the crossing bell? A. Yes, sir; I heard the crossing bell, too. I heard them both.

Q. But you heard the crossing bell? A. I heard that too.

Q. You are sure you heard the crossing bell? A. Well, I heard them all. I won't swear any particular one, I heard them all.

Q. Are you sure you heard the crossing bell? A. I wouldn't swear to it.

Q. What bell was it? A. There was a dozen being rung then.

Q. There was a train coming along right then—coming west? A. I couldn't swear which way it was coming, but I think it was from New York.

Q. You are sure you heard a bell? A. Oh, yes, number of bells were ringing then.

Q. You know the crossing bell? A. Yes.

Q. Up to the time of the crash you hadn't heard the ringing of a bell? A. No, sir.

Q. Didn't hear the automobiles go by? A. No, sir.

Q. They went right by your house? A. Yes, sir.

RE-DIRECT EXAMINATION BY MR. DIXON:

Q. One moment, Mrs. Carr. Whose automobile did you say you were afraid was hit? A. My brother-in-law, Mr. Michael Dunn; he had taken one of my sons out just before that.

Q. That wasn't one of these two? A. Oh, no; I thought it might be someone belonging to me.

Q. When was it that your oldest son went to sea? A. He left our house on Monday night and I couldn't say—I think he sailed on Wednesday. He sent us a postal card saying he wouldn't be home for his Thanksgiving dinner.

Q. That is all.

HENRY PARK CARR, a witness produced on behalf of the plaintiff, being first duly sworn according to law, etstifies as follows:

DIRECT EXAMINATION BY MR. DIXON:

Q. How old are you, Henry? A. Fourteen.

Q. Was this lady that just left the stand your mother? A. Yes, sir.

Q. You live with her on East Twenty-seventh Street? A. Yes, sir.

Q. Do you remember the day of the accident to Mr. Lange's automobile? A. Yes.

Q. On that afternoon where were you? A. I was sitting on the porch.

Q. Do you know where your mother was? A. No, sir.

Q. You were sitting on the porch? A. Yes, sir.

Q. About what time was the accident? A. Between half past and six o'clock.

Q. What was the first thing you heard? A. I didn't hear anything.

Q. You didn't hear anything—you didn't hear any bells? A. No, sir.

Q. How did you come to know about the accident? A. My brother came down and said there was an accident.

Q. Were you in a position that you could have heard a bell if it had been rung? A. Yes, sir.

Q. Have you ever heard bells from the engine or crossing from your porch? A. Yes, sir.

Q. From that place can you hear the whistles if they are blown? A. Yes, sir.

Q. After your brother told you about the accident, what did you do? A. I went up there.

Q. What did you see? A. I saw the auto and the man lying down.

Q. What? A. I saw the body.

Q. Where was that? A. On the track.

Q. On the roadway? A. On the track; in the way of the train.

Q. How near Twenty-seventh Street? A. I couldn't just tell you.

Q. In which direction from East Twenty-seventh Street? A. In a western direction.

Q. Where was the locomotive at that time? A. On the eastern side of the roadway.

Q. And the automobile was where? A. On the west side.

Q. Did you see any men working around there on the east side? A. No, sir.

Q. Was anybody working there at all? A. No, sir.

Q. How far was the engine from the roadway? A. I couldn't just tell but it wasn't very far from the roadway.

Q. At that time was there any crossing bell ringing? A. No, sir.

Q. How long did you stay there while the engine was on the east side of the roadway? A. About a half an hour.

Q. Around that neighborhood? A. Yes, sir.

Q. Did you see the engine when it left there? A. No, sir.

Q. When you left there it was still standing on the east side? A. Yes, sir.

Q. How near the crossing did you go? A. I was on the crossing, and down by the auto.

Q. Down by what? A. Down by the auto.

Q. Automobile—and you are positive that when you went down there the automobile was on the west side and the engine was on the east side? A. Yes, sir.

Q. And was that crossing bell ringing then? A. No, sir.

CROSS EXAMINATION BY MR. DIXON:

Q. How far east of the crossing was the engine when you got there? A. Couldn't tell you.

Q. One hundred feet? A. No, sir.

Q. Two hundred feet? A. No, sir.

Q. How far; you can give us some idea. A. Between twenty-five and fifty feet.

Q. You didn't measure it and you are giving us your best estimate of it? A. Yes, sir.

Q. Were you there when the engine backed in on the siding? A. No, sir.

Q. You didn't see that? A. No, sir.

Q. Were you there when the other train came along? A. Yes, sir.

Q. Another train coming from New York? A. Yes, sir.

Q. Coming on the same track? A. Yes, sir.

Q. How did they go by? A. They removed the body and the auto.

Q. And the engine was on the same track? A. No, sir.

Q. What became of it? A. The engine went back on the switch.

Q. Did it or didn't it? A. Yes, sir.

Q. Did you see it go back? A. No, sir.

Q. You saw it when it was on the switch? A. Yes, sir.

Q. The switch is the switch going into the coal yard? A. Yes, sir.

Q. And when they moved it they had made way for the other train? A. Yes, sir.

Q. Do you remember whether the other train stopped or slowed up? A. Yes, sir.

Q. Did it stop? A. Yes, sir.

Q. How long did it stand there? A. I couldn't just tell; I don't know just how long it was.

Q. Now you didn't know anything about this

accident until your brother told you? A. No, sir.

Q. Didn't hear the crash? A. No, sir.

Q. Did you hear the automobiles? A. No, sir.

Q. What were you doing? A. Sitting there.

Q. Reading a book or paper? A. No, sir.

Q. Just resting? A. Yes, sir.

Q. Weren't studying, were you? A. No, sir.

Q. That is all.

RE-DIRECT EXAMINATION BY MR. DIXON:

Q. Did you see the automobiles go by? A. Yes, sir.

Q. That is all.

THOMAS G. PAXTON, a witness produced on behalf of the plaintiff being first duly sworn according to law testifies as follows:

DIRECT EXAMINATION BY MR. DIXON:

Q. Mr. Paxton, where do you live? A. 752 East Twenty Seventh Street.

Q. How far is that from the crossing of the Susquehanna Railroad? A. Five hundred feet.

Q. How long have you lived there? A. Since the first of May, nineteen thirteen.

Q. And on which side of East Twenty-seventh Street is your house? A. West side.

Q. Describe the situation of the crossing as it was on the twenty-seventh day of September, nineteen thirteen, with respect to the approach to the crossing through Twenty-seventh Street going in a southerly direction. A. On the east side of Twenty-seventh Street near the crossing was a high picket fence of the coal yard and on the west side there is a high board fence and there was no gates there at the time.

Q. Any flagman stationed there at the crossing at that time? A. No, sir.

Q. Was there a bell? A. There was a bell; yes.

Q. A crossing bell at that time? A. Yes, sir.

Q. How long had that been installed, do you know? A. As long as I have been there.

Q. What is your business? A. General Superintendent of the Rogers company.

Q. What do you do? A. Carpenter.

Q. Now, this picket fence that you speak of, about how far does that extend along East Twenty-seventh Street? A. The yard is close in from Eighteenth Avenue up near from the avenue.

Q. How close to the tracks does that fence stand, do you know? A. I couldn't say positively; about ten or twelve feet.

By the Court:

Q. How high is it? A. About eight feet.

By Mr. Dixon:

Q. Looking toward the east is there a fence there? A. Yes, sir.

Q. How far does that extend along? A. Down to the switch going into the coal yard.

Q. How far is that? A. I couldn't judge.

Q. Over a hundred feet? A. Yes.

Q. Over two hundred feet? A. I couldn't say.

Q. Certainly over one hundred feet? A. Yes, sir.

Q. How high is it; it is as high as the other? A. Yes, sir.

Q. A picket fence? A. Yes, sir.

Q. Have you ever crossed over this crossing in an automobile? A. Yes, sir.

Q. How often? A. Oh, nearly every day.

Q. Have you ever travelled along that street going south? A. Yes, sir.

Q. Can you state, travelling along that street in a southerly direction in a driver's seat of an automobile how close you have to get to the west-bound track before you can get a view up towards the east? A. Fifteen or twenty feet.

Q. Do you know that as a fact? A. Yes, sir.

Q. Do many automobiles use that road? A. Yes, sir.

Q. Did they prior to the twenty-seventh day of September 1913? A. Yes, sir.

Q. On that afternoon where were you? A. I was leaving my house with Doctor McAllister.

Q. Did you see the automobiles passing toward the crossing? A. No, sir.

Q. Did you hear anything on that afternoon? A. Yes, sir.

Q. What did you hear? A. I heard a crash just like two freight cars coupling together.

Q. Where were you at that time? A. At the side of my house.

Q. Did you see any collision? A No, sir.

Q. Prior to the crash did you hear any bell or whistle or crossing bell? A. No, sir.

Q. Can you hear the crossing bell if it rung, at your house? A. Yes, sir.

Q. Plainly or not? A. Yes, sir.

Q. Can you hear a locomotive whistle at your house? A. Yes, sir.

Q. Can you hear a locomotive bell? A. Yes, sir.

Q. Plainly or not? A. Yes, sir.

Q. Can you at your house hear the whistle of an engine if it is blown? A. Yes, sir.

Q. The first thing you heard was the crash? A. Yes, sir.

Q. What did you then do? A. Doctor McAllister and I got in his automobile and ran down to the crossing.

Q. And going down there what did you see? A. I saw the automobile standing on the west track and up against the side of a locomotive.

Q. How far was it from the crossing? A. Two hundred and fifty feet.

Q. How do you know? A. We measured it.

Q. Who did? A. Mr. Boyle, Mr. Rogers, Detective Lord and myself.

Q. Was the headlight on the locomotive lit? A No; it was daylight.

Q. How was the locomotive approaching? A. It was passing east.

Q. Describe the situation of the locomotive and the automobile. A. The automobile stood on the westbound track headed east, the locomotive was headed the other way running backward and in the automobile was the boy that had been driving it and on the left the old man lay to the rear and on the other side was the old lady.

Q. Did you notice the old gentleman? A. Yes, sir.

Q. Was he dead then? A. In my opinion, yes.

Q. Did you see anybody else come up there, or was there anybody else there whom you knew? A. Yes; there was a few around there when I got there.

Q. How long did you stay there? A. I stayed there until we got the wreckage cleared off the track.

Q. About how long was that? A. That I have no idea how long.

Q. Quite a while? A. Quite a while, yes.

Q. What was done after you got there? A. The first thing I done was to help Mr. Boyle get the boy out of the machine.

Q. Was he conscious or unconscious? A. Unconscious.

Q. What was done then? A. Then I helped to get the old lady and carry her down to the automobile and took her to the hospital.

Q. Did you remain with them? A. No, sir; I came back.

Q. Then what was done? A. Then we rolled the automobile off the track.

Q. Did you help in that? A. Yes.

Q. How did they get the old lady out? A. We pried the automobile up with a crow-bar.

Q. You say the tender was against the automobile? A. Yes, sir.

Q. Why didn't they back the engine off? A. Well, I think I heard a man say his wheels were locked; he could not pull down.

Q. He could not pull out; the engine did not move? A. The engine did not move—not then; no.

Q. You had to pry the car up with a crow-bar? A. Yes.

Q. How was the car smashed? A. All the wheels off; the tonneau was off; the mud-guards on the left side were smashed up.

Q. You lived there with your family, did you not? A. Yes.

Q. Of whom did your family consist? A. My wife and two boys.

Q. What are your boys names? A. Harry Paxton and Isaac Paxton.

Q. And how old are they? A. One is thirteen and the other is past fourteen.

CROSS EXAMINATION BY MR. HOBART:

Q. Your house number was 752, was it not? A. Yes.

Q. That is right next to Mr. Rogers? A. Yes.

Q. How many houses between you and the railroad tracks? A. Well, that I have never taken the trouble to find out.

Q. Well, there are four or five or six, are there not? A. Yes.

Q. You were talking with Dr. McAllister? A. Yes.

Q. At your house? A. Yes.

Q. Had the doctor gone to see any member of your family? A. To see my boy.

Q. Your boy was sick, or had an accident, or something? A. Had an accident.

Q. Which boy was that? A. My oldest boy.

Q. And you were talking with the doctor about that? A. No.

Q. What about? A. Talking about automobiles.

Q. You are another automobile fan, are you? A. Yes.

Q. You were not watching for this particular engine, of course? A. No.

Q. Paying no attention to it at all? A. No, sir.

Q. Did you know it was coming? A. No, sir.

Q. Until this crash called your attention? A. No, sir.

Q. That is right, is it not? A. That is right.

Q. Have you ever measured the distance that you have to be in order to see an approaching train coming from New York? A. No, sir; I have not.

Q. I understood you to say that you did not observe this particular automobile on that day? A. I did not.

Q. They went by your house? A. Yes.

Q. They had to go by your house in order to get to the crossing? A. Yes, sir; they did.

Q. But you were so interested in talking to Dr.

McAllister you paid no attention to them? A. I did not.

Q. You did not hear them? A. I did not hear them.

By Mr. Dixon:

Q. You were outside when the crash came, were you not? A. Yes, sir.

Harry Paxton, sworn as a witness on the part of the plaintiff, testifies as follows:

Direct Examination by Mr. Dixon:

Q. How old are you? A. Thirteen.

Q. The gentleman who was just on the stand is your father? A. Yes, sir.

Q. You live with him? A. Yes, sir.

Q. In Twenty-seventh Street? A. Yes, sir.

Q. Do you remember the day when this automobile with Mr. Lange in was hit? A. Yes, sir.

Q. Where were you on that afternoon? A. Stepping down on the steps.

Q. Of what place? A. Going down towards the sidewalk.

Q. How is that? A. Going down towards the sidewalk.

Q. Of your house? A. Yes, sir.

Q. Did you see the car get struck by the engine? A. Yes, sir.

Q. Did you see the automobiles pass you? A. Yes, sir.

Q. What was the first thing that attracted your attention to the situation there, the scene there; what did you see or hear? Tell your own way what you saw and heard. A. I didn't hear nothing.

Q. What? A. I didn't hear any bell.

Q. You did not hear any bell? A. No, sir.

Q. Did you hear any whistle? A. No, sir.

Q. You say you saw the engine hit the car? A Yes.

Q. You were looking at them? A. Yes.

Q. Where was the car when it was struck by the engine? A. About in the middle of the west bound track.

Q. On the roadway? A. On the crossing.

Q. What did the engine do with the car when it struck it? A. It drug it two hundred and fifty feet up the track.

Q. What did you do after the collision? A. I ran in and told my father; he was by the corner of the house.

Q. What did you do? A. I ran and told my father; he was by the corner of the house.

Q. By the corner of the house? A. Yes.

Q. Then what did you do? A. I ran down there.

Q. Down where? A. Down to the engine.

Q. Where? A. To the engine.

Q. Where did you say the engine was? A. Two hundred and fifty feet up the track.

Q. Did you go up there to it? A. Yes, sir.

Q. What did you do when you got up there? I seen the automobile and the engine, and I seen the boy driving the engine, and I seen the old man, and I seen the lady.

Q. How long did you stay up there? A. I could not say.

Q. Well, very long? A. Yes, sir.

Q. Did you come back again to the crossing? A. Yes.

Q. When you got back there did you see anything? A. Yes, sir.

Q. What did you see then? A. I seen a man go up to the bell and put a ladder up to the bell.

Q. Where is that bell? A. The crossing bell.

Q. On the post? A. Yes.

Q. A man put a ladder up there? A. Yes, sir.

Q. What did he do, if anything; could you see? A. No, sir; I did not pay any more attention to it.

Q. He went up there, and— A. (Interrupting.) I didn't pay any more attention.

Q. You saw him go up to the bell?

MR. COLLINS: He did not say that; he said he saw him put a ladder up.

A. I saw him put a ladder up.

Q. Did you see him go up? A. No, sir.

Q. Where did he go after he put the ladder up? A. I don't know here he went. I did not pay any more attention to it.

Q. Did you see anybody else around there, doing anything? A. Around the bell?

Q. Yes, around the tracks? A. No, sir.

Q. What did you do then? A. I just ran around.

Q. What? A. Ran around.

Q. How long after the collision was it, about, that you saw this man put the ladder up against the bell? A. About twenty minutes.

Q. And during that interval of twenty minutes where had you been? A. I was up by the automobile, and then I came down by the crossing.

Q. Where is this post with the bell on it? A. On the northern side of the track; on the eastern side of Twenty-seventh Street.

Q. Had you, at your house, every heard the crossing bell ring? A. Yes, sir.

Q. Can you hear it there easily? A. Yes, sir.

Q. At your house can you hear the locomotive bell ring, if it is rung? A. Yes, sir.

Q. Readily? A. Yes, sir.

Q. And at your house can you hear the whistle blow if it is sounded? A. Yes, sir.

Q. Was the crossing bell rung or the locomotive bell rung, or the whistle sounded before this engine struck the car? A. The bell did not ring, but the whistle blew after the automobile hit—or after the engine hit the automobile.

Q. After the engine hit the automobile the whistle blew? A. Yes.

Q. What kind of a blast did it give? A. Shrill, loud.

Q. You were looking at the car when it was struck with the locomotive, were you? A. Yes, sir.

Q. How soon after it struck the car was it that the whistle was blown? A. A couple of minutes after it hit the car.

Q. Was the car still going or not? A. Yes, sir.

Q. Being pushed along? A. Yes, sir.

Q. It was not whistling when the car was up there two hundred and fifty feet away and the engine stopped? A. No, sir.

CROSS EXAMINATION BY MR. HOBART:

Q. Were you on the porch of your house? A. No, sir; I was on the steps going down to the sidewalk, on the last step down.

Q. How many houses are there between you and the crossing? A. About seven or eight.

Q. What were you doing, as you stood on the

step? A. Just stepping there, and watching the automobiles, as I always do.

Q. Did you see these three automobiles go by that have been mentioned in this case? A. Yes.

Q. You saw them, did you? A. Yes, sir.

Q. How fast was he going? A. That I could not say.

Q. Did they make any noise as they went by? A. No, sir.

Q. What? An automobile that did not make any noise? A. It made a little noise, but not a loud noise.

Q. You could hear it? A. Yes, sir.

Q. Did you see the three of the automobiles? A. Yes.

Q. Did you also see Mr. Boyle's auto, who was standing near there? A. Yes, sir.

Q. And the first that you knew that anything happened was when this crash came? A. No, sir; I seen it.

Q. You saw it just at the time of the crash? A. Yes, sir.

Q. And this whistle that you spoke of, was just about the time it struck, or immediately after? A. After.

Q. Was it a loud whistle? A. Yes.

Q. Was it as loud as this whistle that we have just heard from the factory at one o'clock? A. Louder.

Q. Louder than that? A. Yes.

Q. How far could you hear it? A. That I don't know.

Q. You could hear it a good ways, could you not? A. Yes.

Q. You were running toward the crossing at that time, were you not? A. Yes, sir.

Q. Did you know what time this engine was

due to come over that crossing? A. The one that struck it?

Q. Did you know what time that engine was due, what time it usually came over that crossing? A. No, sir.

Q. You did not know anything about that? A. No, sir.

Q. You never had seen it before, as far as you know, had you? A. Maybe I have seen it before, but not as I know of.

Q. Not to pay any particular attention? A. No, sir.

Q. I understand that it was an engine with no car fastened to it? A. Yes, sir.

Q. What they call a light engine? A. As I heard the name of it, it was called a switch engine.

Q. A switch engine? A. Yes, sir.

Q. Were you there when this passenger train came along? A. Yes.

Q. When that train came along the switch engine had backed on the side track, had it not? A. Yes.

Q. You saw that? A. Yes, sir.

Q. How soon after the accident did this other train come along? A. That I could not say.

Q. Was it within a few minutes, five or ten minutes? A. I guess it was a little bit longer than that.

Q. Fifteen minutes? A. Between ten and fifteen minutes.

Q. Do you remember whether that train slowed up? A. Yes; it slowed up.

Q. Did it stop, or did you notice that? A. I did not notice.

Harry Paxton—Re-Direct—Re-Cross.
Peter J. Rogers—Direct.

RE-DIRECT EXAMINATION BY MR. DIXON:

Q. How was the engine running that struck this car? A. That was going quite fast.

Q. How was it facing; was the front of the engine going forward or back? A. It was going back; it was on the west bound track going east.

RE-CROSS EXAMINATION BY MR. HOBART:

Q. Where was this engine when you first saw it; was it then already on the crossing, or had you seen it before it got to the crossing? A. No, sir; I had not seen it before it got to the crossing.

Q. The first time you saw it was just the moment before it struck the automobile; is that right? A. Yes, sir.

At this point a Recess is taken until two o'clock.

AFTER RECESS.

PETER J. ROGERS, a witness already sworn on the part of the plaintiff, recalled and testifies as follows:

DIRECT EXAMINATION BY MR. DIXON:

Q. Mr. Rogers, after the accident and while you were in that vicinity, did you see anything of a ladder around there? A. No; I did not see any ladder.

Q. Did you see any men working there? A. I saw one man at the bottom of the tower with a crow-bar and another man with a big stone in his hand, a train man.

Q. How long after the accident was that? A. Twenty minutes.

Q. Was he doing anything? A. Why, he seemed to be working around that little box at the bottom of the tower; I don't know what he was doing.

BY THE COURT:

Q. What do you call the tower? A. The bell post; I call that the tower.

BY MR. DIXON:

Q. The bell, post? A. Yes.

Q. That is, the post with the bell on? A. Yes.

BY THE COURT:

Q. Is that what you call the crossing bell? A. Yes, sir.

BY MR. DIXON:

Q. What was the man with the rock doing? A. I don't know just what he was doing; he had a rock in his hand.

Q. Do you know where this man got the crowbar from? A. Evidently from the locomotive; there are tools on the locomotive.

Q. Do you know who he was? A. No; I do not. He had on a pair of overalls.

Q. A pair of overalls? A. A pair of overalls; yes.

CROSS EXAMINATION BY MR. HOBART:

Q. Would you know that man if you saw him again? A. No; I cannot say that I would.

Q. Then, you do not know whether you have seen him in the court room, today? A. No; I do not.

Q. You do not see any ladder there at all? A. No; I did not see any ladder.

Q. At any time? A. No.

Q. You do know what this man with the overalls was doing, do you? A. Why, I don't know, but he seemed to be prying the box—

Q. He had the crow-bar in his hand? A. Yes; and working there on that little box at the bottom of the bell post.

By Mr. Dixon:

Q. What is that box? A. I believe it contains the batteries for the bell.

By Mr. Hobart:

Q. Do you know whether it does or not? A. No; I do not.

Q. You do not know anything about it? A. I have seen batteries in these boxes.

Q. You do not know anything about this particular battery? A. No.

Q. You do not know anything about this particular bell? A. No.

By Mr. Dixon:

Q. Have you ever seen the batteries in this box? A. I have not seen them, but they are generally kept in these boxes.

Q. There was on this post two boxes, one at the foot and one at the top? A. Yes.

Q. And it is in the top box that the bell is? A. The bell is in a cast iron covering, enclosing the gong; it is not a box on to; it is a gong with a cast iron casement, as we call it.

Q. That is what is referring to as the box? A. No; the box is further down, at the bottom of the post.

Q. This cast iron— A. That is simply the gong.

Q. What is it on; how is it fastened? A. Fastened on the post.

Q. At the top of the post? A. Yes.

THOMAS PREHN, sworn as a witness on the part of the plaintiff, testifies as follows:

DIRECT EXAMINATION BY MR. DIXON:

Q. Where do you live? A. In Passaic.

Q. What is your business? A. I am the Secretary of the Botany Worsted Mills.

Q. How long have you been Secretary of that Company? A. Ten years.

Q. Did you know Mr. Jergen Lange in his lifetime? A. I did.

Q. How long had you known him? A. As long as he was with the Botany Worsted Mills.

Q. About how long was that? A. I should think about twenty—or twenty-five years— twenty years.

Q. What connection did he have with that company? A. He was a Superintendent—Assistant Superintendent of the mills.

Q. How long had he been such? A. As long as he was there, I think it is about twenty years.

Q. Was he under salary? A. He was under salary.

Q. Besides his salary, did he earn anything else from the company? A. He received compensation at the end of the year, a certain gratuity, like any other employee.

Q. What was his salary, do you know? A. His salary in the last few years was four hundred dollars a month. That means forty-eight hundred dollars a year.

Q. And in addition to that what did he receive? A. He received a gratuity in different amounts. The last gratuity he received was twenty-four hundred dollars for the year.

Q. When did he receive that? A. For the year 1912.

Q. When did he receive that, in January, or—A. He received that the first of April, the end of March, 1913.

Q. What had he been receiving for, say, three or four years prior to that, in addition to his salary? A. I have a statement here of his account, so I can refer to that.

Q. Refresh your memory from that? A. He received in 1911, for the year 1910, twenty-four hundred dollars, the next was fifteen hundred dollars, besides his salary of forty-eight hundred dollars.

By Mr. Collins:

Q. You said "The next" you meant the previous year? A. The next year, 1911, he received fifteen hundred dollars gratuity. In the year following again twenty-four hundred dollars; that was for the year 1912; he received that in March 1913; and at the end of 1913, his account was credited—his estate after his death was credited—with eight hundred dollars, as part gratuity for the year 1913.

By Mr. Dixon:

Q. Besides being superintendent or Assistant Superintendent of the mills, did he have any other connection with the company, in any other capacity? A. Not for the Botany Worsted Mills; he might have had other business outside.

Q. Was he consulting engineer for the mills? A. He was engineer. He had the machinery and steam engines and other machinery under his supervision.

Q. What can you say as to his ability in the business that he was connected with? A. He was a very able man for our business. He was with us over twenty years.

Q. About how old was he, do you know? A. Well—

Q. Was he vigorous, in good health? A. He was in good health, yes. He was about sixty years old, or in the end of the fifties.

Q. And attended to business all the time? A. He was there regularly.

CROSS EXAMINATION BY MR. COLLINS:

Q. How long had he been receiving forty-eight hundred dollars a year; for how long a time? A. I should think for at least four or five years. I have the books here. I can show you for the last ten years.

Q. You may look at the books, if you like. A. This (indicating paper in witness's hand) is only for the last three or four years.

Q. I would like to know what his salary was earlier than three years before. A. I have it in this book from 1906. He received in 1907 a salary of two hundred and fifty dollars a month and a gratuity of twenty-four hundred dollars for that year, 1906; that was paid in March, 1907.

Q. And the next year? A. In 1908 he received the same salary up to April 1st., two hundred and fifty dollars a month, and an advanced salary from April 1st, 1907 three hundred dollars a month.

Q. What do you mean by "advanced salary"? They advanced it from two hundred and fifty to three hundred dollars a month? A. Advanced it to three hundred dollars a month.

Q. What was the gratuity? A. The gratuity for 1907 was two thousand dollars.

Q. And the next year? A. In 1908 he received the same salary of three hundred dollars a month, and the salary was advanced on April 1st, 1909, to four hundred dollars, and has ever since been four hundred dollars a month.

Q. What was the gratuity that year? A. The gratuity for nineteen hundred and eight was seventeen hundred dollars.

Q. What was the gratuity for nineteen hundred and nine? A. The gratuity for nineteen hundred and nine was thirty six hundred dollars.

Q. And for nineteen hundred and ten you have told us what it was? A. It was twenty four hundred dollars.

Q. Why did it vary, this gratuity, what was it based on? A. It was in accordance with the good results of the business year.

Q. That is to say your firm or company had a good year and they divided it among their differen employees? A. They allowed a proportionate sum for the gratuities to their employees.

Q. Did all the employees have gratuities? A. All the employees received according to their position.

Q. The company was under no obligation to pay these gratuities? A. More or less; the contract or agreement made for the monthly salary was always with the understanding that at the end of the year a certain gratuity would be paid.

Q. Depending upon how much— A. Depending upon how much the result would be.

CHARLES T. YOUNG, sworn as a witness on behalf of the plaintiff, testifies as follows:

DIRECT EXAMINATION BY MR. DIXON:

Q. Where do you live? A. At Passaic, New Jersey.

Q. What is your business? A. Manufacturing, factory manager of the Manhattan Rubber Company.

Q. How long have you been connected with that company in that capacity? A. Nineteen years.

Q. Did you know Mr. Jergen B. Lange in his lifetime? A. Very well indeed, sir.

Q. How long had you known him? A. Over fifteen years.

Q. Was he connected with your company in any way? A. Not at all, sir.

Q. Did he do any business with you? A. Yes, sir.

Q. Of what nature? A. Well, he, not personally, but his company ordered materials, rubber materials from our company.

Q. Did he have any agreements or contracts with your company for services of any kind, patents? A. Well yes; royalty on patents.

Q. Royalties on patents? A. Yes, sir.

Q. What was the nature of the patents on which he received royalties from your company?

MR. COLLINS: Objected to on the ground first that the best evidence would be the patents; but apart from that I do not understand that the income from an investment such as a patent right is within the scope of a recovery based on the earning capacity of the deceased, because that would go on just the same, the royalties of patents would go to the estate.

THE COURT: That is what I understand to be the rule.

MR. COLLINS: Mr. Dixon opened about the income from investments but that could not be taken into account.

Q. What patents did he have, how many did he have?

MR. COLLINS: Objected to as irrelevant and not the best evidence.

Objection overruled; defendant excepts.

(No answer.)

Q. How many patents did he have with your company?

MR. COLLINS: Objected to on the same grounds.

Objection overruled; defendants except.

A. One.

Q. What was that for?

MR. COLLINS: Objected on the same grounds.

Objection overruled; defendant excepts.

A. It was a peculiar shaped ring which used in connection with other rings made up a roll for ringing out the crude wool.

Q. How long had that been running under your control? A. Three years.

Q. Did his contract with you respecting that patent survive his death?

MR. COLLINS: Objected to on the ground that it is attempting to give evidence of a contract not produced.

Q. Was it in writing, or not in writing? A. No. It had been in writing but it was cancelled

in a way although it was a sort of a verbal understanding.

Q. What was that verbal understanding with respect to that patent?

MR. COLLINS: Objected to as incompetent and irrelevant.

THE COURT: How do you think that is admissible? Haven't our courts held that investments and things of that nature are not admissible? I so understand the rule.

MR. DIXON: Suppose that it should appear that this contract lapsed with his death, and suppose that it should appear that the contract was in force at the time of his death, suppose that it should appear that that was a valuable asset?

THE COURT: You think his earning capacity can be measured by a contract which ceased at the time of his death?

MR. DIXON: Of course, they would lose the benefit of that the benefits of that contract would cease at the time of his death.

THE COURT: How is it evidential then?

MR. DIXON: It is a pecuniary loss suffered by the beneficiary.

THE COURT: If it ceased it could not be a loss.

MR. DIXON: If it ceased at his death, if he had not died it would not cease; suppose that were the fact; suppose he were to live ten years longer and this was to pay a thousand dollars a month which thousand dollars was devoted to his family wouldn't that be legitimate?

THE COURT: Well. if some of his services were incidental to the patent, if there is anything of kind.

MR. DIXON: I don't think that would be so. I think if they lost anything, whatever they lost by reason of his untimely death would be legitimate testimony. It is not irrelevant, it is not incompetent.

THE COURT: The loss is caused by his death.

MR. DIXON: That would be a loss directly attributable to his death. Suppose he had to give his attention to that contract.

THE COURT: If his personal services were incidental to it then it is something which may be shown in evidence.

MR. DIXON: It seems to me it is not either irrelevant or incompetent at this time. Of course, it may be eventually so.

THE COURT: I don't want to let it in if it is going to be eventually incompetent.

MR. DIXON: Your Honor could then rule it out.

THE COURT: I don't want to rule it in, not unless it is something that is going to be competent, you ought to know that.

MR. DIXON: I cannot tell what the witness is going to tell about it.

THE COURT: You ought to know what the witness knows.

MR. DIXON: I only know, he knows; I only want to get before the jury what he knows, I think it is competent to show what he knows.

THE COURT: No. Unless you can show that his services were incidental to the use of the patent I will rule it out.

Objection sustained; plaintiff excepts.

NO CROSS EXAMINATION.

JAMES BOYLE, sworn as a witness on behalf of the plaintiff, testifies as follows:

DIRECT EXAMINATION BY MR. DIXON:

Q. Where do you live? A. At North Paterson, New Jersey.

Q. On what Street? A. In Lea Avenue.

Q. What is your business? A. Automobile mechanic.

Q. How long have you been in that business? A. Six or seven years.

Q. What was your business before that? A. Electrical.

Q. What kind of electrical business? A. General electrical work.

Q. Describe what you mean by that? A. Motor and lighting work, armature wiring, general electrical work.

Q. How long had you been in that business? A. Seventeen years.

Q. Where? A. Well, several countries; I have travelled for four or five years to Europe, working at difference places in Europe.

Q. You have been in the electrical business then seventeen years? A. About seventeen years, yes, sir.

Q. Do you remember the occasion of the afternoon of the twenty-seventh of September nineteen thirteen? A. I do.

Q. Where were you on that afternoon? A. On Twenty-seventh Street.

Q. Whereabouts on Twenty-seventh Street? A. Close to the Susquehanna Railroad.

Q. About how far away from it? A. About four hundred and fifty feet.

Q. Were you walking, standing or what? A. I was sitting in an automobile.

Q. Whose automobile? A. It belonged to Mr. Ed. Pierce.

Q. And what way was that automobile passing at that time? A. Passing south.

Q. On which side of the street was it standing? A. On the west side.

Q. It was on the right hand side as it faced? A. Yes, sir.

Q. Are you familiar with that crossing? A. I cross there very often.

Q. Well, are you familiar with it? A. I might say that I am.

Q. If you crossed often I suppose you are. A. Naturally.

Q. Now, will you state the character of the crossing so far as the erections are concerned on the east side of Twenty-seventh Street at or near the railroad crossing. A. Well, there is a fence there, a distance back of the crossing.

Q. Running the crossing? A. Running right to the crossing, yes, sir.

Q. How high is that fence, how tall is it? A. Roughly speaking I should say seven feet.

Q. Is it so high that a person sitting in an ordinary automobile would have his head below it? A. Yes, sir.

Q. How far does that fence extend? A. Beg pardon?

Q. Along Twenty-seventh Street how far does the fence extend? A. That I couldn't say.

Q. About how far—give me your best judgment—I know you haven't measured it? A. Roughly speaking a little over one hundred feet.

Q. Do you know where Eighteenth Street is or where Eighteenth Avenue runs? A. Yes, sir.

Q. How close? A. Up close to it.

Q. Now, at the corner of that fence and going parallel with the right of way of the railroad,

going east what is there if anything? A. There is also a fence on that side.

Q. How far does that extend east? A. East it extends about three hundred feet I guess, along the railroad.

Q. What is the character of those two fences, how are they built? A. They are board fences.

Q. Latticed or slatted? A. They are not built close together; there is a space between them.

Q. How much of a space? A. I couldn't say; I never measured that.

Q. Give us an idea as near as you can, not within a fraction of an inch. A. About an inch or so.

Q. Now, on the afternoon of this twenty-seventh day of September you were in an automobile sitting there? A. Yes, sir.

Q. And were you talking or what were you doing? A. I was talking with Mr. Rogers.

Q. With respect to Mr. Rogers' house where was that automobile? A. A few feet off of Mr. Rogers' house.

Q. How long had you been there before the accident? A. Perhaps a half of an hour previous to that.

Q. As you sat in that automobile what way were you facing? A. I was facing south.

Q. While you were there did you notice any automobiles pass your car travelling south or southerly? A. Yes, sir; several of them.

Q. Did you observe the Lange car passing? A. Yes, sir.

Q. About what time did that pass you? A. Somewhere between five forty-five and six o'clock.

Q. When did you first observe that car? A. As it went by me.

Q. And how long did you have it in your range of vision? A. Until it was struck by the locomotive.

Q. You saw it struck then, did you? A. Yes, sir.

Q. Did you see any other cars there at that time? A. A car went over the crossing ahead of it and there was also a car behind it.

Q. How far away from the car that was struck was the car ahead of it at the time it passed you? A. About one hundred feet I should judge.

Q. How fast was it going; did you estimate it? A. Somewhere about twelve miles an hour.

Q. Did you form any judgment about how fast the car was going that was struck? A. They were all traveling about the same rate of speed, all three cars.

Q. In your range of vision until it got to the track? A. Yes, sir.

Q. What occurred? A. A locomotive appeared suddenly and there was a crash and both disappeared from view.

Q. Which way did the locomotive appear? A. From the east.

Q. Traveling west? A. Traveling west.

Q. What track would that be from your position, the westbound track? A. The track nearest me.

Q. The track nearest to you would be the first track upon which the automobile would go? A. Yes, sir.

Q. And the nearest track to the fence? A. Yes, sir.

Q. When did you first observe the locomotive? A. A second before the crash, or a fraction of a second.

Q. How was it traveling, slow or fast? A. Traveling pretty fast by the looks of things.

Q. When it struck what did it do to the car? A. To the automobile?

Q. Yes. A. Afterwards when I went down the track—

Q. Speak a little louder. A. When I got down I found the wheels torn off and the tonneau off and the wreck all the way from the fence to where the car stopped.

Q. Where was the car stopped? A. Two hundred and fifty feet from the crossing.

Q. When you saw the collision what did you do? A. I immediately jumped out of my car and cranked it and drove down to the crossing.

Q. Now, as the car approached the crossing and up until the time of the crash was there any bell rung on the locomotive or whistle blown? A. Not that I heard.

Q. Any crossing bell rung? A. Not that I heard.

Q. Were you in a position to hear it if it had been rung? A. I think so; yes, sir.

Q. What was the first intimation that you seen that a locomotive was about to cross or was crossing the street at that place? A. When it crashed into the automobile.

Q. Now, when you went down there and around where the engine came to a stop what did you see with respect to the car and the passengers? A. I saw two of the passengers were underneath the car; Mrs. Pierce was laying between the tracks with the car over her up to her waste line—the chassis of the car. Mr. Lange laid further up under the car and his son was under the wheel with his head near the draw-line up against the tender.

Q. What was the position with respect to the young man and old man as you got there? A. Mr. Lange's head was crushed so far as I could see; his head was all blood. Mrs. Pierce lay as if she was asleep her clothes were not even dis-

arranged. Her hat and veil were still on but Mr. Lange's head was smashed.

Q. Young Mr. Lange? A. No, the old man.

Q. What about the young man? A. His head was up against the tender.

Q. Was Mr. Lange dead? A. That I couldn't say; the doctor pronounced him dead shortly afterwards.

Q. Well, now, what did you then do? A. When we approached the wreck—

Q. Sir? A. When I approached the wreck—

Q. When you got to the wreck what did you do? A I went to the side of the cab and asked the engineer to drive his engine back a little so we could get them out from under the car and he said he couldn't do that because his brakes were locked and I had been downtown and got a crow bar that I had just got downtown and I had it in my car, and I sent a boy to my car to get it—the brakes were fast and the engineer said he couldn't release them and I sent down and got the crow bar to release it and we jammed it on the brake shoe and got the brakes loose.

Q. What did you then do? A. I went to the car and bent the wheel post and got Mr. Lange, Jr., out.

Q. You jacked up the wheels? A. No; we bent the wheel case so we could get Mr. Lange out and then we placed him in my automobile and I ran him up to the hospital.

Q. Was he unconscious? A. Yes.

Q. And you left him there? A. Yes; and when I returned they were extracting Mr. Lange and Mrs. Pierce from the machine.

Q. Did you observe anybody working around there? A. Before the passenger train arrived I saw three men standing around the bell post.

Q. What were they doing? A. They seemed to be jarring the bell post.

Q. What were they doing? A. I have just stated.

Q. Did they have any tools? A. I didn't notice what tools they had.

Q. Now, do you know anything about that special business—about the way these bells are installed? A. Not much.

Q. Do you know anything about it? A. Well, I know a little about them, but it is a little out of my line of business.

Q. Do you know how they are operated? A. They are what we term a closed circuit.

Q. A closed circuit; speak up. A. Yes.

Q. What do you mean by that? A. They work with a battery.

Q. I don't know what that is; try to explain it. A. I would rather be excused.

Q. Where is the bell located? A. At the crossing.

Q. At the crossing, well, on the ground, on the fence or pole or where? A. On a pole.

Q. What kind of a pole? A. Iron pole.

Q. Where is the pole located? A. On the southeast corner of that crossing.

Q. How far from the street line about? A. A few feet.

Q. And is it that pole that these men were working around? A. Yes, sir.

Q. What else is on this pole besides the bell at the top; what else is on the pole or near it? A. Battery boxes I presume.

Q. Don't you know? A. No.

Q. Is there a box there? A. Yes, there is.

Q. Where is that box? A. At the base of the pole.

Q. Anything running from the box? A. Wires running out to the track lead in there.

Q. How do you know? A. That is how the bell works; that is where they go.

Q. Have you seen them? A. Yes, sir.

Q. How far down the track do they run; do you know? A. I believe down to the lower crossing.

Q. How far away is that? A. I should judge fifteen hundred feet.

Q. Now from that box to the pole, the top of the pole, is there anything that you know of? A. No, sir.

Q. You don't know of any wires leading from the box to the top of the pole? A. Certainly, wires leading from the box to the pole.

Q. Where do they go, do you know? A. On the inside of the pole, I presume.

Q. Don't you know how they go? A. It is an electric bell.

Q. Do you know what kind of batteries they are? A. I don't know what kind they use on the ringing circuit; they can use any kind of batteries; I don't know what kind they usually use.

Q. You don't know how the bell is operated by these batteries then? A. The engine closes the circuit.

Q. What? A. As soon as the engine runs on that block it closes the circuit and rings the bell.

Q. What does that do? A. That rings the bell.

Q. Now then, were you in a position when you sat in that automobile to be able to hear the crossing bell had it been rung? A. I was, yes, sir.

Q. And at that distance could you have heard the engine bell if it had been rung? A. Yes, sir.

Q. Could you have heard the steam whistle had it been blown? A. I could, yes.

Q. Have you crossed that track on that side, going in a southerly direction in an automobile? A. Yes, sir.

Q. How frequently? A. Four or five times a month.

Q. As you proceed in a southerly direction, driving an automobile, how near to the westbound track must you be before you get a view towards the east? A. In the neighborhood of about fifteen feet.

Q. What is it that prevents you from seeing before that? A. There is a fence erected there obstructing the view.

Q. Cross examine.

CROSS EXAMINATION BY MR. HOBART:

Q. As soon as you get by the fence you can see along the track for a long distance, can you not? A. Yes, sir.

Q. A quarter of a mile or more? A. Quite a distance.

Q. You never measured how near you have to get before you can see? A. No, sir.

Q. So when you say fifteen feet you are just giving us your best judgment? A. Yes, sir.

Q. Without any measurements? A. Yes, sir.

Q. How far away from the track were you when you were talking? A. About four hundred and fifty feet.

Q. Talking about automobiles? A. Yes, sir.

Q. Interested in your conversation? A. Yes, sir.

Q. Didn't expect this engine to come along? A. No, sir.

Q. Didn't listen for it and didn't know it was coming until it got to the crossing? A. No, sir; I didn't.

Q. When you first saw it was it at the end of the crossing or in the middle of the crossing? A. I saw it when it got past the fence.

Q. That is the first you had seen it or knew about its coming? A. Yes, sir.

Q. You saw these automobiles go by while you stood there talking to Mr. Rogers? A. Yes, sir.

Q. Did any of them slacken up as they approached the crossing? A. I couldn't answer; I wasn't paying that much particular attention.

Q. You didn't watch them closely? A. They were in my line of view; I couldn't help seeing them.

Q. Did any of them increase their speed? A. I couldn't say.

Q. Did any of them stop? A. I couldn't say.

Q. You would have seen it if they did? A. Yes, sir.

Q. They all kept right on? A. Yes, sir.

Q. Speaking about the second automobile—did it stop before it was hit? A. I don't think it did.

Q. Did it slow up? A. In my judgment they kept right on the same rate of speed.

Q. About what was that rate of speed? A. Somewhere in the neighborhood of twelve or fourteen miles an hour.

Q. Did you notice what kind of an automobile it was, the second one? A. I knew it was a Cadillac.

Q. Now, how long were you at the crossing after the accident, how long did you stay around there? A. About one hour.

Q. Were you there when Detective Sergeant Lord was there? A. Detective Sergeant Lord and Mr. Paxton and I were there when we measured the distance; I had a steel tape and I held it and helped them measure it.

Q. Mr. Lord was there when you got there? A. No, sir.

Q. Got there afterwards? A. Sometime afterwards.

Q. Was Mr. Lord there when the man was at the foot of the pole? A. Yes, sir.

Q. And right at the crossing? A. I can't say he was at the crossing; he may have been up to the engine.

Q. You don't know what they were doing? A. Jarring the pole.

Q. In what way? A. They had something in their hand.

Q. Did they have a rock or crow bar? A. I do not know.

Q. A rock? A. I didn't pay that much attention.

Q. How was he dressed? A. One man with a derby hat on and two others apparently working men.

Q. Was there a ladder up the pole? A. I didn't see any.

Q. Was there a ladder there any time? A. Not that I seen.

Q. You couldn't help but see it if it had been there? A. I think I would have seen it.

Q. It was daylight, wasn't it? A. It was daylight, yes.

Q. Was there a whistle when it crashed into the automobile? A. Just a moment before it struck it.

Q. What kind of a whistle was it? A. A steam whistle.

Q. A loud one? A. Yes, sir.

Q. A long one or several short blasts? A. One long one.

Q. Just about as it happened? A. Just as it was about to hit it the whistle blew out.

Q. Were you at the crossing when this other train came along, the westbound passenger? A. Yes, sir.

Q. The engine had then been backed in on the switch? A. Yes, sir.

Q. That is all.

RE-DIRECT EXAMINATION BY MR. DIXON:

Q. You went to the hospital—how long were you away from the accident while you were at the hospital? A. From three to five minutes I should judge.

Q. You were asked on cross examination whether any of those cars stopped before they got to the crossing and you said "no", do you mean that? A. Not that I can see.

Q. Where did the third car go? A. The third car did stop on this side of the crossing.

Q. Then you didn't mean that the third car didn't stop? A. No, sir.

Q. No question about that? A. No, sir.

Q. You thought he referred to the first two cars? A. Yes, sir.

Q. And that confused you? A. The third car did stop.

Q. Where did it stop; how near the crossing? A. Within a few feet of the crossing.

Q. How far was the second car behind the first car when it passed you? A. About seventy-five or one hundred feet I should judge.

Q. They were going away from you but you couldn't judge whether they slowed up or not? A. No, sir.

Q. You had no difficulty in hearing the whistle when the crash came? A. No, sir; I did not.

Q. You say one of these men had a derby hat on, how were the other two men dressed? A Dressed as workingmen.

Q. What do you mean by that—had overalls on? A. Yes, sir.

Q. You didn't observe what instruments they had? A. I did not, no.

Q. How long did they work around there or stay around that hole? A. I don't know.

Q. To the best of your judgment? A. I wasn't interested at all and I didn't give it a second thought.

RE-CROSS EXAMINATION BY MR. HOBART:

Q. You spoke about the three automobiles and the third one stopping; how near to the track did they go before it stopped? A. Ten or twelve feet.

Q. The first car went right across the track? A. Yes, sir.

Q. Before the accident? A. Before the accident.

Q. Did these three cars as they went by you make any noise or rumble of the automobile engine? A. The ordinary noise that you hear from any automobile.

Q. They made some noise? A. The same as any other automobile.

Q. But they made the same noise as any other automobile running at the same speed? A. Yes, sir.

Q. That is all.

WILLIAM HOWARD PHILLIPS, a witness produced on behalf of the plaintiff, being first duly sworn, according to law, testifies as follows:

DIRECT EXAMINATION BY MR. DIXON:

Q. Where do you live, Mr. Phillips? A. Twenty-seventh Street.

Q. How old are you? A. Eighteen.

Q. Whereabouts on Twenty-seventh Street do you live? A. Between Seventeenth Avenue and Park Avenue.

Q. Which side of the street? A. East side.

Q. Which side of the railroad crossing? A. North.

Q. How far from the railroad crossing? A. About two blocks and a half or three blocks.

Q. Do you remember the day when the automobile was struck by the engine in September, nineteen hundred and thirteen? A. Yes, sir.

Q. That occurred at what time about? A. About five minutes to six.

Q. Where were you at that time? A. On East Twenty-seventh Street between the railroad and Park Avenue.

Q. Were you walking or standing or what? A. I was walking.

Q. Which way were you walking? A. North.

Q. About how far from the railroad were you at the time of the accident? A. Well, two blocks.

Q. About how many feet would you think? A. About six hundred or seven hundred feet.

Q. Did you see these three automobiles pass? A. I saw two.

Q. You saw two go by? A. Yes, sir.

Q. Did you come along Twenty-seventh Street? A. I saw them when I was on Seventeenth Avenue, before I turned into Twenty-seventh Street.

Q. There is first the railroad track, then comes

Eighteenth Avenue? A. I don't believe Eighteenth Avenue goes through there.

Q. You don't think it goes through? A. I don't think it does.

Q. Well, it is not a traveled street, is it? A. Eighteenth Avenue?

Q. Yes? A. It stops at Twenty-fourth street, I think; I am quite sure it does. It stops there I am quite sure; I don't know whether it continues or not.

Q. I mean at this Twenty-seventh Street? A. At Twenty-seventh Street?

Q. Yes, at this Twenty-seventh Street does Eighteenth Avenue continue, it does not cross it actually? A. No, sir.

Q. Then does Seventeenth Avenue cross it? A. Yes, sir.

Q. And that is a traveled street, is it? A. Yes, sir.

Q. That is the street you came out of? A. Yes, sir.

Q. And you turned to the north? A. Yes, sir.

Q. What was the first thing that attracted your attention? A. I heard a crash.

Q. What did it sound like? A. Why, it sounded like two things hitting.

Q. What? A. I could not tell you what it sounded like.

Q. Well, a crash you say? A. Yes, sir, it was a crash.

Q. What did you do then? A. I turned to look in the direction of the crash.

Q. Down to the railroad? A. Toward the railroad.

Q. And when you got down there what did you see? A. Part of the automobile was lying on the track, the engine was still by the automobile, and a man, the older man was lying on the tracks, and

the boy was still at the wheel and the lady was in the front seat with the boy.

Q. Lying down? A. Well, the two wheels were off, the two side wheels were off the machine, it was lying on its axles, he was in that position (indicating) half sitting and half—

Q. Were there any people there when you got there? A. Yes, sir.

Q. Did you know who they were? A. No, sir.

Q. How long did you stay there? A. About ten or fifteen minutes.

Q. Were you there when they took any of the people away? A. Yes, sir, I think they were taken away while I was there.

Q. Who did they take away while you were there? A. They took the lady away and the boy.

Q. On which side of Twenty-seventh Street was this locomotive and the car at the time you got there? A. On which side of Twenty-seventh Street?

Q. Yes? A. On the west side.

Q. How far west of Twenty-seventh Street was the locomotive when you saw it standing there? A. About twenty-five or thirty yards.

Q. Before you heard the crash did you hear any bell rung or whistle blown? A. I did not. I did not pay any attention.

Q. Were you in a position where you could have heard if it had been blown? A. I could not say whether I could.

Q. What? A. I could not say. I might have heard it if I had been paying attention.

Q. You say you did not hear it, did you? A. I did not.

Q. Do you know whether a steam whistle engine whistle could be heard from the distance you were from the track? A. I could not say whether it could or not.

Q. But you did hear the crash? A. Yes, sir.

Q. That is the first thing you heard? A. Yes, sir.

CROSS EXAMINATION BY MR. HOBART:

Q. Did you hear that long screech that was given just before the crash came or just after it came? A. I did not hear anything but the crash.

Q. About how far were you up from the crossing? A. A little over two blocks.

Q. Were there houses between where you were and the railroad tracks? A. What is that?

Q. Were there houses between where you were and the railroad tracks? A. Yes, sir.

Q. Did you actually see the crash or just hear it? A. No, sir, I did not see anything of the crash.

Q. How many feet away were you? A. About two blocks.

Q. You could not see the crossing from where you were? A. I could see the crossing, but I turned around, and I could not see anything, but the automobile was behind it.

Q. You did not see it and the engine come together? A. No, sir.

Q. You were paying no attention to that engine were you? A. No, sir.

Q. Or listening for bells or whistles or anything else? A. No, sir.

Q. Were you on your way home? A. Yes, sir.

Q. Was there anybody with you? A. No, sir.

JOHN LANGE, sworn as a witness on behalf of the plaintiff, testifies as follows:

DIRECT EXAMINATION BY MR. DIXON:

Q. Where do you live? A. In Clifton.

Q. Are you a son of Jurgen P. Lange? A. I am.

Q. How old are you? A. I am twenty-eight.

Q. Are you married or single? A. I am single.

Q. Do you remember the day that your father was killed in a collision on Twenty-seventh Street? A. I do.

Q. What day was that? A. On a Saturday.

Q. What date? A. On the twenty-seventh of September, 1913.

Q. About what time did that accident occur? A. About twenty minutes to six.

Q. Where were you at that time? A. I was in an automobile following that one that was struck.

Q. You were following in another automobile? A. Yes, sir.

Q. Who was in your father's automobile, or the one he was riding in? A. Why, my father, my grandmother, Mrs. Pierce and my brother, Joseph.

Q. How old is your brother Joseph? A. Why, twenty now.

MR. COLLINS: Now, you mean?

THE WITNESS: That is now.

Q. Now twenty? A. Yes, sir.

MR. FARMER: Nineteen then.

Q. How many members of your family are there? A. Seven.

Q. Name them? A. My mother, my brother Jurgen, my brother Edwin, and my sister, Martha, Mrs. Bowker, now—

Q. Do you know their ages? A. Well, about.

Q. Well, state their ages? A. My brother Jurgen about thirty-three; my sister thirty-one; my brother Edwin twenty-nine; myself twenty-eight; my sister Dorothy, twenty-three, and Joseph twenty.

MR. COLLINS: He did not give the mother's age.

Q. Where does your mother live now? A. At Clifton.

Q. Where did your father live at the time of his death? A. At No. 234 Lexington Avenue, Passaic, New Jersey.

Q. How long did he live there? A. About fifteen years, I think, to the best of my knowledge.

Q. About how old was your father at the time of his death? A. Sixty one.

Q. Did you always live with him up to the time of his death? A. Always, yes, sir.

THE COURT: How old is your mother?

THE WITNESS: Fifty-six.

Q. What was your father's condition of health up to the time of his death? A. Why, he was in first class health.

Q. A strong man? A. Always.

Q. What was his business? A. Consulting engineer.

Q. Where did he carry on his business? A. Why, with the Botany Worsted Mill, Passaic.

Q. He died leaving a will, did he not? A. He did.

Q. Who were the executors? A. Why, my mother and my brother Jurgen.

Q. On the day of the accident where did you come from? Where had you come from? A. From Haskell, New Jersey.

Q. About what time did you leave there? A. About twenty-five minutes after four.

Q. When had you gone there? A. I was up there.

Q. You were up there? A. Yes, I was up there.

Q. How long had you been up there? A. From the following Monday.

Q. Eh? A. From the following Monday.

Q. How long before the accident was it that you went up to Haskell? A. Well, that is right.

Q. What? A. The following Monday.

MR. COLLINS: He means the preceding Monday.

THE WITNESS: The preceding Monday.

Q. The Monday before the accident? A. Yes, sir.

Q. Not the Monday after? A. Oh, no.

MR. COLLINS: You said the following Monday.

THE WITNESS: I beg your pardon.

Q. Do you know what time you left that afternoon? A. Left Haskell?

Q. Yes? A. At four twenty-five.

Q. Did your father leave in this car at the same time? A. No, sir.

Q. Did he leave ahead of you or behind you? A. He must have left about five minutes after us.

Q. Where did you pick him up? A. Why, outside of Pompton.

Q. Then you traveled along together? A. We traveled along together all the way in to Paterson.

Q. You went through Twenty-seventh Street, did you, south? A. We did.

Q. When you entered Twenty-seventh Street how far was your car behind that of your father or the one he was riding in then? A. About seventy-five feet.

Q. As you approached the Susquehanna crossing did you continue at the same speed or increase it or slacken it? A. We slackened it.

Q. Where did you begin to slacken your speed? A. Why, in about two hundred feet from the crossing.

Q. What was the movement of the car ahead of you with regard to that, did that keep on the same speed or slacken also? A. That slackened also.

Q. Was the car ahead of you in your full view up to the time it got upon the track? A. It was.

Q. As you approached the crossing, what, if any, efforts, did you make to ascertain whether or not any trains were approaching or about to approach? A. Why, I slackened up and listened for a warning.

Q. What warnings did you listen for? A. Why, the gong and the whistle from the locomotive.

Q. And did you see the car ahead of you go upon the track also? A. Oh, yes.

Q. When it got upon the track, what happened? A. Why, the locomotive appeared and smashed into it, and took it out of our sight right away.

Q. What? A. I say the locomotive ran into it and took it out of our sight almost immediately.

Q. What way was that locomotive traveling? A. Backward.

Q. In what direction? A. Coming from the east.

Q. Going to the west? A Going to the west.

Q. Where was the car ahead of you when the engine struck it? A. On the right hand near the crossing.

Q. When the engine struck the car ahead of you, how far was your car from the crossing? A. About seventy-five feet.

Q. Up to the time that you started to listen for a bell or whistle, or both, up to the time when the car was struck, by the engine at the crossing, was there any bell rung or whistle blown? A. No, sir.

Q. You are positive of that? A. I am positive.

Q. You know what a crossing bell is, do you? A. I do.

Q. If that had been rung could you have heard it? A. Of course, we would have.

Q. When the engine struck the car did it sound a whistle then? A. Why, after it had gone down the track aways, that is after it struck the automobile, they blew the whistle, yes, sir.

Q. Did you continue to cross the track or stop? A. Why, I stopped.

Q. How close to the track? A. About fifteen feet.

Q. When you stopped, what did you do then? A. Why, we immediately ran down the track.

Q. Where did you go? A. Why, we went to the wreckage.

Q. And where was that? A. About two hundred and fifty feet down the track.

Q. To the west? A. To the west.

Q. What did you see when you got down there? A. Why, we saw that my father was dead; grandmother was unconscious, and my brother was hanging on the steering post, unconscious.

Q. What? A. Apparently hanging on the steering column, unconscious.

Q. What was done? A. Why, they were immediately taken to the hospital.

Q. Did you go with them? A. No, sir.

Q. What did you do? A. I went out to telephone to my brother.

Q. What brother? A. My brother Jurgen.

Q. Did you get him on the telephone? A. I did.

Q. And you told him what had happened? A. I did.

Q. And how soon after you told him did he get down there? A. About an hour.

Q. Had you ever been over that crossing before? A. Never, no, sir.

Q. How long have you been driving a car? A. Since about 1900.

Q. Do you know how long your brother Joe has been driving a car? A. Since about six or seven years.

Q. He drove them before licenses were required, didn't he? A. He did.

Q. About how fast was your car traveling and Joe's car, as you approached the crossing, when you got within say a hundred feet or seventy-five feet? A. Well, I should judge between eight and ten miles an hour.

Q. As you proceed along that street in a southerly direction in your automobile can you see to the east? A. No. There is a tall fence there.

Q. How tall is that fence? A. About eight feet.

Q. And, as you sit in your car, is that above your eyes or not? A. Oh, yes.

Q. How close must you get to the track before you can see in an easterly direction? A. About fifteen feet.

Q. You knew you were approaching a crossing didn't you? A. I did.

Q. How did you know it? A. Why, I saw the sign.

Q. What is the sign, do you know? A. Why, it is the bell, it is the locomotive notice, the pole which has the notice to look out for the locomotive.

Q. What is it a cross or what? A. A cross.

Q. You did not see any notice posted along there that the bell was out of order, did you? A. Oh, no.

Q. Are there any gates there? A. There are no gates.

Q. Or, is there any flagman? A. There is no flagman, no, sir.

Q. Prior to his death, did your father contribute at all to your support? A. Not to my support, no, sir.

Q. Do you know whether he did to any of the other members of the family? A. He did.

Q. To which members did he contribute?

MR. HOBART: Objected to unless this witness can say that he knows.

MR. DIXON: He says he knows.

MR. HOBART: Let us see whether he does or not; that is just what we want that he will say so.

MR. DIXON: You can cross examine him.

CROSS EXAMINATION BY MR. HOBART:

Q. How do you know? A. How do I know?

Q. Yes? A. Why, because they received it.

Q. How do you know that your father contributed anything or what he contributed to the other members of the family? A. Well, because they were dependent upon him.

Q. How do you know that he contributed anything? Do you know anything about it of your own knowledge outside of what they have told you? A. Why, yes.

Q. Well, what is it? Tell us how you know, that is what we want to find out? A. I know that he was supporting them.

THE COURT: How do you know; that is the question?

MR. DIXON: Did you ever see him give them money or checks?

THE WITNESS: Why, of course, I have seen him give them money.

MR. HOBART: Very well, that is all right then; that is just what we were trying to find out. Go ahead.

BY MR. DIXON:

Q. How frequently and to which members of the family have you seen him give money? A. Why, to my mother and to Dorothy and my sister.

Q. What is her name? A. Mrs. Bowker now, and to Joseph.

Q. And did he give them money on occasions or regularly?

MR. COLLINS: What you saw and know, you are asked?

A. Why—

Q. Tell us what you did see with respect to his gifts to these members of the family? A. I have seen that he gave mother every month and my sister Dorothy.

Q. Every month? A. Yes, sir, every month he gave to them.

Q. Do you know how much he gave them? A. I don't know that exactly.

Q. You know that he did contribute, but do not know how much he contributed? A. I know that he did contribute.

Q. Do you know of any other business connections your father has besides his connection with the Botany Worsted Mills? A. Why, I know that he has done consulting engineering work for others.

Q. Of what nature? A. Why, in the engineering line.

Q. Do you know with whom? A. Why, I could not name the parties, no.

Q. How about the Haskell Company, do you know anything about that Company? A. I do.

Q. The Haskell Quarry Company? A. I do.

Q. Did he have connections with that? A. Yes, sir.

Q. What connection did he have with it? A. Oh, he was President of it.

Q. President of that Company? A. Yes, sir.

Q. Do you know what salary he drew or what he made from it? A. No, sir.

CROSS EXAMINATION BY MR. HOBART:

Q. You are interested in the Haskell Company, are you not? A. I am.

Q. It was in connection with that company that you were at Haskell on the day of this accident? A. It was.

Q. You run the company, in other words, do you not? A. Well, partly.

Q. Your father had some stock interest in it, did he? A. He had.

Q. What kind of a company was that? A. Incorporated.

Q. What did it do? A. Contracting, quarrying, manufacturing cement block.

Q. When you left Haskell about 4.25, I think you said, on the afternoon of this day of the accident, whom were you with in the car that you were driving? A. My brother.

Q. Anyone else? A. That is all.

Q. What is your brother's name? A. Edwin.

Q. Where does he live? A. Dover.

Q. Dover, New Jersey? A. Yes.

Q. Is he here today? A. I could not tell you that.

Q. Don't you know him when you see him? A. I do.

Q. Look around the court room and see if he is here. A. I don't see him.

Q. You know he is not here, don't you? A. Now, I do; yes.

Q. You have not seen him today, have you? A. I have not.

Q. He was riding in the car with you, was he? A. He was.

Q. What kind of a car did you have? A. A Krit.

Q. Was that a two seated car? A. One seated.

Q. Then both of you were seated along side of each other? A. We were.

Q. You were driving the car? A. I was.

Q. What kind of a car was it that your brother Joseph was driving? A. A Cadillac.

Q. Of what year was it, do you know? A. 1910.

Q. How long had your brother driven that car—ever since it had been purchased—do you know? A. Oh, yes.

Q. He had driven it since 1910, had he not? A. No; not since 1910.

Q. Ever since he had bought it? A. Ever since he bought it.

Q. You had driven it yourself? A. Oh, yes.

Q. How many brakes has that Cadillac car got? A. Two.

Q. What are they—a foot brake and a hand brake? A. Foot brake and emergency brake.

Q. When was the last time you drove that car before the accident? A. I could not tell you that.

Q. Was it a matter of a few days or a few weeks? A. Oh, no—about a couple of weeks.

Q. When you drove it a couple of weeks before the accident, did you have any trouble in managing it? A. None whatever.

Q. The brakes were all right? A. The brakes were all right.

Q. So far as you know they were all right on the day of the accident, were they not? A. As far as I know.

Q. Did your brother Joseph start to drive that car from the time you left Haskell or Pompton, or whatever it was? A. Oh, yes.

Q. He was driving it all the way? A. All the way.

Q. Is your brother Joseph here today? A. Oh, yes.

Q. Was that Cadillac car that your brother Joseph was driving what you call a right hand drive? A. Yes; a right hand drive.

Q. That is, the driver sits on the right hand side? A. On the right hand side.

Q. About how far behind the other car was your car as you were coming up East 27th Street? A. About seventy-five feet.

Q. You say you were going about eight or ten miles an hour? A. I did not say that. I say when we started to approach the crossing we were going between eight and ten miles.

Q. Suppose you tell us how fast you were going before that? A. About twelve miles.

Q. When did you drop to eight or ten miles? A. About two hundred feet from the crossing.

Q. That is a macadam roadway, is it not? A. It is.

Q. About on a level as it approaches the railroad tracks? A. No; there is a slight grade.

Q. Slight up-grade as you approach the track? A. Yes.

Q. You had never been over that way before? A. Never.

Q. Do you know whether your brother Joseph had been that way before? A. Once, I believe.

Q. Do you know when that was? A. That afternoon.

Q. Coming in the opposite direction? A. Yes.

Q. There is a sign up there "Railroad crossing" or "Look out for the Locomotive"? A. There is.

Q. You saw that, didn't you? A. I did.

Q. It was day light when this accident happened? A. It was.

Q. Was that the reason you slowed up your car, because you saw that sign? A. It was.

Q. Did you slow up before or after your brother Joseph slowed up? A. He slowed up before I did, and then I slackened.

Q. Did you see anything of another car that was ahead of your brother's car? A. I did not notice that.

Q. You did not stop your car until after the accident, did you? A. No.

Q. Neither did your brother stop his car until the car was hit, did he? A. Stop it?

Q. Stop it, yes—before he got to the tracks? A. No.

Q. As he approached the track he was going at the rate of ten or eight miles an hour; is that right? A. Yes.

Q. At the time he was struck he was still going at that same rate; is that right? A. Yes.

Q. And had been going at that rate for how far before he got to the track? A. Well, probably one hundred feet.

Q. In how short a space can you stop that Cadillac car that you were driving? A. I never tried it.

Q. You never put on the brakes? A. Of course I put on the brakes, but I never measured the distance in which it would stop.

Q. Well, about how far? A. Well, that is a hard thing to tell; you cannot tell.

Q. You cannot tell or you do not want to tell —which is it? A. You cannot tell. If you were on a grade, naturally you cannot stop as quickly as if you were on a level.

Q. There is an emergency brake, is there not? A. Yes.

Q. That you can put on with your foot? A. No.

Q. Or with your hand? A. With the hand.

Q. Then, there is a foot brake besides that? A. A foot brakes besides.

Q. You do not know how quickly that could be stopped if you put on both brakes at once, or how quickly it could be stopped if you put on either one of them? A. No.

Q. The first you knew or saw of this locomotive was when you saw it coming on the crossing? A. That was the first view I had of it.

Q. I did not ask you that. I ask you if that was the first you knew? A. Yes.

Q. From which side did it come? A. It came from the east side.

Q. That would be from your left hand side as you were going toward the track? A. Yes; on my left hand.

Q. On which side of the other car, that is, the car in which your brother Joseph was riding, was your father sitting? A. On the left hand side.

Q. The side from which the engine approached, was it not? A. Yes.

Q. You spoke of a tall fence near that crossing. The fence that you mean, is that the one around the coal yard? A. I don't know whether it is a coal yard; it is on the left hand side.

Q. And after you passed that fence there is nothing to prevent you from seeing down the track, is there? A. No.

Q. I mean down the track in the direction from which this engine came? A. No.

Q. You can see for a long distance after you get past the fence? A. I don't know how far you can see.

Q. You can see a good ways. There is nothing to prevent you from seeing at least one thousand feet, is there? A. I could not tell that.

Q. At any rate, there is nothing to interfere with your seeing after you get by the fence, is there? A. No.

Q. Did you remain around the crossing for some little time immediately after the accident? A. I did.

Q. Did you go to the hospital with your brother? A. I did not.

Q. How long were you at the crossing altogether after the accident? A. I could not tell that, because I went off and telephoned.

Q. And then you came back again to the crossing? A. Oh, yes; I came back again.

Q. Cannot you say whether you were there half an hour or an hour? A. I could not tell you that.

Q. Where were you going that afternoon with this car? A. Going home.

Q. To your home in Clifton? A. No; in Passaic.

Q. You lived in Passaic? A. At that time, yes.

Q. Do you know where your father was going? A. Going home.

Q. Did you live with your father at that time? A. I did.

Q. Do you know where your grandmother was going? A. I do.

Q. Where was she going? A. Going home.

Q. And your brother Joseph also? A. Going home.

Q. He lived with your father at that time, did he not? A. Yes; he did.

Q. And your grandmother also lived with your father? A. Yes.

Q. So, you were all going home all together to your father's home in Passaic, is that right? A. We were.

Q. Did you observe immediately after the accident in what way the automobile was lying up against the tender of the locomotive? A. I did.

Q. Just describe that to us, won't you? A. Why, it straddled the track—the car—and then the coupling stretched over apart of the frame, so that it held it in a position like that (illustrating).

Q. When you say that the automobile was straddled over the track you mean two wheels were on one side of a rail and two were on the other side of the same rail? A. Yes.

Q. That is what you mean? A. Yes.

Q. Was that a rail of the west bound track? A. It was.

Q. Which of those rails was it—the first rail or the second one? A. The first one.

Q. Which way was the automobile headed? A. Which way?

Q. Yes. A. Right across.

Q. At right angles to the track? A. Yes; at right angles.

Q. So, the two front wheels were on one side of the track; is that right? A. Yes.

Q. And the two hind wheels were on the other? A. The two hind wheels were on the others.

Q. Do you know why your brother Edmund is not here in this case to-day? A. I do not.

Q. Do you know whether he is coming here? A. I do not.

Q. He knows, or ought to know everything that you know about it, ought he not? A. I suppose so.

JOSEPH LANGE, sworn as a witness on the part of the plaintiff, testifies as follows:

At this point an adjournment is taken until Wednesday, December 2nd, 1914, at ten o'clock in the forenoon.

Paterson, N. J., December 2nd, 1914.

The trial was resumed this date pursuant to adjournment.

Present: Mr. Dixon, Mr. Farmer. Mr. Hobart.

JOHN LANGE, recalled as a witness on behalf of the plaintiff, testifies as follows:

CROSS EXAMINATION (continued) BY MR. HOBART:

Q. You told us yesterday that the car that you were driving was about fifty feet behind the car in which your father was riding? A. I did not say fifty feet.

Q. Well, was it seventy-five? A. About seventy-five.

Q. Was the top of the car in which your father was riding, down? A. It was down.

Q. And he was sitting on the left hand side, you told us? A. On the left hand side.

Q. And Mrs. Pierce, your grandmother was sitting along side of him? A. Yes, sir.

Q. Did you observe as the car in which your father was riding approach the crossing, what your father was doing? A. Why, he was just sitting there.

Q. Was he talking with Mrs. Pierce, or didn't you notice? A. I did not notice that.

Q. Did you observe whether he made any attempt to get out of the car? A. None whatever.

Q. Did you observe if he leaned forward as if

to make any effort to stop the car? A. I could not see that.

Q. He was in plain sight, wasn't he? A. He was.

Q. So far as you saw he made no such effort, did he? A. He made no such effort.

Q. He just sat there until the collision? A. Yes, sir.

Q. Did you observe whether he turned his head in either direction to look for the train? A. I could not tell that.

Q. So far as you saw he sat right still in the same seat and made no effort to get up or to have your brother stop the car, is that right? A. So far as I could see, yes.

By Mr. Dixon:

Q. Where did you get that car you were driving? A. I bought that from another party.

Joseph Lange, recalled as a witness on behalf of the plaintiff testifies as follows:

Direct Examination by Mr. Dixon:

Q. Where do you live? A. At present I live at Clifton.

Q. You are a son of Jergen D. Lange, deceased? A. Yes, sir.

Q. How old are you? A. I am twenty now.

Q. Where did you live in September, 1913? A. I lived at 234 Lexington Avenue, Passaic.

Q. Who lived in that house with you? A. My father and my mother, and—well, the rest of the family with the exception of my oldest brother, he is married, and my sister, who was married, my oldest sister, and my brother who is a Priest.

Q. What is his name? A. His name is Edwin.

Q. On the twenty-seventh of September, 1913, you were riding in an automobile, were you not? A. Yes, sir.

Q. Driving it? A. Yes, sir.

Q. Whose automobile was it? A. It was mine.

Q. How long had you owned it? A. I had owned it since Lincoln's birthday in 1912.

Q. Was it registered? A. It was registered.

Q. In whose name as owner? A. Under my name.

Q. Have you your registry car? A. I have them here.

Q. Were you a licensed chauffeur, driver? A. I was.

Q. How long have you been driving automobiles? A. Why, I drove since 1910 under licenses and also drove before they required a license.

Q. How long? A. Well it covers a period of about, up to the time of the accident, it covered a period of probaby seven years.

Q. You were perfectly familiar with automobiles, were you not? A. Yes, sir.

Q. And there construction? A. Yes, sir.

Q. How did you become familiar with their construction? A. Well, I was either directly connected with the building or was an observer of the construction of sixteen of them.

Q. Of what? A. Sixteen machines that were built by our own family.

Q. You had built them yourselves? A. We built them ourselves.

Q. How long ago did you make the first one? A. The first one was built in 1900.

Q. And did you participate in that? A. Not in the first one, no, sir.

Q. In which one did you participate in the building? A. Why, I don't know exactly when I started in.

THE COURT: How is this important to inquire into the details of the building of machine.

MR. DIXON: To show his familiarity with the car and its operation and construction, mechanism.

THE COURT: I think he has told us the time he has been driving a car and if he has been driving a car for that long it is fair to assume that he is familiar with them.

Q. Let us see those cards, will you? A. (Witness produces cards.)

Q. Is this driver's license 34205 the one under which you were driving on the day in question? A. Yes, sir.

MR. DIXON: I offer this in evidence.

(Card is marked "Exhibit P-2.)

Q. Is this master's license 44936 for a Cadillac the license of the car that you were driving on that day? A. Yes, sir.

MR. DIXON: I offer this card in evidence.

(Card is marked "Exhibit P-3.)

Q. On the twenty-seventh day of September, 1913, where did you go in your car? A. I went up to Haskell, New Jersey.

Q. From where? A. From my home in Lexington Avenue.

Q. From where? A. From Lexington Avenue.

Q. Speak up louder. A. I say I went from my home in Lexington Avenue, Passaic.

Q. Did you carry any passengers with you? A. I asked my father to go along.

Q. Who drove the car? A. I drove it.

Q. Where did you go? A. I went up to Haskell, New Jersey.

Q. How did you go? A. Why, we went through Paterson way. That was out through East Twenty-Seventh Street, or through Twenty-Seventh Seventh Street as far as Park Avenue, and down Park Avenue through Market out to Main, and from Main out towards Snake Hill.

Q. How far is this place that you went to from the crossing of the Susquehanna Railroad at Twenty-Seventh Street about? A. I should say it was between twelve and fourteen miles.

Q. What time did you leave that day to go there? A. To go there we left shortly after one.

Q. Did you start from here on the return trip? A. From Haskell?

Q. Yes. A. Yes.

Q. And about what time did you leave Haskell? A. About twenty-five minutes to five.

Q. How did you come back? A. Came back over the same route.

Q. Did that route carry you across the grade crossing of the Susquehanna Railroad on East Twenty-Seventh Street, Paterson? A. Yes, sir.

Q. State in your own way how the car was running, and who was driving, who was in the car, what you did, and what happened as you came through Twenty-Seventh Street, approaching the crossing of the Susquehanna Railroad. A. Why, I was driving and I was alone in the front seat. Father was on the left hand side on the rear seat, and along side of him was Mrs. Pierce.

Q. Who is Mrs. Pierce? A. That is my grandmother.

Q. Go on. A. And we came down Twenty-Seventh Street at about twelve to fifteen miles an hour until I got within one hundred feet or so of the crossing. I slowed down to round eight miles an hour there, and I had no warning. There was no warning to tell me of the approach of an

engine of any description, and I listened, and I heard none. Then I looked towards the left and could not see because of the fence. I looked towards the right and watched to the right, and when I turned back I was hit.

Q. You were on the track? A. On the track.

Q. You say when you turned; what do you mean? A. When I turned to look in the other direction.

Q. You were struck? A. Yes.

Q. Is that the last you remember? A. Yes; that is the last I remember.

Q. You were rendered unconscious, were you? A. I was rendered unconscious.

Q. You say you listened? A. I listened.

Q. For what did you listen? A. I listened for a bell or a whistle.

Q. Did you know you were approaching a crossing? A. I did.

Q. Was there any bell rung or whistle blown? A. There was not.

Q. Your machine was proceeding right along? A. Yes.

Q. At an even gate, about eight miles an hour? A. About eight miles.

Q. When you were on the railroad track? A. Yes, sir.

Q. When did you regain consciousness after the accident—when did you first know after that? A. About midnight.

Q. Where were you then? A. In the hospital.

Q. You didn't know that your father was then dead? A. No, sir.

Q. When you crossed the crossing was there any car behind you? A. Yes; my brother was behind me.

Q. Was there any car ahead of you? A. Yes.

Q. There was a car ahead of you? A. Yes.

Q. How far? A. One hundred or a hundred and fifty feet.

Q. Did you go at the same speed as the same one had been going that preceding you? A. I should say so.

Q. If you can say, how high was the fence ahead of you? A. Over eight feet.

Q. Could you see over it? A. I could not.

Q. How high from the surface of the ground would be the seat of your car in where you sat? A. I should say about thirty-four inches.

Q. On which side of the car was the driving wheel? A. On the right.

Q. You sat on the right? A. On the right, yes, sir

Q. Was it an open car? A. Open car, yes, sir.

Q. The top was down? A. The top was down.

Q. Have you crossed railroad crossings where there are crossing bells? A. I have.

Q. On other occasions? A. Yes, sir.

Q. Have you crossed in automobiles? A. Yes, sir.

Q. Approaching crossings when the bells were ringing? A. Yes, sir.

Q. In your experience how far away can you hear the crossing bell, in your experience as a driver? A. In my experience, at least five hundred feet away.

Q. While you were riding? A. Yes, sir.

Q. In that car? A. In that car.

Q. You say you lived with your father during his lifetime; what beside your support, if he gave you support, what did you get? A. He was giving me an education.

Q. In what? A. Steven's Institute of Technology.

Q. Did he give you an allowance? A. The allowance was to defray my expenses.

Q. What was the allowance that he gave you? A. He gave me money to run the automobile.

Q. Where did you get that automobile from? A. We got it in Jersey City.

Q. Did you buy it? A. My father paid for it with his own check.

Q. Did he give you money to run it? A. Not directly; no.

Q. How much money did he give you? A. If I bought anything at all he gave me the check.

Q. How much did it cost a month? A. I should judge it cost about six dollars a month to run the car.

Q. About how much—did you ever figure it out—he gave you a year for education a year; did you ever figure it up? A. It was in excess of six hundred dollars a year.

Q. And besides that did he give you your board and lodging? A. Yes, sir.

Q. You didn't pay him for board and lodging? A. I did not.

Q. How about your clothing and wearing apparel? A. He gave me that.

Q. Cross examine.

CROSS EXAMINATION BY MR. HOBART:

Q. You were living at home when you were away at college at Stevens? A. I commuted.

Q. How long had you been there? A. One year in the institution and one year in prep.

Q. Your father paid the tuition bills and expenses? A. Yes.

Q. And you figure that those allowances would be about six hundred dollars a year? That included your personal expenses and car fare? A. Yes, sir.

Q. Did that include clothing? A. Yes, sir.

Q. You were supposed to buy your clothing? A. No; there was no stipulated amount. When I wanted clothing I bought it.

Q. When you gave us the six hundred dollars, that included the clothing? A. Yes, sir.

Q. Then the money to run the automobile was a different matter entirely? A. Yes, sir.

Q. I don't suppose you paid any of the bills of running the automobile? A. Some of them I paid.

Q. And the others you turned over to your father? A. Yes, sir.

Q. And he paid it by check or cash? A. Yes, sir.

Q. Did you pay it out of your allowance? A. My allowance wasn't large enough.

Q. Then you didn't pay for those out of your allowance? A. No; I didn't.

Q. That automobile that you were driving that day was that the only automobile in the family? A. No; it wasn't.

Q. How many more were there? A. Two.

Q. The other was the one your brother was driving? A. Yes, sir.

Q. Who owned that car? A. My brother.

Q. Who owned the other? A. My oldest brother.

Q. All kept at your home? A. No, sir.

Q. Where were the other ones kept? A. In Haskell.

Q. At Haskell your father had some interest? A. Yes, sir.

Q. At the Haskell Concrete Company? A. Yes, sir.

Q. This particular car you had the exclusive use of? A. Yes, sir.

Q. Wouldn't your father use it? A. No, sir.

Q. Why not? A. He couldn't drive a car.

Q. If you were not at home wouldn't he use it? A. No, sir.

Q. Why not? A. He couldn't drive a car.

Q. You didn't employ a chauffeur? A. No, sir.

Q. If you are not at home and he wanted to use the car and one of your brothers were there he would drive it for him, wouldn't he? A. The chances are, he might.

Q. Don't you know he did? A. I don't know of any particular instance; no.

Q. You didn't forbid your father from driving the car? A. No; I didn't.

Q. If he wanted to use it—at the time of the accident where did your father get into the car? A. At Passaic.

Q. And you were going up to Haskell? A. Yes, sir.

Q. How long of a drive is that? A. Ordinary, an hour.

Q. Anybody else in the car when you left home? A. Yes, sir.

Q. Who? A. My married sister and her husband.

Q. Mr. and Mrs. Barker? A. Yes; that is them.

Q. And then you and your father rode to Haskell? A. Yes.

Q. What time did you go to Haskell? A. Shortly after two.

Q. In the afternoon, of course? A. Yes, sir.

Q. Was this a Saturday afternoon? A. Yes, sir.

Q. Was it your father's custom to run up to Haskell on a Saturday afternoon? A. Yes, sir.

Q. When did he usually go up? A. It was my duty to go up there—it wasn't a duty,—I used to go up there with my brother.

By Mr Dixon:

Q. Won't you talk louder and talk to the jury. I can't hear you and I don't believe the jury can.

Q. That is your brother—

MR. DIXON: Mr. Lange, won't you speak a little louder if you can, and to the Jury. You can listen to Mr. Hobart's question but he will forgive you if you speak a little louder. I cannot hear you and I believe the jury cannot hear any better.

Q. Your brother who just testified was the active man in that business, was he not? A. Yes, sir.

Q. And he has been spending the entire week at Haskell as a rule, hasn't he? A. That is from Monday to Saturday.

Q. And you would run up in a car and get him on Saturday and bring him home? A. Yes, sir.

Q. And your father sometimes went with you? A. Yes, sir.

Q. And your father was the real owner of that company, wasn't he? A. Yes, sir.

Q. And, of course, when he went up to Haskell on this occasion, he went up in connection with some work for the company, did he not? A. No, he did not.

Q. Didn't he do anything about the business of the company at all while up there? A. As far as I know he transacted no business that day.

Q. What did he do up there? A. He helped work on an automobile.

Q. How long was he there? A. He must have been there about two and a half hours.

Q. And all that time he spent working on an automobile? A. Yes, sir.

Q. I thought you said he did not know anything about automobiles? A. I did not say that. I said he could not drive one.

Q. He did not know enough about them to drive one? A. I did not say that, I said he did not drive one.

MR. DIXON: He did not have a license.

Q. Did he drive one? A. I don't doubt but what he could have learned.

Q. Did he? A. He never learned, not to drive that particular car.

Q. Did he ever drive any car? A. Yes, sir.

Q. What car? A. He drove several of the machines that he built himself.

Q. So he knew how to drive a car? A. Yes, sir.

Q. And he knew how to stop a car? A. Yes, sir.

Q. And he knew how quickly a car could be stopped? A. I believe so.

Q. But he did not have any license to drive, is that correct? A. He did not.

Q. While you were at the quarry that Saturday afternoon did your father go to the office of the company? A. No, he did not.

Q. Have you got an office there? A. No.

Q. What have you got there? A. Why, there is the buildings of the company, there is merely the buildings of the company.

Q. What line of business is that? A. It is crushed stone, granite and rubble.

Q. You have some buildings and some machinery? A. Yes, sir.

Q. Your father spent some of his time that afternoon up at the buildings there or at the quarry, or looking at the machinery? A. As far as I know he was not over there.

Q. How far is the quarry from where you landed with the automobile? A. It is probably three hundred feet, possibly more.

Q. Did you go to the buildings of the quarry or what? A. No, I went to my brother's house.

Q. He lived at Haskell? A. He lived at Haskell.

Q. Is that where your father went? A. Why, he went with me.

Q. Did you go anywhere else except to your brother's house? A. No I did not.

Q. Your brother is superintendent of the company, he was then, wasn't he? A. Yes, sir.

Q. And didn't he and your father discuss the business of the company? A. I cannot say for that.

Q. You were there, weren't you? A. No, I was not right there.

Q. What did your father go there that afternoon for? A. I imagine he went for a ride.

Q. Do you know what he went for? A. I asked him to go along.

Q. When he got there he did not do anything but tinker with the automobile, is that right? A. As far as I know that is all he did.

Q. Were you with him all the time? A. I was about two hundred feet away getting chestnuts but I saw him over there around the automobile.

Q. He didn't even go in your brother's house? A. Yes, I believe he did.

Q. You saw him do that, did you? A. I believe so.

Q. How long was he in there? A. Why, he was in there possibly fifteen or twenty minutes.

Q. And all the rest of the time, a matter of two hours and a half he spent with the automobile, is that right? A. Yes, sir.

Q. What was the matter with the automobile? A. Why they had been overhauling the machine and the cylinders were off and to put the cylinders on takes more than one person.

Q. Was there anything else the matter with it? A. No, there was not.

Q. The brakes were all right weren't they? A. That is the Krit car I am talking about.

Q. Oh, that is the car that he was helping on? A. Yes, sir.

Q. Your car was alright, wasn't it? A. Our car was all right.

Q. The brakes were all right? A. Yes, sir.

Q. They were in first class working order? A. A. Yes, sir.

Q. You knew how to run them didn't you, how to operate the brakes? A. Yes, sir.

Q. How many brakes had you? A. There were two.

Q. What were they? A. The foot service brake and the hand emergency brake.

Q. For ordinary purposes you used the foot brake is that right? A. Yes, sir.

Q. And if you wanted to stop the car quickly you put on the emergency brake, is that right? A. Well, the emergency brake did not hold as good as the foot brake.

Q. You said it was all right, didn't you? A. Yes, sir. I did The emergency brake would hold after it was stopped but you could not lock the wheels, you could with the foot brake.

Q. Can you put them on both at once? A. Yes, you can.

Q. And if you put them both on at once would the car stop more quickly than if you put on either one separately? A. Not more quickly than if you put on the foot brakes because when you locked the wheels you cannot do any more.

Q. All you can do anyway is to lock the wheels? A. Yes, sir.

Q. When you locked the wheels on that car did you have to put on both brakes? A. No, sir.

Q. Which brake did you have to put on? A. the foot brake.

Q. Would the hand brake lock the wheels? A. The hand brake would not lock them.

Q. But the foot brake would? A. The foot brake would.

Q. It is a righthand drive, is it not? A. Yes, sir.

Q. Model of 1910? A. Yes, sir.

Q. How quickly could you stop when you put on the hand brake? A. Well, that depends upon the speed you are going and the condition of the road.

Q. Going, let us say, about eight miles an hour? A. At eight miles an hour I could lock the wheels and stop the car in its own length.

Q. And its own length is what? A. Its own length was nine feet, two inches over, well the length of the car itself was probably twelve feet, the wheel base was nine feet two inches.

Q. So then if you were going at about eight miles an hour you could stop that car in twelve feet by putting on the brakes? A. Yes, sir.

Q. And if you were going, say, twelve miles an hour, how quickly could you stop it? A. Why, I never tried it.

Q. You never tried that? A. No, sir.

Q. Had you ever been over this crossing before? A. Once.

Q. When? A. On the way up that afternoon.

Q. Of course, at that time, you were going in the opposite direction? A. Yes, sir.

Q. How did you usually go to Haskell? A. Why, we usually went all the way up Main Avenue, straight up Main Avenue, and drove to Snake Hill.

Q. How did you happen to go across Twenty-Seventh Street on this day? A. Why, I saw the road, I had passed there, and saw the road looked pretty good and that was probably a day or two before, and this day I thought I would try it.

Q. Did you say anything to your father about tring that road? A. I did not.

Q. As a matter of fact the road was pretty good, wasn't it, it was a hard macadam road? A. It was a hard macadam road.

Q. This was a clear day? A. This was a clear day.

Q. Now, as you were coming back from Haskell and after you had reached 27th Street did you notice an automobile that was a short distance ahead of you? A. Yes, sir.

Q. Did you know whose car that was? A. I know now.

Q. Whose was it? A. It was the Davis car.

Q. How far ahead was he? A. I should say between one hundred and one hundred and fifty feet.

Q. He was going in the same direction that you were? A. In the same direction.

Q. Is Mr. Davis here to-day? A. I don't know.

Q. You don't know him? A. I don't know him.

Q. Then the other car that your brother was driving was behind you? A. Behind me.

Q. About how far? A. Well, I don't know, but most of the way down it was never further than two hundred feet behind.

Q. You were both intending to go to your father's house, were you not? A. Yes.

Q. Where you were going to have dinner or supper? A. Going to have supper.

Q. You were all living together there at that time? A. Well, my brother the Priest was visiting.

Q. He was riding in the car behind? A. In the car behind; yes, sir.

Q. You spoke of Mrs. Pierce, your grandmother, where did you get her? A. I got her in Haskell.

Q. She had been visiting your brother? A. She had been visiting my brother.

Q. Now, as I understand you, Mr. Lange, as you were coming along 27th Street, and before you had got very close to the track, you were

going about twelve or fifteen miles an hour; is that right? A. Yes, sir.

Q. And then, as you came nearer the track, you slowed down? A. I slowed down.

Q. To about eight miles an hour? A. Yes, sir.

Q. Why did you slow down? A. Because I knew I was coming to a railroad.

Q. How did you know that? A. Because we had been there on the way up and I had seen it.

Q. You could see the sign board "Railroad Crossing" or something like that? A. I guess you could.

Q. You saw that? A. I don't remember.

Q. Pardon me. A. I don't remember having seen that.

Q. It was day light? A. It was day light.

Q. When the accident happened, was it not? A. Yes, sir.

Q. You knew you were approaching a railroad crossing? A. I knew I was approaching a railroad.

Q. Did your father say anything to you about slowing down? A. I don't know whether he did or not.

Q. You don't recollect now that he said anything to that effect? A. I do not, but almost always he warned me, and the chances are he said something.

Q. I mean on this particular occasion; did he warn you on this particular occasion? A. I cannot say whether he did or not, to my recollection.

Q. About how far from the railroad track were you when you slowed down to eight miles an hour? A. About one hundred feet.

Q. Were you driving about in the middle of the highway? A. Well, I don't know that exactly; I could not say that.

Q. Well, there were no other wagons or cars that you were meeting, were there? A. No.

Q. You did not have to turn out for anybody? A. No, sir.

Q. Now, as I understand you, when you approached this track, or as you approached it, you looked to your left? A. Yes, sir.

Q. That is the direction from which this train came, was it not? A. Yes, sir.

Q. When you looked to your left you say you could not see because of the fence? A. The fence, yes.

Q. I suppose the fence that you mean is the coal yard fence that has been mentioned? A. The picket fence.

Q. Then, you looked to your right? A. Then I looked to the right.

Q. You did not stop at any time? A. I did not stop; no.

Q. You did not slacken at all after you first slackened up? A. No.

Q. When you looked to the right, when you turned, you were hit? A. Yes.

Q. The only time you looked to the left was the time when the fence cut off your view? A. I looked then, and then when I turned again to look, I was hit.

Q. You looked once to the left? A. Yes.

Q. And that is when your view was cut off by the fence? A. Yes.

Q. That is right, is it? A. Yes, sir.

Q. Do you recollect hearing any sharp blast or shrill whistle just about the moment of the collision? A. No, sir.

Q. I think you have told us that the top of the automobile was down? A. Yes, sir.

Q. Did that car have doors on the side? A. In the rear.

Q. In the rear? A. Yes, sir.

Q. Your father was sitting on the left? A. On the left.

Q. He did not say anything to you about stopping or anything of that kind? A. Not as I recollect; no.

Q. You were looking ahead, I suppose, after you had looked to the left and to the right, you looked ahead? A. I looked to the left and then to the right and then back to the left again.

Q. And the time that you looked the last time you were on the track? A. I was hit.

Q. You were on the first track were you not? A. I don't know just which track it was.

Q. Did your father make any attempt to tell you or to make you slow up more, or say anything to you at all about it? A. I don't recollect anything.

Q. Pardon me. A. I do not recollect it. I do not think he appreciated the fact that he was approaching a crossing.

Q. Was he talking with Mrs. Pierce as you came down from Haskell? A. He was; yes, sir.

Q. And as you approached the crossing? A. A he approached the crossing he might have been.

Q. You were talking with him, too, from time to time, as you came along the road? A. Very seldom.

Q. Occasionally? A. Once in a while.

Q. Who decided by what road you were to return to your home? A. I did.

Q. Did you tell your father you were going to take that road? A. I did not.

Q. He made no objection to taking that road? A. He never said anything about the road.

Q. He said nothing about it at all? A. No.

Q. Now, you referred to the height of the seat of the car, I think. Did you mean from the

ground measured to the top of the seat where you were sitting? A. I do not know just which part. The seat was about four inches thick; that is, the cushion; I don't remember whether it was the bottom or top of the cushion.

Q. You say it was about thirty-four inches? A. Around that.

Q. Did you measure it, or are you giving just your best judgment? A. I measured it one time.

Q. Before the accident? A. Yes, sir.

Q. How tall are you? A. I am about five feet, seven and three-quarter inches.

Q. Would you object to my having the surveyor measure you? A. No, sir.

(At this point Mr. Hobart calls surveyor who measured witness and announces "Five feet, six and a half.")

MR. HOBART: Please measure the height of the witness's eyes.

(Surveyor: That is about five feet two inches.)

Q. Now, Mr. Lange, will you kindly sit down a moment. A. (Witness sits down.)

MR. HOBART: Mr. Surveyor, will you kindly measure the height of the eyes as he sits in the chair.

MR. DIXON: Sit as you would in the automobile.

MR. HOBART: First measure the height from the floor.

THE SURVEYOR: That is three feet.

MR. HOBART: Measure from the ground first.

THE SURVEYOR: That is three feet, four.

MR. HOBART: About three feet, four, from the ground?

THE SURVEYOR: To the height of his eyes.

MR. HOBART: From the top of the seat to the level of the eye?

THT SURVEYOR: That is two feet.

RE-DIRECT EXAMINATION BY MR. DIXON:

Q. On this day when you started for Haskell did your father tell you where you were to go, or did you tell him where you were going, and invite him to go along with you? A. I told him where I was going.

Q. Did you invite him to go? A. I asked him to go.

Q. Were you going on business, or was he, to your knowledge? A. What is the question?

Q. Was he going on any business, to your knowledge, as far as you know? A. As far as I know, no.

Q. What were you going on? A. I was going up there to get my brother.

Q. What did you have your brother and sister and brother-in-law along for? A. I took them as far as Paterson.

Q. And left them on the way? A. Left them at Paterson.

Q. You selected the road yourself? A. Yes, sir.

Q. Both going and coming? A. Yes, sir.

Q. When you spoke of this six hundred dollars as an allowance, you did not include in that the cost of your board and keep, did you? A. No; I did not.

EDWIN LANGE, sworn as a witness on the part of the plaintiff, testifies as follows:

DIRECT EXAMINATION BY MR. DIXON:

Q. Where do you live? A. In St. Mary's Rectory, Dover, New Jersey.

Q. How long have you lived there? A. For the past three years.

Q. Are you a son of Jergen P. Lange, deceased? A. I am.

Q. How old are you? A. I am at the present time, thirty.

Q. Are you an ordained priest of the Catholic Church? A. I am.

Q. How long have you been such? A. About three years and a half.

Q. And were you such on the twenty-seventh of September, 1913? A. Yes.

Q. Now, on that day were you riding with your brother in an automobile along East 27th Street in the City of Paterson? A. I was.

BY THE COURT:

Q. With which brother? A. With my brother John.

BY MR DIXON:

Q. Was that automobile following the one in which your father was riding? A. Yes, sir.

Q. Did you observe in what part of the automobile your father was riding? A. My father was riding on the left hand side.

Q. Front or rear seat? A. In the rear seat.

Q. Anybody in the seat with him? A. Mrs. Pierce, my grandmother.

Q. As you approached the Susquehanna Railroad crossing on 27th Street, about how far, in your judgment, was your car behind that in which

your father was riding? A. Anywhere from seventy-five to one hundred feet I should judge.

Q. Who was driving the car in which you were riding? A. My brother John.

Q. Did you see the car your father was riding in, struck? A. I did.

Q. Did you see the locomotive hit the car? A. I did.

Q. Where was the car when the locomotive hit it? A. How do you mean? On the tracks or—

Q. In what part of the roadway and what part of the track, to the best of your judgment? A. Probably to the right, a trifle; I don't know exactly—

Q. What? A. Probably a trifle to the right of the center of the road.

Q. In the road was it? A. It was in the road.

Q. On what track? A. On the westbound track.

Q. That would be the nearest track? A. The nearest track.

Q. The first track that you would meet? A. The nearest track.

Q. When did you first see the locomotive? A. I could not see it until it got from behind the fence.

Q. That would be in the roadway? A. And crossing the road.

Q. What part of the locomotive did you first see? A. The part that I first saw?

Q. Yes. A. Why—

Q. How was it running? A. Why, it was running backwards, to my knowledge.

Q. In what direction? A. It was running westward.

Q. When the automobile came in contact with the car about how far from the railroad crossing was the car which you were running? A. I should judge about seventy-five or one hundred feet.

Q. And did you stop before you got to the crossing after the collision? A. Yes, we ran about twenty-five feet or so.

Q. From the crossing? A. From the crossing.

Q. And what did you then do? A. I got out of the automobile and ran up to the crossing.

Q. Anybody go with you? A. I think I was the first one and was followed by my brother.

Q. How far up the track did you go? A. Up to the locomotive; about two hundred and fifty-feet.

Q. And when you got up to the locomotive did you then stop? A. Then stopped.

Q. Where was the car then? A. You mean the damaged car?

Q. Yes, the automobile. A. At the far end of the engine.

Q. In front of the tender? A. Behind the tender.

Q. In front of the locomotive? A. Yes, sir.

Q. In what condition was the automobile?

By The Court:

Q. Is there any dispute about the damage to the automobile?

By Mr. Dixon: I don't think so, we are not suing for the damage to the automobile.

By Mr. Hobart: I think it may have a bearing in the case.

By Mr. Hobart:

Q. What was the position of the automobile? A. It was across the track.

Q. Had it the same relation to the track as it did just before it was struck? A. Practically the same, but it was thrown over on its side.

Q. According to the direction in which it was going? A. The same.

Q. Facing in the same direction? A. Facing in the same direction.

Q. Where were the people that were in the car, your father, your brother, the driver, and Mrs. Pierce? A. After the collision it was in a debris. They all got in the debris, my brother was on top of the machine and my father was in—part of his body was under the machine.

Q. What did you do when you got there? A. Beg pardon?

Q. What did you do when you got there? A. I did the best I could—the last rites to them.

Q. Was your father then living or not, do you know? A. I couldn't say, the blood was running out of his mouth at the time.

Q. You say that you were followed by your brother? A. Yes, sir.

Q. Did other people come up? A. Other people came up.

Q. How long a time elapsed before they were released? A. I couldn't say.

Q. You were somewhat excited, of course? A. I was.

Q. Do you know how long a time elapsed? A. I do not know.

Q. Do you know how they were released? A. Some young man came and shut the motor off; it was still running.

Q. Of the automobile? A. Of the wrecked car; I remember that the same young man brought some kind of an instrument.

Q. A crowbar? A. A crowbar or something like that.

Q. Did the engine move during the time—the locomotive? A. I believe it had to be moved a short distance in order to turn the machine over.

Q. Do you remember whether they had to do

anything to move it before it would move? A. I don't remember.

Q. Do you remember as you approached the crossing in your car before you saw the engine did you hear any crossing bell rung or any whistle or any locomotive bell? A. Not until I saw the engine.

Q. There was no bell or no whistle? A. No whistle.

Q. When you saw the engine as it emerged did you hear anything? A. Some time after I saw the engine and between the time of the impact or some indefinite time to my opinion I heard what I thought was the engine bell.

Q. Was that the time the impact came? A. It was, I think, about the same time.

Q. You saw the engine before you heard the bell? A. That is my impression.

Q. Was there any crossing bell ringing there? A. I didn't hear any.

Q. Have you ever heard crossing bells in automobiles? A. Yes, sir.

Q. Were you close enough to hear it if it had been ringing? A. I think so.

Q. You have heard locomotive whistles? A. Yes, sir.

Q. Did you hear it then? A. I heard it after the automobile was struck—I heard the distress signals.

Q. Huh? A. I heard the distress signals.

Q. You heard that distinctly did you? A. Yes, sir.

Q. Cross examine.

CROSS EXAMINATION BY MR. HOBART:

Q. The automobile in which you were riding was a two-seated car, was it not? A. In which I was riding?

Q. Yes. A. A one-seated car.

Q. And you were riding on the left? A. Yes, sir.

Q. And your brother on the right? A. Yes, sir.

Q. And how far behind the other car? A. About seventy-five or a hundred feet.

Q. And you kept that same distance all the way? A. Practically, they would get a little ahead of us and we would catch up to them again.

Q. You were going home to visit your father? A. I was going home just for an hour or two.

Q. About how fast was the automobile in which you were riding going; how fast was that going? A. You mean as we approached the crossing?

Q. Yes. A. About eight miles an hour.

Q. You had slowed down? A. Yes, sir.

Q. And the car ahead had slowed down too? A. Yes, sir.

Q. About how fast was the car ahead going? A. About the same as ours, and I think it has slowed down accordingly.

Q. About how fast was that car going, in your judgment, when it was hit by the engine? A. About six or eight miles an hour.

Q. Did it stop? A. No, sir.

Q. You saw your father and Mrs. Pierce—where was your father looking? A. I don't know.

Q. Did he look forward? A. I didn't see it.

Q. He was in plain sight? A. Yes, sir.

Q. You were looking ahead? A. I was.

Q. Did you notice whether he was talking to Mrs. Pierce or not? A. I did not.

Q. You didn't observe that? A. No, sir.

Q. You didn't observe whether he was looking to the right or left? A. No, sir.

Q. Was he looking straight ahead? A. It seems to me he did.

Q. As this car ahead of you was approaching the crossing did you notice that there was still

another car ahead of you? A. I didn't notice it; I have no recollection.

Q. There was no car or wagon coming in the opposite direction? A. I didn't see it.

Q. And in the car in which you were riding was about in the middle of the street? A. I think it was.

Q. And how about the car in which your father was riding? A. I think about the center or a little to the right.

Q. This bell that you heard was it the engine bell that you heard? A. That is the point that I cannot say definitely at all.

Q. You heard a bell ringing? A. Yes, sir.

Q. You know it was before the sound of the crash? A. I cannot say for sure.

Q. What is your best judgment—your best recollection? A. It might have been a second before.

Q. Do you know whether it was the engine bell or the crossing bell? A. It sounded to me like the engine bell.

Q. There was no other engine around there that you saw? A. I didn't see any.

Q. The collision between the engine and the automobile made quite a loud noise? A. Yes, sir.

Q. Loud enough to drown any sound of a bell? A. It might have been.

Q. It would prevent you from hearing the bell? A. It might have been a second before.

Q. Was it after the collision? A. It might have been.

Q. Was it at the moment of the collision? A. That I cannot tell.

Q. Your best recollection if it is that it was what is called an engine bell? A. It was.

Q. Do you know Detective Sergeant Lord? A. I met him at the accident.

Q. He was there a few minutes after the collision? A. Yes, sir.

Q. You saw him there? A. Yes, sir.

Q. And you and he were talking about the accident, weren't you? A. We were there together.

Q. The Sergeant was in charge on this occasion of the accident, wasn't he? He seemed to be, at least? A. I suppose so; he was sergeant.

Q. You know he was sergeant? A. I did not ask; I did not at the time.

Q. You learned it since? A. Yes; I did.

Q. Were you there when another train came over the crossing? A. I was.

Q. Do you recall Sergeant Lord pointing out to you that the bell rang when the second train passed there? A. I have not any recollection of that.

Q. You have no recollection? A. No, sir.

Q. I am referring now to the crossing bell. A. I have not any recollection of that.

Q. Will you swear that the sergeant did not point it out to you? A. Why, I have no recollection of it, if he did; I don't know anything about it.

Q. How long were you there after the accident? A. I should judge about fifteen or twenty minutes.

Q. That other train came along while you were there, didn't it? A. There was a passenger train went by.

Q. Coming on the same track and in the same direction as this engine? A. Yes, sir.

Q. And during that time, within ten or fifteen minutes after the accident did you say to Sergeant Lord that you thought you heard the crossing bell? A. I don't think so.

Q. Do you deny it? A. I deny that I said—that is, I have no recollection of saying it.

Q. Do you deny that you did say it? A. I might have been excited and did say it, but I am almost positive that I can deny saying that.

Q. Can you, or can you not deny it? A. First of all, I would like to have the state of the question. You mean when the train came in—the second train—

Q. Never mind the second train. While you were there immediately after the accident—

MR. DIXON: What is the question? Let us know what you are asking.

MR. HOBART: He knows what the question is. You need not interrupt.

MR. DIXON: I don't think he does know what the question is.

THE COURT: The witness has asked to have the question read and I think it is fair that it be read to him.

Q. (Question read as follows:) And during that time, within ten or fifteen minutes after the accident, did you say to Sergeant Lord that you thought you heard the crossing bell?

MR. DIXON: I ask now which bell do you mean—the crossing bell, what time?

MR. HOBART: I will have the question read again.

Q. (Question read as follows:) And during that time, within ten or fifteen minutes after the accident, did you say to Sergeant Lord that you thought you heard the crossing bell? A. I don't remember, I don't remember saying that to Sergeant Lord.

Q. Do you remember that same time saying to Sergeant Lord that you saw a car cross ahead of the car in which your father was and that you thought that the occupants of the car in which your father was saw that car go ahead and thought

they could go ahead, did you say that? A. I did not.

Q. You deny that, do you? A. I deny that.

Q. On or about the seventh day of October, 1913, at St. Mary's Parish House did you say to one Harold Whieting in an interview at that place that you heard a bell as you approached the crossing? A. Not distinctly; not definitely.

Q. Do you deny that? A. Mr. Whieting said to me, "As the engine got to the fence did you hear a bell?" I made no positive statement whatever; I told Mr. Whieting I would not give any statement and I shrugged my shoulder and said I did not know, or, in other words, I left it in doubt, as I said I could not be sure.

Q. You did not have any doubt about it at that time, did you? A. What?

Q. Did you have any doubt at that time about whether you heard that bell? A. Certainly, I had doubts about it; the same as I said before.

Q. Have you any doubt about it now? A. That I could not be positive at the exact time.

Q. Have you any doubts now that you did hear a bell? A. I say that I thought I heard a bell at some time.

Q. Aren't you sure that you heard a bell? A. No; I am not sure, I don't know whether I am sure about that, even.

Q. Do you know that you are under oath? A. I do, but I have already said that I thought I heard a bell.

Q. Don't you know that you heard a bell? A. Well, some bell, yes.

Q. And didn't you so state to Sergeant Lord and Mr. Whieting on the occasions that I have mentioned? A. I don't remember about Sergeant Lord and as to the other one I told him I would make no statement and that I could not be sure about anything.

RE-DIRECT EXAMINATION BY MR. DIXON:

Q. Who was this Whieting, do you know? A. Whieting was the claim agent, I believe, of the Erie.

Q. He is the claim agent for the Erie? A. Yes, sir.

Q. Would you know him if you saw him? A. I think so. I have not seen him in a long while.

MR. DIXON: Is Mr. Whieting in court.

MR. HOBART: I don't know whether he is here or not. Is Mr. Whieting here?

MR. DIXON: If he is not here I would like you to send for him.

MR. HOBART: He has already been sent for.

MR. DIXON: I want to identify him.

BY MR. DIXON:

Q. You said that you were not quite sure whether you heard a bell a second before the collision or not. That is correct, is it not? A. A second before the collision or not?

Q. That is, as the engine emerged from behind the fence? A. Yes.

Q. Are you sure that you did not hear any bell or whistle before the engine came into view? A. I am quite certain of that.

RE-CROSS EXAMINATION BY MR. HOBART:

Q. Were you examined before the Grand Jury of this county, this year? A. I was.

Q. Did you testify before the Grand Jury? A. I did.

Q. Did you say before the members of the September panel of the Grand Jury when you went before them in reference to this very matter that you did hear the crossing bell?

MR. DIXON: Objected to as being improper. What he said before the Grand Jury I understand is always a secret of the State.

THE COURT: I will admit it.

Plaintiff excepts.

A. No, sir; I don't think I did. I had no intentions of saying that, anyway.

Q. Did you say before the same Grand Jury, on the same occasion, that you did hear the engine bell? A. I think that I said—my opening statement was that I could not be sure but I thought that I heard the engine bell. And all the rest of it I said just the same as I said here, that I think I heard a bell but at the exact time, I could not say.

BY MR. DIXON:

Q. You said that it was when the engine emerged or after it emerged into your view, didn't you? A. I think that is as far as I recollect now, that I left the whole matter in—because I said I thought I heard it.

Q. You stated practically what you have told here, did you? A. As far as I can recollect.

JERGEN P. LANGE, sworn as a witness on behalf of the plaintiff, testifies as follows:

DIRECT EXAMINATION BY MR. DIXON:

Q. You are a son of Jergen P. Lange, deceased, are you not? A. Yes.

Q. How old are you? A. Thirty-three years old.

Q. Where do you live? A. At Haskell, New Jersey.

Q. Where did you live in September, 1913? A. At Haskell, New Jersey.

Q. Are you an executor of Jergen P. Lange, deceased? A. Yes, sir; I am.

Q. Who is the other executor? A. My mother.

Q. Were you admitted as executor by the Surrogate of the county? A. We were.

Q. You qualified? A. Yes, sir.

Q. And you took your oath as executors and are now acting as executors of his will? A. Yes, sir.

Q. Are you connected with the Haskell Company? A. I am.

Q. In what capacity? A. Vice-President and Treasurer and I was at that time superintendent.

Q. And was your father connected with that company? A. He was.

Q. In what capacity was he connected with it? A. President and financial backer.

Q. Was Joseph connected with it? A. No, sir.

Q. In no way at all? A. No, sir.

Q. That is the boy who is driving the car in which your father was killed? A. Yes, sir.

Q. On the 27th day of September, 1913, were you in Haskell? A. I was.

Q. In the afternoon were you visited by any of the members of your family? A. I was.

Q. Who? A. My father.

Q. Who else? A. And my brother Joe.

Q. And your other brother, where was he, the minister, the priest? A. My other brother was staying with me for the week.

Q. What time did they arrive there, your father and Joe? A. Somewhere after two.

Q. Did your father visit you? A. Yes, sir.

Q. What time did they leave? A. It was about 4:38.

Q. Did they all go together? A. Why, no; my brother Jack left a little ahead of them in his car.

Q. Who went in the car with your brother Joe? A. My father and my grandmother, Mrs. Pierce.

Q. And who drove? A. Joseph.

Q. And when he left in what seats were your grandmother and father sitting? A. Father was sitting on the left-hand side.

Q. In the rear? A. In the rear.

Q. Where was your grandmother? A. On the right-hand side.

Q. About what distance is it from the back of the rear seat to the back of the front seat of the car in which you were? A. I don't know.

Q. Can't you give us any idea? A. I suppose about four feet center to center.

Q. Did you learn of an accident that occurred to your father on that day? A. I did.

Q. When did you learn of that and how? A. My brother telephoned to me about six o'clock in the evening.

Q. Which brother was that? A. Jack.

Q. He telephoned to you at Haskell? A. At Haskell, yes, sir.

Q. What did you then do? A. Why, I got into the machine and came down to the scene of the accident.

Q. Did they notify you that your father was dead? A. Why, when I got—

Q. At the time they telephoned? A. I misunderstood my brother. I thought he was living yet.

Q. And you jumped in a car and went down to the scene of the accident? A. I did.

Q. About what time did you get down there? A. Why, I imagine somewheres around seven o'clock.

Q. What was the condition of things when you got there? A. Why, I saw debris strewn all along the track. I saw the debris to one side as I got up there possibly two hundred feet along, and in the ditch was the machine, turned over, and my father lying on the ground.

Q. He was still lying there on the ground? A. Yes, sir.

Q. Was it dark then? A. Yes, sir.

Q. And this debris that was spread along the track where did that first start? A. Why, I should say possibly one hundred and fifty feet up the track.

Q. When you got to the crossing at 27th Street and the Susquehanna Railroad, did any train come along in a westerly direction? A. Why, yes; that is, shortly after I reached the crossing.

Q. Did you pull out for it or not? A. Oh, no; I did not pull out for the train.

Q. Where were you at the time that went over the crossing? A. Why, I was going up towards the accident.

Q. Did the crossing bell ring as that train went over the crossing? A. I did not hear it.

Q. Were you in a position to hear it? A. I should think I was.

Q. Did you observe to see whether it did ring? A. Why, someone called attention in the crowd there saying that the crossing bell was not ringing now.

Q. Did you listen for it? A. I did not hear it. I listened for it, but I did not hear it.

Q. How far up were you from it then? A. Why, I must have been, I was in some little, I think, from the bell, between the bell and the automobile, I was near Mr. Lord, I think, and one of the policemen that were on duty there.

Q. About how far up from 27th Street were you? A. Why, I was, I must have been 200 feet.

Q. You were between where the car was in the ditch and the crossing, were you? A. Between the bell and the accident.

Q. Between the bell and where the car was in the ditch? A. Yes, sir.

Q. Somewhere in that distance? A. Yes, sir.

Q. What was your father's state of health in his lifetime? A. Why, he was usually in excellent health.

Q. How old about was he when he died? A. Sixty-one years.

Q. What was his business? A. Consulting engineer.

Q. Was he employed anywhere? A. He was employed in the Botany Worsted Mills.

Q. Did he carry on any other business than that with the Worsted Mills? A. He was connected with the Haskell Quarry and he did some consulting with the Firstman-Huffman Company of Passaic.

Q. How about the rubber company, the Manhattan Rubber Company? A. I don't know that he actually had any business with them, simply with his patents, that is the rubber roll.

Q. Was he an inventor, too? A. Yes, sir.

Q. How long had he been working on inventions and of what character? A. Ever since I knew him.

Q. What kind of inventions? A. Various.

Q. Along what lines? A. Well, they had been in the rubber business, he made patents, took out patents for improvements on machinery, also worsteds, rubber rolls and motor vehicles.

Q. He was interested in all those things? A. Yes, sir.

Q. Do you know what his income was per annum? A. Eleven thousand dollars.

THE COURT: Do you know, is the question?

Q. Do you know what it was per annum? A. Yes, sir.

Q. How do you know? A. From his account book.

Q. What was it per annum?

MR. HOBART: Objected to. He says he knows from books. He certainly must produce the books.

Q. Have you got the books? A. Why, I have some. That is, I have one of the principal books.

Q. Well, produce it. A. Well (producing), this is the book with the Botany Worsted Mills.

Q. Is that the book with the company? A. That is the book that the Botany kept.

Q. Who kept?

MR. DIXON: That is the Botany book.

MR. COLLINS: Did he say who kept it?

THE COURT: The Botany people kept it, he says.

Q. What other books have you got? A. Why, I have not any other books here.

Q. Did you go through his estate to make an inventory? A. I did.

Q. From these books do you know what his income was?

MR. HOBART: Objected to. The books must be produced.

MR. COLLINS: It has been so held in several cases.

THE COURT: I think that is true. This book we have proved, haven't we?

MR. DIXON: Yes; we have proved that.

THE COURT: Yes; you have proved that already.

MR. DIXON: That book we have proved already by the Botany people, haven't we?

THE WITNESS: Yes, sir.

MR. DIXON: That is seven or eight thousand dollars.

Q. Where did you get that book? A. Why, it was from the Botany, that is, it was in his possession.

Q. Where did you get it? A. Get this book?

Q. Yes. A. I got it from his effects.

Q. Whereabouts were they? A. In the safe.

Q. In your safe or in his safe? A. In his safe.

Q. Now, do you remember any other books from his safe showing accounts of his income? A. I do.

Q. Where are they? A. They are home.

MR. DIXON: Well, you will have to get them.

Q. Did you get his check books, have you got his check books? A. Yes, sir.

Q. Do you know whether or not he contributed anything to his children in cash besides their support?

MR. COLLINS: You are asked if you know.

Q. Of your own knowledge? A. I have never

seen him, that is, I have seen him, but I do not—

Q. That is what I am asking you. Whether you have seen him? A. I have seen him, yes.

Q. Giving them money? A. Yes, sir.

Q. Do you know how much he gave them and when? A. No; I do not.

Q. You say you have seen him give them money? A. Yes, sir.

Q. When have you seen him give money to the children? A. At times when I have been at the house.

Q. I don't mean the specific dates, of course. How often, how frequent? A. Well, I have not been home enough to see that.

Q. How many times, about, have you seen him give them money? A. Well, I cannot answer that.

Q. You have a married sister, Mrs. Bowker? A. Yes, sir.

Q. Where is Mrs. Bowker now, do you know? A. She is in the hospital.

Q. In what hospital? A. St. Mary's.

Q. How long has she been there? A. A little over a week.

Q. She is not able to get here to the trial? A. No, sir.

Q. Did you file an inventory of your father's estate with the Surrogate? A. I did.

Q. Have you got a copy of it? A. I think so (producing).

Q. Among your father's effects what stock did he have?

MR. HOBART: Objected to as immaterial and incompetent.

MR. DIXON: I don't see why it should be objected to as incompetent. They served

interrogatories on us asking this specific question.

MR. HOBART: What of it?

MR. DIXON: If it was incompetent why did you do it?

MR. HOBART: Why did you answer it?

MR. DIXON: Why did I answer it? That is what I want to know. I am going to prove it and why don't you accept it? I am only proving the interrogatories or the answers. I withdraw the question.

CROSS EXAMINATION BY MR. HOBART:

Q. About how long after the accident that you arrived at the crossing, Mr. Lange? A. Why, I suppose it was around seven o'clock.

Q. The accident happened shortly before six o'clock, did it not? A. I think so.

Q. Well, had the bodies been taken away by the time you had gotten there? A. That is, my brother and my grandmother had been taken away, but my father had not been taken away.

Q. Was the track cleared of the wreckage at that time? A. Yes.

Q. Where did you come from in order to get to the crossing—from your home? A. I did.

Q. You lived in Passaic? A. No; I live in Haskells.

Q. You came down by automobile? A. I did.

Q. As soon as you got word by telephone, I suppose? A. I did.

Q. You think it was about seven o'clock when you got there? A. Why, I am not positive about that, but I suppose it was about that time because it was dark.

Q. Was Sergeant Lord there at that time? A. I believe he was.

Q. You know him, do you? A. I think I do.

Q. Do you recall his being at the crossing and waiting for a train to come? A. Not at the crossing.

Q. Near the crossing? A. Near the accident.

Q. Near the accident? A. Yes.

Q. Was the Sergeant there then? A. I think he was.

Q. In which direction did the train come from? A. From New York.

Q. The same direction that this light engine came from? A. From the east.

Q. Going west? A. Going west.

DOROTHEA LANGE, sworn as a witness on the part of the plaintiff, testifies as follows:

DIRECT EXAMINATION BY MR. DIXON:

Q. Where do you live? A. I live at Clifton, now.

Q. In September, 1913, where did you live? A. I lived at Passaic, on Lexington Avenue.

Q. With whom? A. With my father and mother and brothers and sisters.

Q. Speak up louder. Tell me with whom you lived? A. I lived with my father and mother and grandmother and my brothers and sisters.

Q. Where was that? A. Lexington Avenue, Passaic.

Q. You are a daughter of Jurgen P. Lange, deceased, are you not? A. Yes.

Q. How old are you? A. I am twenty-three.

Q. How old? A. Twenty-three.

Q. Up to your father's death who supported you? A. My father.

Q. Who clothed you? A. My father.

Q. Was your father accustomed to give you money for yourself? A. Yes.

Q. How frequently did he give you money? A. Whenever I asked him.

Q. How is that? A. Whenever I asked him.

Q. How much would he give you? A. Sometimes it was five or ten dollars for spending money.

Q. Can you tell about how much your father gave you a month or a year, besides your shelter and raiment? A. Why, I do not know the exact amount.

Q. Well, what is your best judgment about it? A. I don't know.

BY THE COURT:

Q. Do you know how much it was? A. Why, my spending money was ten dollars, and everything else was bought for me.

BY MR. DIXON:

Q. About how much would you get from him in cash a month for your own personal use? A. Why, I should judge about fifty dollars.

Q. I didn't hear. A. About fifty dollars a month for clothing and things.

BY THE COURT:

Q. A month? A. Yes.

BY MR. DIXON:

Q. When was your sister married? A. About three years ago.

Q. And after her marriage where did she live? A. She lived on Burgess Place.

Q. Do you know whether or not your father contributed to her any monies after her marriage? A. Why, he gave her presents of money.

Q. How is that? A. He gave her presents of money.

Q. That is what I mean. A. Yes; he did.

Q. You know that? A. Yes; I know that.

Q. How frequently, how often would he give her money? A. I really don't know.

Q. I did not hear you?

THE COURT: "I really don't know."

Q. Do you know how much he would give her at a time? A. No; I do not.

Q. Have you seen him give her money? A. I have.

Q. You don't know how much it was? A. No.

Q. Do you know whether he used to pay any of her bills? A. No. Well, I think he helped with one of the doctor bills.

Q. How is that? A. He helped with one of her doctor bills.

Q. He helped what? A. He helped to pay one of her doctor bills.

Q. Where is she now? A. She is in the hospital at present.

Q. How long has she been there? A. A week ago Sunday.

Q. Is she able to come to court? A. No.

Q. Do you know of any other expenses that he used to help her bear before his death? A. No; I don't know of any other.

CROSS EXAMINATION BY MR. HOBART:

Q. You say that your allowance was about fifty dollars a month?

THE COURT: That included her wearing apparel.

A. My clothes.

Q. You bought your clothing out of that, did you? A. No, I did not. My father paid all my bills for clothes and things and gave me spending money.

Q. How much spending money did he give you? A. He gave me ten dollars.

Q. He gave you ten dollars a month, and in addition to that he paid all your bills, bought all your clothes for you? A. Yes.

Q. And, of course, you boarded at home? A. Yes.

RACHEL LANGE, sworn as a witness on the part of the plaintiff, testifies as follows:

DIRECT EXAMINATION BY MR. DIXON:

Q. Mrs. Lange, you are the widow of Jurgen P. Lange, deceased? A. I am.

Q. And executor of his last will? A. Yes, sir.

Q. How old are you? A. Fifty-eight at present.

Q. How old was your husband when he died? A. Sixty-one.

Q. In September, 1913? A. Sixty-one.

Q. Over sixty-one? A. Sixty-one years and nine months.

Q. How long had you been married? A. Thirty years when he died.

Q. How many children have you borne? A. Six.

Q. How many are living? A. Six.

Q. Which is the youngest child? A. Joseph.

Q. What is his age? A. Twenty, now.

Q. There is no dispute, I think, about the children and their ages.

MR. HOBART: You might as well prove them.

Q. What is the next child's age? A. Twenty-three.

Q. What is her name? A. Dorothea.

Q. And the next? A. Twenty-eight.

Q. Who is that? A. John and then comes Edward.

Q. Who is next? A. Martha.

Q. Martha is the married daughter? A. Yes, sir.

Q. Where is she now? A. In the hospital.

Q. When did she go there? A. Two weeks ago Sunday.

THE COURT: There can't be any dispute about that. That has been proven.

Q. Up to the time of your husband's death where did you live? A. 234 Lexington Avenue, Passaic.

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

Q. What was your husband's business? A. Consulting engineer.

Q. Where? A. In the Botany Worsted Mills.

Q. Do you know what his income was? A. Yes, sir.

Q. What was it?

Question objected to.

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

Q. How do you know? A. From what he told me and the books he left after his death.

Q. Did you figure it up from the books? A. Yes, we did, my son and I after his decease.

Q. Now, Mrs. Lange, what is and has been generally the condition of health of your children up until the present time? A. My girls had been rather delicate.

Q. How about the boys? A. Pretty good health generally.

Q. Never lost any children, have you? A. A baby; yes.

Q. Only a baby? A. Yes.

Q. And your health, how has it been generally? A. Not so good.

Q. Your husband's health was good? A. Very good, indeed.

Q. Now, was your husband accustomed to contribute anything to you or any other member of the family? A. Yes; every member of the family.

Q. Do you know that he not only contributed to you but to every member of the family? A. Yes.

Q. How much was he in the habit of contributing to you in the way of an allowance or if he made you an allowance what did he give you? A. One hundred dollars a month.

Q. Were there any other monies that he gave you? A. Yes; very frequently.

Q. How much did he give you? A. I cannot say; it might be ten dollars or fifteen dollars or twenty-five dollars, according to what I wanted.

Q. About how much would it make during a year? A. I honestly think about twenty-five hundred dollars a year.

Q. That would include your doctor's bill? A. My doctor bill, clothing, everything that I needed.

Q. And to your children; do you know that he gave them money from time to time? A. He gave to all of them.

Q. Do you know how much that would be? A. He gave fifty dollars at one time to my married daughter and twenty-five dollars at another time.

Q. That is your married daughter? A. Yes; her husband is young and only a beginner.

Q. And you know that your husband did contribute to her after her marriage? A. I do, positively.

Q. What else besides cash would he give her? A. He would give her presents sometimes.

Q. Pay any bills? A. Yes; doctors' bills, and

bought a sewing machine for her and other little articles about the house.

Q. Was he accustomed to do that up until the time of his death? A. Yes.

Q. Would he give Joe anything? A. Yes.

Q. What amount? A. Five or ten dollars and pay for his clothing and schooling and automobile expenses and everything he needed; he had no other means of support.

Q. How about Dorothea? A. He gave her, too.

Q. How about her clothing? A. He paid for that and I might buy her something out of my allowance for her clothing.

Q. How much did that come to? A. Do you mean everything or just for clothing?

Q. Everything. A. She went to convent for two years and when she came from there she was very delicate.

Q. How much would it amount to a year? A. At least one thousand dollars.

Q. How about the other boys, did he contribute to them? A. Jurgen and John, they had been supporting themselves for some years.

Q. Did you pay the funeral bills? A. Not I personally.

Q. Well, you or the executors? A. Yes; the executors of the will.

MR. COLLINS: You don't intend us to pay that too?

MR. DIXON: I am going to prove it.

THE COURT: Mr. Dixon, you don't need to waste time on that; you know it was settled by the Court of Errors long ago.

MR. DIXON: I know it was, but it may have been decided later.

CROSS EXAMINATION BY MR. COLLINS:

Q. You say your health is not good? A. Not very robust.

Q. May I ask you what is the nature of your trouble? A. Principally nervous trouble the last year and other things that I do not care to mention here.

Q. Female troubles? A. Yes, sir.

Q. And that has been so for some years? A. Yes, sir.

Q. You said that you had a hundred dollars a month allowance? A. Yes, sir.

Q. And out of that you furnished and supplied the table? A. Yes, sir.

Q. And I understood you to say that out of that allowance you spent something for Dorothea? A. Yes, sir.

Q. The one hundred dollars a month was sufficient for that? A. Yes, sir.

Q. Do you own the house or pay rent? A. My husband owned the house.

Q. And you had one hundred dollars to supply the table? A. Yes, sir.

Q. And outside of that you say that you got about twenty-five hundred dollars a year—no, I am wrong—outside of that you got about thirteen hundred dollars a year—how do you know that? A. I can't figure out but I think I got about that much.

Q. How do you know it? A. Everything Mr. Lange spent for me he used to count in that.

Q. You understood that from counsel in the case? A. Yes, sir.

Q. Everything that he spent for you over the allowance came within the thirteen hundred a year? A. Yes, sir.

Q. You can't give us what the items are? A. No, sir.

Q. Did you clothe yourself? A. No, sir.

Q. Your clothing was outside of that? A. Yes, sir

Q. And little excursions that you went on, was that included in that? A. No, sir; and I didn't pay for gas or coal or anything like that.

Q. I suppose included in the thirteen hundred dollars included any article of furniture or anything like that that you might buy for the house? A. Yes, sir; anything he bought he said was for me.

Q. That was included in the thirteen hundred dollars? A. Yes, sir.

Q. You never kept any account yourself? A. No, sir.

Q. And now just at the suggestion of counsel you try to remember what it was? A. Yes, sir.

Q. Where was it that you were living at the time of your husband's death? A. 234 Lexington Avenue.

Q. And you moved away from there? A. Yes, sir.

Q. Where? A. I think it was around November.

Q. Where? A. I think November, 1913.

Q. Where? A. Oh, you want to know where I moved; in Clifton.

Q. The house you lived in in Paterson was sold? A. In Passaic.

Q. Oh, yes, Passaic, you sold that? A. No, sir.

Q. Did you rent it? A. Yes, sir.

Q. Why did you move to Clifton? A. My husband was building a house for my married daughter and I went to live with her.

Q. With whom? A. My married daughter and her husband.

Q. And you are living there with her? A. Yes, sir.

Q. And Joseph, too? A. Yes; and Dorothea, also.

Q. Who runs that house, you? A. No.

Q. Who runs it? A. Mrs. Bowker.

Q. That is your married daughter? A. Yes, sir.

Q. You spoke of Mr. Bowker being a beginner; what is his business? A. In the New York Belting & Packing Company.

Q. What is his salary? A. He is now getting twenty-five dollars a week; he wasn't getting that when he was first married.

Q. Oh, it has been increased since? A. Yes, sir.

Q. That is all.

RE-DIRECT EXAMINATION BY MR. DIXON:

Q. When you say you made this calculation at the request of your lawyers it was in answer to interrogatories served on you by the other side? A. Yes, sir.

Q. And you swore to those interrogatories? A. I did.

Q. That is all.

MR. DIXON: Mr. Hobart, is that gentleman, Mr. Whieting, here yet?

MR. HOBART: He is not here yet. He is coming out on the twelve o'clock train.

MR. DIXON: We rest, but I want to reserve the privilege of having Mr. Whieting identified.

MR. HOBART: Certainly.

PLAINTIFF RESTS.

Defendant's Case.

WILLIAM T. DAVIS, sworn on the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. Where do you live? A. 151 Twentieth Avenue, Paterson.

Q. How long have you lived there? A. Three years and six months.

Q. Where were you on the 27th day of September on the occasion of an accident at the Twenty-seventh Street crossing of the Susquehanna Railroad? A. At any particular time.

Q. Well, I mean about 5:30 or 5:40 in the afternoon. A. Well, I was riding in a machine, coming—

Q. In an automobile? A. An automobile.

Q. Of your own? A. My own.

Q. Were you on Twenty-seventh Street? A. About that time.

Q. And in which direction were you driving your car? A. South.

Q. Was anybody with you? A. A little boy.

Q. How old was he? A. Five years old.

Q. Is that your own little boy? A. My own boy.

Q. Where were you going? A. Home.

Q. You were going home from your business? A. No; I had been up to a farm that I own on Goffle Hill.

Q. What is your business? A. I am a painting contractor.

Q. Located here in Paterson? A. Yes, sir.

Q. Then, you know where the Twenty-seventh Street crossing of the Susquehanna Railroad is located? A. I do.

Q. And you knew at that time where it was? A. Yes, sir.

Q. And you approached that crossing in a southerly direction about 5:40 on that day, did you hear any signals then, or warnings? A. I heard the crossing bell.

Q. Where was the crossing bell that you heard? A. On a pole on the east side of Twenty-seventh Street.

Q. Was it a bell on that crossing? A. Yes; at that crossing.

Q. How far away from the crossing were you when you first noticed the bell? A. Well, I should say about fifty feet—about fifty feet.

Q. Was your car making any noise? A. Oh, yes.

Q. The ordinary noise of an automobile? A. The ordinary noise of an engine.

Q. When you heard that crossing bell what did you do? A. I slowed up; I was going to stop.

Q. You did not, however, stop, did you? A. No, sir.

Q. When you slowed up where were you? A. Well, I slowed up gradually, probably a couple of hundred feet from the crossing, but when I heard the bell I came almost to a stop, probably four or four miles an hour.

Q. About how far from the railroad track were you when you had come almost to a stop? A. I should judge twenty-five feet.

Q. Was the bell ringing? A. The bell was ringing.

Q. Had it been ringing from the time you first heard it up to that time? A. Yes.

Q. Well, now, when you had come almost to a stop what did you do in the way of observing the tracks? A. Looked first to the east, then to the west.

Q. That is, to your right and to the left? A. To my left, first.

Q. And you were at that time about twenty-five feet from the track? A. About that; yes.

Q. When you looked to your left, that is, towards the east, did you see anything in the way of trains or engines? A. I saw a locomotive.

Q. You were then about twenty-five feet from the track? A. I should judge that.

Q. Which way was that locomotive coming? A. Going west.

Q. Coming from your left? A. Coming from New York.

Q. That would be from your left as you approached the track? A. Yes.

Q. How far away was that locomotive when you saw it? A. I should say about four hundred or five hundred feet.

Q. Did you have any trouble seeing it? A. No.

Q. It was daylight, was it? A. It was daylight.

Q. And did you notice whether it was going frontward or backwards? A. No; I did not notice.

Q. Did you notice whether it was a single engine? A. I noticed it was a freight engine.

Q. Without any cars? A. Without any cars.

Q. When you saw that engine what did you do? A. I started on across the track.

Q. Why did you do that? A. I thought I had plenty of time.

Q. Did you get across all right? A. I got across.

Q. Do you know whether there were any cars coming behind you, any automobiles? A. No, sir.

Q. You knew nothing about that, until afterwards? A. Nothing at all.

Q. When did you first know that any accident had happened? A. Why, I got about two hundred feet, I should judge, from the tracks, and I saw

an old man starting to run, going as if he was going to start at a run.

Q. Running towards the crossing? A. Running towards the crossing; I was almost even with him at that time.

Q. Then, what did you do? A. Stopped the machine and looked back.

BY THE COURT:

Q. Did you hear the crash, Mr. Davis? A. No, sir.

BY MR. HOBART:

Q. You did not hear this collision, or the sound of the collision? A. No.

Q. But when you saw this old gentleman running or starting to run, you turned and looked back? A. I thought there must be something the matter.

Q. Let me ask you about that crossing bell again. When you were going over the tracks was the bell ringing then? A. All the time that I was going over.

Q. Did you turn your car around and come back to the crossing? A. Yes, sir.

Q. What did you see when you got there? A. I saw a machine fastened up against the locomotive, pretty well damaged.

Q. Did you assist in looking after the people? A. No. I had my little boy with me and he made such a time that I had to quit it; I had to take care of him.

Q. He was excited? A. Very much excited.

Q. And you were, too? A. Yes.

Q. Did you go home after that? A. I took the car home.

CROSS EXAMINATION BY MR. DIXON:

Q. Are you quite familiar with that crossing, Mr. Davis? A. Yes, sir.

Q. How often do you go over it? A. An average of twice a day.

Q. And you are quite familiar with that bell, are you? A. Very familiar.

Q. Now, as you came up to the track you say you heard the crossing bell. You are sure it was not any other bell than the crossing bell? A. No; it was the crossing bell.

Q. That is the only bell you did hear? A. That is the only bell I heard.

Q. You are sure you heard that? A. Yes.

Q. When you approached the crossing? A. Yes, sir.

Q. You did not hear that bell until you were about fifty feet from the crossing? A. I should judge about that.

Q. And when you did hear that bell you were going at what speed? A. I would say eight or ten miles an hour, then.

Q. And then you slowed down to nearly a stop? A. Yes, sir.

Q. Within twenty or twenty-five feet of the track, and you saw a train approaching, did you? A. A locomotive.

Q. How do you know it was only a locomotive? A. I could see there was nothing behind it.

Q. Was it light enough for that? A. Oh, yes.

Q. How far do you think the locomotive was away from you? A. I could say four or five hundred feet.

Q. You were about to imperil the life of your child and your own life, were you not; don't you know better than that? A. I realize that, too; yes, sir.

Q. How far away were you from the locomotive? A. I said about four or five hundred feet.

Q. Not over that? A. What say?

Q. Not over that? A. It might have been a thousand feet.

Q. It might have been a thousand feet; you could not tell? A. No.

Q. You could not tell which way it was going? A. I know it was going west.

Q. How do you know that? A. I could see it coming.

Q. You were almost in front—almost on the tracks—were you not—on which the locomotive was running? A. When I first saw it, about twenty-five feet of it.

Q. How many tracks are there there? A. Two.

Q. And two all the way up East? A. There are switches on both ends.

Q. Did you stay in this position within a few feet of the railroad track long enough to see which way that engine was travelling? A. I never stopped at all.

Q. But you looked and saw that it had no cars attached to it, didn't you? A. I could see that as I was going.

Q. And yet you do not know whether it was going with the tender backing or coming ahead, the locomotive with the cow catcher in front? A. No, sir; I don't know which way it was turned.

Q. Did you change your gear when you slowed down? A. I did; I went in second.

Q. You went across in second? A. Almost across; put it in third as I was going over.

Q. Then you shot ahead, how fast? A. Well, I would say I went across there, by the time I got on the other side I was going fourteen or fifteen.

Q. How far were you from the crossing on the south side when you stopped your car after the accident? A. About two hundred feet.

Q. Could you tell how fast the locomotive was travelling? A. No, sir.

Q. Well, ordinarily, if the locomotive was headed toward the east, and with no cars on either side of it, and, say, a distance of six or eight hundred feet away, you would suppose that she was going in the way she was headed, would you not? A. Not always.

Q. Ordinarily? A. Not always.

Q. But would you not naturally? A. I don't think so. I don't think I would cross until I knew which way she was going. I don't think I would—

Q. Do you mean to say that at a distance of one thousand feet from your position at the side of the track you could distinguish in which direction that locomotive was going? A. I did not know which way it was—

Q. You did not know which way it was— A. Not when I was crossing.

Q. You did not know which way it was when you were crossing? A. No, sir.

Q. You did not know which way she was going? A. I know she was going towards me.

Q. How did you know that? A. I could see it coming.

Q. You could see it moving, could you? A. Yes.

Q. Then, cannot you say how far away it was when you first saw it? A. I said it was about four hundred or five hundred feet.

Q. That is your best judgment? A. Yes.

Q. You thought that gave you plenty of time to get over? A. Yes.

Q. As you went over, the bell was ringing? A. The bell was ringing.

Q. How far away did you get before you ceased

to hear the bell ringing? A. Well, I could not tell you that.

Q. Well, we want your best recollection. A. It might have been ringing all the way, as far as I have gone—

Q. Did you hear it ringing all the time? A. I don't remember.

Q. Why don't you remember? A. Because I saw I had made a mistake in going across the tracks, and I was a little excited after I got over.

Q. Why should you remember about the bell ringing while you were going across and not remember when you ceased to hear it ringing? A. Because I was interested in the bell going over but not after I got over.

Q. Do you know when it was that you ceased hearing the bell ring? A. No, sir; I do not.

Q. You did cease hearing it ring? A. I must have, or I would hear it yet.

Q. When was it that you ceased hearing it ring? A. I could not say.

Q. Before you came to a stop with your car? A. I don't know.

Q. You don't know whether you remember hearing it ring at the time your car came to a stop or not, do you? A. No, sir; I do not.

Q. You don't remember whether you ceased to hear it ring after you were immediately across the track? A. No. I know it was ringing when I went across.

Q. But you don't know whether it ceased ringing immediately after you got across, do you? A. No, sir; I do not.

Q. You don't know whether it immediately ceased ringing when you were twenty-five feet away from the crossing? A. No, sir.

Q. In other words, you did not hear it twenty

five feet from the crossing, when you had crossed? A. No, sir.

Q. You did not hear it when you had come to a stop two hundred feet from the crossing? A. I don't remember.

Q. You did not hear it, did you? A. No.

Q. Why would you not remember it as well as you remember hearing it ringing the other time? A. Because I told you, going over I was interested in the bell; after I got over I was very much excited.

Q. You were interested in the bell not to stop your machine because you saw somebody running? A. I saw the man running.

Q. Why were you not interested enough to know whether the bell continued to ring? A. Because I figured I had a narrow escape myself.

Q. What is your business? A. Painting contractor.

Q. Painter? A. Yes.

Q. How long have you been in that business? A. I have been in the contracting business ten years.

Q. Do painting for the Susquehanna Railroad Company? A. No, sir.

Q. Do you do painting for the Erie? A. No, sir.

Q. Never have? A. No, sir.

Q. Have you ever done any jobs for them? A. Never.

Q. And have never been in their employ? A. No, sir.

Q. Or interested in them in any way? A. No way at all.

Q. Eh? A. None whatever.

Q. You did not stop your car at all as you approached the crossing, did you? A. No, sir.

Q. You were moving all the time? A. I kept on moving.

Q. The only bell that you did hear, that you are sure of, are you, was the crossing bell? A. That is the only one.

Q. That is the only way you knew the engine was approaching? A. Yes, sir.

Q. You are positive of that, are you? A. I am positive of that.

Q. You don't know when you ceased hearing it? A. No; I do not.

By Juror No. 12:

Q. Are you sure there was no warning from the engine coming down to that crossing? A. I am not sure; no.

Q. You did not hear the whistle? A. I did not hear it.

Q. Did you hear any bell from the locomotive? A. No.

Re-Direct Examination by Mr. Hobart:

Q. From the time that you first heard the crossing bell, up to the time you had got across the track, did that bell keep on ringing all that time? A. While I was crossing the track.

Q. From the time you first heard it up to the time you got across the track? A. Yes.

Q. Was the bell ringing all the time? A. Yes.

Q. Was the engine making any rumbling noise or anything of that sort as it came along? A. Not that I noted.

Q. Did you hear any sharp blast or shriek of the whistle just before you saw this old man, or just about the time you saw this old man begin to run? A. No.

Q. You were somewhat excited because of your narrow escape, were you? A. I was very excited.

HAROLD CURZON, sworn as a witness on the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. How old are you? A. Nineteen.

Q. Do you go to school? A. I go to school and work, both.

Q. You attend the High School now, do you? A. Yes.

Q. Where do you work? A. Warner Manufacturing Company.

Q. You work there after school hours? A. Yes, sir.

Q. Do you remember this accident that happened on the Tewenty-seventh Street crossing of the Susquehanna Railroad on September 27th, 1913? A. Yes, sir.

Q. And where were you that afternoon about 5:30 or 5:40? A. On Twenty-seventh Street.

Q. How did you happen to be there? A. I had just left my boss on Twenty-sixth Street and came through Seventeenth Avenue to Twenty-seventh Street and walked along there.

Q. Were you going home? A. Yes, sir.

Q. In which direction were you walking on Twenty-seventh Street? A. South, towards the railroad.

Q. Do you know on which side of the railroad you were? A. Right hand side going towards Market Street.

Q. As you were going along did you notice any automobiles coming along? A. At 18th Avenue I heard the bell ring and when I was about two hundred and seventy-five feet from the crossing I heard the whistle of the engine blow, and when I was about seventy-five feet I saw an automobile coming, and I hollered at them that there was a train coming, and I stepped out about three

yards to them, and he drove straight ahead on to the tracks.

Q. Do you mean that you left the sidewalk and went out into the road? A. There is no sidewalk there. There is just a place along side of the road.

Q. You mean you stepped from the side of the road where the sidewalk would be? A. Yes, sir.

Q. Up to that time had you heard the automobile coming? A. No, sir; not until I saw it.

Q. You say you stepped out. Tell us just what you did. A. I stepped out and I hollered "Heigh, there is a train coming," and the chauffeur turned his head half way and looked at me and drove right on.

Q. Did he slacken any? A. No, sir; he did not.

Q. Did he increase his speed? A. He kept on going at the same rate.

Q. At that time when you ran out and warned that automobile or that chauffeur was the engine in sight? A. No; I was about seventy-five feet away then; I could not see it; I heard it.

Q. What did you hear? A. I heard the whistle.

Q. You spoke of some bell that you heard; what bell was it that you heard? A. I heard the crossing bell.

Q. Did you hear that? A. Yes, sir; I heard very plain.

Q. What became of that automobile that you tried to warn? A. Well, he drove near the crossing, and the engineer hollered at him; you could hear him plainly, and he turned to his right and he went out down on the right and he went on the tracks, and when the engineer hollered at him, he didn't stop, and he had two wheels on one side of the track and two on the other, and the engine took him down the track.

Q. Was that the same automobile that you had tried to warn? A. Yes. I did not see the first one. I only saw two automobiles.

Q. Did you hear any bell on the engine, as distinguished from the crossing bell? A. I did not take notice to that; I heard the whistle; that is all.

Q. You are sure you heard the whistle? A. Yes; the whistle blew.

Q. Was the engine in sight then? A. No; I could not see it then until I warned him.

Q. After this automobile turned to the right and got astraddle as you have told us, how far did it go before it was hit by the engine? A. I could not judge but it only went a few feet before it got up on the track.

Q. It was hit by the engine? A. Yes, sir.

Q. It was carried along or pushed along by the engine? A. It was pushed.

Q. Do you know whether that was a light engine—whether there were any cars? A. There were no cars. I did not take much notice to the engine.

Q. Did you notice whether the engine was moving frontwards or backwards? A. It was backwards.

Q. Did you notice how many people that were in the automobile that you tried to warn? A. I believe there was three.

Q. Do you know whether there was a lady in it? A. One lady and one gentleman in back and the boy drove the car in front.

Q. The boy that was driving the car, do you see him in court to-day? A. Is he here? I did not have a good look at him, but I think I could recognize him.

Q. How far from the crossing was this automobile when you hollered to him? A. About seventy-five feet.

Q. Was there an old gentleman riding in the back of that automobile? A. Yes; there was.

Q. When you hollered or ran out, or whatever it was that you did, did the old gentleman do anything? A. No; I did not notice him; I was watching the man driving.

Q. All he did was to turn his head? A. All he did was to turn his head half way.

Q. Toward you? A. Yes.

Q. That would be in which direction—right or left? A. Towards me—that would be right.

Q. Did you observe the driver as he approacned the crossing, whether he looked as he came up closer to the crossing? A. He seemed to drive straight ahead.

Q. Could you see whether he turned his head after that again? A. No, sir; he did not turn his head; he went straight on.

Q. Can you give us any idea how fast that automobile was moving? A. I should judge fifteen or twenty miles an hour.

Q. Did you stay around the crossing for some time after the accident? A. I went down the track from there; I went to No. 10 engine house on 17th Avenue and a fireman telephoned for the ambulance, and I went and got Dr. Golding on 17th Avenue and took him over there, and by that time I found that they had moved the boy and old lady.

Q. Were you there when another train came from New York? A. Yes.

Q. A passenger train? A. Yes. That was up the track then.

Q. What was up the track? A. The passenger train was up from the crossing.

Q. It had not yet reached the crossing? A. It had not yet reached the crossing.

Q. Were you at and around the crossing when it was there? A. It was standing on the track when I came back.

Q. Did you notice anything about the crossing bell then? A. The crossing bell was ringing then.

Q. The same as it had been before? A. Yes, sir.

CROSS EXAMINATION BY MR. DIXON:

Q. These people in the automobile you had never seen before you saw them on the street that day? A. No, sir; never.

Q. Have you ever seen any of them since? A. No; not that I remember, never. Tuesday or Monday morning I saw the Priest that was here I believe; I am not positive; but I think he was here.

Q. Did you see him on that day? A. Yes; I saw him get out of the car behind.

Q. How was the driver of the first automobile dressed? A. Well, I did not take particular notice of that; I could not describe him to you, and I would not care to.

Q. What was his condition when he was under the car after the accident? A. His head seemed to be that way (illustrating) and his hand was on the steering gear.

Q. Face down? A. Kind of face down.

Q. Did you lift up his head? A. No, sir; I ran right to the engine house to telephone for the ambulance.

Q. You did not look at him there? A. No, sir; I didn't look at him.

Q. So the only time you got a glance at him was when he was going by? A. I just had a glance after he had been hit; I just looked at him.

Q. You just said you did not. A. He was placed that way, and I ran for the ambulance. I did not wait, I knew he was hurt.

Q. His face was down? A. It was kind of down.

Q. Didn't you swing his head around to take a look at him? A. No, sir; I didn't touch him at all.

Q. How far away did you stand when you looked at him in that position? A. I was on the track, between the two tracks.

Q. Just identify him here in court; pick him out, will you? A. I would not be sure, but I think it is that fellow over there with the black hair (indicating).

Q. Which one? A. That would be the sixth one, I think.

Q. (Calling "Stand up!") Is that the boy? A. I believe that is him; yes, sir.

Q. What kind of a cap did he have on that day? A. I did not take notice of the cap.

Q. Do you swear now that you never seen that boy from the day you saw him on that street until you just identified him? A. Would I swear?

Q. Are you testifying now that you never saw that boy from the time you saw him on the street that day, when he was going along there, until you identify him here in court? A. Until now?

Q. Yes. A. I have seen him outside, I guess; I have seen him around the building.

Q. Who pointed him out to you? A. Nobody.

Q. How did you know that he was the driver, then? A. Because I saw him.

Q. Who pointed him out to you? A. Nobody, because I saw him.

Q. Who is the man that you gave your statement to? A. Mr. James.

Q. Where is he? A. (Indicating) Right there.

Q. Who is he? A. I believe he is a claim agent for the Erie Railroad.

Q. When did you give it to him? A. A week ago Monday.

Q. Was that the first time you ever gave it to him? A. Yes; it was the first time I ever seen any official from the Erie Railroad.

Q. A week ago Monday? A. Yes.

Q. Did you give it to him in writing. A. He wrote it down and I read it off to him. I gave him the statement as I saw the accident.

Q. Didn't he, during the last week, point out to you this young man as being the driver of that automobile? A. No, sir.

Q. Didn't anybody? A. No, sir.

Q. So that, from the time that you saw him first in that brief space, until you saw him in court, nobody has indicated that he was the man that was driving? A. No, sir; nobody.

Q. What street was it that you came down? A. I was on Twenty-seventh Street at the time of the accident.

Q. You got into 27th Street from some other street; what street was it? A. From 26th Street to 17th Avenue—I believe I came that way; I would not be positive, but I was going home, and I was talking to the boss on 26th Street and Park Avenue, and I had just left him.

Q. From what street did you go? A. I think I came down 26th Street to 17th Avenue, and up 17th Avenue to 27th Street, and along 27th Street to the Erie Railroad.

Q. 17th Avenue is where with regard to this railroad? A. That is two blocks away from the Susquehanna crossing.

Q. Two blocks from the Susquehanna crossing? A. North; yes, sir.

Q. Two blocks north? A. Yes.

Q. How far in feet is it from the Susquehanna? A. I could not judge by feet.

Q. Why not? A. I don't know nothing much about feet.

Q. Why not? A. I don't know; I did not measure it.

Q. Cannot you give us approximately how far it is? A. No, sir.

Q. You don't know whether it is five hundred feet or half an hour? A. Oh, well, I guess it was not half a mile; I could not tell you that.

Q. You were there? A. Yes, sir.

Q. At 17th Avenue two blocks from the railroad? A. Yes.

Q. And what was the first thing you heard? A. At 18th Avenue was the crossing bell.

Q. When you got to eighteenth Avenue? A. Yes.

Q. That is the next block toward the railroad? A. Toward the railroad.

Q. How far is it toward the railroad? A. I judge—I don't know—about two hundred and seventy-five feet—something like that, I guess.

Q. Could you hear it plainly? A. Yes; I could hear it very plainly.

Q. You mean loud enough so as to be able to distinguish it from the locomotive bell? A. Yes, sir, that is how I knew the train was coming.

Q. You did not hear the locomotive bell? A. Not then.

Q. And then was it there you stopped to warn this car? A. No, when I was by the telegraph pole, if you have the picture there you can see the pole there.

Q. Don't bother about that— A. I am giving you the distinct distance where I was when I notified the man because I felt very bad after that when I did not save him.

Q. You were going on the right hand side were you, towards the right? A. I was on the right hand side going towards the railroad.

Q. And the man that you notified was this young man? A. Yes; I am pretty sure it was that young man.

Q. Aren't you positive? A. Yes, I can be positive.

Q. Why didn't you notify the car ahead of him that was about to cross the track? A. I did not see the car ahead of him because I had a paper in my hand and I was reading and walking along.

Q. You were reading a newspaper? A. Yes; I had some business I had to attend to, some papers to go away on Monday morning and I was walking along there.

Q. So that you heard this bell two hundred and seventy five feet away? A. Yes, sir.

Q. And yet here was an automobile right ahead of you going over the track and you did not even see that? A. I did not notice that, no, sir, I was not interested until then when I heard the bell ring.

Q. The other automobile was closer to the track than that one, wasn't he? A. I did not notice that. I did not see the first automobile, I only saw two.

Q. You only saw two? A. Yes, sir.

Q. Then you were how many feet away from the track? A. When I saw the first one I was seventy-five feet away when I saw the first car.

Q. Seventy-five feet away. A. Yes, when I saw the first car.

Q. In other words the bell was ringing during the time you were walking from a distance of two hundred and seventy-five feet away from the track until you got to a distance of seventy-five feet

away from the track? A. Well, I was at seventy-five feet when I warned the driver of the car.

Q. You are doing the calculating, I am only asking questions. A. Yes, all right, sure.

Q. Is it a fact that you heard the bell ringing from the place where you first heard it two hundred and seventy-five feet away from the track until you got within seventy-five feet from the track? A. Yes, sir.

Q. And during that time you say you were walking toward the track two hundred feet and the second automobile had not come up to you yet? A. No, I don't think so. I did not see the first car at all. I did not see anything of it.

Q. The second one did not come up until you got about seventy five feet away from the track? A. I was about seventy five feet away when I saw it.

Q. Then you hailed the driver, did you? A. Yes, sir, I did.

Q. Was it when you hailed the driver that you heard the whistle blow? A. Yes, sir, I heard the crossing whistle blow.

Q. You heard the crossing whistle? A. Yes, sir.

Q. After you notified the driver? A. Yes, sir.

Q. You mean the locomotive whistle? A. Yes, sir.

Q. How long did it take you to walk that two hundred feet? A. From where? From Eighteenth Avenue?

Q. Yes. A. I don't know.

Q. You were reading a newspaper? A. Well, I was not then. I was all through then when I came along when I heard the bell, I stopped.

Q. Then why didn't you see the first car? A. I did not notice it I told you, I did not see the first car.

Q. I know you told it, but why didn't you? You said you were walking along and you were reading a newspaper. A. Sure. Then I stopped and walked along and I was looking at the railroad.

MR. COLLINS: He did not say he was reading a newspaper, he said he was reading some business papers.

WITNESS: Some business papers they were.

Q. What kind of business papers? A. A list of customers that I had to see on Monday.

Q. That was why you were walking along two hundred feet? A. I was here on the right hand side of the road and walking along, I was not reading then, and I heard the bell, I was not looking toward the railroad, and I heard the bell ring until I got about seventy-five feet away and then I got out, I saw the automobile and I stepped out and hollered "Hey, there is a train coming," and he turned his head.

Q. You say that as though you almost learned it. A. Yes, and I pitched it, and I saw it, that is how I know it so well. I never want to see a sight like that again.

Q. Where was the car when the whistle blew? A. Well, I would say that it was about fifty feet then, something like that. I am no judge on feet, I cannot give you the feet.

Q. You are not a judge now? A. On feet.

Q. You have been judging on feet pretty well? A. Well, I just imagine that it is that far.

Q. When the automobile was fifty feet away you heard the whistle blow? A. Yes, sir.

Q. And the car went right on? A. Yes, sir.

Q. And as it got to the track it went to the

west, did it? A. To the right, that would be to the west, yes, to the west.

Q. And then did it get in the track and go up the track? A. It went off the roadway and on up the track.

Q. So that at the time the collision occurred the automobile and the locomotive were both travelling in the same direction, were they, was the automobile ahead? A. Well, the automobile tried to get up on the track as though he had seen the engine coming or something like that.

Q. They would be both going west at that rate, is that the fact? A. Well, they seemed to be both going west as though the car had tried to come up on the railroad and beat the engine across.

Q. Is it a fact that before the collision occurred the driver of the automobile turned his automobile towards the west? A. Toward the right yes, sir.

Q. And was preceding the locomotive up the track? A. No, sir; he tried to cross the track.

Q. You mean he swung around the locomotive? A. Yes, sir; that is what I thought he seemed to do.

Q. He switched around the locomotive? A. Yes, sir, as though he had a chance to get across.

Q. You mean to say he went in and then switched off around in a circle. A. That is what he did, he had two wheels on one side of the track and two on the other when the engine hit him.

Q. Well, there is no doubt about that; he was not then facing up towards the west when the engine hit him? A. No, he was facing right straight across, two wheels on one side and two on the other.

Q. And you never talked to anybody for the railroad until— A. A week ago Monday.

Q. A week ago Monday? A. No, sir, never. Who was the young man who came to my house at half past twelve a week ago?

Q. Was this the only man from the railroad company you talked to? A. Yes, sir. Say, who was the two men who came to my house a week ago at half past twelve at night?

Q. Who were they? A. Yes, who came looking for me, and I had moved or something or that sort.

Q. Don't you know who they were? A. I didn't see them.

Q. Did you have any trouble about giving this statement to Mr. Janes? A. No, I didn't have any trouble.

Q. You weren't reluctant about giving it? A. Huh?

Q. You gave it freely? A. Yes; I told him what I saw.

Q. Now repeat again just what audible signals you heard at that location as to the approach of this engine and the place you were and when you heard them? A. The crossing bell and the whistle on the engine.

Q. Where were you when you heard that? A. Eighteenth Avenue.

Q. When did you cease to hear that bell? A. I heard it all the way up until the engine had crossed.

Q. Was it ringing when you got on the crossing? A. The engine had passed.

Q. Was it ringing when you got on the crossing? A. No.

Q. Was it ringing when you got there? A. I don't know; I was excited.

Q. You weren't excited before the accident? A. I hollered at the man; there is nothing to excite you if you don't see anything.

Q. You heard the crossing bell and you supposed he heard it too? A. Yes.

Q. Then why were you exicted; why did you run out in the roadway and holler? A. I wanted to save him.

Q. You weren't so excited that you didn't warn the first man? A. I didn't see him.

Q. Were you so excited that you thought he didn't hear the bell? A. I dont know.

Q. He heard the whistle? A. I don't know.

Q. Wasn't it sounded loud enough for him to hear it? A. Yes, sir.

Q. Was it loud enough for you to hear it? A. He was in the car.

Q. Did the whistle blow before you called to him or after? A. After.

Q. How long after? A. A minute or so; I couldn't judge the time.

Q. And how near was his car to the track when you heard the whistle blow? A. About fifty feet.

Q. And you were at about seventy-five feet? A. Yes, sir.

Q. Might it not have been twenty-five feet? A. I don't know.

Q. Did Janes tell you it was about fifty feet? A. No, sir; I told him all the statement he had.

Q. You are quite positive that when you heard the whistle blow the automobile was not over fifty feet away, are you? A. No; it wasn't over fifty feet.

Q. It might have been twenty-five feet? A. I wouldn't say; I could not tell you.

Q. You are not sure as to whether or not it was twenty-five feet? A. I will say it was fifty feet.

Q. You have said that already. A. Yes, sir.

Q. Are you sure it wasn't over twenty-five feet? A. It was fifty feet.

Q. You are now positive? A. Yes, sir.

Q. Why didn't you say so before? A. I did.

Q. Why didn't you say it was fifty feet? A. I did.

Q. Now, you say it was fifty feet? A. I said it was fifty feet and now you want me to say it was twenty-five feet.

Q. You are sure about that are you? A. Yes, sir.

At this point an adjournment was taken for recess until two o'clock P. M.

Trial resumed at two P. M. as per adjournment.

HAROLD CURZON, recalled.

CROSS EXAMINATION CONTINUED BY MR. DIXON:

Q. At the time of the collision between the engine and the motor where were you; how far from the crossing? A. When they came together?

Q. Yes; when they came together—from the tracks? A. I couldn't say as to the distance.

Q. Give us your best judgment; indicate in this room. A. I was pretty close but I couldn't give you any definite amount of feet.

Q. Show us here in this room how close were you.

BY THE COURT:

Q. Was it as far as from here to the door? A. About like that.

BY MR. DIXON:

Q. Was it a little over or not? A. About that.

Q. About that when the crash came? A. Yes.

Q. How far were you from the track when the

engineer hollered at the automobile? A. He hollered when he was at the east side of the crossing.

Q. How near were you when the engineer hollered to the man? A. About twenty-five feet.

Q. As far as from here to the wall? A. Something like that.

Q. Were you nearer to the track when the automobile crash came than when the engineer hollered or not? A. It came very quick after that.

Q. Did you see the engineer when he hollered to the driver of the car? A. I could see the men on the train.

Q. I didn't ask you that. A. I didn't pay any particular attention; you could hear him for a block.

Q. How do you know it was the engineer? A. It came from the cab.

Q. Could you see the cab at the time? A. No; it was in back.

Q. You testified in your direct examination that the engineer gave warning to the drive of this car; you say he called out and you could hear him for a block; was it in your view? A. Yes, sir.

Q. Was the cabin your view? A. The engine was turned around.

Q. I didn't ask you that; was the cab in your view when the engineer called out? A. I didn't watch that.

Q. Why not? A. I watched the crash.

Q. You said it was the engineer called out. A. I heard his voice afterwards and it was the same voice.

Q. You know that this man whose voice you could not place at the time you heard him? A. I couldn't see him but afterwards I knew it was him.

Q. You knew it because he spoke to you after?

A. He didn't speak to me; I heard him talk when the man asked him to back up.

Q. And was his voice then about the same as when you first heard it? A. Not so loud.

Q. You were about twenty-five feet from the track? A. I should judge about twenty-five feet from the track.

Q. In order that we may know what you mean by twenty-five feet indicate in this room what you think would be twenty-five off, if you can. A. From here to the door; something like that.

Q. You were about from here to the door away when the crash came? A. I had just come up the road; I can't tell you anything definite on feet.

Q. You say you were from here to the door away when the crash came, and about twenty-five feet when the engineer hollered out? A. I was nearer when the crash came, because I had moved up.

Q. How far? A. Not very far because he was on the east side and he hollered at him and when he hit him he was on the west side.

Q. How far were you away when you heard the engineer cry out? A. A little further than the door.

Q. How far had you walked—how many steps? A. Not very far.

Q. As far as from here to the door? A. No; not that far.

Q. Half that far? A. I don't know, it came so quick.

Q. The whole thing happened so quickly? A. The whole thing came at once.

Q. They both came together? A. No; he had a little chance if he had turned to the left.

Q. You mean to avoid the crash? A. Yes, sir.

Q. How far was his automobile away from the track when the crash came? A. You mean the engine and the automobile on the crossing?

Q. How far from the track on which the train was running and the automobile at the time you heard the cry of the engineer? A. I couldn't give you anything definite on that; I don't know that.

Q. Huh? A. I couldn't tell you exactly.

Q. Give us about how far in this room; show us and we will judge; show us, don't hesitate so long. A. I can't tell; I was excited.

Q. You remembered very well on your direct examination. A. Well, I wasn't so particular about it.

Q. Just show us how far you think it was—how far when you heard the cry of the engineer. A. About twenty feet.

Q. What do you call twenty feet? A. About from here to the next to the last seats there.

Q. Then you were within five feet of the automobile when you heard the cry of the engineer, were you? A. Somewhere around there; I couldn't give you a definite idea of it.

Q. Were you walking or running? A. I started to run a little.

Q. When? A. When I was about seventy-five feet away.

Q. Did you keep up with the automobile? A. No; I didn't keep up with them.

Q. When the automobile passed you you said it was going about twenty miles an hour? A. About fifteen or twenty miles.

Q. If it was going that fast how could you catch up to it to within five feet? A. I didn't get up to it.

Q. Within the distance of this room? A. Something like that.

Q. You didn't catch up to it, did you? A. No; I didn't catch up to it.

Q. What is your business? A. I go to school.

Q. What is your business? A. I work for Warner after school.

Q. Where do you live? A. Madison Terrace now.

Q. Do you live with your parents? A. With my mother; my father is dead.

Q. Any brothers? A. Yes, sir.

Q. How many? A. Four.

Q. What is their business? A. One is a bill-poster, one helps me when I work and the other drives for Prescott and Waywell.

Q. And the other—is that all? A. And one is a loomfixer in Frank & Dugans.

Q. Well, if you were within twenty feet of the track at the time the automobile was struck and then you started to run to the track then you got there before anybody else? A. I don't say that; I started on a little trot after; I warned him; I was behind the auto all the time.

Q. Were you the first one to get there after the collision? A. I didn't see anybody only the crew on the train.

Q. And you were the only one there then? A. I only saw the priest.

Q. Did he pass you? A. He didn't pass me; I was there ahead of him I think.

Q. Do you know? A. I don't know.

Q. Was there anybody else there? A. I didn't see anybody else there except the priest.

Q. You were the first one to get there after the accident outside of the train crew? A. I think so.

Q. Was anybody else there? A. I don't remember; I ran and telephoned for the ambulance.

Q. You don't know? A. I didn't notice; no, sir.

RE-DIRECT EXAMINATION BY MR. HOBART:

Q. You say last Monday you saw this man that

you identify in the courtroom? A. I seen him around here.

Q. Was it in the court house? A. Yes, sir.

Q. Do you think it was some day last week? A. I wouldn't be positive about it; I saw the priest here.

Q. How did you come to be here last Monday? A. Lange's people subpoenaed me or else I wouldn't have come.

RE-CROSS EXAMINATION BY MR. DIXON:

Q. You would not have come? A. No, sir.

Q. You freely told the railroad people about the accident? A. They asked me and I told them.

Q. Did you talk to me on the day you came here? A. Yes, sir; you took me in that room.

Q. Did you refuse to tell me anything about the accident? A. No, sir.

Q. Didn't I ask you about the signals and didn't you refuse to answer? A. No, sir.

Q. And didn't you ask me who I represented? A. Yes, sir.

Q. And when I told you the plaintiff and then you refused to tell me? A. Yes, sir; I did.

Q. And up to that time you had not told the company anything, had you? A. No, sir.

BY MR. HOBART:

Q. Did Mr. Dixon tell you that you needn't come here again? A. Yes, sir.

Q. Did he give you another subpoena to come back again? A. No, sir.

CAROLINE CRAWFORD, sworn as a witness on behalf of the Defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. Where do you live? A. At No. 726 Market street, Paterson.

Q. Were you living there on the twenty-seventh of September, 1913? A. Yes, sir.

Q. Where is that with reference to the Susquehanna crossing at Twenty-seventh street? A. It is on the south side of the railroad.

Q. On which side of Twenty-seventh street, east or west. A. Where I live?

Q. Where you live, yes? A. Well, I face the north, my house runs from east to west but I face the north side of the street.

Q. Do you face toward the railroad? A. Yes, sir.

Q. Are you on the side of Twenty-seventh street that is nearer the City or that is nearer to Dundee Lake? A. I take in the whole entire block from Twenty-sixth to Twenty-seventh street.

Q. Then you are between Twenty-sixth and Twenty-seventh streets are you? A. Yes, sir.

MR. DIXON: Which is that, east or west of Twenty-seventh street?

THE COURT: Is it East of the Erie crossing, or West of the Erie crossing.

THE WITNESS: I am north of the crossing.

MR. DIXON: On which side of Twenty-seventh street?

THE WITNESS: I am on the west side of Twenty-seventh street.

Q. Were you at your home on the afternoon of the twenty seventh of September 1913 at about 5:30 or 5:40 P. M.? A. I was.

Q. What were you doing about that time? A. I was sitting on my front porch.

Q. Were you expecting any friends to come to see you that evening? A. I was.

Q. Where were they coming from? A. From New York.

Q. On what were they coming? A. They were to be on the train that would arrive near six o'clock.

Q. Do you know at what time that train usually passed Twenty-seventh street? A. Yes, sir.

Q. As you sat on the porch of your home, of your house, were you paying any attention in particular to the warnings or signals from the railroad trains? A. I was listening for the train to come up from New York.

Q. The train on which you expected your friends? A. Yes, sir.

Q. As you say there did you hear any signals from any trains? A. I heard the bell.

Q. What kind of a bell? A. The warning bell.

Q. On the locomotive, do you mean, or on what? A. No, sir, the bell on Market street.

Q. You mean that is up above by the? A. On the opposite side of the crossing that would be the north side of the crossing.

Q. What attracted your attention to it? A. I was listening for the train to come up and, I don't know what attratced my attention, I merely heard the bell and I thought it might be the train that I was expecting my friends on.

Q. Did you observe whether, as a matter of fact, a locomotive had come along at about that time? A. No, the first that I saw was Mr. Davis crossing the track.

Q. You saw him go across? A. I saw him coming across, yes, sir.

Q. Can you see the crossing from your house? A. Yes, sir. Not at the present time. At that time; but not at the present time.

Q. And did you observe whether or not that bell was ringing when Mr. Davis crossed? A. It was.

Q. Did you see any engine come along? A. I saw an engine coming from New York City.

Q. What kind of an engine was it? A. Well, it was an engine without cars or without a caboose or anything, it was an engine alone.

Q. Did you observe whether or not it was running frontward or backward? A. It was running backward, was running towards the City.

Q. Did you observe any signals from the engine? A. I did later.

Q. What signals did you hear? A. I heard a very shrill whistle.

Q. Did you observe where the engine was at about that time? A. It was backing up over Twenty-seventh street.

Q. What kind of a whistle was it, one long whistle or several short whistles?

MR. DIXON: I object to that as leading.

Objection overruled.

A. It was a long whistle, a shrill whistle.

Q. Did you see the collision? A. I saw something; I could not tell you what it was: I heard the shrill whistle and we looked and we saw something go over, on the railroad track, and I ran across my porch, I did not know what it was, I could not tell you, but I saw it was an accident.

Q. When you saw that was there any noise or any crash in connection with it? A. Yes, there was a crash.

Q. This long shrill whistle that you have spoken of, was that before or after the crash? A. It was after the crash.

Q. That was after you heard the crash? A. Yes, sir.

Q. Did you go down to the crossing? A. I started, but I turned back when I found out there was someone killed I turned back and went home.

Q. So you did not go to the crossing at any time that evening? A. No, sir.

Q. How far is your house from that crossing bell? A. Well, I should judge about six to seven hundred feet.

THE COURT: Which crossing bell?

Q. I mean the crossing bell at Twenty-seventh street? A. Yes, sir, the crossing at Twenty-seventh street.

Q. About six or seven hundred feet, did you say? A. I should judge so, yes.

Q. Could you hear the bell at that distance? A. Oh, yes, plainly, especially if the wind comes from the north you can hear it very distinctly.

Q. Do you remember how the wind was on that occasion? A. Well, according to the bell, it must have been from the north then.

Q. At any rate you heard the bell? A. I positively did, yes, sir.

THE COURT: What was the bell at Market street that you spoke of?

THE WITNESS: It was the signal always gives as danger as though the train was approaching.

THE COURT: But you referred to Market street now?

THE WITNESS: Twenty-seventh street.

THE COURT: What was the one at Market street that you spoke about?

THE WITNESS: I call that Market street. Twenty-seventh street, there is absolutely no crossing at Market street. At Twenty-seventh street there is a crossing.

Q. When you have spoken of the Market street bell you mean the one we have been calling the Twenty-seventh street bell do you? A. Yes, sir.

CROSS EXAMINATION BY MR. DIXON:

Q. It was the crash then which you heard that you made it look up? A. No, sir, I was looking towards the railroad.

Q. You were already looking? A. Yes, sir.

Q. And this thing flew by that you know was an engine? A. No, I could not see what it was.

Q. You could not even say what it was. Something went by across Twenty-seventh street, across the tracks towards the west? A. Towards the west, yes, sir.

Q. And it was after that that you learned that it was a locomotive engine? A. No, I saw it was a locomotive engine.

Q. You saw it was a locomotive engine? A. No, sir.

Q. Did you see the impact, did you see the engine strike the car? A. No, sir, I did not.

Q. You did not see that? A. No, sir.

Q. And it was going pretty fast wasn't it? A. Which? The engine? Not very fast at all. No, sir, I should not say so, rather slow.

Q. Rather slow? A. Rather slow.

Q. But you had it in view, how far in your view? A. It was simply crossing the street, that is all; I first observed the engine coming from the,—of course, the bells were ringing and I was expecting this train.

Q. You mean the crossing bell was ringing? A. The crossing bell was ringing, and I was expecting the train, so I looked towards New York to see whether it was a passenger train and—

Q. That all was in sight there? A. Yes, sir.

Q. You could see from your house way down? A. Yes, sir.

Q. So that you saw that engine coming all the way down? A. Yes, sir.

Q. And you did not see it hit the car, the automobile? A. I heard the crash.

Q. The stoop that you were sitting on faced to the east? A. To the railroad.

Q. Faced the railroad? A. Yes, sir.

Q. Are there any houses between you and the railroad? A. At the present time there is one, rather two, I should say; at that time there was but one.

Q. Who lived in those houses? A. Mr. Hunter, the ice cream man had the one and the party who built the new house, I don't really know their name, they built the house and it has just been finished. It has been just finished only in the last couple months, probably a month.

Q. You did not go down after the crash to find out what had happened? A. No, sir; I walked across Market Street.

Q. Where is the station that you were speaking of? A. The station would be the Broadway station.

Q. On which side of this crossing was that station, on the east or the west? A. That I don't really know; oh, it would be to the west, of course.

Q. How far west? A. Well, I am at Twenty-seventh Street and I think the station is at Twenty-second Street, I am not positive.

Q. Did you go down to meet your friends? A. No, sir.

Q. Did your friends come that day? A. Yes, sir.

Q. On that train that you expected? A. Yes, sir.

Q. That was the only bell that you did hear, that crossing bell? A. I heard the engine bell later.

Q. Later, after the crash? A. Yes, sir.

Q. You did not hear that before? A. No, sir.

RE-DIRECT EXAMINATION BY MR. HOBART:

Q. You say you heard the engine bell? A. Yes, sir.

MR. DIXON: Later.

Q. How could you tell that from the crossing bell? A. Why, by the sound.

Q. Where was the engine at that time. A. It was backing up, it started to ring as the engine started to back.

Q. You could tell the difference between the two bells by the fact that they sounded differently? A. Yes, sir.

BY MR. DIXON:

Q. And you could hear it perfectly plainly from where you were? A. Yes, sir.

HARRY N. WEITING, sworn as a witness on behalf of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. Where are you employed? A. With the Aetna Insurance Company.

Q. Were you at one time in the employ of the Erie and the Susquehanna Railroads? A. I was.

Q. In what department? A. In the claim department.

Q. Were you in the employ of those railroad companies on the twenty-seventh of September, 1913, and for some time thereafter? A. I was.

Q. Did you have an occasion to make some investigation of this accident at Twenty-seventh Street? A. I did, yes, sir.

Q. How did you come to make it? A. Through the regular course of my duty, when the report of the accident came in, I took up the reports and went out and made the investigation.

Q. In the course of that investigation was your attention called to the names of the persons who were in the automobiles and who were supposed to know something about the accident? A. It was.

Q. And among them was the name of the Rev. Edwin Lange given to you as a witness? A. Yes, sir.

Q. Did you know him up to that time or ever meet him before? A. No, I never met him before.

Q. Did you find out where he lived? A. Yes, I think it was either Mr. John Lange or Mr. Jurgen Lange, Jr., who told me that he was living up in Dover.

Q. Do you recall where you were told that he lived? A. Why, he was connected with St. Mary's Parish in Dover.

Q. Did you go to see him at that place? A. I did.

Q. Do you recollect about when it was? A. I would not have recalled it except that I just refreshed my memory by the paper there, I see it was on October seventh I know it was about that time.

Q. The paper you refer to is some notes that you made at that time? A. At the time of the investigation, yes, sir.

Q. Did you have an investigation with him at that place? A. I did.

Q. On October seventh? A. Yes, sir, I think that is the date.

Q. Did you inquire from him about the circumstances of the accident? A. Yes, sir.

Q. Did he say to you at that time and place that he heard a bell as he approached the crossing? A. He did.

No Cross Examination.

JOHN GASS, sworn as a witness on behalf of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. How old are you? A. Thirteen years old.

Q. Do you go to school? A. Yes, sir.

Q. Where do you go? A. At Pierce in Philadelphia.

Q. Last September, that is, September of 1913, did you live in Paterson? A. Yes, sir.

Q. Did you live here with your father and mother? A. Yes, sir.

Q. Were you going to school at that time? A. Yes, sir.

Q. Do you remember about an accident on East Twenty-seventh Street? A. Yes, sir.

Q. Where were you just before that accident happened? A. I was walking down the left side of the track with Frankie Simmons.

Q. How did you happen to be there? A. I was walking down to his house, me and him in the afternoon.

Q. Was there anybody with you? A. I was walking down the left side of the track with Frankie Simmons in the afternoon.

Q. Was there anybody with you? A. Frankie Simmons.

Q. Which side of the crossing were you on as to towards New York or the City, towards Paterson City? A. Towards Paterson City.

Q. In which direction were you walking? A. Towards New York, towards the Twenty-seventh Street crossing.

Q. Do you remember which track it was that you were walking on, whether it was the eastbound track or the westbound track? A. The track that the train comes to Paterson on.

Q. That they come to Paterson from New York? A. Yes, sir.

Q. As you were walking along did you see anything of an engine? A. Yes, sir.

Q. Where was the engine when you first saw it? A. It was coming out of the side track from the red house down the other side of the Twenty-seventh Street crossing.

Q. Down by the red house? A. Yes, sir.

Q. About how far, can you give us any idea, how far that was from the crossing? A. About three hundred yards.

Q. Did you notice which track the engine was on? A. Yes, sir.

Q. Did you notice on which track the engine was on? A. Yes, sir.

Q. Which track was it on? A. The track I was coming on.

Q. Which way was the engine moving? A. Backwards, towards Paterson City.

Q. Was it moving backward or frontward? A. Backward.

Q. Did you hear any sound, or whistles from that engine? A. I heard several whistles, but I don't know how many times.

Q. When you heard those whistles where was the engine? A It was about a hundred feet from the crossing.

Q. Was it still moving? A. Yes, sir.

Q. It had not yet got to the crossing? A. No, sir.

Q. How close to the crossing were you at that time? A. I should say about a hundred feet.

Q. Did you keep on walking towards the crossing as the engine approached the crossing? A. Yes, sir.

Q. Did you see anything of this automobile that was hit? A. I did not see the first one, but I saw the second one coming it was about fifty feet away from the crossing.

Q. And did you see it struck by the engine? A. Yes, sir.

Q. Where were you when they struck? A. About seventy-five feet from the crossing.

Q. Were you still on the track or had you got off, or what? A. I was on the side of the track.

Q. Did it make any crash? A. I did not hear the crash; I turned away.

Q. Why? A. I did not want to see the sight?

Q. Were you afraid? A. Yes, sir.

Q. How close to the track was the automobile when you first saw it? A. About fifty feet.

Q. Can you give us any idea of about how fast

it was going? A. It was going quite fast, as fast as the engine about.

Q. About the same rate as the engine? A. Yes, sir, both of them went quite fast.

Q. Did you notice if the automobile slowed up before it got to the crossing? A. No, sir.

Q. Did it slow up? A. No, sir.

Q. Did you see how many people were in that automobile? A. No, sir.

Q. Did you notice who it was that was driving? A. No, sir.

CROSS EXAMINATION BY MR. DIXON:

Q. About how many hundred feet, were you, you say; you were about a hundred feet from the crossing when you heard the first whistle, were you? A. Yes, sir.

Q. And when you heard the first whistle the automobile was about fifty feet away from the track? A. Yes, sir.

Q. And did you hear the whistle after the car was struck? A. No, sir, just before.

Q. Just instantly before? A. Yes, sir.

Q. They were almost together, were they? A. Yes, sir.

Q. And those were the only two sounds you heard, weren't they? A. Several sounds, I don't know how many.

Q. The whistle and the crash? A. Yes, sir.

Q. That is all you did hear? A. Yes, sir.

Q. And how far had you walked before you got to that position? A. About fifty feet.

Q. Along the track? A. Fifty yards, I mean.

Q. Where had you come from? A. From Seventeenth Avenue, from my house, from the Seventeenth Avenue crossing.

Q. From your house? A. Yes, sir.

Q. And did you walk along the track all that way? A. Yes, sir.

Q. How far is that from the crossing at Twenty-seventh Street? A. I should say about fifty yards I was.

Q. Fifty yards? A. Yes, sir.

Q. That is a hundred and fifty feet? A. Yes, sir.

Q. So your house is within a hundred and fifty feet of the crossing? A. No, sir, it is about five hundred yards from Seventeenth Avenue. I live up by Nineteenth Street.

Q. Had you walked all the way down the track? A. Yes, sir.

Q. All the way along the track? A. Yes, sir.

Q. That is what I say; and you had walked from your house along this track? A. From Seventeenth Avenue.

Q. And the first whistle you heard was when you got about a hundred feet away from Twenty-seventh Street. A. Fifty yards.

Q. Why do you say fifty yards, who told you to say that? A. Nobody.

Q. Do you speak in yards generally rather than feet? A. No, sir, a hundred and fifty feet.

Q. A hundred and fifty feet? A. Yes, sir.

Q. And you were within a hundred and fifty feet then of the crossing when you first saw the auto? A. Yes, sir.

Q. And when you first heard the whistle? A. Yes, sir.

Q. And after the engine came to a stop, what did you do, run away? A. No, sir, I went to see the accident.

Q. And you could plainly hear these signals, could you? A. Yes, sir.

Q. How far away was the engine from the crossing when that whistle was blown first? A. I should say about a hundred feet.

Q. And you did not see any other automobile cross? A. No, sir.

Q. Well, if it had crossed, it was right in your view, wasn't it? A. No, sir.

Q. Was there anything to obstruct your view? A. Yes, sir.

Q. What was there? A. The fence.

Q. What fence? A. The lumber yard fence.

Q. How would that prevent you from seeing this automobile cross the track? A. Well, it was too high to look over.

Q. Who? Does it curve around there? A. Yes, sir.

Q. Is there a curve? A. Yes, sir.

Q. You were going toward the east weren't you? A. Yes, sir.

Q. There is not any fence on that side, on the west side of the street? A. No, sir, it is on the left hand side going down.

Q. So that an automobile that would go south over that crossing would be between you and the fence wouldn't it? A. That had crossed all right, I did not see that; I did not pay any attention to it, I did not know there was going to be an accident.

Q. You did not expect any accident at all? A. No, sir.

Q. When the accident came it was an entire surprise to you, wasn't it? A. Yes, sir.

Q. You had no reason to believe that there would be an accident? A. No, sir.

GARRET G. MERSELES, sworn as a witness on behalf of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. Where are you employed? A. By the Pennsylvania Coal Company.

Q. Located where? A. Rochelle Park, New Jersey.

Q. Were you employed there on the twenty-seventh day of September, 1913? A. Yes, sir.

Q. In the afternoon of that day, about half past five or a quarter to six where were you? A. I came up to Paterson on the train arriving here about 5.41 in the afternoon.

Q. At what station did you get off? A. At Broadway.

Q. Then where did you go? A. I walked down back, down the track toward home.

Q. Back towards New York? A. Yes, sir, towards Park Avenue.

Q. Was your attention called to an accident at Twenty-seventh Street? A. Why, the first I knew of it was when I seen the brakeman.

Q. What did you do? A. I asked him what was the matter, when I saw the man running, and he said there was an accident and I went down there.

Q. Did you go down to the crossing? A. Yes, sir.

Q. How long did you stay there? A. I was there until about twenty minutes past six or thereabouts.

Q. Did you see the auto and the light engine? A. Yes, sir.

Q. While you were at the crossing did another train come going west? A. Coming from New York, yes, sir.

Q. Were you there when that train came up to the crossing? A. Yes, sir.

Q. Do you know where the crossing bell is at that crossing? A. Yes, sir.

Q. State whether or not the crossing bell rang when that other train came up? A. It did.

Q. For how long a time did it ring as far as you noticed? A. Why, until the train passed the crossing.

CROSS EXAMINATION BY MR. DIXON:

Q. Your train arrived at about what hour? A. It was due to arrive at Broadway at 5.41.

Q. Were you late? A. I could not say, I don't remember.

Q. When you did arrive there, had the accident already taken place? A. No, sir.

Q. It had not taken place? A. No, sir.

Q. So that you passed that crossing before the accident took place? A. Yes, sir.

Q. When you went back did you see the locomotive? A. Yes, sir.

Q. And was she to the east or west of the crossing at that time? A. East of the crossing.

Q. And the automobile, the wreck of it, was where? A. On the track.

Q. And where, to the west? A. To the west of the crossing.

Q. And was the locomotive on the main track at that time or on a switch? A. On a switch.

Q. And it was while it was on the switch there that this other train went by? A. Yes, sir.

BY MR. HOBART:

Q. Did you notice the number of that engine? A. No. 125.

MR. COLLINS: You mean this engine on the switch?

MR. HOBART: Yes.

JOHN W. BLACKBURN, sworn as a witness on behalf of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. You are employed by the Susquehanna Railroad? A. Yes, sir.

Q. In what capacity? A. Road foreman of engines.

Q. As such do you have general charge and supervision of the engines of that railroad? A. Yes, sir.

Q. Did you on the twenty-seventh of September, 1913, have an engine known as Number 125? A. Yes, sir.

Q. What kind of an engine was that? A. That is known as a Consolidation Engine.

Q. Used for what purpose? A. For switching purposes.

Q. Did you at my request weigh the bell on that engine? A. Yes, sir; I weighed it myself.

Q. How much does it weigh? A. 136 pounds.

Q. Has it got the same bell now as it had last September? A. Yes, sir.

Q. And it has had the same bell on all the time for several years past, has it? A. Yes, sir, the same bell.

No Cross Examination.

JOHN F. KALAHER, sworn as a witness on behalf of the Defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. You are a surveyor? A. Yes, sir.

Q. And the same surveyor who made some measurements of a witness who was on the stand this morning? A. Yes, sir.

Q. And those measurements that were made of that witness are correct as stated by you at that time are they? A. Yes, sir.

Q. Did you make a map for us in this case? A. Yes, sir.

Q. When did you make the survey? A. October fourth, 1913.

Q. Did you afterwards extend the map at my request? A. Yes, sir.

Q. This blue print that I show you, is that the map that you surveyed? A. Yes, sir.

Q. State generally what it shows? A. It shows the physical conditions as I found them around the crossing at East Twenty seventh Street, it shows the track down as far as Thirty-first Street, Twentieth Avenue and the fences and the poles in the immediate vicinity of the track.

Q. Is there any street crossing between Thirty-first Street and Twenty-seventh Street? A. No, sir.

Q. And the scale of the map is what? A. One inch to twenty feet, one inch equals twenty feet.

Q. Is that based upon an actual survey? A. Yes, sir.

Q. By you? A. Yes, sir.

Q. Assisted by whom? A. By Mr. Mallalieu.

MR. HOBART: I offer the map in evidence.

MR. DIXON: I want to cross examine the witness first.

MR. HOBART: All right.

By Mr. Dixon:

Q. This map you made when? A. October fourth, 1913.

Q. Did you make this blue print October 4th? A. Yes, sir.

Q. Or the survey October fourth? A. I got all my measurements on October fourth and I simply extended the map a year later, on October twentieth, just to show the street further east.

Q. Did you put down at the crossing here all the physical poles etc.? A. Yes, sir, all that I found there.

Q. Do you show the crossing gates there? A. There was not any there when I was there; there was just the posts there for the crossing gates.

Q. Where were the posts? A. Well, they are indicated there on the map.

Q. They are not so marked? A. Then I did not designate them by any writing, but I have got them marked.

Q. Won't you come here and designate them? A. (The witness does so).

Q. Mark on the map what they are? A. (The witness does so).

Q. What do you call them? A. Gate base.

Q. What do you mean by Gate base? A. That is the base the gate itself is fitted on.

Q. Gate for what? What kind of a gate? A. A crossing gate.

Q. An arm, do you mean? A. The arm.

Q. Is the bell post indicated here? A. Crossing bell (indicating) indicates the post, and the bell itself, that is the bell post is indicated and the crossing bell is there.

Q. The crossing bell is the circle with a cross in it near the line of the fence on the easterly side? A. Yes, sir.

Q. Do you indicate how high the board fence is? A. No, sir.

Q. Didn't you measure it? A. Yes, sir.

Q. Why didn't you indicate how high it was? A. Well, that is a plan, I would have to show the elevation to show the heighth of the plan.

Q. Can you tell us how high it is? A. Yes, sir.

Q. How high was it? A. Nine feet high.

Q. That board fence is indicated here by a line paralleling the east Twenty-seventh Street and is that line intended to show the termination of that fence? A. No, sir.

Q. How far does that fence extend along Twenty-seventh Street? A. I don't know; I did not measure it back Twenty-seventh Street.

Q. Why not? A. Well, I was just simply making a map of conditions around the crossing.

Q. Weren't you told to take into consideration that fence? A. No, sir; I was simply told to make a survey of that crossing.

Q. Didn't you understand the survey of the crossing was to embrace the direction and extent of the fence? A. No, sir. I did not know anything at all about it. I did not know what they wanted the map for.

Q. You cannot tell us from any memorandum how far that fence extends along Twenty-seventh Street? A. No, sir.

Q. You have another line of a board fence that parallels the right of way of the railroad company? A. Yes, sir.

Q. It seems to join the other fence? A. Yes, sir.

Q. How far does that extend along the railroad? A. I can tell you that, that is about two hundred and nineteen feet.

Q. Those two lines or pairs of lines east and west are the main tracks are they? A. They are marked on the map there, I don't know which one you are pointing to.

Q. They are marked "West" and "East"? A. Yes, sir, the main line tracks.

Q. Those are the westbound tracks and the eastbound tracks? A. Yes, sir.

Q. And J. H. Diederick siding, what is that? A. That is a siding a switch track that runs into the coal yard there.

Q. Does that connect also with the main track, with the westbound track? A. Yes, sir.

Q. How far does that siding parallel those two main tracks? A. Why, from the point of the switch to the end of the siding is 1126 feet.

MR. DIXON: That is all.

MR. HOBART: The map is offered.

MR. DIXON: There is no objection.

Admitted and marked "Defendant's Exhibit D-1" of this date.

BY MR. HOBART:

Q. Now, will you come down to the easel so that I can ask you to point out certain other matters in connection with this blue print. As you see in a southerly direction from East Twenty seventh Street toward the railroad tracks, kindly state whether the streets cross the tracks at an angle or directly across? A. They cross at an angle of about twelve degrees. I did not measure that. That is what I got from calculating the triangular measurements, that I took with a transit, and that are correctly shown on the map.

MR. DIXON: How do you know they are correctly shown?

THE WITNESS: Well, because that has to be correct, because I have taken it from the different measurements and it has got to be correct.

Q. It cannot be different and come right? A. No, sir.

Q. As you approach the railroad tracks from the north will you state the distance from the northerly, the most northerly rail of the west bound track to the board fence around the coal yard measured at right angles? A. The corner of the fence at right angles from the north rail of the westbound track is thirty feet and one inch.

Q. What is the distance from the north rail of the westbound track to the board fence extended across the highway and measured in the line of the highway? A. That will measure about forty-five feet approximately, within an inch or so.

Q. Did you get the whistling post indicated on that map anywhere? A. Yes, sir (showing).

Q. Point it out please? A. (The witness does so).

Q. It is marked W. P.? A. Yes, sir.

Q. At a point a short distance west of Thirty-first Street? A. Yes, sir.

Q. Do you indicate the telegraph poles along the right of way lines? A. Yes, sir.

Q. Referring to this siding, is there a siding leading from the westbound track towards the coal yard and the lumber yard? A. Yes, sir.

Q. And where is the switch point of that siding, how far from the Twenty-seventh Street crossing? A. Forty-seven feet and six inches from the centre line of the crossing.

Q. Have you got any measurements showing the heighth of the post on which the crossing bell was erected? A. Why, no, sir, I did not take the heighth, I know what they generally are.

Q. What are they? A. Well, they are about twelve feet high.

Q. How far is that whistling post to which you have already referred, how far is that from the Twenty-seventh Street crossing? A. 1225 feet east.

Q. And how far is Thirty-first Street from Twenty-seventh Street? A. About 1497 feet to the intersection of both streets.

Q. Between Twenty-seventh Street and Thirty-first Street is the track straight? A. Yes, sir.

Q. And for how long a distance further do the tracks continue to be straight? A. About a hundred and thirty feet further.

Q. Did you also make another plan at my request showing the location of certain buildings in the neighborhood of the crossing? A. Yes, sir.

Q. This plan that I show you, is that made by you from actual survey? A. Yes, sir.

Q. And does that show in addition to the surroundings immediately around the crossing certain buildings around Nineteenth Avenue? A. Yes, sir.

MR. HOBART: I offer the second and smaller blue print in evidence.

THE COURT: Admitted.

Marked "Exhibit D-4."

Q. Now, in reference to the small blue print this house stood how far is that from the crossing? A. From the north rail of the westbound track it is four hundred and seventy seven and one half feet.

Q. Do you know how far Mrs. Stroutsberg lived from there? A. That is it here.

Q. Have you any measurement showing the arrangement of the wires and circuits for the crossing bell? A. I have the measurement from where the circuit starts east.

Q. That would be for the westbound track? A. Yes, sir.

By Mr. Dixon:

Q. When did you make that? A. October the fourth.

Q. Was the circuit in the same condition then as it was on the day of the accident? A. I don't know.

Q. Did you hear it was changed? A. No, sir.

Q. You were just about to tell us about the bell circuit measured by you on the fourth of October, 1913. With particular reference to the west bound tracks state how far from the crossing that circuit began. A. 1415 feet and three inches to the center line of East 27th Street.

Q. How were you able to determine that location? A. Well, I measured down along the track until I came to the joint down at a battery box that they have placed this side of 31st Street where, as the train goes over, it rings the bell—where the rail is bonded.

Q. You can tell by the wires on the rail? A. Yes.

Q. Did you also measure how far that circuit extends to the west of the crossing? A. I did. It extends from the center of the crossing about twenty-seven feet.

Q. Twenty-seven feet from the center point of the crossing? A. Yes.

Q. How wide is the crossing itself at that point? A. The crossing itself at that point is twenty-eight feet and three inches.

By the Court:

Q. That point twenty-seven feet, is that where it shuts it off? A. As the train goes over, it stops the bell.

By Mr. Hobart:

Q. As soon as the wheels go past that point

the circuit is open and the bell stops ringing; is that right? A. That is the idea.

Q. Did you measure the east bound circuit? A. No, sir.

Q. Are they separate circuits? A. Yes.

Q. But only one bell? A. One bell, two circuits.

Q. Do you know whether the general plan of the east bound circuit is the same as the west bound circuit, that is to say, approaching for a considerable distance, ringing the bell, and stopping after the train passes beyond the crossing? A. Yes, sir; it is.

Q. Did you make some observations of the extent of the view approaching this crossing from north and looking towards New York? A. Yes, sir.

Q. When did you make your observations? A. Why, I made them at two different times. I made the first on October 4th, 1913, and I made one also on October 30th, 1914.

Q. Was the view on these two different occasions the same or otherwise? A. Well, it varied a little on account of the object that I was using. The last time I used a train. The time before that I simply had a sighting poll. I could see further back with the sighting poll than with the other object. It varied sometimes twelve feet, sometimes fifteen feet.

Q. Substantially it is about the same? A. About the same.

Q. Where did you take your position in the highway in order to make this observation? A. In the center of the highway.

Q. All of them were made in the center of the highway? A. Yes.

Q. From what point did you make your measurements, that is, from what part of the crossing? A. The center of the crossing.

Q. Measured in the line of the highway? A. Yes, sir.

Q. And in the middle of the highway? A. In the middle of the highway.

Q. State what the extent of the view was at a point twenty-five feet north of the north rail of the west bound track, measured in the line of the highway as you have described? A. Twenty-five feet north?

Q. Twenty-five feet north; yes, north. A. 2037 feet.

Q. North of the north rail of the west bound track? A. North of the north rail.

BY THE COURT:

Q. That is looking eastward? A. Yes, sir.

BY MR. HOBART:

Q. Did you take any views at forty-two feet and at forty-five feet? A. Yes, sir.

Q. What was the extent of the view at forty-two feet and at forty-five feet? A. The same view, 1770.5.

Q. That was also looking towards the east? A. Yes, sir.

Q. Same direction as the other view? A. Yes.

Q. And the distance there also measured from the same rail? A. Yes, sir.

Q. Did you take any other views? A. Yes, sir; I took one at 47 feet back.

Q. What was the view at 47 feet? A. 1098.4.

Q. Did you take any at 50 feet? A. Yes, sir.

Q. What was the view? A. 461 feet.

Q. And at 55 feet. A. 260.7.

Q And at 60. A 170.6.

Q. And at 75 feet. A. 100 feet.

Q. And at 100 feet? A. 74.3.

Q. Now, going back to the view at 25 feet, did

you make any observations between 25 feet and 42 feet to see how the view was in between those two points? A No, sir.

By the Court:

Q. What did you say the view at 42 feet was? A. 1770.5.

By Mr. Hobart:

Q. Did you have the same view at 45 feet? A. Yes.

Q. So that there was no change between 42 feet and 45 feet? A. No, sir.

Q. Let me ask you somewhat of a general question. At 45 feet did this coal yard fence obstruct your view? A. Yes, sir.

Q. To what extent? A. Well, the extent of the difference between when you are clear of it—you can see down the track for 2037 feet, and as you go back to 42 feet the fence starts to cut off your view, to the extent of the difference between 2037 feet and 1770 feet.

Q. Is there anything else at that point outside of the fence? A. No, sir.

Q. Then at 42 feet and 45 feet the fence obstructs the view to the same extent? A. Yes.

Q. You can still see 1770 feet? A. Yes.

Q. Would that bring you east of 31st Street? A. I think so. Yes; that would be east of 31st Street; yes, sir; further down.

Q. Then, as you go further back, the view—A. Becomes smaller.

Q. As you have described? A. Yes.

Q. Who assisted you in taking these views? A. Why, a man by the name of Mr. Mallalieu.

Q. I wish you would describe a little more in detail just how you took them? A. Why, we measured down the center of 27th Street and measured off these distances, 25 feet, 42 feet, 45

feet, and so on, up to 100 feet, and sent a man down the track with a poll where you could see in a straight line, so we marked that point; and that was our clear vision, and we measured from where that point was marked on the track to the center of 27th Street.

Q. You speak of a poll. How high above the ground was the poll? A. You mean the crossing poll?

Q. No; the sight poll? A. Six feet high.

Q. How high is a locomtoive, do you know? A. I could not tell you.

Q. It is considerably more than six feet high, is it not? A. Oh, yes.

By the Court:

Q. How high were you when these views were taken? A. Standing up.

Q. When you made the measurements and the distances with your naked eye? A. Standing on the street.

By Mr. Hobart:

Q. How high would that bring your eye above the ground, about? A. Five feet, eight.

Q. You have a rule in your pocket? A. Yes, sir.

Q. This map is made with a rule? A. With a steel tape.

Q. I mean to scale? A. To scale, yes.

Q. Will you come here and indicate on this map with ink the initial point from which you made your measurement and to which you have testified? A. (Witness does so).

Q Now, standing at that point how far could you see down the track to the east? A. Two thousand and thirty seven feet.

Q. And why can't you see further? A. There is a curve of the track where it goes around.

Q. In which direction? A. Goes north.

Q. Now, what is the distance from the most northerly rail of the siding to the northerly rail of the main track? A. About sixteen and one half feet.

Q. Taking your initial point and measuring back to the hundred and forty foot point was the observation made at one hundred feet; measure it off on the diagram; those were the two extreme points that you took? A. Yes, sir.

Q. Did you locate on this map the little red house? A. No, sir.

Q. Do you know of any little red house from which this engine came? A. No, sir; I don't remember any little red house down here.

Q. No, down here where the engine came from? A. No, sir.

Q. On the right of way? A. No, sir.

By the Court:

Q. Is that board fence continuous? A. To this point here.

Q. And does it join to the one at Twenty-seventh Street? A. Yes, sir.

Q. How far is that measured at right angles from the westbound track? A. Thirty feet and one inch.

Q. When you go back one hundred feet doesn't that obstruct your view down the track? A. Yes, sir; it does.

By Mr. Dixon:

Q. How far can you see down the track? A. Seventy-four feet and three inches.

Q. Is that correct, accurate I mean? A. Yes, sir.

Q. That is across the edge of the fence? A. Yes, sir.

Q. Now you say you went over this signal system circuit and measured that? A. Yes, sir.

BY THE COURT:

Q. You say you took these measurements starting at twenty-five feet and so back to one hundred feet from which track? A. From the north rail of the westbound track.

Q. That was the closest rail to people coming down Twenty-seventh Street? A. Yes, sir.

BY MR. DIXON:

Q. Now, do you know anything about that signal system? A. Why, no; except that where the rails are bonded.

Q. What do you mean by that? A. The rails are joined together by wires and makes a continuous circuit to the bell.

Q. Are those wires exposed to view? A. Yes, sir.

Q. So you could tell them? A. Oh, yes.

Q. Aren't there other wires there? A. There are, but you can always tell a bell wire.

Q. How can you tell them? A. They way they are connected with the rail.

Q. How are they joined? A. Where the rails come together.

Q. Don't they follow on? A. No, just at the ends of the rails.

Q. And then? A. That makes the circuit and carries it on down to the bell.

Q. And then rings the bell? A. Yes, sir.

Q. Did you start to measure that from the pole indicated here on the map? A. No; I measured it from the center of the crossing.

Q. Now, that bell, what is located at the foot of that post? A. A battery box.

Q. A battery box? A. Yes, sir.

Q. What kind? A. I don't know.

Q. Wet or dry? A I couldn't tell you.

Q. How do you know it is a battery box? A. It was marked.

Q. And you measured from one battery-box to the other battery-box? A. No; down to where it is bonded.

Q. To the end? A. Where it is joined.

Q. Do they have two battery boxes or only one? A. I think two.

Q. One at each end? A. I think so

Q. You had to know in order to tell where the end was? A. I could tell the way the rails are bonded.

Q. You mean that there was a long distance where there was no wires? A. There is a piece—I don't know what you call it.

Q. What do you mean by bonded? You mean the wire goes through the rail or what? A. Connects the rails to the bell.

Q. How is it fastened to the rail? A. I don't know that.

Q. It has to be in contact with each rail? A. Yes, sir.

Q. If the contact is broken the connection isn't there? A. No, sir.

Q. And then the thing is out of order? A. I suppose so.

Q. You made your examination on what day? A. October fourth, 1913.

Q. I show you a photograph of the wire or wires or what appears to be a wire; was that what you call a bonding wire? A. I guess so; I don't know.

Q. That is the only wire there, isn't it? A. That is the only wire shown in that photograph.

BY THE COURT:

Q. Is that the one you measured to? A. I

measured to the wire—I measured to the connection.

Q. Was it the same as is now shown you? A. Yes, sir.

By Mr. Dixon:

Q. Was that the same? A. Yes, sir.

At this point an adjournment was taken until Thursday, the third day of December, nineteen hundred and fourteen, at ten o'clock A. M.

Paterson, N. J., December 3rd, 1914.

The trial was resumed this date pursuant to adjournment.

Present: Mr. Dixon, Mr. Farmer, Mr. Collins, Mr. Hobart.

John F. Kalaher, recalled on the part of the defendant, testifies as follows:

Cross Examination by Mr. Dixon:

Q. Mr. Kalaher, I think we were examining about a little photograph yesterday? A. Yes, sir.

Q. That is the one you testified about yesterday morning (showing witness photograph)? A. Yes, sir.

Mr. Dixon: I will have this photograph marked for identification.

The said photograph is marked "Plaintiff's P-6 for identification" of this date.

Q. I understood you to say yesterday that you did not measure this angle, itself, the obtuse angle of the northeast intersection of the fence. A. I

measured the angle but I didn't measure it with a transit.

Q. Generally you do measure angles with a transit do you not? A. No, sir.

RE-DIRECT EXAMINATION BY MR. HOBART:

Q. Referring to this picture marked P-6 for identification you don't know where that was taken, I suppose? A. No, sir; I have not any idea.

Q. Does that look like the general arrangement of the wires by which the rails are bonded? A. Somewhat, yes, sir.

Q. Is there anything on this from your recollection, differs from what there was at East 27th Street crossing? A. Why, I could not tell where that photograph was taken. It looks to me as if the wires, one of the wires was broken, something like that, in that picture, I don't know whether it is or not, it looks a little too long for the joint.

Q. But it shows the general arrangement of connecting the two bonds? A. Yes, sir.

Q. Reference was made yesterday to a little red house or red building of some kind, did you at my request go down to the crossing last night? A. Yes, sir.

Q. Did you look for the red building? A. Yes, sir.

Q. Did you find it? A. Yes, sir.

Q. Where was it? A. It was 2010 feet from the center of the crossing on the south side of the track, about the starting of the point of the curve.

Q. Where was it with reference to 31st Street? A. I should imagine it would be about 150 to 175 feet from 31st Street.

Q. East or west? A. It was east.

Q. That is further towards New York? A. Further towards New York.

Q. Can you see that red building from the crossing? A. Yes, sir.

Q. What kind of building was it? A. It was a small stable I think or a shed for wagons or horses or something.

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RE-CROSS EXAMINATION BY MR. DIXON:

Q. Again referring to this photograph plaintiff P-6 for identification will you indicate what it is that you say looks like a broken wire, mark it on there. A. I don't know whether it is a broken wire, that is, my judgment only.

Q. It looks like a broken wire which has been twisted up, does it not? A. (The witness marks
20 on the photograph with ink.)

Q. It looks like a broken wire that had been twisted does it not? A. Yes; it does.

Q. And if that were one of the bonding wires, a part of the bell system that was broken and the end twisted would it affect the bell? A. I don't know, I could not tell you.

Q. Well, the purpose of the wire is to make the connection, is it not? A. I suppose so.

FREDERICK D. PANGBORN, sworn as a witness on
30 the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. You are a photographer? A. Yes, sir.

Q. Did you make some photographs of this crossing at East Twenty-Seventh Street, Paterson? A. Yes.

Q. When did you make them? A. September twenty-ninth, 1913.

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Q. You made them September twenty-ninth, 1913? A. September twenty-ninth, 1913.

Q. Are these the photographs which I show you? A. Yes; these are the photographs,

Q. I notice a number in the lefthand corner of each photograph, beginning with 4095. What is that? A. That represents the number of the negative taken. I number all negatives taken.

Q. (Showing witness.) I show you seven photographs. Were these all taken by you on September twenty-ninth, 1913? A. Yes, sir; they were all taken by me on that day.

Q. When you took these photographs did you make a memorandum of where you stood when they were taken? A. I did.

Q. Corresponding to your file number? A. It corresponds to the file number.

Q. Calling your attention to photograph number 4095, where was that taken? A. That was taken looking east over the north rail of the westbound track in the center of the highway.

Q. When you say the north rail of the westbound track, you mean that your camera stood on the north rail? A. Stood directly over the rail.

Q. Of the westbound track? A. Of the westbound track looking eastward.

Q. Have you marked that on the back? A. Yes, sir.

Q. The words "east, from over north rail, westbound track"? A. That is correct.

Q. Calling your attention to photograph number 4096, where was that taken? A. 4096 was taken at a point forty-two feet north of the near rail of the westbound track, looking east.

Q. Did you make the measurements yourself? A. As to where I stood?

Q. As to where you stood? A. Yes, sir.

Q. Did you measure in the center of the highway? A. No; I calculated the center of the highway.

Q. Did you get it as close to the center as you could, by observation? A. Yes; approximately the center.

Q. Did you measure the distance from the north rail? A. Yes.

Q. When you say it is forty-two feet that is from actual measurement? A. Yes; that is from actual measurement.

Q. Have you got marked on the back of number 4096 the point where you took it? A. I have.

Q. "Forty-two feet north from near rail of westbound track"? A. Yes.

Q. I show you photograph number 4097. Where was that taken? A. That was taken forty-five feet north from the near rail of the westbound track looking east.

Q. You have got that marked on the back for references? A. I have.

Q. And photograph number 4098—where was that taken? A. That was taken fifty feet north from the near rail of the westbound track looking east.

Q. And that is marked on the back? A. That is also marked on the back.

Q. I show you photograph number 4099. Where was that taken? A. That was taken seventy-five feet north from the near rail of the westbound track, looking east, and it is marked on the back.

Q. And photograph number 4100; where was that taken? A. That was taken one hundred feet north of the near rail of the westbound track, looking east.

Q. That was looking directly at the crossing? A. Well, it was a general crossing view, but there is an easterly view also.

Q. Looking slightly to the east? A. Yes. That is also marked on the back.

Q. And photograph number 4101; where was

that taken? A. That was taken looking north one hundred and fifty feet south of the westbound track. That is also a general crossing view.

Q. Loking directly toward the track? A. Directly toward the crossing. That was taken from the northside of the track. That is marked on the back also. Q. That is taken from the southside of the track? A. I should say southside, looking in the opposite direction.

Q. All these photographs are marked on the back? A. Yes; they are all marked on the back.

Q. Were the measurements showing where your camera stood taken by you? A. I was right there when the tape was laid down, and I watched the measurement when they were marked down, and I made a note at the time; I saw the figures as they were marked.

Q. How high was the camera above the ground when you took the picture? A. I think these pictures were taken at a height of five feet three inches.

Q. Is that about the eye level as you stood upon the ground? A. That is about on my eye level; yes.

Q. These various distances that you have given for the position of the camera were all by measurements approximately in the center of the highway? A. Yes.

MR. HOBART: I offer these seven photographs in evidence.

BY THE COURT: They will be admitted.

Q. Looking at the stantion on which the gate swings—where was that? A. Well, that would be here.

Q. You are pointing to photograph No. 4100? A. Yes. This is the one and this is the other one.

By Mr. Hobart:

Q. Wait a minute. We will offer them in evidence. The defendants offer seven photographs in evidence and they are numbered D-5, to D-11 inclusive.

By Mr Dixon:

Q. In D-11 you are looking in a northerly direction up the railroad, are you not? A. Yes, sir.

Q. And within the fence enclosure? A. Yes.

Q. Wouldn't that fence enclosure there in that photograph show you the building of D. H. Fredericks coal pockets right here on the photograph in large letters. How far is that from the fence paralleling 27th Street? A. I don't know.

Q. Do you know how far away your camera was at that place? A. Yes, sir.

Q. You were one hundred and fifty feet away? A. Yes, sir.

Q. You don't know how far this was away? A. No; I don't; do you mean the building?

Q. Yes; from 27th Street. A. No, I don't.

Q. How near the fence does it approach, do you know? A. No; I don't.

Q. According to the photographs can you give any approximation? A. No; according to this photograph, I can't.

Q. You don't think it does? A. No; not in this case.

Q. Why not in this case? A. Because it doesn't in this case.

By Mr. Hobart:

Q. Calling your attention to D-7, does that building referred to by Mr. Dixon appear in that picture in that photograph? A. No, sir.

Q. And that is the photograph taken at forty-five feet from the rail? A. Yes, sir.

Q. Calling your attention to D06 does the building appear in that picture? A. No, sir.

Q. That was taken at 42 feet from the rail? A. Yes, sir.

Q. Did that building in any way interfere with the view up to the point say 45 feet from the rail? A. No, sir.

Q. Calling your attention now to Exhibit D-6 again, taken at 42 feet from the rail, will you state whether or not a locomotive appears in that picture? A. Yes, sir; there is an engine down below.

Q. In which way was that engine headed at the time you took the picture? A. Well, it was headed in an easterly direction, towards Jersey City.

Q. That is with the tender facing towards the crossing? A. Yes, sir.

Q. Going towards the east? A. Yes, sir.

Q. Which track was it on? A. It was on the westbound track.

Q. Calling your attention to G-7 does the view of the engine show in that picture? A. Yes, sir; it does.

Q. Is that the same engine? A. Yes, sir; that is the same engine.

Q. With the tender facing—facing towards the crossing? A. Yes, sir.

Q. And on the westbound track? A. Also on the westbound track.

Q. Did you observe what the number of the engine was? A. I don't think so, just a minute, I will see (referring to notes) No; I made no note of the number of the engine.

Q. Calling your attention to Exhibit D-8 does the same engine appear in that picture? A. Yes, sir.

Q. On the same track? A. On the same track.

Q. Calling your attention to Exhibit D-9, does the same engine appear in that picture on the same track? A. Yes, sir.

Q. And does it also appear in D-10? A. It does.

CROSS EXAMINATION BY MR. DIXON:

Q. You say it appears in this picture D-6? A. Yes, sir.

Q. Where is it? A. (The witness indicates.)

Q. You would not know there was an engine unless somebody told you, would you? A. I think you would.

Q. Is that the same engine that appears in all the photographs? A. Yes, sir; the same engine.

Q. How do you know that? A. Because I saw it when it was there, no other engine was around at that time.

Q. This engine was placed in position for you, was it? A. Not that I know of; it was there, that is all I know.

Q. Was it standing or running at the time when we see it over by the fence there, when you took that photograph? A. I believe it was standing.

Q. It was stopped then for you to take the photograph, was it? A. Yes, sir; it had to stop so that I could get a picture of it.

Q. It was a time exposure. A. Yes, sir; it was a cloudy day.

Q. And the first picture where you say it is an engine down in the vista there was that standing at that time? A. I think it was, yes, sir; yes, I think it was.

Q. Whatever it is there in your photograph it was standing for the purpose of your taking the picture? A. Yes, sir.

FOSTER POST, sworn as a witness on the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. Where do you live? A. 103 17th Avenue.

Q. Were you living there on the 27th of September, 1913? A. Yes, sir.

Q. About 5:45 in the afternoon of that day was your attention attracted to an accident at that crossing, the 27th Street crossing? A. No, sir.

Q. You did not see the accident? A. No, sir.

Q. Did anything unusual happen at that time? A. Yes, sir.

Q. What was it? A. A young fellow ran up the street to the railroad.

Q. He ran past your house? A. Yes, sir.

Q. You saw him? A. Yes, sir.

Q. What did you do? A. I ran out.

Q. Did you go up to the crossing? A. Yes, sir.

Q. What did you find when you got there? A. I saw the automobile on the track.

Q. How far is your house from the crossing? A. Oh, six or seven hundred feet.

Q. Did you see a locomotive engine near the crossing when you got there? A. Yes, sir.

Q. Was it standing still at that time? A. Yes, sir.

Q. How long did you stay around the crossing? A. Oh, about an hour.

Q. While you were there did any train, any passenger train come on the westbound track? A. Yes, sir.

Q. Was it coming on the same track on which that engine stood when you first got there? A. Yes, sir.

Q. Do you know whether or not the crossing bell rang when that passenger train came along? A. Yes, sir.

Q. Did it ring? A. Yes, sir.

Q. In what way did it ring? A. Oh, so I could hear it.

Q. Was it a continuous ring? A. Yes, sir.

Q. And did you notice where the passenger train was when that crossing bell first began to ring? A. Beyond 27th Street.

Q. You don't know how far beyond? A. No, I do not.

Q. You did not notice that? A. No, sir.

Q. When you say beyond 27th Street, do you mean towards New York? A. Yes, sir.

CROSS EXAMINATION BY MR. DIXON:

Q. What time did that train come there? A. Oh, somewheres around six o'clock.

Q. After six, wasn't it? A. Yes, of course.

Q. Do you know what train it was, what time it was due at the station there? A. It was one minute after six, I think.

Q. Was it late do you know? A. I couldn't tell you.

Q. Did she stop before she went over the crossing? A. Yes, sir.

Q. Came to a stop? A. Yes.

Q. Where did she come to a stop? A. Twenty-Seventh Street.

Q. Hum? A. Near Twenty-Seventh Street.

Q. Before Twenty-Seventh Street? A. Yes, sir.

Q. How far before—before it got to Twenty-Seventh Street? A. Yes, sir.

Q. How far away? A. Twenty-five feet?

Q. The bell wasn't ringing while she was standing there? A. I couldn't say that.

Q. It was after she started up that you heard that? A. Yes.

Q. What part of the train was twenty-five feet away, the engine? A. Yes.

Q. How long did she stand there? A. About fifteen minutes.

Q. And where were you standing when she crossed the crossing? A. Somewhere around Twenty-Sixth Street.

Q. Hum? A. Twenty-Sixth Street, down there further.

Q. And, well, could you say—when the bell stopped ringing could you say where the train was when it stopped ringing? A. No; I could not.

Q. Did it stop ringing before she got all the way over the crossing? A. No; I don't think so.

Q. You weren't paying attention to the bell? A. No; I wasn't.

Q. Where were you when you heard it ringing? A. Up by the accident.

Q. How long did it ring—how long a time did it continue to ring? A. I don't know that.

BY THE COURT: Mr. Post, speak up. The jurymen have to strain their ears all day long to hear what the witnesses are saying; speak up so they can hear you.

BY MR. DIXON: What was that last answer, Mr. Stenographer?

BY THE STENOGRAPHER: "I don't know that."

Q. That is all.

EUGENE ZINN, sworn as a witness on behalf of the defendant, testifies as follows:

BY THE COURT: Mr. Zinn, please speak up so we can hear you.

BY THE WITNESS: I will try and do so.

BY THE COURT: All right. Proceed.

DIRECT EXAMINATION BY MR. HOBART:

Q. What is your business? A. Automobile business.

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

Q. How long have you operated cars? A. About seven years.

Q. Have you operated Cadillac cars? A. Yes, sir.

Q. For how long? A. About seven years.

Q. Have you a Cadillac 1910 car? A. Yes, sir.

Q. Did you some days ago, at my request, make some tests with that car? A. Yes, sir.

Q. Was it a two seated car? A. A five passenger tonneau.

Q. That is a demi-tonneau? A. A five passenger car.

Q. Where did you make those tests? A. Twenty-Seventh Street.

Q. How close to the track did you make them? A. I don't know how close.

Q. Did you make them on the north side or the south? A. Between Broadway and Park Avenue.

Q. Yes; between Broadway and Park Avenue, and how was the weather, clear when you made those tests? A. Clear; yes, sir.

Q. What condition was the road in? A. Dry.

Q. Macadam is it? A. No, dirt road.

Q. And when you made the tests which way

did you go? A. Well, let me see, I was looking toward Market Street.

Q. Toward the railroad? A. Yes, sir.

Q. How many people were in the car with you? A. Me and two others.

Q. Did you have a speedometer on your car? A. Yes, sir.

Q. You said there were two others with you. Where did you sit—in the front seat, of course? A. Yes; and the other two sat in the back.

Q. Did you make any test to see how quickly you could stop going at certain speeds? A. Yes.

Q. Going at a speed of five miles an hour in what space did you make that stop?

MR. DIXON: I object to that as being immaterial and irrelevant, unless defendant shows that the circumstances were practically the same as at the time of the accident. Nothing has been shown to indicate that they are the same. It is not shown that fences are the same, or that the roadway is the same.

THE COURT: Is there any evidence as to a speed of five miles an hour?

MR. HOBART: I think not.

MR. DIXON: The reason that I object is that I think they are bound to show that the conditions are the same, and we want them to show that they are the same.

THE COURT: They show that they are practically the same.

MR. DIXON: I do not think that they have. I want them to show that they are the same.

MR. HOBART: I will admit that they were.

MR. DIXON: All these conditions?

MR. HOBART: I concede they were.

THE COURT: I will admit it if it relates to the same speed as testified to.

MR. HOBART: Of course, there has been varying testimony as to speed.

THE COURT: Eight miles, as I recollect, is the lowest.

Q. Did you make the test of the space in which you could stop going at a speed of ten miles an hour? A. Yes, sir; I did.

Q. Going at a speed of ten miles an hour, in how short a space could you stop, or did you stop? A. I do not just remember. I could tell you if I looked at the thing.

Q. Did you make a memorandum of it? A. I made a memorandum of it.

Q. You made a report of it, did you? A. Yes, sir.

Q. Refreshing your recollection by the paper that purports to be signed by you, under date of October 22, 1914, can you by referring to that now tell us in what space you stopped going at a speed of ten miles an hour? A. 68 inches.

Q. And going at a speed of fifteen miles an hour, in what space did you stop? A. 16 feet nine inches.

Q. And going at a speed of twenty miles an hour? A. 31 feet three inches.

Q. When you made these tests did you have these two persons in the automobile with you? A. Yes, sir.

Q. And how did you determine the rate of speed at which you were going? A. How did I what?

Q. How did you tell how fast you were going? A. By the speedometer.

Q. And how did you determine the distance within which you stopped? A. I put the brake on where I was seated at the wheel.

Q. Did you measure it? A. Yes; we measured them all.

Q. With a tape line? A. With a tape line.

Q. You say "we measured it". Was Mr. Finklestein with you? A. Yes.

Q. He helped you make these measurements? A. yes, sir.

CROSS EXAMINATION BY MR. DIXON:

Q. Were there people watching you make these tests? A. Why, there were a couple there.

Q. Several times you made them? A. Sir?

Q. You made these tests several times? A. (No answer.)

Q. You made these tests on various days? A. One day.

Q. Didn't you make any on two days? A. Why, not the tests; we made the test in one day.

Q. What you call the test is—what you call the test—to find out these figures? A. These figures, how quick we could stop.

Q. You made a good many trials to see how quickly you could stop on that crossing? A. No. Every time we stopped, we would go further.

Q. What? A. We only done it once for each time.

Q. Are you sure about that? A. Yes, sir.

Q. What day did you do it? A. I don't just remember the date. I was pretty busy all the time.

Q. Do you know Mr. Boyle? A. Yes; I know Mr. Boyle.

Q. And you did know him then? A. Yes.

Q. Do you know Mr. Paxton—Mr. Rogers? A. Mr. Rogers, yes.

Q. Do you remember them standing there watching you make these tests? A. No, sir

Q. Some times you stopped on the railroad

track, did you not? A. Not that I remember of.

Q. Do you mean to say that you did not, in making these tests, more than once run right in the middle of the railroad track? A. No, sir.

Q. You did not do that? A. No, sir—not on the railroad track, but near it— within about three feet, that is—

Q. Which test were you making when you did that? A. I think it was the twenty miles an hour test.

Q. How did you stop this machine under these tests? A. Foot brake.

Q. Only the foot brake? A. Yes, sir.

Q. Not the emergency and foot? A. No, sir.

Q. Who marked the place that the machine was when you clamped your brake down? A. Mr. Finklestein and another man.

Q. How did he do it? A. Why, as soon as the wheel,—as soon as I would put the brake on where he was standing, I would put on the brake.

Q. Where he stood, you put on the brake? A. Where he stood, I put on the brake.

Q. Going at twenty miles an hour? A. Yes.

Q. Might you not have gone a foot or two beyond him, before you put on the brakes, going at a speed of twenty miles an hour? A. I put them on right away as soon as I was even with him. As soon as I was even with him I would put it on.

Q. You were prepared for him, and he was standing in the road? A. Yes.

Q. At a place, and you were prepared for him, and you jammed on the brake, did you? A. Yes.

Q. It didn't turn your machine around? A. No, sir.

Q. Or skid? A. Not a bit.

Q. Not at all? A. No, sir.

Q. You say you could do that at any time you tried? A. Yes.

Q. Then, why did you stop on the track? A. Why did I stop on the track?

Q. Yes. A. When?

Q. On one of these tests. A. There was some horse manure there and it slid on that.

Q. Then, you did skid? A. Yes, once, when I told you I was making twenty miles an hour, it happened to hit the horse manure, and it skid along.

Q. Did your car turn around? A. No, sir; it did not turn around.

Q. Do you swear you did not stop right on the track or in the middle of the track? A. No, sir; I did not.

Q. How many men were engaged in making this test with you? A. How many men engaged?

Q. Yes. A. There was Mr. Finklestein and another man there.

Q. Who was the other man? A. The crossing man.

Q. Who is he? A. I don't know. I know him, when I see him.

Q. The flagman, do you mean? A. The flagman, yes, sir.

Q. The crossing flagman? A. Yes, sir.

Q. You mean the flagman at that crossing? A. the flagman at that crossing.

Q. Who were the men in the car? A. Mr. Finklestein and the flagman.

Q. Did they ride in the car when you were making the tests? A. Yes, once, and then Mr. James got in and then Mr. Finklestein got off, and then we started the tests.

Q. Who? A. Mr. Finklestein got off and then Mr. James got in, and we started the tests.

Q. Mr. James got out? A. Mr. James got in.

Q. You didn't tell us about James. Was he there? A. Yes; he took the statement.

Q. Who is James? A. Claim agent for the Erie Railroad.

Q. Was he the man who did the measuring? A. Me and Mr. Finklestein and him both done the measuring.

Q. Did he put down these figures that you have read? A. Sir?

Q. Did he put down these figures that you have read? A. Yes, sir.

Q. When did he put them down? A. Right at the place there.

Q. How do you know he did? A. Why, I seen him.

Q. You mean he put down figures—with what—a pencil or a pen? A. A pen.

Q. These figures that you read were typewritten? A. Sir?

Q. These figures that you read from were typewritten? A. Typewritten; yes, sir, but they are correct.

Q. You did not put these figures down? A. No.

MR. HOBART: You are mistaken, Mr. Dixon. The figures that the witness read from are written in ink, in manuscript.

MR. DIXON: What you showed me were typewritten, and I thought they were the same that you showed the witness.

Mr. HOBART: That was a copy.

MR. DIXON: Then, please let me have the original.

Q. (Showing witness paper handed by Mr. Hobart to Mr. Dixon.) Now, I show you this document. Is that the one you were reading from? A. That is the one that I was reading from; yes.

Q. These figures are in Mr. — A. In Mr. James' handwriting.

Q. They were put down on this paper at the time the tests were made, immediately when they were made, were they? A. At the time what?

Q. At the time the tests were made, immediately succeeding the tests, he put down these figures, did he? A. Yes; he put down these figures. First he made a statement out and then put figures down.

Q. He made the statement out and then put the figures down. Where did he make the statement out? A. In the flagman's cabin.

Q. This statement was written in that cabin, was it? A. Yes.

Q. When you were in the cabin, you mean that he made out this statement and then put down these figures; then he did not make these figures as the tests were made? A. We checked them off as we made them and made the statement out in the cabin.

Q. It is true that this is not the original set of figures that you put down? A. That is the original set of figures.

Q. Then, somebody carried them in his memory until you go to the cabin? A. I carried them.

Q. You carried these figures? A. I marked them down myself; yes, sir.

Q. You marked them down? A. I marked them down too, so to be sure about it I wanted to be right so that they didn't change or anything.

Q. They have been changed, haven't they? A. No, not that I know of, they are the same thing.

Q. Look at that twenty miles an hour and tell me whether that has not been changed somehow, somewhere? A. That is thirty-one.

Q. Hasn't that been changed, what was it first?

(The witness refers to a paper). What are you referring to now? A. A paper that I kept where I put them down myself, I put them down here myself, that is thirty-one three, there is twenty miles an hour.

Q. Look at that, hasn't that been changed? A. No, sir.

Q. There was no other figure written there first? A. Sir?

Q. There was no other figure written there first? A. He may have made a mistake but that is my figure, thirty one three.

Q. How many tests did you make? A. I made from five to twenty-five miles an hour.

Q. How many tests did you make? A. From five to twenty-five miles an hour.

Q. Tell me the number of tests that you made. A. Five tests I think.

Q. Eh? A. It must have been five tests, five or six tests, I don't know how many, about five or six tests.

Q. Wasn't it eight or ten? A. No, sir, not that many.

Q. Don't you know whether it was six or five? A. I know either one, it was in between, I don't know which it was, five or six, I don't know.

Q. You say you made those in a cabin, what cabin do you refer to? A. The flagman's.

Q. The flagman's house? A. Yes, sir.

Q. Where is that? A. Right by the crossing.

Q. On which side? A. The righthand side, towards Market Street.

Q. On the east or the west side of Twenty-Seventh Street? A. On the righthand side of the track is the cabin, I don't know whether it is east or west, it was on the righthand side of the track.

Q. The righthand side going which way? A. Going to New York.

Q. Is there a grade there? A. A grade?

Q. Yes. A. Where on the railroad track? I could not tell that.

Q. Eh?

BY MR. COLLINS: He asks, do you mean on the railroad track.

Q. Do you know whether there is on the railroad track? A. I don't know of any grade on the railroad track.

Q. Is there on the road? A. No, sir; not on the road.

RE-DIRECT EXAMINATION BY MR. HOBART:

Q. You were referring to a paper which you have, is that your own memorandum? A. Yes, sir; that is my own memorandum but this aint a very good one.

Q. Was that made by you at the time? A. Yes, sir; that is thirty one three, yes, sir.

Q. That is your figures? A. That is my figures, yes, sir.

Q. Did you mark them down at the time these tests were made? A. Yes, sir, and I kept it in my pocket.

Q. Refer to those figures and tell us what the result was at the rate of ten miles. A. Six feet eight inches.

Q. And fifteen miles? A. Sixteen nine.

Q. And twenty miles? A. Thirty one three.

RE-CROSS EXAMINATION BY MR. DIXON:

Q. Did Mr. Finkelstein ride in the car on each of these tests with you? A. No, sir.

Q. Did he ride in any of the tests? A. He

rode in one test, one there, we might have tried one over, that is the tests were about five or six and we might have tried one over by that skidding on that horse manure, that is all.

Q. Did he ride in the car in any other test than this one? A. He stayed there when he went like that. (Waiving hand in the air.) When I put the brake on.

Q. He gave you the signal? A. Yes, sir.

By Mr. Hobart:

Q. He stood alongside of the road? A. He stood alongside of the road so we knew where to check it off, mark it off.

Q. You spoke about making five or six tests and that you made them from five to twenty-five miles an hour, you mean that you made the tests at five mile intervals? A. Yes, sir, five, ten, fifteen, twenty and twenty-five.

Jesse Finklestein, sworn as a witness on behalf of the defendant, testifies as follows:

Direct Examination by Mr. Hobart:

Q. Do you know Mr. Zinn, the witness that just testified? A. Yes, sir.

Q. Were you with him when certain tests were made near Twenty-Seventh Street? A. Yes, sir.

Q. Who operated the car, did you or Mr. Zinn? A. Mr. Zinn.

Q. Tell us what you did in the way of helping him to make the tests. A. When he came down I would tell him to stop.

By The Court: My, my, speak up, every witness that I get on the stand I have to tell him to speak up. You would speak up louder if you were out with the boys.

A. (Continued.) I would stand in a certain place in the road and he would measure the distance from there to where the car stopped.

Q. And who all were there at the time these tests were made? A. The flagman and Mr. James and Mr. Zinn.

Q. Who, when the tests were made? A. The flagman and Mr. Zinn and myself.

Q. Cross examine.

CROSS EXAMINATION BY MR. DIXON:

Q. You say you were in the automobile? A. Yes, sir.

Q. You were in the automobile? A. Yes, sir.

Q. How many times? A. About five times.

Q. Which seat did you ride in? A. I was in the lefthand seat in the rear.

Q. In the lefthand seat rear? A. Yes, sir.

Q. Weren't you there more than five times? A. About five times.

Q. Weren't you in six or seven times? A. No, sir.

Q. How do you know? A. I know about how many times we were there but I didn't keep count of them.

Q. Weren't there a dozen tests made? A. No, sir.

Q. Were you in when it reached the track? A. No, sir.

Q. Who rode with you? A. The flagman.

Q. How many times did he ride with you? A. He was in every time that I was.

Q. Where Janes ride? A. He didn't ride in the car.

Q. Janes didn't ride in the car? A. Not in the tests.

Q. I don't hear you. A. Not on the tests.

Q. You didn't do anything in making the tests? A. No, sir.

Q. Why do you say that Janes didn't ride in the car? A. He rode up there.

Q. Just rode up to the place? A. Yes, sir.

Q. When did you make these tests? A. I don't remember.

Q. How long ago? A. About a month ago.

Q. Sure of that? A. Yes, sir.

Q. Who employed you to help make these tests? A. Mr. James.

Q. Where did he find you? A. At the Hotel Lansdowne.

Q. Hotel what? A. Lansdowne.

Q. That is where you live? A. That is where we have our cars.

Q. That is a garage? A. A hotel; we have our cars there outside.

Q. And Mr. James went there and hired you? A. Yes, sir.

Q. He and the flagman? A. Yes, sir.

Q. And that was a month ago? A. That was about a month or five weeks ago.

Q. Don't you know that you made twenty tests? A. No, sir.

Q. All made in one day? A. Yes, sir.

Q. Afternoon or morning? A. I don't know.

Q. That is all.

RE-DIRECT EXAMINATION BY MR. HOBART:

Q. When you made the tests were you riding in the car? A. Yes, sir.

Q. Was there anybody standing on the street to indicate when the car should stop? A. Yes, sir.

Q. Who was that? A. I don't know; he was a stranger to me.

Q. You know Mr. James? A. Yes, sir.

Q. Is he the gentleman in court? A. Yes, sir.

By Mr. Dixon:

Q. Did the stranger indicate when you should stop? A. Yes, sir.

Q. That it all.

Grover R. James, sworn as a witness on behalf of the defendant, testifies as follows:

Direct Examination by Mr. Hobart:

Q. You are in the employ of the Erie Railroad Company? A. Yes, sir.

Q. Claims department? A. Yes, sir.

Q. Did you arrange with Mr. Zinn and Mr. Finklestein to hire their automobile? A. Yes, sir.

Q. Do you remember when that was? A. October second, nineteen fourteen.

Q. Where were those tests made? A. At the Twenty-Seventh Street crossing.

Q. Which side? A. According to what?

Q. According to the compass, north or south? A. North.

Q. Heading toward Market Street? A. Yes, sir.

Q. Was there anybody that was there to give signals to Mr. Zinn as to when he should put on the brakes? A. Yes, sir.

Q. Who was that? A. I did.

Q. On which side of the track was that? A. The east side; the side towards Jersey City.

Q. How did you give the signals? A. I yelled out loud and threw up my hands; I had placed a large piece of coal and I yelled when they reached that place.

Q. How far back did he start on these several tests? A. When he was coming on the five mile test he was up at East Eighteenth Street and as the speed increased he went back I think the last one was about two blocks.

Q. Who else was there? A. Mr. Janes, the crossing watchman, and he was sitting in the back seat with Mr. Jesse Finkelstein the man who has just testified and there was a stranger that came there and I don't know who he was.

Q. Do you know Mr. Boyle and Mr. Rogers? A. I do very well.

Q. Was Mr. Boyle there? A. He was not.

Q. When you speak of Mr. Janes you don't mean yourself? A. No; that is Mr. Edwin H. Jane.

Q. Did you keep any record of the tests? A. I did; the tests as they were made. They measured them and I wrote them down, and as I recollect it Mr. Zinn also kept a record and put it down after each test was made.

Q. And did you go down to this cabin? A. what is that?

Q. Did you go down to the cabin or gateman's shanty? A. Yes; I went there with both Janes and Zinn.

Q. And that is the statement to which both refer? A. Yes, sir.

Q. And that is all in your handwriting except the signatures? A. Yes, sir.

Q. How did you make the measurements? A. We got the measurements from the Castle and Inman tape measure, I believe that is the standard measure.

Q. How many tests did you make? A. I believe five tests; we made five tests before we made the regular tests and the reason was is that I had forgotten that there were two people in the rear seat of this car that was struck and we went over them again.

Q. And then Mr. Janes and the other man got in the rear seat of the car? A. Yes, sir.

Q. Not yourself? A. No; the crossing watchman and that is the reason because he was the handy man there at the time.

Q. And the tests that were made were made with three people in the car? A. Yes, sir.

Q. Take the witness.

CROSS EXAMINATION BY MR. DIXON:

Q. Then it is true that you made twelve or fifteen tests? A. I wouldn't swear to it.

Q. You didn't keep count of them did you? A. I would be quite safe in saying not over ten or twelve tests.

Q. About twelve or fifteen? A. I wouldn't say.

Q. It might have been twenty? A. No; it might not.

Q. Aren't you uncertain? A. No; we didn't make twenty tests.

Q. Where did you stand? A. Right on Twenty-Seventh Street.

Q. That is indefinite. A. I believe the east side.

Q. Which side? A. As the car was approaching Market Street I stood on the lefthand side of the street.

Q. That is indefinite yet; whereabouts on Twenty-Seventh Street on the lefthand side, how near the north rail of the westbound track? A. About forty-two feet.

Q. About what? A. About forty-two feet or a little better.

Q. That is where you stood all the time? A. It would vary a little; I didn't measure it.

Q. You didn't measure it at all then? A. When I made the first test it was measured and after that it was made by Mr. James and Mr. Finklestein—I would put a big piece of coal there and

when they reached that I would yell and throw up my hands at the same time.

Q. When were the tests made? A. October second, nineteen fourteen; I forget just what time of day; the paper would show it.

Q. Where do you live? A. Now, in Passaic Park, New Jersey; my home is in Buffalo.

Q. How long have you lived there? A. I have lived with the Assistant Claim Agent of the Railroad since the fifteenth of last May; with my wife since the last month or two.

Q. How long have you known Mr. Rogers? A. I forget how long ago it is, I could tell by looking at my files.

Q. How long have you known Mr. Paxton? A. About the same length of time.

Q. Mr. Boyle? A. About the same length of time.

Q. How many claim agents are there that have been interested in the investigation of this case for the railroad besides yourself? A. Well, say there is one, two; two, I believe.

Q. Who are they? A. Mr. W. E. Brown, Mr. H. N. Wieting.

Q. Mr. Wieting has been in court, how about Mr Brown, is he in court? A. Mr. Brown is in the court at the present day.

Q. Where is he? A. Right over there, the man with the whiskers.

Q. Is that all? A. What do you say?

Q. Are those all the claim agents who have been interested in this case, to your knowledge? A. No, I imagine our New York claim agent knows something about it.

Q. I mean investigating it up here, seeing the witnesses and all that sort of thing? A. I don't recall that any other claim agents besides Mr. Wieting and Mr. Brown and myself have been at the scene of the accident.

Q. Have you had any other assistants under you who did it, or under Mr. Wieting or Mr. Brown? A. No, sir; I have not, I believe not.

RE-DIRECT EXAMINATION BY MR. HOBART:

Q. When you speak of the New York office, that is the general office of the company? A. That is our general office.

Q. To which you make reports from time to time? A. We make all our reports to that office.

Q. How many tests did you make when there were three people in the automobile? A. We made five tests.

Q. Those were the five that Mr. Zinn mentioned? A. They were referred to by Mr. Zinn; they were recorded by Mr. Zinn and myself.

JOHN SCHMIDT, sworn as a witness on behalf of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. COLLINS:

Q. Where do you live? A. In Passaic.

Q. Were you the foreman of the Grand Jury for the September Term for the Passaic County Courts? A. 1913, yes, sir.

Q. Did that grand jury investigate the accident at the crossing of 27th Street and the Susquehanna Railroad on September 27, 1913? A. It did.

Q. It did investigate that? A. Yes, sir.

Q. Did the Rev. Edwin Lange appear as a witness before that grand jury? A. Edwin Lange? Reverend Lange.

Q. Father Lange? A. Yes, he appeared.

Q. He appeared as a witness before that grand jury? A. Yes, sir.

Q. And did he testify? A. He testified, yes, sir.

Q. Did he testify on that occasion before the grand jury when deposing about the accident, the collision between the engine and the automobile in which his father was riding that day and was killed, that he heard the crossing bell? A. Well, I don't think I care to testify here what was testified in the room of the grand jury session.

MR. DIXON: His oath was that he would not disclose it.

MR. COLLINS: I submit the matter to the court.

THE COURT: You will have to answer.

THE WITNESS: I will have to answer?

THE COURT: Yes; answer.

A. He testified yes, but I don't remember what to. What was that question again?

Q. That he heard the crossing bell? A. I could not remember every testimony that took place there. I don't know as I could testify. I took a constitutional oath.

THE COURT: That does not make any difference what you think about it. The court rules that you must. That is the law of our state.

THE WITNESS: I have sworn that I would not disclose what took place there.

THE COURT: We won't argue it, that is the ruling of the court.

THE WITNESS: All right; will you repeat that question again?

Q. Did he testify that as he approached that crossing in an automobile that he heard the crossing bell? A. I cannot tell what was testified in the grand jury room so long ago, it is nearly a

year and a half ago and I cannot at this late date remember.

Q. Did he on that occasion testify that as he approached the crossing he heard the engine bell? A. I don't remember. It is impossible for me to remember what was testified to way back there.

Q. Did he testify that he heard some bell? A. I cannot remember any of his testimony any more than I can any other case at this time; it is impossible to remember what took place there a year and a half ago or more; I cannot remember.

No Cross Examination.

GARRET KEYSER, sworn as a witness on the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. Where do you live? A. 867 East 27th Street.

Q. What is your occupation? A. Slate roofer.

Q. On the 27th of September, 1913, where did you live? A. 867 East 27th Street.

Q. About 5:45 in the afternoon of that date where were you? A. In my back yard.

Q. What were you doing? A. I was just standing there smoking a cigarette.

Q. Was your attention called to anything unusual at the 27th Street crossing? A. Why, no; not just at present; I stood there and as I stood there I heard the train blow for 31st Street.

Q. You heard what blow? A. The engine blow by 31st Street.

Q. What kind of a blow was it? A. A pretty loud blow.

Q. Could you see the engine from where you were? A. Well, not at that present time.

Q. But you heard the blow? A. Yes, sir.

Q. Which direction did it come from? A. Why, it was coming from New York.

Q. What did you hear next? A. I heard the blow for 27th Street.

Q. About where was the engine then as near as you can tell? A. Right near Dilliston's lumber yard.

Q. The lumber yard is east of 27th Street crossing, is it? A. Yes, sir.

Q. Could you see the engine at that time? A. Yes, sir.

Q. What kind of a blow was that? A. It was a very loud blow.

Q. What did you next hear? A. I heard the bell ring at the crossing. The engine bell was ringing.

Q. Were there two separate bells? A. Yes, sir.

Q. What happened next? A. Why, there was a kind of a noise down there and I did not pay much attention to it till I saw some people coming down there and I went down there and I saw there was an accident there. I found there was an automobile on the tracks that the engine had hit.

Q. What kind of an engine was it? Why, just a light drill engine.

Q. Was there a tank or a tender fastened to it, did you notice? A. Yes, sir.

Q. Which way was the engine headed? A. The engine was headed towards New York.

Q. Was the tank moving towards Paterson? A. Yes, sir.

Q. How long did you stay around the crossing? A. I stayed around there around a half an hour.

Q. Did any other passenger train come along while you were there? A. Yes, sir.

Q. Did you notice whether the crossing bell rang as that train went by? A. Yes, sir; it rang all the way.

Q. Where was the passenger train so far as you noticed with reference to that crossing when the crossing bell first began to ring for that train? A. Just this side of 31st Street.

Q. When you say this side, you mean towards New York? A. No; towards Paterson.

Q. You heard that crossing bell ring, did you, for that? A. Yes, sir.

Q. And where were you at that time? A. Standing right on the crossing.

Q. How far is your house from the crossing? A. About 625 feet.

Q. Can you hear the crossing bell from the house? A. Yes, sir; plainly.

Q. On which side of 27th Street? A. On the east side.

Q. That would be towards New York, wouldn't it? A. Yes, sir.

Q. And on which side of the track, on the north side or south side? A. That would be on the south side.

Q. Did you assist in removing the bodies? A. No, sir.

Q. You were just standing around there? A. I was just standing around.

Q. Did you see Sergeant Lord around there? A. I did not take notice of anyone down there.

CROSS EXAMINATION BY MR. DIXON:

Q. You live on the same side of the street as Mrs. Carr lives on, do you? A. Yes, sir.

Q. How near Mrs. Carr's house? A. Mrs. Carr lives on the other side of the track, the north; I live on the east side, on the south side.

Q. Now you have given us three points of the companss, where do you live? A. I live just off Market Street.

Q. Off Market Street? A. Yes, sir; on 27th Street.

Q. You live to the south of the railroad then? A. Yes, sir.

Q. About six or seven hundred feet south? A. 625 feet.

Q. How do you know it was 25 feet? A. Well, I just judged that.

Q. You just judged that? A. Yes, sir.

Q. When did you just judge that? A. The day they got my statement.

Q. Then you went out there to make some measurements, did you? A. No, sir.

Q. How near do you live to that lady that was on the stand here yesterday? A. Mrs. Crawford?

Q. Is that her name? A. Well, I don't know who you are referring to.

Q. You saw her on the stand yesterday? A. I seen a lady up here yesterday, yes, sir.

Q. She keeps a boarding house of some kind? A. Well, I don't know what kind of a house she keeps.

Q. You don't? A. No, it is none of my business.

Q. It is not, eh? A. No, sir.

Q. How near her do you live? A. She lives on the other side of Market Street. I live say, about 200 feet away from her.

Q. Weren't you in her house at the time of this accident awaiting to meet her friends from New York? A. Why, me?

Q. Yes, you? A. No.

Q. How near to her house do you live? A, 200 feet, I told you.

Q. On the same side of the street? A. No. She lives on the opposite corner. She lives on the southwest corner.

Q. How would you get from your house around to this crossing? A. You would go right down 27th Street, north.

Q. You went down to the crossing, and which side of the crossing did you stand on when this train went through that you speak of? A. I stood on the west side of the crossing.

Q. Well, the sides of the crossing that I have reference to are north and south; which side of the railroad track was it? A. Which side of the track?

Q. Yes. A. (Indicating.) That side.

Q. Which side? A. The north side.

Q. The north side of the railroad track? A. Yes.

Q. When the train went through? A. Yes, sir.

Q. Did you go there before the train went through or just as it went through? A. I was there before the train went through.

Q. You stood there watching for it? A. Yes.

Q. Waiting for it? A. Yes.

Q. To see if it would ring? A. Yes.

Q. You stood waiting to see if it would ring? A. Well, it did ring.

Q. You stood there waiting to see if it would ring? A. Yes.

Q. How long did you stay before the train came through? A. About half an hour I stood there altogether.

Q. Before the train came? A. The accident happened at five forty-nine and I stayed there from that time on.

Q. I did not ask you that. How long did you stay there at this crossing watching for this train to come over in order to see if the bell would ring? A. I should judge fifteen minutes, anyway.

Q. Fifteen minutes? A. Yes.

Q. Then, you did not go up to see the accident? A. Well, I was there, certainly. That is all in that time.

Q. You went first to see the wreck? A. Yes.

Q. Then you came back and watched for this train to go through? A. Yes.

Q. Did you come back to this place before the engine backed down onto the siding? A. Well, it was just backing into the siding when I got there.

Q. It was backing in when you got there? A. Yes.

Q. How long after he backed into the siding did the train come through? A. Well, it was not more than ten minutes, I guess.

Q. Well, do you know how long it was? A. No, sir; I did not have any watch out.

Q. Now, when you stood on the south side of the crossing— A. I stood on the north side, as I told you before

Q. When you stood on the north side watching for that train to come through— A. Yes.

Q. How close to the track did you stand? A. Why, I should judge about six feet from the track.

Q. You stood there about fifteen minutes? A. Yes, about.

Q. On which side of Twenty-seventh Street did you stand? A. Why, on the left side.

Q. And you saw it come up; how far did you see her? A. Why, Thirty-first Street—just over Thirty-first Street.

Q. That is the first you could see of her? A. Yes.

Q. How far beyond Thirty-first Street? A. I should judge about two hundred feet.

Q. You saw her come along and proceed to cross this track, did you? A. She stopped.

Q. Where did she stop? A. She stopped right by the bell.

Q. At the bell post? A. Yes.

Q. How long did she stand there? A. A few seconds.

Q. And then went off? A. Yes.

Q. Do you know what she stopped for? A. Why, certainly.

Q. What for? A. Why, the wreck was on the track yet.

Q. Still on the track? A. Yes, sir.

Q. When did the bell start to ring? A. When it just got over Thirty-first Street.

Q. Eh? A. When the train passed over Thirty-first Street.

Q. How far away? A. I don't know; I never looked at it.

Q. Didn't you observe that? A. I did not walk up the track to see where it started to ring.

Q. You were watching for that purpose? A. I just about judged where it started.

Q. Where did it stop ringing? A. After the last coach went over the crossing.

Q. Where was the train when the bell stopped ringing? A. Why, across the crossing, of course.

Q. What part of it was across the crossing? A. The last part of it.

Q. The last car? A. Why, certainly.

Q. How many cars were there? A. I should judge about six.

Q. How far across the crossing was it before it stopped? A. It is just across the crossing when it stops.

Q. How far? A. I don't know.

Q. Didn't you notice? A. No.

Q. Why? A. Because I didn't look at it, that is all.

Q. Did anybody tell you to stand and watch that train? A. No, sir.

Q. What is your business? A. I said slate roofer by trade; I am not in business at all.

Q. You are a roofer? A. I am a roofer.

Q. A slate roofer by trade. When were you last a slate roofer? A. Up to the present day I am a slate roofer.

Q. Where did you work last? A. Herbert C. Rutt.

Q. How long ago? A. I am working there three years and a half.

Q. How long ago did you cease to work there? A. Did I cease to work? Why, I should judge about two months ago.

Q. You are not doing anything now? A. Not just at the present time, only sitting here in this chair.

LAWRENCE KEYSER, sworn as a witness on the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. You are a brother of the last witness? A. Yes.

Q. Where did you live on the 27th of September, 1913? A. East Twenty-seventh Street.

Q. Are you still living there? A. Still there.

Q. What is your business? A. Plumber.

Q. Were you at home about half-past five or quarter to six on the evening of the day of this accident? A. I was.

Q. Where were you? A. On the front porch.

Q. What first attracted your attention to anything out of the ordinary? A. Why, the neighbor next door told me there was an accident down the street, and we walked down.

Q. Did you go down with him? A. I went down with him.

Q. Before this neighbor spoke to you about an accident, had you noticed anything about the crossing bell at that crossing? A. I did not.

Q. When you got to the crossing, how long did you stay there? A. About twenty minutes.

Q. While you were there did a train come from New York? A. While I was there, going down there, the freight engine was just backing into the switch and then a train came from New York, and I stayed there.

Q. You were at the crossing when this train came along? A. I was at the crossing when the train came, yes.

Q. Did you notice whether that train stopped or slowed up? A. It did. It stopped.

Q. Did you notice anything about the crossing bell as that New York train went by? A. The crossing bell was ringing.

Q. Did you notice where that train was when the bell began to ring? A. Why, it generally rings right over Thirty-first Street.

Q. Did you make an observation whether the train went beyond the crossing— A. No, sir, it did not.

Q. How far did it go? A. I should judge it stopped back of the crossing about twenty feet or twenty-five feet; I am not sure what it was.

Q. While it was there did you hear the crossing bell? A. The crossing bell was ringing.

Q. Who was the neighbor that went down with you? A. Mr. Hannan.

CROSS EXAMINATION BY MR. DIXON:

Q. You did not go down with your brother? A. No, sir; he was ahead of me.

WILLIAM H. LORD, sworn as a witness on the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. Sergeant, you are in the Police Department of the City of Paterson? A. Yes, sir.

Q. And have been for a number of years, have you not? A. Yes.

Q. How long? A. Twenty-three years, going on twenty-four.

Q. Your position at the present time is detective sergeant, is it not? A. Yes.

Q. Did you hold that position on the 27th of September, 1913? A. Yes.

Q. And had held it for some years before that? A. Yes.

Q. Was your attention called to this accident at Twenty-seventh Street? A. Yes; it was. On Saturday evening, September 27th, at 5:54 there was a telephone call received at Police Headquarters that there was an accident on the Susquehanna Railroad track at Twenty-seventh Street.

Q. What did you do when that report came in? A. I got in the automobile patrol wagon along with Officers Luddy and McGrath, and we proceeded to the crossing, up Park Avenue to Twenty-seventh Street, and from Twenty-seventh Street to the crossing.

Q. How long did it take you to go from headquarters? A. I should judge it was about six o'clock when we arrived there.

Q. When you got there what did you find? A. I went on down the track to where the accident—to where the automobile lay—and the body of Mr. Lange lay in the center of the track. I ordered the body lifted off the track and the automobile pushed over to the side, down the embankment; there was a little embankment there.

Q. Do you recollect whether the engine that was there was backed onto the side track? A. It was on the siding when I went there.

Q. About how long were you there altogether, Sergeant? A. I was up there until dark.

Q. That would be about what hour? A. Oh, I suppose, a quarter of eight or half-past seven—a quarter of eight.

Q. When you first got there was it dark? A. No; daylight.

Q. While you were at the crossing did another train come along from New York? A. Well, there was an argument arose there between somebody—

BY THE COURT:

Q. Sergeant, the question is whether the train came along from New York? A. Yes.

BY MR. HOBART:

Q. The train came from New York? A. Yes.

Q. On which track? A. On the westbound track.

Q. Did you observe whether there was any crossing bell rung for that train? A. Yes.

Q. How did you come to observe that? A. Well, there was an argument arose about the bell not being in working order, and I seen the drill engine there and I said, "To settle that, we will have the drill engine come up," and I spoke to one of the railroad officials in regards to having it come up, and with that the bell started to ring, and the train came. I said, "the bell is ringing, and here is a train coming. That settles that."

Q. The bell was ringing? A. The bell was ringing.

Q. How far away was that train? A. I suppose it was somewhere in the neighborhood of Twenty-ninth Street—Twenty-ninth or Thirtieth Street.

Q. That is, east of this crossing? A. East, yes.

Q. Two or three blocks east? A. Yes.

Q. Did the crossing bell continue to ring as this train approached the crossing? A. It continued to ring.

Q. Twenty-ninth Street and Thirtieth Street are west of Thirty-first Street? A. Yes.

Q. Twenty-ninth Street and Thirtieth Street are between Thirty-first Street and Twenty-seventh Street, are they not? A. Yes. The streets are numbered from Madison Avenue. After you pass Madison Avenue, there is Twenty-first Street, Twenty-second Street, Twenty-third Street, Twenty-seventh Street, and so on, out, east.

By Mr. Dixon:

Q. East of what? A. East of Madison Avenue.

By Mr. Hobart:

Q. Did you observe whether this train slowed up or came to a stop? A. It stopped at the crossing.

Q. Do you recollect whether it went all the way over the crossing before it stopped or whether it stopped partially on the crossing? A. It stopped not to cover the crossing, but it stopped with the cowcatcher nosing the crossing.

Q. So that part of the locomotive was almost on the crossing? A. Yes.

Q. Was the bell ringing while it stood there? A. Oh, yes.

Q. What do you say? A. Yes, sir.

Q. Could you hear it clearly? A. Yes, sir.

Q. You were around the crossing, you say, up to half-past seven or a quarter of eight? A. Yes; somewhere in there.

Q. During that time did you see anybody try

to open a box at the foot of the pole on which the bell was located? A. No, sir; I did not.

Q. You, of course, knew where the bell was, the crossing bell? A. Yes, sir.

Q. You knew it was located on a sort of a post or pole? A. It is on a pole there.

Q. Did anybody put a ladder up that post or pole while you were there? A. I saw nothing of the kind.

Q. Did you see anybody hammer against the pole or post on which the bell was? A. No, sir.

Q. Or do anything with that post or pole or bell? A. No, sir.

Q. Was there anything done with that post or pole or bell while you were there? A. I saw nothing done with the post at all.

Q. Were you there for the purpose of knowing whether there was anything done of that kind? A. I was there to find out what the cause of the accident was and to get all the evidence I could pertaining to it.

Q. Do you know the Rev. Edwin Lange? A. Yes, sir.

Q. When did you first know him? A. That evening, when I met him on the railroad track there.

Q. Did you have any conversation with him while you were there in regards to this accident? A. Yes, sir; I got the names of his father and brother and, I think it was, his grandmother, if I am not mistaken.

Q. During that conversation with him was there any question raised about the ringing of the crossing bell? A. Yes; that is where the argument started with somebody, whoever it was, I don't know now, over the ringing of the bell.

Q. Did Father Lange say to you, during that conversation, that he thought he had heard the

crossing bell? A. Yes, sir; he said he thought he heard a bell or crossing bell ring; he didn't know for sure.

Q. And did he, during the course of the same conversation, say anything as to having seen a car go over the crossing ahead of the car in which his father was riding? A. I would not be positive about that, there was something said about it, but I won't be positive on that point.

Q. You are not clear? A. No; I am not clear on it; I don't want to say so unless I am positive.

Q. You are positive he said he thought he heard a bell? A. He thought he heard a bell ring.

Q. Was Father Lange there when this other train came along? A. Yes.

Q. Did you point out to him that the bell was ringing when that train came along? A. No; not distinctly to him, because there were several others there.

Q. Was he standing there? A. He was standing there; yes.

Q. While you were discussing it? A. Yes, sir.

CROSS EXAMINATION BY MR. DIXON:

Q. About how long after you received the telephone message did you go to the crossing? A. Well, I should judge it was in the neighborhood of probably five or six minutes.

Q. It would be about six o'clock? A. Somewhere in the neighborhood of six o'clock.

Q. How long had you been there before this other train come up? A. Well, I could not just say how long, because I did not take notice of that. I was speaking to one of the railroad officials and telling him that I wanted the switch engine backed out to see if the bell was ringing, and with that it started to ring, and I saw the

train coming up. What time it was I don't know.

Q. You were not there very long then? A. No; I was not, because this train came along and started the bell ringing.

Q. You didn't get to the scene of the accident at the time the engine was west of the crossing? A. No, sir.

Q. When you got there the engine was actually in the switch? A. Yes, sir.

Q. Where was the automobile then? A. Lying down the track about 250 feet.

Q. And his father's body and the grandmother's? A. Yes, sir.

Q. Is that after it had backed up in the switch? A. No; further up the track; I was going east then.

Q. Who else was around there? A. Quite some other people there.

Q. Did you observe some people there working on the wires on the east of the crossing? A. No, sir; I didn't see anybody there.

Q. Didn't see two men with overalls there? A. No, sir; I did not.

Q. That is all, Sergeant.

BY THE COURT:

Q. Just one moment, Sergeant. Never mind, that is all.

JOHN B. MURPHY, sworn as a witness on the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. You are a member of the police department of the City of Paterson? A. I was at that time.

Q. I believe you were a motorcycle man? A. I was.

Q. Did you hear of the accident shortly after it happened down at 27th Street? A. Yes, sir.

Q. How soon after? A. I imagine about ten minutes.

Q. What did you do then? A. I rode right over to 27th Street.

Q. Were you there when Sergeant Lord was there? A. Yes; just after that.

Q. How long did you stay there? A. Until quarter to eight or eight o'clock.

Q. Were you there when the train came from New York? A. Yes, sir.

Q. Were you there at that time? A. Down at the body.

Q. Did you hear the crossing bell ringing? A. Yes, sir.

Q. Did you observe where the train was when the bell started ringing? A. No, sir; I did not.

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

Q. You didn't observe the distance? A. No, sir.

Q. That is all.

CROSS EXAMINATION BY MR. DIXON:

Q. You are familiar with that crossing, aren't you, officer? A. Yes, sir.

Q. Where were you at the time of the collision? A. I should judge about Madison Avenue and Market Street.

Q. Did you hear the crash? A. No, sir; I didn't.

Q. What time did you get to the scene of the accident? A. About five minutes to six or ten minutes to six.

Q. You knew that the bell at that crossing—that crossing bell frequently got out of order? A. I don't know that.

Q. You had been there when the train was passing and it didn't ring? A. No, sir.

Q. You have known that it didn't ring in time to warn passengers? A. No, sir.

Q. Don't you know that you have had to give it a jar to start the bell ringing? A. No, sir; I don't know that.

Q. Didn't you almost get hit there yourself, one time, when you were on your motor cycle, just prior to that? A. I should judge about two weeks before that I had come across there with my machine and I had just got across when the train come along, but I don't remember hearing the bell.

Q. It didn't ring? A. I don't know.

Q. It rang on the next train, though? A. I don't know; I wasn't there when the next train came in.

Q. That is all.

THOMAS J. MCGRATH, sworn as a witness on the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. You are a police department officer? A. Yes, sir.

Q. Did you go to this crossing a few minutes after the accident? A. Well, I got a telephone message at the police station that there was an accident at East 27th Street and to go there as soon as we could.

Q. Did you go with Officer Lord? A. Officer Lord, Officer Luddy and myself.

Q. How long did you stay there? A. I should judge in the neighborhood of half an hour.

Q. Were you at the crossing? A. I was at the crossing and down by the body, too.

Q. Did you see a ladder up against the bell pole? A. No, sir; the most of my time was spent down by the body.

Q. You were interested in the body? A. I was interested to get names to bring back to the police station.

Q. It was your purpose to get names—in getting names to make a police record? A. Yes, sir.

Q. Did you notice anything about the crossing bell while you were there? A. No, sir; my mind wasn't drew to that.

Q. What was that? A. Nobody drew my mind to that.

Q. You were watching the body? A. Watching the body and getting the names that I could get.

Q. That is all.

WILLIAM B. WHITE, sworn as a witness on the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. You are also on the police department of the City of Paterson, officer? A. I am.

Q. And you were on the occasion of this accident on East 27th Street? A. Yes, sir.

Q. Where were you when word come of the accident? A. At the depot of the Broadway station of the Susquehanna Railroad.

Q. What did you hear of it? A. Mr. Steele was there and I asked him what was wrong and he told me there was an accident and we went down there.

Q. You went down there? A. I went in his car.

Q. In his automobile? A. Yes, sir.

Q. What time did you get there? A. Ten minutes to six.

Q. And when you reached the crossing did you see any signs of an accident there? A. Yes, sir.

Q. What did you see? A. I saw an automobile on the westbound track some distance from the crossing—some distance from 27th Street—and the body of the man underneath or partly under the automobile. It was on its side, that is, facing towards the west, and the rear of the automobile was toward the east.

Q. How long did you remain there? A. I stayed until 6:45.

Q. What did you do? A. I assisted in removing the automobile and getting the body of Mr. Lange and taking it to the side of the track.

Q. Were you there when the other train came from New York? A. Yes, sir.

Q. Where were you when the train approached? A. On 27th Street.

Q. Did the crossing bell ring? A. Yes, sir.

Q. How far away from the crossing was the train when the bell started to ring, if you noticed it? A. I did notice it; there were some controversy—some said it rang and some said it didn't ring, and so forth, and I should say that the distance of the train from the crossing when the bell started to ring was two or three blocks away—two or three city blocks.

Q. Did the train stop? A. It had to be stopped.

Q. How long did you notice that it came to a stop? A. I should judge three or four minutes.

Q. While it was stopped, did the bell ring? A. Continuously.

Q. Did you see anybody climb up that pole or put a ladder up against the pole? A. I did not.

Q. Did you see anybody around the batteries? A. I did not.

Q. Cross-examine.

CROSS EXAMINATION BY MR. DIXON:

Q. Did you see the engine back down and enter the switch? A. At the time I got down there the crew was getting off the engine.

Q. You didn't get there until after it was on the switch? A. No, sir.

Q. Going in the switch? A. It was already in.

Q. You don't know whether it started to ring when it was going back over the switch or not? A. I don't know; no, sir.

Q. That is all.

THOMAS LUDDY, sworn as a witness on the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. You are also a member of the Paterson police force? A. Yes.

Q. And were on September 27th, last? A. Yes, sir.

Q. Did you hear of the accident at the 27th Street crossing? A. I was in the station at the time.

Q. You recall it? A. Yes, sir.

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

Q. Who went with you? A. Sergeant Lord and Officer McGrath.

Q. In the patrol wagon? A. Yes, sir.

Q. How long did it take you to go there after the report came in? A. About five minutes, I suppose.

Q. Did you see any signs of the accident when you got there? A. Yes; I saw the automobile down the track and the people there.

Q. How long did you remain there? A. About half an hour.

Q. What did you do there? A. Kept the crowd off the crossing to avoid another accident.

Q. When you got there did another train come in from New York? A. Yes, sir.

Q. Did the crossing bell ring when that train came in? A. Yes, sir.

Q. How far down the track was the train when the bell started to ring? A. Down to 30th Street, I should judge—three blocks.

Q. Did the train stop? A. Yes, sir.

Q. How long did it stop? A. Three or four minutes.

Q. Did it stop east or west of the crossing? A. Toward New York.

Q. And while it was stopped did the crossing bell ring there? A. Yes, sir.

Q. While you were there all the while? A. Yes, sir.

Q. Did you see anybody jarring or tinkering with the post? A. No, sir.

Q. You were there from the time you got there for about half an hour? A. Yes, sir.

Q. That is all.

CROSS EXAMINATION BY MR. DIXON:

Q. The engine was standing on the switch when you got there? A. Yes, sir.

Q. That is all.

EDWARD HENNESSY, sworn as a witness on the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. You are also a member of the Paterson police force? A. Yes, sir.

Q. And was at the time of this accident? A. Yes, sir.

Q. Was your attention called to this accident? A. Yes, sir; I was on the corner and Sergeant Fitzpatrick came along and told me that there had been an accident and told me to get over there as soon as I could.

Q. How long did it take you to get there? A. I should judge about ten minutes.

Q. When you arrived did you see some indication of an accident? A. I saw the automobile and just above that Mr. Lange's body laid.

Q. How long were you there that day? A. I was there that time right up to the time the under-

taker—Dr. Armstrong came there and examined the body and said all right you can take it over to the undertaker.

Q. About how long was that? A. I should judge that was near eight o'clock when the undertaker removed the body.

Q. You were there all the time around the crossing? A. Not by the crossing but Mr. Lange's body. Sergeant Lord told me to stay by that body.

Q. Do you recollect a train coming along while you were there? A. Yes, sir; I recollect one train.

Q. Did the crossing bell ring at that time? A. Yes, sir; the crossing bell rang at that time. There was an argument and somebody said something about the bell ringing and I listened and heard it ring.

Q. Did you hear it ring? A. Yes, sir.

Q. Did you notice if that train stopped? A. No; I think there was a train, another one that had stopped; we got around and cleared the track and got the people off the track.

Q. You think there was another train came along? A. Yes, sir.

Q. Did you observe a ladder upon the bell post while you were there? A. I was up from the crossing towards the west. I was not down near the crossing.

Q. You were not down by the crossing? A. No. My attention was to the west of the crossing.

CROSS EXAMINATION BY MR. DIXON:

Q. How long after you got there did this argument start between the people there, the bystanders, as to the bell not ringing? A. I don't think it was very long, it was not very long after I got there, we had to clear the people off.

Q. That argument took place between the people who were up near the body? A. Yes, sir; right near the body there.

Q. Near the body? A. Yes, sir.

Q. That is where you were all the time you were there? A. Yes, sir; I kept them off, kept the people off.

Q. You heard the argument and therefore you must have been near the body and the argument must have been near the body? A. Yes, sir.

Q. And the argument was with respect to the bell having rung at the time the engine passed the crossing which hit the automobile? A. No, sir; not that time, I was not there then.

Q. But the argument was with respect to the bell at that time that the engine hit the automobile? A. Yes, sir.

Q. And the people there said it did not ring? A. Yes, sir.

Q. And you don't know whether it was fixed in the meantime or not? A. No, sir; I do not; I was up on the west side of the crossing.

NELSON B. HAMMOND, sworn as a witness on the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. Where do you live? A. At 865 East 27th Street.

Q. What is your occupation? A. Agent for the N. Y., S. & W. Railroad at Maywood, New Jersey.

Q. Were you such and so employed on the 27th of September, 1913? A. I have been since April 21st, 1910.

Q. How far is your house from the 27th Street crossing? A. Between six and seven hundred feet.

Q. About 5:30 or 5:40 in the afternoon of September 27, 1913, were you at home? A. I was. In the rear of the house.

Q. While you were there did you hear any engine coming along the Susquehanna tracks? A. I heard a light engine going west, coming west, as she blew for 31st Street.

Q. Could you see the engine from where you were? A. I could.

Q. And did you see it? A. I did.

Q. In what direction was it going? A. It was going west.

Q. You have told us your street number but tell us whether you are north or south of the crossing? A. I am south of the crossing.

Q. And are you east or west of the crossing? A. East of the crossing.

Q. That is nearer New York? A. Nearer New York; yes, sir.

Q. Where was that engine when you first saw it? A. It just came over 31st Street.

Q. What kind of a whistle did you hear? A. I heard two long and two short blasts of the whistle.

Q. Do you recollect whether you heard any other whistles after that before the accident? A. I did. I head them blow for 27th Street at Dilliston's lumber yard or coal yard down there.

Q. Near the lumber yard? A. Near the lumber yard; yes, sir.

Q. What kind of a whistle was that? A. Two long and two short.

Q. Do you recollect whether there were any others? A. Yes; about the time of the crash I heard several short blasts of the whistle that called my attention to the crash.

Q. Did you hear any other signal from that engine outside of those whistles? A. I heard the

bell ringing as she went by me. She was only about 600 feet from me.

Q. Could you hear it clearly? A. I could.

Q. Could you see the bell from where you were? A. I could; nothing obstructed my view of the track.

Q. Did you see whether the bell was moving? A. It was.

Q. Is this the engine bell that you refer to? A. The engine bell; yes, sir.

Q. Did you see the accident, itself? A. I did not see the accident; no, sir.

Q. Did you hear any crash or noise? A. I heard a rumble as if they had gone on the ground and about the same time that I heard this rumbling noise I heard a series of short whistles.

Q. What did you do then? A. I immediately ran around out on 27th Street and I could see when I got out on 27th Street that they had hit something.

Q. Did you go down to the crossing? A. I did.

Q. How long did you stay there? A. I stayed there probably a half or three quarters of an hour.

Q. While you were there did any other train come along? A. Yes, sir.

Q. How many, while you were there? A. Three.

Q. In which direction? A. Two from the east and one from the west.

Q. How soon after you got there did the first train come from the east? A. Well, 917 pulled in there, I should judge, probably ten or fifteen minutes after I arrived there, coming west.

Q. When you say 917 do you mean the number of the train? A. The number of the train, 917.

Q. Is that a passenger train? A. That is a passenger train, yes, sir.

Q. West bound. A. A west bound passenger train.

Q. Coming on the same tracks that the engine came on? A. On the same track that the engine was on.

Q. How soon after 917 did the next train come? A. The next train was 955 which was probably 5 minutes behind 917.

Q. Also coming west? A. Coming west, on the west bound track from New York.

Q. When train 917 approached the crossing were you at the crossing? A. No, not directly at the crossing. I was up by the wreck of the automobile when 917 passed, assisting in throwing it down the bank.

Q. Where were you when 955 approached? A. A. I was at the crossing when 955 came up.

Q. Did you hear the crossing bell ring for any of those trains? A. I did.

Q. Did you hear for either one or for both of them? A. I heard it for both of them, I called Mr. Steele's attention to the crossing bell ringing, because there was some controversy about the bell not ringing and our train master Mr. Steele was there and I told him to go down and examine the bell as the bell was ringing when I first came there.

Q. Did anybody knock against the bell post or anything of that sort? A. I seen no one around the bell post at all, that is, working around the bell post.

Q. Were there people standing around? A. Oh, there were people standing around, I should judge there were two hundred people at the scene of the accident before it commenced to die away.

Q. They were on all sides of the crossing? A. Oh, certainly.

CROSS EXAMINATION BY MR. DIXON:

Q. What did you say your employment is? A. Agent of the Susquehanna Railroad at Maywood, N. J.

Q. Agent? A. Yes, sir.

Q. What, agent for what? A. Agent for the railroad there at the station.

Q. What kind of an agent? A. Station agent.

Q. How near these Keyser boys do you live? A. I live right next door to them. They live at 867 and I live at 865.

Q. You know them pretty well? A. I do; yes, sir.

Q. And did you see one of them in the yard that night? A. They were in the rear of the house, one of them, I could not tell you which one.

Q. Did you talk to him? A. Why one of them went down with me and one of them went ahead of me.

Q. Why did you say then that you could not tell which one was in the rear of the house? A. Well I don't remember, we all went out of the house at the same time.

Q. The two Keyser boys and you? A. About the same time; yes, sir, one went out through their alley and I went out through our alley.

Q. Which one did you go with? A. We both started out.

Q. Which one did you go down with? A. I went down with Lawrence.

Q. Lawrence? A. Yes; Garrey went ahead of us, he started on a run.

Q. You told Mr. Steele to go and examine the bell? A. I requested him to go down and look at the bell; yes, sir.

Q. Did he do it? A. I think he did; yes, sir. He examined it.

Q. What do you mean by examining it? A. Well, I suppose to see if the bell rang when a train came on the circuit.

Q. Is that the only examination he made? A. That is all; yes, sir, that is the only examination he could make.

Q. Why did he need to go down to the bell to do that when you could hear the bell where you were, couldn't you? A. You could hear it; yes, sir.

Q. Why did he need to go down, why did you tell him to go down and examine the bell if you could hear it where you were? A. Because there was some controversy when this bell rang whether it rang or not.

Q. You could hear the bell and that ended the controversy? A. We could not hear the bell at that time because there was no train on the circuit.

Q. Then he did go down and examine the bell, did he? A. He went down that way, yes, sir; when 917 moved in after we had throwed the wreckage from the track.

Q. Do you mean to say that he did not examine the bell or that he did examine the bell? A. He examined the bell, yes, sir.

Q. At your request? A. I called his attention to it; yes, sir.

Q. What examination did you see him make of the bell? A. He stood on the track and listened when a train came in the circuit.

Q. But that was not examining the bell. A. What would you call it if you don't call it examining the bell.

Q. Was that what you mean by examining the bell? A. Yes, sir; that is all the examination you can make, you could not unlock the box and make an examination.

Q. He could get a ladder, couldn't he? A. There were no ladders there.

Q. Couldn't he, and examine the bell? A. No; that would be no examination to get a ladder.

Q. What you mean to say by examining the bell is that he should go down and stand on the crossing and wait for a train to come on and see if it rang? A. Yes, sir.

Q. Whereas, as a matter of fact, just where you were and where you were having the conversation you could equally as well hear whether the bell rang or not? A. We could if the train got in the circuit.

Q. You had to wait for a train to be in the circuit anyway? A. Yes, sir.

Q. Then why did he have to go down and examine it? You didn't mean that, did you? A. I meant that I told him to examine the bell; yes, sir.

Q. You didn't mean to tell him to go and wait for a train to come in the circuit, did you? A. Yes, sir.

Q. You knew that there was a train coming in almost immediately, didn't you? A. I did not, no, sir; not till the train came.

Q. Didn't you know that this train nine something was due? A. I knew that was due; yes, sir.

Q. 917, didn't you know exactly when it was due? A. It was due at Broadway at 6:01, yes, sir.

Q. This was about the time you had the conversation? A. I could not tell you the time we had the conversation; no, sir.

Q. And you were watching this locomotive prior to the accident with such care that you could tell at this distance of six or seven hundred feet away that the bell was moving, you watched

to hear the bell did you and you watched her move? A. I did; yes, sir; nothing obstructed my view.

Q. Why should you watch that bell move? A. It is a custom.

Q. It is a custom to sit there in your back yard and look at the bells move? A. I don't say I was sitting in my back yard.

Q. Where were you—on your front porch? A. I did not say so.

Q. Where were you? A. I said I was in the yard at the rear of the house.

Q. Where whose yard? A. My yard.

Q. Is that a back yard? A. Yes, sir.

Q. And you sat there watching the bell move? A. I did not say I sat there.

Q. Stood there? A. I was walking across my back yard at the time this train came in view.

Q. What train? A. This engine, light engine.

Q. And you watched the bell move? A. I watched the bell move.

Q. What did you watch the bell move for; couldn't you hear it ringing? A. I could; yes.

Q. Why did you watch it move when you could hear it and knew it was ringing? A. I could see, there was nothing obstructed my view, I was looking directly at it and I could see the bell move.

Q. Then you could not tell from hearing it that it was ringing, could you? A. I certainly could; yes, sir.

Q. But you wanted to be able to testify both as to your eye sight and your hearing? A. I did not know that there was going to be an accident at that time.

WESLEY H. STEELE, sworn as a witness on behalf of defendant testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. You live in Paterson? A. Yes, sir.

Q. And your occupation is what? A. Train master of the Susquehanna Railroad.

Q. And you have been in that position for some years past? A. Yes, sir.

Q. How long? A. Since 1882.

Q. On the 27th of September, 1913 on the occasion of this accident on the 27th Street crossing where were you? A. At the Broadway station.

Q. How did you happen to be there? A. I make that an office when I am in Paterson; my office proper is in Jersey City but when I am out on the line my office will do to do my business anywhere on the line, I have telephones and telegraph wires at all those offices.

Q. On which side of 27th Street is the Broadway station, east or west? A. West.

Q. About how far west? A. I should think a quarter of a mile.

Q. How did you first know of the accident? A. Why one of the train men on extra 125 that hit this automobile ran to the depot from the crossing and notified us at that point.

Q. What did you do when you got that word? A. I first called up police department, headquarters, and told them, and then I went across the street and got my automobile that was in a garage there and brought train man Murray and Officer White down to the scene of the accident.

Q. Then they went with you in your automobile? A. They went with me in my automobile.

Q. How quickly did you get there? A. Well I assure you I exceeded the speed limit.

Q. You only had about a quarter of a mile to go? A. That is all.

Q. What did you find when you got there? A. I found engine 125 west of the crossing, off of the circuit, the bell circuit, against the automobile and she laid in the track in fact she laid about like that (indicating with hands).

Q. Sort of catacornered? A. Sort of catacornered; and they had gotten the lady out and the young man and Mr. Lange was still under the automobile yet.

Q. Was there an ambulance called? A. An ambulance had been called. I told our agent to call the ambulance after I left, I told him before I left there rather, and he had called it between that and the time I got down there.

Q. That is, the Broadway agent? A. Yes, sir.

Q. You had told him to call the ambulance? A. I told him to get the ambulance. I got the police department and I was little detained in getting that and I told him to get the ambulance I wanted to get down there as quick as I could.

Q. How long did you remain there? A. I was there until about a quarter or twenty minutes past six.

Q. While you were there did any other tram come along from New York. A. We had three trains back of the block; 944 went east, 917 west and 955; and extra 128 was still at Passaic junction when I got back to the station.

Q. Well 917 and 955 were both west bound trains? A. They were both west bound trains; but one could get in that block, 917 was in the block, '17 came in on the card, what we call the card, from Vreeland Avenue, between Vreeland and Broadway.

Q. That means the signals were to slow down? A. That is the signal; yes, sir; and they held 955 back until '17 cleared at Broadway and '17 could not clear at Broadway until we got this wreck cleared up and got this engine off on the siding.

Q. Did you order it on the siding? A. Yes, sir.

Q. How long after you got there was it put on the siding? A. Not until after we had gotten Mr. Lange out and Officer Lord had taken him away and then we made three turns of the automobile before we could clear it from the track.

Q. When 917 came along did you notice anything about the crossing bell? A. Before 917 came along we did this—she had come in on the block, but she was still back behind our flag, we had a flag up besides the block, but I wanted to work this 125 into the siding and when we backed her back we put her in the circuit again and that started the bell ringing just about that time, and the mover, the conductor of 125 opened the siding and that broke the circuit.

Q. That is 125 engine? A. Engine 125; yes, sir; and that broke the circuit and she went in the siding and Lord came to me and said to me—

MR. DIXON: I object to what he said.

Q. Never mind what Mr. Lord said? A. Yes.

Q. At any rate you ordered the engine back in on the siding? A. I put her in there.

Q. After the engine was put in on the siding then train 917 came along? A. Then 917 came up; yes, sir.

Q. Did you observe anything about the crossing bell when 917 came up by the crossing? A. The bell was ringing as soon as we closed the siding.

Q. Did you observe that? A. Yes, sir.

Q. How did you come to notice that? A. That is what I was looking for probably, I was going to draw this engine up and show it—

Q. At whose request? A. Well, there were two or three talking about the bell not ringing and I thought I would prove to the people there that the bell was ringing.

Q. And you started to drive the engine out? A. I started to drive the engine out and I saw 917 come in on the circuit and I said he better stay there.

Q. How far away from the crossing was this 917 when the crossing bell began to ring? A. Well it down around near 31st street.

Q. And about where the circuit begins? A. Yes, sir.

Q. While we are on the subject of these circuits you said that the engine when you got there was in the bell circuit? A. Yes, sir; the bell circuit, the bell circuit extended about 40 feet, I should judge, west of the crossing—

Q. I was about to ask you that—do you know the distance that the bell circuit extended west of the crossing? A. The bell circuit extended about 40 feet, I should judge west of the crossing so that going west the bell will continue ringing until it gets about that distance over the crossing, west of the crossing?

Q. As soon as it clears that does the bell stop ringing? A. The bell stops ringing because it is off the circuit.

Q. You were also there when this other west bound train came along? A. 955; yes, sir.

Q. Did the crossing bell ring for that train? A. Yes, sir.

Q. Do you recollect whether you stopped 917, at or near the crossing? A. I did.

Q. Why? A. Mr. Paulison the conductor of 917 was up with me after he had been stopped by our flag he came up to see if he could render any assistance or do anything to help.

Q. Did 917 stop east or west of the crossing? A. East of the crossing.

Q. How close to the crossing? A. Well, I should think two or three hundred feet.

Q. Was it in the bell circuit at that time? A. Oh, he was in the bell circuit when he came over 31st Street.

Q. How long did it stop? A. Oh, he was there eight, perhaps twelve minutes.

Q. From the time that he stopped, during that time, was the crossing bell ringing? A. After we closed the switch.

Q. The opening of the switch cuts off the circuit does it? A. Yes.

Q. While you were there did you observe if anybody tampered with the bell or the bell circuit in any way? A. I made it my business to know that nobody touched the bell.

Q. Why were you watching that particularly? A. I was watching the bell along with the rest of the duties that I had.

Q. Was there any ladder put up on the post? A. No ladder whatever.

Q. Was there anybody monkeying with the batteries? A. None at all; the battery box was locked, under lock and key and nobody could get into it but the battery man.

Q. Was it locked at that time? A. Yes, sir.

CROSS EXAMINATION BY MR. DIXON:

Q. The switch that you speak of is that switch indicated on this car? A. Yes, sir; that is the one.

Q. And the engine had backed down and did it go directly in the switch or did it stop before it went in the switch? A. When I first arrived there the engine was against the automobile, I backed them away as soon as I got Mr. Lange clear so that we could turn the automobile over, and it did not put the engine on the circuit as yet and then when we got the automobile turned off of the track I told Gruber to open the switch and let his engine in the siding.

Q. What do you mean by opening the switch? A. Opening the clap, the switch, break the rails, there to allow the engine to go in the siding.

Q. The switch has a siding? A. The switch has a siding and he was to turn the switch.

Q. You open the switch by closing the rails, you call that opening the switch, when you close the rails, bring the rails into contact so that the flange of the wheel takes the rail, that is what you call opening the switch? A. Yes, sir.

Q. The engine stopped before it got to the point of the switch, didn't it? A. In backing up.

Q. Yes. It came to a stop at or near the crossing and to the east and stood there before it went into the switch? A. It started right from the starting point. When we backed the engine away from the car and turned the car down the bank, then we went back and opened the siding to let the engine in the switch and she started about ten feet away from where the automobile was when I got there and backed right on in the siding without making any stop.

Q. She did not make any stop at all to the east of 27th Street? A. No, sir.

Q. Till she went in the siding? A. She went right on in the siding, clear.

Q. When she was settled in there with the

switch open, that is, with the rails together would she sound the bell? A. No, that breaks the circuit going in there. In other words those rails—

Q. How long is that siding? A. Oh, about thirty car lengths.

MR. COLLINS: You started to say something else "In other words."

THE WITNESS: The switch rails are not bonded.

Q. This siding is not bonded? A. Not with the wire; no, sir.

Q. So that when you are running a train out of this siding, backing a train of cars out of that siding and across 27th Street you don't ring any gong? A. It does not ring any gong until she gets on the crossing.

Q. Till she is on the crossing? A. Just as she comes on the crossing.

Q. That is after— A. That is after, may I show you there?

Q. Sure. A. (Showing on the photograph.) A point right there, that is east of the crossing.

Q. How far east? A. Twenty feet.

Q. Is it? A. Yes, sir.

Q. Sure? A. Measure it if you don't think so, there is the map shows you the inches to the mile.

Q. Well, from the fence line, that is the first point, is it, you ring the bell, when you come out of this switch, twenty feet away from the crossing on that side? A. (No answer.)

Q. You start with an engine and a car a thousand feet down that siding and run her up onto this westbound track, and she will run right along from that switch onto that track and get within twenty feet of the crossing without ring-

ing any crossing bell, is that correct? A. Yes, sir.

Q. That is right? A. That is the side track, you remember, that is not the main track.

Q. Well, it is used there? A. One end of a stub switch.

Q. It is used there, is it not? A. They are using it yes, sir, to shift cars in.

Q. And out again? A. Yes, sir.

Q. In order to shift them in and out you have got to cross Twenty-seventh street haven't you? A Yes, sir; and before you cross Twenty-seventh street you will get an alarm from the bell, and before you cross the Twenty-seventh street the switch has got to be open and the man that opens the switch protects the crossing.

Q. Twenty feet before you get into Twenty-seventh street you get your alarm, do you? A. Yes, sir.

Q. How long has that condition existed before the day in question? A. I don't know just how long that bell has been up in there. Some time.

Q. A number of years, wasn't it? A. I could not say just how many years.

Q. You had in mind that you would take that engine out of the switch and run her across there to show these doubters that the bell would ring, had you? A. How is that.

Q. You had it in mind to take this switch engine out of this siding to show these doubters or arguers that the bell would ring? A. There was not any doubters there, only one man I heard say anything about it.

Q. You say they were arguing about it? A. Yes, sir.

Q. And then you concluded you would not do that because you knew the train was coming along? A. I saw the train coming, yes, sir.

Q. You did not know it was coming until you saw it? A. She could not come till we cleared up.

Q. Didn't you know as a matter of fact that that train was due there at six o'clock? A. Sure, I knew it was due there, and it was she was right there then and our flag would hold her until she was cleared, and she had to be cleared up before she dared to come.

Q. When did this argument start? How long after you got to the scene of the accident? A. What argument?

Q. The argument about the bell not ringing? A. The man came to me and told me the bell was not ringing, I don't know just what time it was exactly, and I told him I would show him that it did ring.

Q. Where was the engine when you told him that? A. West of the crossing, off of the circuit.

Q. When you ran her back again, wasn't that a demonstration enough that it would ring? A. That left the switch open. If the switch was closed it would have been all right but we had to close the switch behind him.

Q. Is it the fact that the engine went across this crossing without the crossing bell ringing? A The minute she got into this forty feet she started ringing if you leave the switch closed.

Q. How is it if she went backwards over Twenty-seventh street and did not ring the crossing bell? A. I could not tell you, I was not listening to that.

Q. Why weren't you? A. Because it was more my intention to get the railroad cleared then.

Q. You were having an argument there and wanted to prove to this man that she would ring? Why didn't you prove it to him? A. What is that?

Q. That the crossing bell rang when the engine passed over the crossing? A. The crossing bell did ring when the engine passed over.

Q. You said it did not ring? A. I told you we had the circuit broke.

Q. Now, I want to know whether or not, when that engine backed up, went east, over that crossing, under your direction, to go into the switch or siding, whether when she crossed going in that direction she rang the crossing bell? A. No, I told you that she did not because the circuit was broke.

RE-DIRECT EXAMINATION BY MR. HOBART:

Q. Could she get into the switch without breaking the circuit? A. No, sir.

Q. I want to show you some pictures that have already been offered in evidence and marked Exhibits D-6 to D-11, and I want to call your attention to an engine that appears in some of the pictures, take, for example, the engine that appears in Exhibit D-9, do you know whether that was the same kind of an engine as engine No. 125? A. That is No. 125 in the picture, and also 125 that was in the wreck.

Q. That is with a high tank at the top? A. Yes, sir; that is the same engine, I was there when the pictures were taken.

Q. Can you point out on any of those pictures what you mean by cutting out the circuit when the engine backed in on the side track? A. I can, yes, sir.

MR. COLLINS: Breaking the circuit.

Q. Look at Exhibit No. D-5? A. This is set to the main track now.

Q. As it appears in the picture? A. As it ap-

pears in the picture, it is set in the main track now, and by the engine coming on this circuit, the same as this is on the westbound track, way down here, that will start that bell ringing, but if you break that by drawing this rail over against that and open that it will go in there, and an engine working or backing from here won't ring the bell.

Q. Who was that man that was arguing about the bell, do you know? A. No. It was a police officer.

Q. Was it Sargeant Lord, do you know if it was Sargeant Lord? A. No, it was Sargeant Lord that said—

MR. DIXON: Never mind about that.

Q. It was not Sargeant Lord? A. No, sir.

RE-CROSS EXAMINATION BY MR. DIXON:

Q. Referring to this Exhibit D-5 west of the switch, if you throw in the rail to the switch that manipulates it, now, where is that? A. See that stand?

Q. That there, yes? A. That is it.

Q. Right opposite the point of the switch then is it not? A. Yes, sir.

MR. DIXON: The witness indicates this handle that throws the point of the switch.

Q. That you say is about twenty feet from the crossing? A. East of the crossing.

Q. And in order to throw that switch you have to have a man go there and do it? A. Yes, sir.

Q. Why did you throw that switch before the engine crossed the crossing? Why didn't you leave it there and throw it as she entered upon the point and so demonstrate to the audience

that she would ring the bell? Instead of letting them think that she would not ring it by going over and having it silent? A. I would rather have people see that train '17 ring the bell from its ordinary starting point.

Q. But why didn't you let the people see that the engine when she went over that crossing would ring the bell, when it was not necessary to open the switch until she got to the point, all the way over? A. Wasn't it?

Q. Wasn't it? A. It was, I think, from a railroad standpoint; it was my duty to get that engine in the switch out of the way and open the main line.

Q. You had a flag across the line, across the main line? A. No, I did not have a flag across the main line.

Q. I thought you did? A. I had a flag up against this passenger train that I was holding with six or eight carload of people into it, and this engine stood there all alone.

Q. You were trying to demonstrate that the bell was ringing? A. I did demonstrate it.

Q. Why didn't you open the switch and show she would ring up here? A. I wanted to get her up here in the switch out of the way and show that she would ring as they started down at Thirty-first street where the passenger train was coming.

THE COURT: When a train gets past the crossing then the bell rings?

THE WITNESS: Then she rings.

Q. (By the Court.) And if she goes in the switch it does not ring?

THE WITNESS: Then she stops.

THE COURT: But when you have an en-

gine go over that again she will ring the bell?

THE WITNESS: Yes, sir, but as long as you open the switch up here in the siding—

Q. Irrespective of the siding?

THE WITNESS: Irrespective of the siding, the minute you come back onto it she rings.

BY THE FOREMAN: I would like to know if that argument started after the switch engine was on the siding or while it was still at the wreck?

THE WITNESS: That was started just —I heard this officer say that this bell did not ring after the engine backed onto the siding, and I was going to bring the engine out to prove that she would ring when '17 loomed up in sight around Thirty-first street and I said, "Whoa, stay in there, close your switch and clear things." And bang bang went your bell, '17 was on the circuit.

BY MR. DIXON:

Q. Didn't you testify a short while ago in response to my examination that that argument took place while the engine was west of the crossing and standing there about ten feet from the automobile? A. What is that? What is that?

Q. Didn't you testify a short while ago in respose to my examination that that argument took place while the engine was west of the crossing and standing there about ten feet from the automobile? A. What did I say now?

THE COURT: Just answer the question.

Q. What do you say now? A. I say that—

Q. What do you say now in answer to that question? Where was the engine? The Foreman's question was, where was the engine when this argument was going on, respecting the sounding of the bell? Where was it? A. Well, I was behind the engine at that time.

Q. Where was the engine, can you understand that? A. Yes. And can you understand me; I was behind the engine at that time, I don't know just where it was.

Q. Where was the engine at the time the argument was going on? A. I was behind the engine at that time and I don't know just where it was.

Q. Where was the engine at the time the argument was going on? A. I was behind the engine at that time and I cannot say exactly where sne was.

Q. Can you say whether she was upon the west switch? A. Upon the west switch you say?

Q. West of the crossing? A. She was west of the switch I say, but whether on the circuit or not, I could not tell.

Q. Was she west of the crossing? A. She must have been west of the crossing.

MR. DIXON: Does that answer your question?

THE FOREMAN: Not clearly.

Q. As I understood the foreman's question, ne wants to know where the locomotive was with respect to the crossing, is it not? With respect to the crossing? Whether it was east of the crossing or west of the crossing at the time of the argument? A. That is before the circuit was broken you mean?

THE COURT: At the time of the argument.

Q. Never mind the circuit; where was the locomotive at that time of the argument? Was it east or west of the crossing? A. Well, it was west of me and certainly west of the crossing for I stood on the crossing.

Q. How far west of the crossing was it? A. I could not tell you.

Q. Was it in the circuit or out of the circuit? A. I could not tell you that, because the circuit was broken.

Q. So that after the argument the engine proceeded toward the east and onto the siding did it? A. Well, I would not say positive to that.

Q. Why not? A. What?

Q. If the engine was west of the crossing at the time of the argument and went from the west of the crossing to the siding and it went directly in without stopping, why can you not answer the question? A. Well, I suppose if I had known that I was going to be questioned on that thing I would have made a note of that and bore that in my mind so that I could have properly fixed it to answer you your question. I was looking after the railroad interest when I was there.

Q. You bet you were? A. That is my business, that is what they were paying me for.

THE COURT: Which way was this train that struck the automobile, going, was it coming down this siding or on the main line?

THE WITNESS: On the main line.

MR. HOBART: All the witnesses depict it as on the main line.

BY MR. HOBART:

Q. How long did this argument continue? A. Just a word; I just simply heard that, and I was

afraid somebody might of heard that and I (snapping fingers) thought I would squash it right there.

Q. Had you already given orders to back the engine into that siding? A. The man had orders just as soon as we got the automobile out of the way, I told him to get out of the way so that we could move '17.

Q. Had you given orders to back onto the siding some time before the engine started? A. Yes, sir, and the conductor had gone back on the switch and opened the switch so that the engine could go in, before the engine had attempted to move in.

Q. In accordance with your orders? A. In accordance with my orders.

Q. Preparatory to backing in on the side track? A. Yes, sir.

BY THE COURT: Could a train come down the main line with the switch open for that siding?

THE WITNESS: Come down the main line?

THE COURT: Yes, and cross Twenty-seventh street, with the switch open for the siding?

THE WITNESS: You mean down the westbound track?

THE COURT: Yes, the same as this train was coming?

THE WITNESS: Yes, sir.

THE COURT: So that it would be possible then for a train to come down this main line with that siding open, which would cut off the bell and prevent it from ringing?

THE WITNESS: You understand that is a double track.

THE COURT: I want to know whether that is possible to be done?

THE WITNESS: That is possible to be done. You don't bond every wire. The only wire you bond is where the trains are running out on the double track.

Q. That is what you call a traffic switch there?

THE WITNESS: Yes, sir.

Q. So that if the switch was open and the switch cut off the circuit a train coming on the westbound track would not start the bell? A. That is so.

Q. Until the switch was put back in the circuit? A. Until it was put back in its proper position.

JOSEPH B. BUSH, sworn as a witness on the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. Where do you live? A. 114 Spring Street.

Q. And your business is what? A. Formerly employed at J. H. Dederick.

Q. In the coal business? A. Yes, sir.

Q. At the time of this accident where did you live? A. On the corner of Twenty-seventh Street and Eighteenth Avenue.

Q. How close to the Twenty-seventh Street crossing? A. I should judge about three hundred feet.

Q. Anyone call your attention to the accident that day? A. I was up to the stable and I heard the crossing bell ringing and as I started to go upstairs in the house I heard the crash of the automobile and the engine.

Q. Did you hear the crossing bell before you heard the crash? A. Yes, sir.

Q. After you heard the crash did you go to the scene of the accident? A. Yes, sir.

Q. How long did you stay there? A. Probably one half hour.

Q. Were you there when the other train came from New York? A. Yes, sir.

Q. Did you see it coming? A. Yes, sir.

Q. Did you hear the bell ring for the other train? A. Yes, sir.

By the Court:

Q. That is the crossing bell? A. Yes, sir.

By Mr. Hobart:

Q. Had you been over that crossing earlier in that day? A. Yes, sir.

Q. How many times? A. Probably ten times—a dozen times.

Q. In connection with your business there? A. Yes, sir.

Q. Had any other trains crossed that crossing that day? A. Yes, sir.

Q. While you were there? A. Yes, sir.

Q. How many? A. I stopped on three different occasions for trains to go by.

Q. Going west? A. East and west both.

Q. Do you know at what hour? A. No; not just at what hour.

Q. Morning or afternoon? A. The last one was somewhere between four and five o'clock.

Q. In the afternoon? A. Yes, sir.

Q. Did the crossing bell ring for that train? A. Yes, sir.

Q. Do you remember whether that was going east or west? A. I am quite sure it was a westbound train.

Q. Cross examine.

CROSS EXAMINATION BY MR. DIXON:

Q. On this afternoon on the twenty-seventh day of October where were you going just before you heard the crash? A. I was busy in the stable.

Q. That is prior to the accident? A. Yes, sir.

Q. What is your position? A. I work in the yard.

Q. In what yard? A. I am employed by J. H. Dederick.

Q. What do you do there? A. Drive teams and take charge of the yard.

Q. Driver? A. Take charge of the yard.

Q. Driver for the company? A. Yes; driver.

Q. How long had you been in the stable before you heard the crash? A. Three quarters or half an hour.

Q. When you heard the crash where were you? A. Going upstairs.

Q. In your house? A. Yes, sir.

Q. You were in the inclosure of the stairs? A. Yes; going up the stairs.

Q. Was that a loud crash? A. Quite loud.

Q. Was it then that you heard the bell? A. Before that.

Q. How long before? A. As I was going to the house.

Q. Is that the only bell you heard rung? A. That is the only one I remember.

Q. That is the only one you know about—the train came along and the bell was ringing—the crossing bell? A. It was.

Q. You can't tell us whether it was going east or west? A. I didn't pay any attention to it.

Q. How far is your house from the stable? A. About one hundred feet.

Q. And where is the stable with respect to the crossing? A. The stable is on Eighteenth Avenue —facing on Eighteenth Avenue.

Q. How far away is that?

BY THE COURT:

Q. The stable and the crossing? A. About the same distance as the house.
LANGE 93

BY MR. DIXON:

Q. How far is it? A. It might be a little more.

BY THE COURT:

Q. How many feet? A. About a hundred feet more.

BY MR. DIXON:

Q. You know about this yard? A. J. H. Dederick's?

Q. Yes; there are some coal pockets there? A. Yes.

Q. Where are those pockets?

At this point an adjournment was taken until two o'clock.

JOSEPH B. BUSH, resumes the stand.

CROSS EXAMINATION (continued) BY MR. DIXON:

Q. Your employment brings you in this coal yard, does it not? A. Yes, sir.

Q. Just west of the lumber yard? A. Yes, sir.

BY THE COURT:

Q. West of the lumber yard? A. Yes.

BY MR. DIXON:

Q. Is that lumber yard used in connection with the coal yard? A. No, sir.

Q. Are there buildings in there? A. In the lumber yard?

Q. In the coal yard. A. There is a coal trestle.

Q. What? A. A coal trestle.

Q. Where is that coal trestle? A. Along East Twenty-eight Street.

Q. Indicate on this diagram where that is? A. Twenty-eight Street is not shown on the map.

Q. Where do you figure Twenty-eighth Street would be? A. It would be towards the lumber yard. Here is the lumber yard here. This track (indicating) goes on the coal trestle.

Q. That is marked— A. J. H. Dederick siding.

Q. A siding, is it? A. They are both marked sidings.

Q. And the one to the lumber yard— A. Goes on the coal trestle.

Q. Where does that begin to rise from the ground? A. Why, outside of this fence something like twenty-five or thirty feet.

Q. As that little siding leaves the main siding it begins to ascend the coal trestle, does it? A. Yes, sir.

Q. How far in does that coal trestle reach? A. Within about twenty-five feet of Eighteenth Avenue or the line of fence on Eighteenth Avenue.

Q. Is there a line of fence on Eighteenth Avenue? A. Yes.

Q. That is not indicated on this diagram? A. No, sir.

Q. Where would you put that line of fence on this diagram? A. (Indicating.) Along about here.

Q. Does not the fence run along East Twenty-seventh Street? A. No, sir; on Eighteenth Avenue.

Q. And it runs nearly at right angles to the right of way? A. About; yes, sir.

Q. How high is that fence? A. I should judge that fence is ten feet high.

Q. That is, to the east of East Twenty-seventh Street? A. From east Twenty-seventh Street down to the Dillistin Lumber Co., on East Twenty-eight Street or Eighteenth Avenue.

Q. That fence runs along there? A. Yes, sir.

Q. How far is that? A. I should judge two hundred and fifty feet.

Q. That begins, you think, about at the point where the board fence running on East Twenty-seventh Street meets the board fence that runs parallel with the railroad track? A. There is no board fence along the railroad track.

Q. No board fence along the railroad track? A. No, sir.

Q. Was there in 1913? A. No, sir.

Q. Are you sure about that? A. Yes, sir.

Q. Is there any picket fence? A. Yes; a picket fence.

Q. There is a picket fence? A. Yes, sir.

Q. There is a picket fence that runs along the railroad? A. Yes.

Q. That board fence that you speak of ten feet high, starts at about the corner formed by these two picket fences, does it? A. It runs from the office. The office is at Twenty-seventh Street and Eighteenth Avenue and it starts at the rear end of the office and continues to Twenty-eighth Street with the exception of a pair of gates which are pickets.

Q. And this— A. And stable.

Q. And this coal trestle, how high does that run? A. Well, at the extreme end, I should judge it is about twenty-two feet high to the top.

Q. How far back from the railroad right of way does that run until you get to the end of it? A. How far from the right of way?

Q. Yes, where this siding begins and comes out of the main track, I call it,—the main siding—where does that come out, how far up does that go towards the north? A. I should judge three hundred feet.

Q. That is not shown on this map? A. No, sir.

Q. What is this siding used for? A. The lower one?

Q. The main siding that comes out of the west bound track, about twenty feet to the east of East Twenty-seventh Street? A. Why, putting in cars to unload.

Q. What? A. Unloading cars.

Q. Shifting cars in there? A. Yes.

Q. What kind of cars? A. Why, Mr. Rutt uses it for unloading slate; Mr. Dederick uses it for unloading grain and such like.

Q. All kinds of freight cars in there? A. Yes, sir.

Q. Do you know how far that siding runs down towards the east? A. No, sir; I do not.

Q. A long way, is it not? A. Quite a distance.

Q. Whose lumber yard is this? A. Dillistin Lumber Co.

Q. Do they use any siding? A. Of their own, yes, sir.

Q. Where does their siding come in? A. Well, it switches off the main track there some distance below the Twenty-seventh Street crossing.

Q. Well, is that shown on this map? A. I cannot see it from here.

Q. Come down and look at it. A. It starts right at this point here (indicating on map), and back down here, and then you come into Dederick's yard, back up into Dederick's.

Q. They use the Dederick siding? A. Who?

Q. The lumber company. A. No, sir.

Q. How do they get into the lumber yard? A. Go right straight down. This is the lumber yard.

Q. They have no track running up into the yard? A. No, sir.

Q. Are there cars standing along there occasionally? A. At the lumber yard?

Q. Standing there at the lumber yard, are there not cars there generally? A. Well, quite often---

Q. What? A. It is quite often that the siding is clear.

Q. But it is quite often that it is not clear? A. Yes, it is quite often that it is not.

Q. And occasionally your cars or cars for your coal yard stand on the siding too? A. While being unloaded.

Q. And that is quite frequent? A. No, sir.

Q. Not very frequent? A. No.

Q. You do not use many cars? A. None of that description; no.

Q. What? A. Not of freight.

Q. Any kind? A. We do coal cars, but they are put up on the trestle.

Q. They go up on the trestle? A. Yes, sir.

Q. What kind of cars do you use that stand on the main track? A. Box cars.

Q. What comes in them? A. Slate, hay, oats, whatever the purchase is.

Q. Do you know whether these fences to which you refer are now in about the same condition in which they were in 1913? A. Yes.

Q. September, 1913? A. Yes.

Q. There has been no change? A. No.

By Mr. Hobart:

Q. The crossing is just the same? A. Just the same, to my knowledge.

Q. The same kind of a street leading up to it? A. Yes.

Joseph C. Bush, sworn as a witness on the part of the defendant, testifies as follows:

Direct Examination by Mr. Hobart:

Q. You are a relative of the last witness? A. Yes.

Q. A son? A. Yes, sir.

Q. Where did you live on the twenty-seventh of September, 1913? A. 83 Chestnut Street.

Q. And how near is that to East Twenty-Seventh Street crossing? A. About two miles and a half.

Q. On that day, September twenty-seventh, 1913, shortly before six o'clock where were you? A. In the stable.

Q. What stable is that? A. James McGuire's on Twenty-Sixth Street.

Q. Were you employed there? A. Yes, sir.

Q. What did you do? A. Drove a pole wagon.

Q. Now, did you have your attention called to any accident at the crossing? A. I did.

Q. What did you do? A. I heard somebody holler for help, and I went down towards the crossing.

Q. Did you go all the way to the crossing? A. Yes, sir.

Q. Did you find some indication of an accident? A. Yes; I saw an automobile on the track.

Q. How long did you remain there? A. About an hour.

Q. While you were there did a train come from New York—a passenger train? A. It did.

Q. How soon after you got there did that train come? A. I should judge about twenty minutes.

Q. Did you observe whether the crossing bell rang? A. It was.

Q. Do you recollect whether any other train came after that first one? A. There was one came from the west going toward New York.

Q. Those two are the only ones that you remember? A. Yes, sir.

No Cross Examination.

Homer J. Hosfield, sworn as a witness on the part of the defendant, testifies as follows:

Direct Examination by Mr. Hobart:

Q. Where are you employed? A. Erie Railroad Company in New York.

Q. In what capacity? A. Clerk, treasury department.

Q. Where did you live on September twenty-seventh, 1913? A. 194 East Twenty-Seventh Street.

Q. How far from the Erie Railroad? A. About three blocks—four blocks.

Q. Where were you on this day of the accident? A. On Market Street walking toward the crossing.

Q. How far from the crossing were you? A. About three blocks.

Q. Was your attention directed to anything unusual? A. No, sir; it was not.

Q. Was your attention called to the accident? A. Yes.

Q. What was it that called your attention to it? A. I noticed the automobile coming up with the injured lady.

Q. And then what did you do? A. Proceeded to the crossing.

Q. And how long did you stay there? A. Fully one-half hour.

Q. While you were there did any train come along from New York? A. Yes, several trains.

Q. How many did you notice coming from New York? A. Two.

Q. How close were you to the crossing when the train came? A. Directly on the crossing.

Q. Do you know where the crossing bell is located? A. Yes; I do.

Q. When those trains came from New York did you notice whether the bell was ringing? A. Yes, sir.

Q. Was it ringing? A. Yes, sir.

Q. How many trains came from New York? A. Two.

Q. Was it ringing for both? A. Yes; it was.

Q. Did you observe how far the first of those two trains was from the crossing when the bell started to ring? A. No; I didn't.

Q. Do you know whether the train came to a stop? A. Yes; I do.

Q. Did it stop? A. Yes, sir.

Q. East or west of the crossing? A. East of the crossing.

Q. How long did it stop? A. Three or four minutes.

Q. Did you notice whether the crossing bell was ringing after it stopped? A. Yes, sir; all the time.

Q. Cross examine.

No Cross Examination.

JACOB H. DAGELMAN, sworn as a witness on the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. What is your business, Mr. Dagelman? A. What?

Q. What is your business? A. Occupation, you mean?

Q. Yes. A. Watchman.

Q. For whom? A. Dillistin Lumber yard.

Q. Were you employed by that company in September, 1913? A. What?

Q. Did you work for them in September, 1913? A. Yes, sir.

Q. Were you there on Saturday afternoon, September twenty-seventh? A. I was there at half past five.

Q. That is the time you come to work? A. Every day.

Q. You are the night man? A. Yes, sir.

Q. Did you have your attention called to an accident? A. Not properly.

Q. What? A. Not properly; I heard the whistle but I didn't pay any attention and I saw the boys running up the track.

Q. Did you hear the whistle before you saw the boys? A. They do that.

Q. Did you or didn't you on this day? A. Sure.

Q. What did you do then? A. I paid no attention; I thought it was a lot of boy scouts.

Q. Did you go up to the crossing? A. Not right away.

Q. Did you after? A. About twenty minutes afterwards.

Q. How did you come to go up there? A. It is my duty to go up that far.

Q. In the course of your rounds? A. Yes, sir.

Q. Were you there when the train came up from New York? A. No, sir.

Q. How long did you stay there? A. Where?

Q. At the crossing? A. At the crossing?

Q. At the crossing at Twenty-Seventh Street? A. About three minutes.

Q. Then where did you go? A. Back to work.

Q. Did you then see the train coming from New York? A. No, sir.

Q. Didn't see that train at all? A. No, sir.

Q. What kind of whistles was it you heard before you saw these boys coming? A. One long one and two short ones.

Q. That is all.

CROSS EXAMINATION BY MR. DIXON:

Q. You are sure about that are you; one long and two short? A. Yes, sir.

Q. And that is all you heard? A. Yes, sir; and the bell ringing.

Q. Where were you when you heard the bell ringing? A. On the crossing at Twenty-Seventh Street.

Q. And then the bells ran up? A. They do that right along.

Q. That is all.

RE-DIRECT EXAMINATION BY MR. HOBART:

Q. They do what right along? A. The bell rings.

Q. That is all.

BY MR. HOBART: I will now read the depositions taken of a witness who is not now able to attend court.

BY MR. DIXON: What is the matter with her?

BY MR. HOBART: She is not able to attend court.

BY MR. DIXON: What is the matter with her?

BY MR. HOBART: Epileptic fits, I believe. I will now read them.

NEW JERSEY SUPREME COURT.

RACHEL ANN LANGE,
Plaintiff,
vs.
NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY,
Defendant.
Deposition.

DEPOSITION of Mrs. Jennie Salisbury, an aged and infirm witness, taken before me, David A. Newton, a Supreme Court Examiner of the State of New Jersey, on November 7, 1914, at the residence of said Jennie Salisbury, 836 East 27th Street, Paterson, New Jersey, by consent, without formal notice, in the presence of Warren Dixon, Esq., attorney of plaintiff, and George S. Hobart, Esq., of Collins & Corbin, attorneys of defendant.

IT WAS STIPULATED AND AGREED by the respective counsel that the deposition shall be taken stenographically by the Examiner, by him transcribed, and that the signature of the witness to said transcript is hereby waived.

"MRS. JENNIE SALISBURY, a witness produced in behalf of the defendant, upon being duly sworn acording to law, on her oath, testified as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. You live at 836 East Twenty-Seventh Street, Paterson? A. Yes.

Q. And how long have you lived there? A. (After colloquy with her husband.) A year ago last June, a year and four or five months.

Q. Were you living here in last September, 1913? A. Yes, sir.

Q. And you live in the second floor of this building? A. Yes, sir.

Q. With your husband? A. Yes, sir.

Q. What is your age, Mrs. Salisbury? A. Sixty-one. My birthday was the other day so I am sixty-two.

Q. What is your state of health, Mrs. Salisbury? A. Well, it is better now than it has been in years. He took me away this summer and proposed staying three weeks and when we reached there it was so pleasant that we stayed for eight weeks.

Q. Are you at times subject to illness—to fits? A. Well, I don't know as you would call it a fit. I took care of my mother when she was very ill and after she died one night I woke up and the doctor was there and my father, and he had gone for my sister and her family—thought I was dying. It is not a fit; it is a sort of—I don't know what it is.

Q. Nervous attack of some kind? A. I have no warning of it whatever and when I come to I am completely unnerved; I haven't even the power of my hands.

Q. Do you become unconscious? A. Yes; I believe I do.

Q. You lose your senses for a while? A. Yes, I do.

Q. How far is the house where you live from the Twenty-Seventh Street crossing of the Susquehanna Railroad? A. Well, would you call it a block?

Q. What is your idea? A. I would call it about a block.

Q. And on which side of the tracks,—on the north side or the south side? A. On the south side.

Q. Do you recall an accident to an automobile on Twenty-Seventh Street on the Susquehanna line? A. Yes.

Q. Do you remember about when it was? A. It was one Sunday afternoon.

Q. And about what time in the afternoon? A. I should judge about four o'clock.

Q. Are you sure of the time? A. I don't know; I am not sure of the time.

Q. Was it during daylight or after dark? A. It was in daylight.

Q. What did you see of the accident yourself? A. I didn't see anything; didn't see anything at all.

Q. Did you see the automobile after the accident? A. Well, it was—I guess probably four weeks before I went down there.

Q. When did you first know of the accident; what called your attention to it? A. The noise, the shock; the noise of the—I suppose the engine and Mr. Salisbury says, "Well, that is an accident."

Q. Where were you when you heard that noise and Mr. Salisbury said something about an accident? A. Between here and the railroad.

Q. About how far from the railroad were you? A. I cannot tell; I think we were right near Nineteenth Avenue; Nineteenth Avenue is right near.

Q. Nineteenth Avenue crosses Twenty-Seventh Street? A. Yes.

Q. Nineteenth Avenue—is there a street called Nineteenth Avenue? A. Yes, sir.

Q. On the south side of the tracks that is? A. Yes.

Q. Where were you with reference to this street, Nineteenth Avenue, when you heard the shock or noise? A. Well, I think we were just near Nineteenth Avenue.

Q. Were you in this Street, in East Twenty-Seventh Street? A. Yes, sir.

Q. Were you walking with your husband? A. Yes.

Q. Anybody else? A. No.

Q. Which direction were you walking? A. Walking south.

Q. Would that be away from the railroad track? A. Yes.

Q. After you heard this noise or crash did you turn around or pay any further attention to see what it was? A. Why, certainly, we turned around and we said that is—

MR. DIXON: Don't give us any conversation; just tell what you saw.

Q. You turned around and what did you see? A. I just saw the engine stopped and I didn't see any automobile.

Q. Do you know which way the engine was going? A. Going west.

Q. Towards Broadway? A. Yes.

Q. Did you go back to the crossing? A. No, sir.

Q. Where did you go? A. I came in the house.

Q. Had you heard anything of the engine before this noise or shock? A. Well, yes; I heard the bell ringing, the crossing bell, and I heard the engine coming, and I said—

MR. DIXON: Never mind what you said.

Q. What kind of a noise did the bell make that you heard, can you describe it in any way? A. just regular noise of the bell. It is a strange sounding bell. Have you heard it?

Q. Just answer the questions. Had you heard it before? A. Yes, sir; hundreds of times. I am very good at hearing. I can hear it in the house when the doors and windows are closed.

Q. In your own house? A. Right here, yes, sir.

Q. So you had heard it before a number of times? A. Yes.

Q. And knew the sound of it? A. Yes.

Q. And was that the sound that you heard before this shock or noise? A. Yes.

Q. You said something about hearing the engine; do you remember what you heard about the engine? A. No, I don't remember only as—just as I heard it before. The engine was puffing and coming on. They always start quite a ways down there to ring the bell and to blow the whistle.

Q. Do you recollect whether you heard any bell or whistle on the day when this accident happened? A. Why I certainly heard the engine blow and the bell ring on the engine, and I heard this bell at the crossing.

Q. Did you see anything of the engine before it came to the crossing? A. No, sir."

MR. HOBART: Mr. Dixon will now read you the cross examination.

MR. DIXON:

"CROSS EXAMINATION BY MR. DIXON:

Q. You hear a bell now, do you not? A. I heard a bell.

Q. Do you know what bell that was that you just heard? A. That was the engine bell.

Q. An engine bell? A. Going west.

Q. What you hear is an engine bell, going west? A. Yes, sir.

Q. Why do you say that? A. Well, because I know it.

Q. Was that a moving engine ringing that bell? A. I am not positive about that. but I should think it was.

Q. Do you hear it moving now? A. Yes.

Q. It was not moving when the bell was ringing, was it? A. No.

Q. Which way did you say it was going? A. I said west, wasn't it?

Q. No. Going east. In fact, it didn't go very far at all; it kicked a car. Now it is going east. Just crossing now. You don't hear her moving now, do you? A. No. But you cannot catch me or trip me on the trains, because I know. I understand them thoroughly, and I hear them without noticing it.

Q. In other words, you are so accustomed to hearing the bells ring and whistles blow that you don't pay any attention to them? A. Yes, I most always do pay attention because there is nobody here to take my attention from anything else.

Q. But you were not in the house on that day? A. No.

Q. Where were you? A. Right here on the street.

Q. How far from the railroad? A. I should think it was about a quarter of a block from 19th Avenue.

Q. From the railroad track how far were you? A. That would be about three-quarters of a block from the railroad.

Q. Had you crossed the railroad? A. Yes, we came across the railroad.

Q. When were you born, what year? A. Well, I could not tell that without going back. I think it was 1860, wouldn't it be? '58—somewheres there. I was born in Scotland.

Q. Don't you know what year you were born in? A. No, sir; I have papers that tell me, but I don't pay enough attention to it.

Q. Have you never known what year you were born in? A. Oh, yes: I have known and I know to-day, but I don't remember.

Q. What is the date of your birth; what day of month I mean? A. Fourth of November. You know a woman does not care to have her age known. Of course, it doesn't make any difference to me; but still I wouldn't like to see it in the paper.

Q. Where had you come from on that day? A. Well, we were just out for a walk, I think; don't think we were any place.

Q. You saw the engine standing after the crash? A. Yes, I saw the engine standing after the crash.

Q. That is, it was in the lines of the road which we call 27th Street? A. Yes, sir.

Q. And it had stopped there? A. It had stopped between 27th and—26th and 27th streets.

Q. Between 26th and 27th streets? A. Yes.

Q. In what direction from 27th Street is 26th Street? A. West.

Q. And on which side of 27th street were you walking? A. Well, we were walking on the west side, near our home. There is not any sidewalk between this place and the railroad, and you have to walk in the street to keep out of the dust.

Q. How near your home were you at the time you heard the bell ring? A. We were very near 19th Avenue.

Q. How near your house were you at the time

you first heard the bell ring, the crossing bell? A. Probably 125 feet.

Q. From your house? A. Yes.

Q. When you first heard it? A. Oh, I was further than that when we first heard the bell.

Q. That is what I asked you; how far were you when you first heard the crossing bell? A. Probably 225 feet.

Q. From the crossing? A. From the crossing.

Q. From your house or from the— A. From my house.

Q. How far from the crossing? A. That would be a block—about three-quarters of a block, wouldn't it?

Q. Didn't you hear the crossing bell before you heard the engine bell? A. That I could not say; I don't think I did, though the crossing bell you can hear most any time before you hear the engine bell.

Q. But you have no distinct recollection of which you heard first on that day? A. No.

Q. Did you hear the whistle before you heard the crossing bell or after? A. Oh, I heard the whistle,—well, I don't know that either. Generally you hear the bell before you hear the whistle.

Q. How far from your house were you when you heard the whistle? A. Well, about—probably between here and the railroad.

Q. How far away from your house at the time you heard the whistle? A. Well, about 125 feet.

Q. How far were you from the railroad crossing, the tracks, when you heard the whistle? A. Well, we were about, just at 19th Avenue.

Q. How far away from the railroad crossing? A. That would be about two blocks, 19th Avenue and 18th Avenue—about a block and a half from the railroad.

Q. How far from your house would you be at that time? A. From my house, that would be about a block, about 125 feet.

Q. From your house? A. From our house.

Q. How many blocks do you say there are between your house and the railroad? A. Well, I call it about one block and a half—one block and about 100 feet.

Q. You call how many feet to a block—200 feet? A. I don't know; I was going to ask you that question, how many feet there was to a block.

Q. How many feet do you think there are to the block here that you refer to? A. Well, it is a pretty long block from the railroad to 19th Avenue.

Q. I understand you to say that there is a block and a half between your house and the railroad? A. Yes.

Q. That is the way you figure it? A. Yes.

Q. Which do you call a half-block; is that next to your house or next to the railroad? A. Here, next to the house.

Q. You call that the half-block? A. Yes.

Q. Is there a street there? A. 19th Avenue.

Q. And from that on to the railroad is what you call a block? A. Yes, it is a pretty long block, too.

Q. Is it in fact a block; there are no streets intervening? A. No.

Q. First comes your house; then comes 19th Avenue and then comes the railroad to the north? A. Yes.

Q. So, going north, first is your house, then 19th avenue and then the railroad? A. Yes.

Q. You were about 19th Avenue then when you heard the bell ring? A. A little below probably.

Q. Below, which way do you mean? A. North.

Q. And that is about 125 feet north of your house, as you figure it? A. Yes.

Q. And you were about there when you heard the crash? A. Yes.

Q. And you were walking along leisurely? A. Yes.

Q. Nothing to distract your attention until the crash came? A. Nothing, except hearing the bell down there ringing, and the engine.

Q. You hear that every day, thousands of times? A. Hundreds of times.

Q. And many times a day, don't you? A. Yes.

RE-DIRECT EXAMINATION BY MR. HOBART:

Q. Won't you please look out the window of your house; now, can you see the number of that engine on the tracks? A. No, sir.

Q. Can you make out that it is 47? A. I can see that it is 47 now that you tell me.

MR. HOBART: We can agree on that, I suppose.

MR. DIXON: I can't tell any better than she can.

MR. HOBART: Oh, you haven't your glasses.

Q. Mr. Dixon asked you about a bell on an engine that was ringing just as he began to ask you some questions, you heard that bell? A. Yes.

Q. Was that a bell on an engine on the Susquehanna railroad? A. Yes.

Q. And the time that you heard that was about half past ten? A. Well, what is it now?

Q. It is now a quarter of eleven, is it not (showing witness watch)? A. Yes.

Q. And was it about 10 or 15 minutes before this? A. Yes.

Q. You hear a bell ringing now, and it is now

a quarter of eleven. You hear it distinctly, don't you? A. Yes.

Q. You hear it clearly? A. Yes, don't you.

Q. And you are now sitting in the front room of your house on the second floor? A. Yes.

Q. And all the windows are down? A. Yes.

Q. And all the doors are closed? A. Yes.

Q. Going back for a minute now to the crossing bell that you heard? A. Yes.

Q. Can you give us any idea how long you heard that crossing bell ring before you heard this crash? A. You mean the bell at the gates?

Q. The crossing bell? A. Well, the bell was ringing at the time of the crash.

Q. Was it ringing before the crash? A. Oh, yes.

Q. How long before, as near as you can tell? A. I don't know. I haven't any idea. I heard it before, but I haven't any idea how long before the crash.

Q. Do you recall that you heard the crossing bell ring before you heard the puffing of the engine? A. Yes, I can generally hear the crossing bell before I hear the engine bell.

Q. Did you on this time hear the crossing bell first? A. Yes.

Q. Can you tell whether you heard the crossing bell before you heard the engine whistle? A. Yes, I always do.

Q. Did you this time? A. As far as I remember, I did; but I won't say I positively did. I think I did.

Q. Has there ever been an accident before at 27th Street and the railroad tracks, since you lived here? A. No, sir.

RE-CROSS EXAMINATION BY MR. DIXON:

Q. Can you hear the crossing bell at your house?

A. You mean here, with the windows and doors closed?

Q. Yes. A. Yes.

Q. Did you hear any crossing bell at the time that I called your attention to the ringing of the engine bell? A. No, I didn't notice it.

Q. You didn't hear it? A. No, I didn't hear it. If you had heard it I would have noticed it. I don't think it crossed the track, did it?

Q. Yes. You observe the engine is now crossing the track, do you hear any crossing bell? A. No, no, I don't hear the crossing bell.

RE-DIRECT EXAMINATION BY MR. HOBART:

Q. As a matter of fact when you answered Mr. Dixon's last question about observing the engine you did not look to see where the engine was? A. No.

Q. You were not looking out of the window? A. No.

Q. So you don't know where the engine was? A. No.

RE-CROSS EXAMINATION BY MR. DIXON:

Q. If you will look around at it you will see it crossing back, and you don't hear any bell, do you? A. No, there is no bell ringing now.

Deposition closed."

LEMUEL VAN BUSKIRK, sworn as a witness on behalf of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. Are you employed by the Susquehanna Railroad? A. Yes, sir.

Q. Were you so employed on the twenty-seventh day of September, 1913? A. Yes, sir.

Q. What is your line of work? A. Engineer.

Q. And how long have you been an engineer? A. About nine years.

Q. On the twenty-seventh day of September, 1913, were you running an engine on the Susquehanna Railroad? A. Yes, sir.

Q. What was the engine number? A. Engine number 125.

Q. That engine had a high tank on it like the one I show you in the photograph referred to as Exhibit D-9? A. Yes, sir.

Q. Where had you been working that day? A. At Coalberg between Passaic Junction and Rochelle Park.

Q. How far is that from Twenty-Seventh Street? A. A little over three miles; no; a little less.

Q. Is that a drill engine—a switch engine? A. Yes, sir.

Q. And you were operating it? A. Yes, sir.

Q. Did you leave the yard at Coalberg that afternoon with your engine? A. Yes, sir.

Q. About what time, do you recall? A. We left there about three-thirty five and stopped at Passaic Junction and left there about three-thirty nine.

Q. Three-thirty nine? A. No, five thirty-nine; I said three but I meant five.

Q. Where were you taking your engine? A. North Paterson.

Q. That is where you lay it up for the night? A. Yes, sir.

Q. After you—or when you started from Passaic Junction which way was your engine heading? A. East.

Q. Which way were running it? A. Backwards.

Q. In a westerly direction? A. Yes, sir.

Q. Which track? A. Westbound.

Q. Were you intending to stop at any place? A. No, sir; unless the block was against us.

Q. Is that the reason you quit at Passaic Junction? A. Yes; we ran in there to let train number 941 go through.

Q. What was the number of that train? A. 941.

Q. On which side of the engine were you riding when you started from Passaic Junction? A. Right side.

Q. How many men were there on the engine? A. There were four besides myself—five altogether.

Q. That constituted the yard crew? A. Yes, sir.

Q. Where was the fireman riding? A. On the back of the tank.

Q. Do you know where the other three men were? A. One man on the pilot and one brakeman, one brakeman back on the tank with the fireman, and the conductor was on the left hand side in the cab.

Q. You were riding on the right hand side? A. Yes, sir.

Q. Between Passaic Junction and Broadway, Paterson, how many crossings are there? A. Well, there is a crossing there at Passaic Junction, but we crossed that before we leave there; we cross that; then the next crossing was what we call just east of the fair grounds—I do not know what crossing it is called—at the fair grounds;

one at Dundee Lake station; one each side of Vreeland Avenue station, one at 31st Street, then 27th Street would be the next one.

Q. 27th Street crossing is the one nearest to Broadway on the west, is it not? A. Yes.

Q. Is there any crossing between 31st Street and 27th Street? A. Not to cross the track.

Q. What kind of a bell did you have on your engine? A. Regular standard bell.

Q. How was it operated? A. Automatic, by air.

Q. How did you start it and stop it? A. A little valve in the cab starts it.

Q. Who has control of it? A. I do.

Q. Do you start it with one hand or finger? A. Yes, a little turn turns it off or on.

Q. If you want to stop it what do you do? A. Close the valve.

Q. Turn it the other way? A. Yes.

Q. Yes. A. There is also a rope, so that in case one air fails you can pull it by hand.

Q. How was your air on this occasion? A. All right.

Q. Did you have anything to do with the ringing of the bell that afternoon? A. Only with the air.

Q. Did you ring it? A. Yes.

Q. Where did you turn it on? A. I turned it on Coalberg, just after I started.

Q. Did you turn it off at any time up to the time of the accident? A. No, sir; I did not.

Q. State whether or not the bell was ringing. A. Yes; it was, because as I was running backwards I look right towards it all the time.

Q. How far is the bell from you as you sit in the cab? A. Well, I should judge seven or eight feet; I should judge not over—between seven or eight feet.

Q. It is in plain sight? A. Yes, as you are

running backwards. If you are running ahead you would not see it as the bell would be behind then.

Q. You, of course, remember the accident? A. Yes, sir.

Q. How long after the accident was the bell shut off? A. Well, I could not say exactly, as I did not close it off until after I got in out of the way; I left it run.

Q. Until you got on the side track? A. Yes.

Q. Up to the time you got on the side track was the bell ringing? A. Yes, sir.

Q. State what signals you gave after your engine started from Passaic Junction up to the time when the accident happened. A. Well, I blew the standard crossing whistle which is two long and two short before approaching the crossing, and the bell was ringing continuously. That was not closed off, because the crossings are close together and it does not pay to shut off the valve.

Q. You keep the bell ringing all the time? A. Yes; kept it ringing from the time I left Coalberg until I get to Riverside.

Q. Did you give the crossing whistle before you approached 31st Street crossing? A. Yes, sir.

Q. Did you give the crossing whistle before you approached East 27th Street? A. Yes.

Q. Do you know where you were when you gave the signal for 27th Street? A. Shortly after I passed over 31st Street.

Q. Were there any other whistles blown after that before the accident? A. No, sir.

Q. What kind of a whistle did you have? A. Regular standard whistle, a large whistle.

Q. How fast were you going as you approached 27th Street? A. About fifteen miles an hour.

Q. How fast had you been going before that? A. About that rate all the way.

Q. From the time you left Passaic Junction? A. Yes.

Q. Do you recollect whether there was any danger whistle blown just about at the time of the accident? A. No, sir; there was not.

Q. You were riding on the right hand side of the engine—on the engineers side, I should say? A. Yes, sir.

Q. That would be on the left hand side on account of running backwards? A. That would be on the left hand side as we were running backwards—right hand side of the engine going ahead.

Q. That would be on the south side? A. That would be between the east and west bound track, on the south side.

Q. From that side of the engine could you see East 27th Street crossing? A. No, sir; I could not—that is, only on the one side; I could see on this side, but not on the upper side.

Q. You could not see on the northerly side? A. No.

Q. As you approached 27th Street did you observe whether there was any kind of a vehicle that passed over the crossing in front of you? A. yes.

Q. What did you observe in that respect? A. An automobile passed over just ahead of me, and I observed too—

Q. How far ahead of you? A I should judge I was between 40 or 50 feet of the crossing. There was two automobiles standing on this side waiting for me to go by, and this man came from the other side and went across ahead of me.

Q. Do you recollect from which side the automobile came that passed ahead of you? A. Yes; it came from the north side across.

Q. Did you see any other automobile after that until the accident? A. No, sir; I did not.

Q. Were you looking towards the crossing? A. Yes, sir.

Q. What was the first that you knew that anything happened? A. When I felt the air go on and at the same time I seen the wheels appear on my side of the tank.

Q. What did you do—apply the brakes? A. There is automatic application of the brake, whenever anything happens that would cause a reduction of the air, that would apply the brake.

Q. Does that apply the brake with considerable force? A. It is all according to how big the leak might be.

Q. Did you afterwards find out that there was anything broke on the train? A. Yes; the train pipe was broke, that would run to the end of the tank.

Q. Would that cause the brakes to go on? A. It would cause the brakes to go on in emergency.

Q. Where was your engine when the brakes went on? A. I should judge about five rail lengths west of the crossing.

Q. You had already got over the crossing? A. Yes, sir.

Q. What did you do when you felt the brakes apply? A. I pulled the brake handle around and reversed the engine.

Q. Did the engine stop? A. The engine stopped. By the time I had it reversed we were standing still.

Q. When you came to a stop did you notice whether your engine bell was then ringing? A. Yes, sir.

Q. What did you do with your engine afterwards? A. Why, I got down on the ground to see what the damage was, and before I got back to the hind end of the tank the conductor asked me to move ahead, and I got back on the engine,

and I found I could not move. That was the first I noticed the train line was broken, and until I got the brakes off, I could not move, and I asked him to take the brakes off so I could move. I left the brakes in emergency, which close that line. I had to release the auxiliary reservoirs.

Q. Did you afterwards move the engine? A. I moved just a short ways, and I went and got out again to see what the damage was, and by the time I found that they wanted me to move ahead and I got up and moved to the siding out of the way.

Q. That is to the siding by the coal yard? A. Yes, sir.

Q. Did you go to the scene of the accident at any time afterwards? A. No, sir; I did not go back as far as that.

Q. Did you go there the next morning? A. I went down on Sunday morning; yes, sir.

Q. Did you see any marks of automobiles? A. Yes.

Q. What did you see? A. I could trace a pair of wheels that had went around from the road crossing and run up the track, with one pair of wheels inside the rail and one pair outside, for a distance of over five rail lengths, you could trace the wheels on Sunday morning.

Q. You traced the wheel marks, did you? A. Yes, and as I was going back I met Mr. Johns and I took him down and showed him.

Q. Mr. Johns was superintendent of the Susquehanna Railroad Company? A. Yes.

Q. He has since died? A. Yes, and I took him down and showed him the marks.

CROSS EXAMINATION BY MR. DIXON:

Q. Who was in the cab besides yourself? A. The

conductor was on the opposite side of the cab—

Q. What part of the engine was he riding on? A. The left hand side of the cab.

Q. In the cab? A. In the cab, on the left side.

Q. Where—on the right side— A. On the right side as we were going.

Q. On the right side as you were progressing? A. Yes.

Q. In other words, were you on the south side of the engine? A. Yes, sir; we always describe the engine by right or left, the way the engine is going.

Q. You are always supposed to be facing the engine and you speak of right and left from that? A. Right and left accordingly.

Q. As a matter of fact, on this occasion, you were on the opposite side of the engine from that on which you would be if the engine were going frontwards? A. I was on the right side, but of course the left was according to the way I was going.

Q. And therefore it was that you did not see this automobile approach at all? A. No, sir; I did not.

Q. Why could you not see? A. Because my view was obstructed by the back of the tank.

Q. How did the back of the tank obstruct your view? A. There is a hood in back, and it was a double cab engine, and there is a hood—

Q. Is there a hood that drops? A. There is a hood from the top, and there is a small door that goes through, and you cannot look through that door—

Q. But you can look over the cab? A. No, sir.

Q. You have to put your head out of the window? A. You have to put your head out of the window, and you cannot see only along your own

side unless a thing is quite a ways off, and then you can see a great distance, but not close by.

Q. So that, as a matter of fact, you had no actual knowledge of the approach of this automobile or the impending danger of striking it until you actually hit it? A. No, sir; I did not.

Q. Not the slightest? A. No, sir.

Q. And consequently you would not, of course, have given an extra blast? A. No, sir; I did not.

Q. And you did not? A. No, sir.

Q. You gave no whistle after the collision? A. Nothing after I blew for the crossing.

Q. Nothing after you blew for the crossing? A. No, sir.

Q. You are positive of that? A. Yes.

Q. You had no intimation whatever from any source that you were about to have an accident until the thing had happened? A. Not until after the thing had all happened.

Q. Who else were on the engine besides yourself? A. Fireman and brakeman and conductor and—

Q. Did you have your head out of the window? A. Yes.

Q. Leaning out? A. (Illustrating.) I was in this position leaning, with one hand on the throttle, and the other arm on the arm rest, which would fetch me in this position.

Q. You felt nothing until you heard the crash? A. No, sir; the air was on in force, the first thing I left, just like that (illustrating) that is all I felt, and at the same time I felt that I saw the wheels.

Q. You felt the air and saw the wheels of the auto? A. At the same time, practically.

Q. The wheels extended then across the rails? A. Just stuck out behind the tender.

Q. Behind the tender? A. Yes; just enough to see them.

Q. Didn't you feel the impact at all? A. No, sir; I did not know I had anything at all; the air was all I felt.

Q. You heard it, of course? A. No, sir.

Q. You didn't even hear the crash? A. No, sir.

Q. Was there anything to prevent you from hearing the crash? A. The natural noise of the engine. You have an injector working along side of you; that makes noise. You have the bell ringing along side of you, and you have the exhaust from the engine.

Q. Where is that bell located? A. Right between the two cabs, about in the center, between the two cabs, on top of the boiler.

Q. On top of the boiler? A. Yes.

Q. Are there two cabs? A. Yes; there is what is called a double cab engine. There is one for the fireman and one for the engineer and the machinery.

Q. Is the engineer's cab ahead of the fireman's cab? A. Yes; that is about in the center of the engine.

Q. Then, the conductor was not directly across from you? A. Directly across from the cab.

Q. Was there anybody in the fireman's cab? A. No, sir; that is only a hood for the protection of the fireman in case of rain.

Q. Is it over the bell? A. No; the bell is between the two, on top of the boiler.

Q. Can you stick your head out and see the bell? A. Yes, because it has glass in the door; you have a glass door, which is always open, and you can look through that.

Q. Can you stick your head out and watch your track and see the bell in that position? A. Yes; you can. I can show you.

Q. Well, here are the pictures. Show me. A.

Well, I can show you right here. Here (illustrating) is the back of the cab where the back door would be.

Q. Which cab do you mean? A. The cab that I am riding in here (illustrating) is the window. This is the window I am looking out of. This is glass. What is to interfere with me looking through that, at the same time you are looking—

Q. The trouble is that you are not looking that way. You are leaning out. A. You are naturally looking ahead, and naturally you can see that.

Q. Why would you be looking to see if the bell was ringing when you knew it was ringing? A. You are looking ahead, and you cannot help but see it.

Q. To see it you have to take your eyes off the track and bring them back to the locomotive? A. No, sir; you don't have to. You are looking in that direction all the time and you cannot help see it. It is in the middle between the two cabs, on top of the boiler and you are naturally looking that way.

Q. You are naturally looking ahead along the track? A. Along the track on both sides. This bell, hangs in the middle between the rails.

Q. Your head is out the window? A. You are looking to see where you are going. Here is—

Q. Do you testify that you were actually doing that thing? A. I was looking right ahead seeing where I was going.

Q. As you approached East 27th Street? A. Yes, and at the same time I could see my bell; I could not help but see it.

Q. Didn't they remove the brakes with a crow bar? A. No, sir; it is impossible for any man to do it.

Q. Didn't they use that? A. No, sir; they could not.

Q. Did you talk to anybody about your brakes being locked? A. Yes, sir; I did, when they asked me to move. I told him it was impossible—

Q. As soon as this pipe broke that let the air out with a rush, didn't it? A. Yes.

Q. Much quicker than you could have done it? A. Just the same speed; I have to turn the valve; a turn puts its on service application or emergency application. Nothing can do it quicker.

Q. Which did you put on? A. I didn't put either on. I tried to put it on, but when I pulled the handle there was no air; the air was on. When the pipe broke that put it on as quick as I could put it on.

Q. When that pipe broke, the air break was applied immediately? A. Yes, and it made what you call an emergency application, which was all that I could have done myself.

Q. Do you know whether you were going up hill? A. There is a very slight up hill grade there, very slight; a man would not hardly notice it unless he had a heavy train and stopped there

Q. How long is that engine in feet from the end of the boiler to the place where you hook on the tender? A. Just the length of the engine?

Q. Yes. A. I should judge about forty feet.

Q. How long is the tender? A. I should judge that was about twenty or twenty-two feet; I should judge the whole engine was about sixty-five feet—I should judge; I never measured one, but I should judge that is about what that was.

Q. In what part of the locomotive is your cab situated? A. About in the center of the boiler.

Q. There is as much of the boiler behind you as there is in front of you? A. Just about.

Q. What are the signal whistles? A. Two long and two short for a road crossing.

Q. Where did you first see this automobile that escaped? A. When I was about 40 or 50 feet from the crossing he went over ahead of me.

Q. Where was it when you first saw it? A After it went by me.

Q. After it went by you? A. After he went by me, yes, as he came from behind the tender.

Q. Was it off the railroad right-of-way? A. It was off the rail I was on, but it was on the other rail.

Q. It was on the other rail when you saw it? A. Yes.

Q. And you were within forty or fifty feet? A. As he came from behind the tank I saw him go, and I was thinking he was taking an awful chance.

Q. You were 40 or 50 feet away? A. Not more than that.

Q. You are sure of that? A. That is the best of my judgment, he was forty or fifty feet when he cut over the crossing.

Q. Where were these other automobiles that you spoke of? A. There were two standing on the other side of the track waiting for me to go by.

Q. Where were they standing? A. Right near the crossing going the opposite direction.

Q. In what part of the roadway were they? A. They were standing to the side, on the right hand side of the way they were going, and they were going in the opposite direction.

Q. You saw them, of course, a long while before you got there? A. Yes.

Q. Where were you when you first saw them? A. When I came around the curve at 31st Street, or below 31st Street, when I blew the whistle, after I blew the whistle I seen these two cars standing there.

Q. You were then a thousand or two thousand feet away? A. About a thousand feet away, I should judge.

Q. They were waiting for you to come along? A. Yes.

Q. Both standing there? A. Yes.

Q. And you were a thousand feet away? A. Yes. One behind the other; yes, sir.

Q. What is the name of the conductor that was in the cab? A. Theodore Gruber.

Q. Were there any other men in the cab? A. No, sir; not in the cab.

Q. Any other men on the engine? A. There was one man on the pilot and two on the tender.

Q. Where was the man on the pilot? A. In front on the pilot in front of the engine.

Q. On the tank? A. On the front end of the engine, on the pilot.

Q. Did you see anything of the accident to warn you at all? A. He was not where I could see.

Q. Could he not talk to you? A. No, sir; not from where he was.

Q. Didn't the conductor say, "Here comes an automobile; be careful"? A. Not that I heard; no, sir. I heard nobody speak at all from the time I left Coalburg.

Q. You could have heard him if he said anything? A. He would have to holler quite loud or put his head in the window; if he had his head outside, the same as I did, he would have to speak quite loud for me to hear him.

Q. He did not attempt to hear you? A. No, sir; not to my knowledge.

Q. Nobody attracted your attention? A. No, sir; nobody at all.

Q. Do you know within what distance you could stop that locomotive going upgrade, such

as this grade was if you clamped on your emergency brake as hard as it would go on through a break in the pipe? A. No, sir; I never make the tests.

Q. How long have you been an engineer? A. About nine years.

Q. You never tested to see how quickly you could stop that engine? A. No, sir; there are different circumstances in different cases. One time you might stop very short and another time you could not; it is all according to conditions, according to your cars.

Q. This was the time that you didn't have anything to do with cars? A. No, sir.

Q. You had no train? A. No.

Q. Cannot you tell us within what distance that engine could be stopped if you put on your emergency brake as hard as it would go on? A. I would not take my oath on the exact distance.

Q. How near would you take your oath? A. 40 feet.

Q. You would not think there would be any trouble about stopping forty feet? A. No, sir; I would not, not on a good rail.

Q. Well, that was a good rail? A. Yes; that was a good rail.

Q. You could stop that engine going up that hill, applying the brakes, in forty feet? A. Yes; I believe I could. I have not made any test to that effect.

Q. Of course, if you carried a heavy car, you could stop it quicker? A. Yes, sir; certainly it would make a little difference.

Q. Suppose that engine was going up that hill at say forty miles an hour, how quickly could you stop it? A. I don't know. I never went that fast with one of those engines, because those engines don't go that fast.

Q. That engine would not run forty miles an hour? A. She is not supposed to.

Q. Do you mean to say that that engine would not run forty miles an hour? A. She is not supposed to. She is not built for speed. She is built for hauling; she had small wheels.

Q. Do you think small wheels have anything to do with speed? A. It has a whole lot to do with the speed of an engine.

Q. That prevents it from going at 40 miles an hour? A. It could not make forty miles an hour.

Q. You think small wheels have all to do with it. Automobiles have small wheels and they can run a hundred miles an hour? A. There is a difference between engines and automobiles.

Q. You do not mean to give the size of the wheels as the reason why this engine could not run forty miles an hour? A. A freight engine is not built for speed.

Q. How fast will she run? A. I should judge thirty miles an hour—25 or 30 miles. I have run this engine, and I know if you run them over twenty miles an hour they get hot.

Q. Take her out on the road without any train behind her, how fast can you run her? A. Well, I don't know; I have never run it over—

Q. How fast have you run it? A. About twenty miles an hour, and then you go any distance they run hot. You don't often go any distance with speed.

Q. How quickly can you stop her with your emergency brake, or whatever you call it, if she is going twenty miles an hour up hill? A. I don't know. When I have run it I take out a train.

Q. You never tried to run this light engine? A. Not twenty miles an hour.

Q. You have no idea how quickly she can stop? A. Not to swear to it.

Q. You have been an engineer nine years? A. Yes.

Q. Don't you know that it is your business to be able to judge distances? A. Yes.

Q. And how quickly you can stop? A. Yes.

Q. That is your business? A. That is, but I ain't running that engine—drill engine—when you go over the road with that engine you have a train; if you are making 20 miles an hour, which is the limit, you always have a train behind you.

By Juror No. 6:

Q. When this brake goes on automatically is there any kind of a whistle given? A. No, sir; when it goes on that way you get no discharge of air from the valve. When I pull the handle I knew it was on automatically from some other cause.

Q. There is no noise? A. No.

By the Court:

Q. There is no noise? A. There is no noise whatever. You get reduction and when you get reduction, anything that give you reduction, that puts it on automatic, and you get no discharge in the cab, and you hardly feel the brake, and then of course you have to release it from the cab; you cannot release it down below without letting it off.

By Juror No. 12:

Q. You did not know anything about it, did the track? A. No, sir; I did not.

Q. You did not call to the man going across you? A. I did not know a thing about it until it was practically over.

HARRY MELVIN, sworn as a witness on behalf of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. You are employed by The Susquehanna Railroad as a fireman? A. Yes, sir.

Q. Were you firing with engineer Van Buskirk? A. Yes, sir.

Q. Were you on the engine when this accident happened at Twenty-seventh Street? A. Yes, sir.

Q. Do you recollect starting out from the yard at Coalberg? A. Yes, I do.

Q. And then you started out at Passaic Junction I think? A. Passaic Junction.

Q. When your engine reached Passaic Junction where were you riding? A. On the back of the tank on the right hand side up on the coal.

Q. That was up on the right hand side in the direction in which the engine was going? A. Going backward westward.

Q. That would be on the northerly side would it not? A. On the northerly side, yes, sir.

Q. Did you hear any whistles sounded at any time after you left Passaic Junction? A. Yes, sir.

Q. Do you recollect what whistle was sounded and where? A. The standard code, four whistles for each crossing.

Q. Four whistles? A. Four blasts.

Q. Are they all of the same length? A. No, there was two long and two short.

Q. You know where East Twenty-seventh Street is? A. Yes, sir.

Q. And you know where East Thirty-first Street is? A. Yes, sir.

Q. Have you been over that part of the line before many times? A. Yes, sir, for six years.

Q. After your engine passed Thirty-first Street was there any whistle sounded? A. Yes, sir.

Q. What whistle did you hear? A. The four blasts.

Q. How fast were you going at that time? A. About fifteen miles an hour, fourteen or fifteen, somewheres around there.

Q. Did you notice anything about the bell on the engine? A. Only that it was ringing.

Q. Where was it ringing, where did it start to ring? A. The engineer started the bell to ring at Coalberg when we left the switch and it was ringing yet passing this crossing.

Q. How far from the bell were you as you were riding there on that engine? A. Oh, about eleven feet.

Q. Were there any other persons with you riding on that tank? A. Brakeman Thompson.

Q. What part of the tank were you riding in or on? A. On the right hand side.

Q. Were you sitting or what? A. On the top of the coal.

Q. Which way were you facing? A. Westward.

Q. In the same direction the engine was moving? A. In the same direction that we were going.

Q. After you had passed Thirty-first Street and were approaching Twenty-seventh Street did you see any automobile pass over the crossing at Twenty-seventh Street? A. Your question again?

Q. After you had passed Thirty-first Street and were approaching Twenty-seventh Street did you see any automobile pass over the crossing at Twenty-seventh Street? A. Yes, sir; one.

Q. From which direction did that one come? A. From towards the south, going to the south, from the north to the south.

Q. Did he come from the same side on which you were riding, that is on the north side? A. Yes, sir.

Q. Did he get across all right? A. Yes, he got across.

Q. How far from the crossing was your engine when that automobile went over? A. About a hundred and fifty feet.

Q. After that auto had passed did you see another automobile? A. No, we did not see none till we got right on the crossing.

Q. What did you see then? A. Then, when Mr. Lange came with his, and he could not make it so he started up the track or behind us and from there I jumped down in the tank and I hollered to attract the attention of the engineer but he did not hear me.

Q. How far did that auto go along the track before it was hit by the engine? A. About four or five rail lengths.

Q. When you say he went behind the engine, you mean behind the tank? A. Behind the tank

Q. In the same direction in which the engine was moving? A. In the same direction the engine was going.

Q. Did you notice anything about your brake on your engine then? A. To what extent?

Q Well, did it go on or what happened? A Yes, the air went on.

Q. And did the engine stop? A. Yes, sir, the engine stopped.

Q. And did you get down? A. Yes, sir.

Q. And did you notice anything about the angle cock? A. The angle cock was broken on the back of the tank.

Q. Do you know at what time that was? A. Well, about 5.47, or 5.48, somewhere around there.

Q. And how far was it from the time you started at Passaic Junction up to the time the accident happened, what was the distance about? A. The distance?

Q. Yes? A. Why, it is a little less than three miles.

Q. Before the engine struck the automobile, did you notice anything about the crossing bell at that crossing? A. No, sir.

Q. Were you watching the automobile that had got ahead of you? A. Yes, sir, the one that had gone.

Q. Did you observe the crossing bell at any time while you were around there? A. No, sir.

Q. Did you have anything to do with fixing the engine, the broken parts of the engine? A. Yes, I helped to fix the engine.

Q. You were assisting with that were you? A. Yes, sir.

Q. Did you have anything to do with looking after these people that were hurt? A. I helped them to get the machine up and get the people out from under it.

CROSS EXAMINATION BY MR. DIXON:

Q. Were you on the engine when she went back again to the siding? A. No, sir.

Q. You did not go back with it to the siding? A. No, sir.

Q. How long did she remain up against the automobile after the collision? A. Oh, about three minutes.

Q. Did somebody come up with a crow bar to help to move her off? A. Why, a fellow came there with a crowbar and tried to release the brake but he could not.

Q. Your brakes were all jammed weren't they? A. Yes, sir, the brakes were all jammed.

Q. What did you have to do in order to release them? A. Why, bleed the reservoir to release the brakes.

Q. How do you do that? A. A little pet cock

underneath the reservoir, just open that and that lets the air out, lets the air escape from the reservoir.

Q. Where is that? A. Beneath the tank.

Q. How does that release the brakes? A. Why there is the reservoir and the air flows out, there is two reservoirs and the air flows out from one to the other and when the brake is jammed like that and the angle cock broken why the engineer could not release it, that is, from the valve, so you had to get that pet cock loose before you could release the brake.

Q. What is it puts the brake on, is it the air pressure or the air vacuum? A. The air pressure.

Q. The air pressure puts on the brake? A. The air pressure puts on the brake.

Q. How is it the breaking of a pipe and letting the air out, how is it that puts on the brake? A. If the air leaks that will put on the brake.

Q. That lets the compressed air flow out doesn't it? A. Yes, sir.

Q. That is what clamps your brake? A. That is what clamps the brake, the compressed air.

Q. So it is not the air pressure that compresses? A. Well, the compressed air.

Q. It is the release of the air, is it not? A. No, sir.

Q. If this break occurred in the pipe did you have any compressed air? A. No, sir.

Q. There was not any compressed air? A. No, not a bit, that is why I had to release it.

Q. Then how could you release the brakes, by exterior force? A. By plugging the pipe up.

Q. And then you start and make compressed air? A. Yes, sir.

Q. You pumped that? A. Yes, sir.

Q. Then you started your pump going? A. No, the pumps was going.

Q. Then it was not the opening of the cock; it was the stopping up of the air break that enabled you to take the brakes off wasn't it? A. No.

Q. How far ahead of the engine tender was this automobile as it was proceeding up the track, how far ahead of you was she? A. The automobile that went up the track?

Q. Yes? A. Why, when I first seen it it was about five feet, five or six feet ahead of the engine.

Q. And she ran four or five car lengths before you caught her? A. Rail lengths.

Q. And each rail is how long? A. About twenty-four feet.

Q. Thirty feet, is it not, thirty-three feet, a rail length, about thirty-three feet? A. Well, I won't just say how long they are, I gave a judge of about twenty-four feet on it.

Q. You are sure it was four or five rail lengths that she ran ahead of the tender along the track before you caught her? A. Yes, ahead of it.

Q. And she was going then in exactly the same direction you were? A. The same direction as us.

Q. Was she running on the ties? A. On the ties.

Q. Where were her right hand wheels, on which side? You had best come down here and show us on this map where the right hand wheels were and where the left hand wheels were? She turned in East Twenty-seventh Street and turned down to the west and went onto the westbound track; now where was the right hand wheel as she was going up the track? A. (The witness indicates on the blue print Exhibit D-1).

Q. Between the two rails or alongside? A. One rail on the outside and one inside of the westbound rails.

Q. And where were the other two wheels? A. Well, there was one wheel here and one in on the front here, and the same on the back.

MR. COLLINS: On each side of the rail.

Q. The front and rear wheel on the right hand side were outside or to the north of the north rail were they? A. Yes, sir.

Q. And the front and rear wheels on the left hand side of the car were between the two rails? A. Yes, sir, that is right.

Q. And she was right up ahead of you in that position? A. Yes, sir.

Q. What is the nature of the roadbed? A. It is ballast stone they have there.

Q. Is it level, stone levelled off with the ties, or do the ties come up above the stone? A. Well, that I cannot say.

Q. Did she seem to go smoothly along? A. I did not see it go along.

Q. Yes, you did, you say she was about five feet ahead of you and it was running five feet ahead of you? A. Just about five feet ahead of me when I seen him turn on the track I jumped off from there to get down in the manhole of the tank.

Q. You said she ran along four or five rail lengths before you struck her along up the track? A. Yes, sir.

Q. Then you must have seen her? A. Then I came back again up the tank.

Q. You came back and she was still going and you had not yet caught her? A. Yes, sir.

Q. She was still running, you had not caught her yet? A. No, we had not caught her yet.

Q. You saw her going on the track ahead of you, how far ahead of you you say? How far ahead of you was she on the track when you saw her? A. Idid not see her on the track.

Q. The first you saw she was on the track running ahead of you? A. Yes, sir.

Q. Up the track? A. Yes, sir.

Q. As soon as you saw that you jumped down where? A. Into the manhole where the coal is, the coalhole.

Q. Where does that lead you to? A. Why about five feet from where we were sitting, where you have the coal.

MR. COLLINS: He asks where it leads to?

THE WITNESS: It leads to the fire box.

Q. You went down there for what purpose? A. To holler to the engineer.

Q. You were going to tell the engineer about it? A. Yes, sir.

Q. Did you tell him? A. No.

Q. Did you tell him? A. No.

Q. Didn't tell him? A. No.

Q. Didn't holler to him? A. No.

Q. You go back again to the car, the car was still going? A. I don't know; it was ahead of the engine and I don't know whether anybody hollered or not, I don't know that because Mr. Thompson was there.

Q. He followed you down? A. Yes, sir.

Q. You climbed up again to where you were before? A. Yes, sir.

Q. And the motor car was still going? A. I didn't see the car the second time I got up there.

Q. Where was the car, was it somewhere around? A. I don't know where it was; I didn't look the second time.

Q. Didn't you swear the car was running up the track four or five engine lengths ahead of the locomotive? A. Yes, sir, I did.

Q. And did you say at what point that was? A. That was the first place—there was no watch

or clock there. I don't know what the time was.

Q. Then you are testifying from what you imagine to be the fact, you don't know what you saw there at that time? A. I am telling you what I saw.

Q. Now you have sworn that you saw this car run four or five rail lengths ahead of the train, is that right? A. Yes, sir.

Q. Is that true? A. Yes, sir.

Q. Was that before you jumped down in the coal hole? A. Yes, sir.

Q. How far ahead of the locomotive was she before you seen it? A. Five feet.

Q. And she continued running along for four or five rail lengths? A. I can't say.

Q. Was she? A. I can't say; a man hasn't time to stop and measure that in a case of that kind.

Q. You know where you stopped? A. Yes, sir.

Q. You say that was two hundred and fifty feet west of the crossing? A. No; two hundred and ten feet.

Q. How do you know that? A. Because it was measured by somebody.

Q. Did you hear others testify that mentioned it? A. No, sir.

Q. How do you know then that it was only two hundred and ten feet? A. Because somebody said it was two hundred and ten feet.

Q. Somebody else said it was two hundred and fifty feet? A. My word is just as good as their's.

Q. Is it; you didn't measure it and these people measured it and still you say it was two hundred and ten feet,—why? A. Because I heard somebody say it was two hundred and ten feet.

Q. So you didn't call to the engineer? A. Only hollered, that is all.

Q. Who did you holler to? A. The engineer.

Q. Where were you? A. On the top and then I jumped down in the coal box and hollered once.

Q. Where was the car then? A. Going up the track.

Q. How far up had it gotten? A. I don't know.

Q. I want to know how far up it got? A. Possibly three rail lengths or so.

Q. It may have been two rail lengths? A. I don't know.

Q. Why didn't you holler when you first saw it on the track? A. We did.

Q. Then it may have been two rail lengths because it went only six rail lengths altogether? A. Four or five rail lengths altogether.

Q. And that engine kept going after it and kept on so before you jumped down in the hole? A. Yes.

Q. How far across the roadway had your engine gone when you hollered—how far to the west of the roadway had your engine ran? A. Five or six feet.

Q. The crossing bell was ringing, wasn't it then? A. I don't know.

Q. That is all.

WILLIAM EDWARD MURRAY, sworn as a witness on behalf of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. Were you one of the working crew on engine number 125 that day? A. Yes, sir.

Q. Do you recollect this accident at Twenty-Seventh Street? A. Yes, sir.

Q. Were you riding on the engine? A. Yes, sir.

Q. Whereabouts? A. On the tool box on the front of the engine.

Q. On the cowcatcher? A. On the tool box top of the pilot.

Q. How long had you been riding there? A. From the time we left Passaic Junction until the time the accident happened.

Q. How long have you been riding over that section of the road? A. More or less, five and a half or six years.

Q. You know where Thirty-first Street is? A. Yes, sir.

Q. Was there a whistle blown? A. There was one blown at Thirty-first Street.

Q. How do you remember that? A. Because the same time it was blowing I received a wave of the hand from the flagman there.

Q. Do you know where the whistling post is? A. Yes, sir.

Q. Do you know where the engine was at that time? A. Right near the crossing—a little to the east of the whistling post I mean.

Q. Was the engine bell ringing on the engine when you started out? A. Yes, sir.

Q. Could you hear it from where you were? A. Yes, sir.

Q. And do you remember after the accident

and after the engine had stopped, did you notice whether it was ringing then or not? A. Yes, sir; it was still ringing.

Q. What was the first that you noticed that there was anything wrong? A. About three or four engine lengths across the crossing I noticed that the engine threw up some small stones or pebbles, and they flew out from under the engine.

Q. Was that across the crossing? A. Yes, sir.

Q. Had anything happened out of the ordinary before that? A. There was someone going to the south in an automobile and I was watching that.

Q. You saw another automobile that had crossed the crossing going south? A. Yes, sir.

Q. Was he going fast or slow? A. Going about twenty or twenty-five miles an hour.

Q. You were looking in a southerly direction at the time? A. I was looking at the machine.

Q. Did you notice the crossing bell at the time? A. I did not.

Q. You didn't notice that? A. No, sir.

Q. After the engine stopped what did you do? A. I immediately ran back in back of our engine.

Q. Well, what did you see? A. Then I took notice of the position of the people that was in the machine and some other people came up and I asked one of them to give me a hand to get the machine off of them and to try and get the woman out and I tried to lift the machine and I couldn't.

Q. Then what did you do? A. I ran up the railroad track to the Broadway depot and I talked to Mr. Steele and Mr. Crowley was there and I went back to the scene of the accident in Mr. Steele's machine.

Q. You were there when the next train came along? A. Yes, sir.

Q. That was train number 917? A. 913.

Q. Did you notice the bell then? A. The bell was ringing.

Q. I mean the crossing bell? A. That was ringing.

Q. The bell was ringing; did another train come along? A. Yes, sir.

Q. I mean on the westbound track? A. That was nine-fifty five.

Q. Were you there when that came along? A. Yes, sir.

Q. Did the crossing bell ring for that? A. Yes, sir.

Q. Up to the time that you observed this dirt and stones fly around under the engine, up to that time had anything happened to attract your attention? A. No, sir.

Q. Cross examine.

CROSS EXAMINATION BY MR. DIXON:

Q. How long a distance do you figure it out from the front of the engine to the back of the tender? A. Twenty-five or twenty feet.

Q. From the front of the engine? A. That is from the front of the pilot to the rear end of the tank I should say was twenty-five or thirty feet.

Q. From the front of the locomotive to the rear of the tender? A. Now, you are asking me for my opinion and I am trying to tell you; I never measured it.

Q. Twenty-five or thirty feet, well whatever it was it was five times that distance west of the crossing when the dirt started to fly, wasn't it? A. Four or five rail lengths.

Q. And up to that moment there had been nothing unusual occurred that you noticed? A. No, sir.

Q. And you were sitting on the front of the engine? A. On the tool box on the pilot.

Q. The pilot—where is that? A. Commonly called the cowcatcher.

Q. Riding backwards? A. Yes, sir.

Q. Did you see the automobile that crossed the road until you got opposite the crossing? A. I got over to about the west end of the crossing when I saw this machine going ahead.

Q. Where was that then? A. It may have been a hundred and fifty or a hundred and seventy-five feet across the crossing.

Q. Still going? A. Yes, sir.

Q. Could you tell it was going about twenty miles an hour before that? A. I figured its speed as such.

Q. How far did he go so you could figure his speed? A. We didn't go long.

Q. You didn't see him after that? A. Not that I know of.

Q. The last thing you saw of him was that he was still going? A. Yes, sir.

Q. And he was a hundred and fifty or two hundred feet from the crossing? A. Yes, sir.

Q. And you were at the west end of the crossing? A. Yes, sir.

Q. There had been no whistle blown? A. No, sir.

Q. No crash? A. No, sir; there had been a whistle at Thirty-first Street.

Q. At this crossing there wasn't? A. No, sir.

Q. No crash had occurred or no hollering? A. No, sir.

Q. You heard somebody holler didn't you? A. No, sir.

Q. Not at all? A. No, sir.

Q. After your engine had backed in clear of the Twenty-seventh Street crossing and you rode

backwards on the front of it looking down to the south and watching this automobile flying along twenty miles an hour away from the track what did the other two automobiles do here? A. I never paid any attention to them; this was before that.

Q. And you are going along here for four or five engine lengths and tender and nothing occurred to attract your attention? A. No, sir.

Q. Nothing at all to attract your attention? A. No, sir.

Q. Nothing to call your attention to the fact that there was an accident? A. I never took any notice of that automobile only once.

Q. Did you see them after the accident? A. No, sir.

Q. Where was it that you say you saw them? A. On the east side of the road south of the crossing.

Q. East side of the road? A. Yes, sir.

Q. And you didn't notice them after that? A. No, sir.

Q. Didn't see them back up to start across the track? A. No, sir.

Q. What was the first thing you did notice? A. The throwing up of the pebbles, the small pebbles and dirt and gravel, it started to fly from the engine.

Q. You didn't feel any tightening up of the air brakes? A. No, sir; not at that time.

Q. At what time was that? A. The time I saw the gravel fly.

Q. You mean to say you didn't feel the air brakes go on at the time you saw the gravel fly? A. No, sir.

Q. How long after you saw the gravel fly did you first feel the air brakes going on? A. A minute or two after.

Q. How far had you gone in that length of time? A. Fifteen or twenty feet maybe.

At this point an adjournment was taken until Friday, December 4th, 1914, at ten o'clock in the forenoon.

Paterson, N. J., December 4th, 1914.

The trial was resumed this date pursuant to adjournment.

Present: Mr. Dixon, Mr. Farmer, Mr. Hobart, Mr. Collins.

WILLIAM E. MURRAY, resumes the stand.

RE-DIRECT EXAMINATION BY MR. HOBART:

Q. There is one other question that I wanted to ask you, Mr. Murray. Were you present at this crossing at the time there was a conversation between Father Lange and Sergeant Lord? A. Yes, sir.

Q. Did you hear what was said? A. Why, Sergeant Lord—

Q. Did you hear what was said? A. Yes, sir.

Q. In the course of that conversation did Father Lange say anything about having heard a bell? A. Yes, sir.

Q. Did Father Lange at that time say to Sergeant Lord that he thought he heard a bell ringing? A. He didn't say he thought. He says the bell was ringing.

RE-CROSS EXAMINATION BY MR. DIXON:

Q. Sergeant Lord is mistaken when he says that Father Lange said he thought he heard a

bell ringing? A. If Sergeant Lord says that Father Lange said that, he must be mistaken.

Q. What? A. He must be mistaken if he says that.

Q. You could not possibly be mistaken? A. No, sir; not on those words.

JOHN A. STORMS, sworn as a witness on the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. What is your business? A. Brakeman on the N. Y. S. & W. Railroad.

Q. Were you employed by that company on the 27th of September, 1913? A. Yes, sir.

Q. Where had you worked that day? A. On the Paterson Drill engine.

Q. That is a separate engine from the one that caused this accident, is it not? A. Yes, sir.

Q. About 5.45 in the afternoon of that day, where were you? A. I was coming down Market Street from my house on East 25th Street.

Q. Was your attention called to anything unusual as you were walking along? A. When I got to Market Street I saw Mr. Steele and brakeman Murray coming in an automobile quite fast and brakeman Murray motioned to me to come on, and there was some trouble, and I walked over the lots then to the accident.

Q. Did you go to the crossing? A. Yes, sir.

Q. Were you there when a train came from New York? A. Yes, sir.

Q. Were you there when the train came from New York? A. Yes, sir.

Q. Did you notice whether or not the crossing bell was ringing for that train? A. I did.

Q. Did you observe whether that train stopped before it came to the crossing? A. Yes, sir.

Q. Did it stop? A. Yes, sir.

Q. How long did it stop there? A. Three or four minutes.

Q. While it was stopped there was the bell ringing? A. All the while; yes, sir.

Q. I am referring to the crossing bell? A. Yes, sir.

Q. Were you there when another train came from New York? A. I was there about an hour and fifteen minutes.

Q. Did you observe every train that came along? A. Yes, sir.

Q. How about the crossing bell? A. It was ringing for every train.

Q. Cross examine.

No Cross Examination.

WILLIAM THOMPSON, sworn as a witness on behalf of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. You are one of the crew of this engine which caused the accident? A. Yes, sir.

Q. You were the brakeman, I believe? A. Yes, sir.

Q. Which part of the engine were you riding on? A. I was sitting on the tank.

Q. Which side? A. Right side going backwards.

Q. Right side in the backward direction? A. Yes, sir.

Q. Were you near Mr. Melvin the flagman? A. Yes, sir; right next to him.

Q. After your engine had crossed Twenty-sev-

enth Street—how fast were you going? A. About twelve or fifteen miles an hour.

Q. Was there any signal given after you crossed Thirty-first Street? A. Yes, sir.

Q. There was a signal given? A. Right at the foundry.

Q. Where is that? A. East of the crossing.

Q. How far from Twenty-seventh Street? A. It was about thirty feet west of Thirty-first Street.

Q. What kind of a whistle was it, Mr. Thompson? A. Two long blasts and two short.

Q. As you approached Twenty-seventh Street did you notice an automobile crossing the tracks? A. Yes, sir.

Q. What did you see of that? A. I didn't pay much attention to that, I was looking ahead for the block at Park Avenue.

Q. Did he get over—the car you saw got over? A. Yes, sir.

Q. You are speaking of a block signal, what do you mean by that? A. The block signal was against us at Passaic Junction and I was watching for the one at Park Avenue.

Q. That was west of you? A. Yes, sir.

Q. That signal was to the west? A. Yes, sir.

Q. Then what did you do? A. Then the accident happened.

Q. I mean after that? A. I started to run back to flag for 917.

Q. That was the number of the next train coming west? A. Yes, sir.

Q. How about the bell on your engine, was it ringing? A. Yes, sir.

Q. When you left your engine to go back with the flag what was your bell doing then? A. I wouldn't say as to that.

Q. You didn't notice that when you was going back with the flag? A No, sir.

Q. Which direction did you go? A. To the east on the westbound track to protect our engine from 917.

Q. Did you observe anything about the crossing bell any time while you were there? A. After I came back after flagging 917 the bell was ringing.

Q. How did you get back to the crossing? A. I came back on 917's engine.

Q. And did that train stop before it reached the crossing? A. Yes, sir.

Q. After it stopped did you notice that? A. Yes, sir.

Q. Where did you go then? A. I walked up to the crossing.

Q. That is when you heard the bell? A. Yes, sir.

Q. Did you see 955 come in? A. Yes, sir.

Q. You were there then? A. Yes, sir.

Q How long after that was that? A. About fifteen minutes.

Q. Did the crossing bell ring? A. Yes, sir.

Q. Cross examine.

CROSS EXAMINATION BY MR. DIXON:

Q. How long had you been working as a brakeman employed by this company? A. Six years.

Q. How long had you been working on this engine No. 125 or with it? A. I could not say how long I was working on that engine; I might too (referring to book) I have in this book January 1 to February 11; I don't know whether I did before or not. That is all I have in this book.

Q. Only about a month at that time? A. Yes, sir. I may have been on there before but I don't know for sure.

Q. This accident happened in September? A. Yes, sir.

Q. How long prior to the accident had you been working with that engine? A. I could not say that.

Q. Were you accustomed to working in that place? A. Yes, sir.

Q. On this same strip of run? A. Yes, sir.

Q. Where is it you were accustomed to working? A. Between Passaic Junction and Rochelle Park, at Coalburg.

Q. Where is that situation? A. Between Passaic Junction and Rochelle Park.

Q. How far away from the Broadway station? A. Oh, three miles, a little less.

Q. This junction that you stopped at, where is that, Passaic Junction, how far from the Broadway station? A. About three miles.

Q. They are not both in the same place, Passaic Junction, and Coalburg are not in the same place? A. It is practically the same.

Q. On this afternoon you were riding in the tender all the way along? A. Yes, sir.

Q. How long had you stopped at Passaic Junction? A. Well, I would not say that, probably two or three minutes.

Q. You had made this journey before frequently? A. Yes, sir.

Q. Have you any turn tables in Coalburg, or Passaic Junction? A. No, sir.

Q. So that you always run backward, coming out, do you? A. Yes, sir.

Q. Where were you going? A. We were going west to North Paterson to tie up.

Q. And you knew that this train was right behind you, you were blocking the following train? A. Yes, sir.

Q. And you had to keep out of her way? A. Yes, sir.

Q. Are you familiar with the working of that

bell on No. 125 engine? A. Well, I would not say so, no.

Q. You don't know? A. I am not an engineer.

Q. What do you have to do on the engine, around the engine? A. Why, we are supposed to drill up cars, couple cars.

Q. You only couple the cars? A. Yes, sir.

Q. Do you have anything to do with coupling the car? A. Yes, sir; the air on the cars.

Q. You couple the air on the cars, you couple that up to the engine? A. Yes, sir.

Q. The same compressed air that works the engine brake works the brake on the cars? A. Yes, sir.

Q. What is that coupling, do you make anything between the engine and the car? A. The air, yes, sir; the air hose.

Q. From what part of the tender does that air hose come which you couple up to the cars? A. From the back end of it.

Q. Whereabouts, under the tender—A. No, exactly no; it is on the end of it.

Q. And sticks right out at the end? A. At the end.

Q. You have a bumper or coupling, don't you? A. Yes, but that has nothing to do with that.

Q. Is it under that bumper? A. It is right along side of the coupling.

Q. That pipe is a rubber pipe, is it not? A. No; the air hose is rubber, the angle cock and pipe is iron.

Q. The angle cock and pipe is iron and on that angle cock is the rubber hose? A. Yes, sir.

Q. And that has a little coupler on the end of that to couple a similar hose on the car? A. Yes, sir.

Q. That cock, the iron or rubber cock is sit-

uated right along side of the coupler, is it not? A. Yes, sir.

Q. On which side of the coupler? A. On the back of the tank it would be on the right side of it.

Q. How far does that little pipe project out from the tank? A. Well, about,—well I don't know that there is any certain length.

Q. There is scarcely any projection, is there? A. No, sir; they are about four inches I think.

Q. Three or four inches? A. Yes, sir.

Q. And in that coupler is there a valve? A. What do you mean?

Q. When you hold the two pipes together how do you get the air to go through? A. You mean the two hose?

Q. Yes; the two hose. A. Why there is an angle cock.

Q. Where is that angle cock? A. Well there is one on the engine and there is one on the air.

Q. Where is that one on the engine, on the tender, where is that situated? A. That is just right next to the coupler, I told you.

Q. Well, it is in that copper tube, is it not, to which the rubber pipe is connected? A. There is no copper about it; it is iron.

Q. An iron pipe—whatever it is—a metal pipe? A. Yes.

Q. That cock is located in that metal pipe, is it not, and close up to the body of the tender? A. Yes, sir.

Q. And beyond that extends the car coupler does it not? A. Yes.

Q. What is that car coupler made of? A. Iron.

Q. So that when you run your coupler up against another car these two couplers come together; there is nothing that can possibly touch that cock? A. No, sir.

Q. That pipe, that metal pipe, extending two or three inches from behind the tender goes where, leads where—under the tender? A. Yes.

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

Q. What was broken on that coupler or that angle cock; what part of it was broken? A. There wasn't anything broken.

Q. Did you see it after the accident? A. Yes, sir.

Q. Was there not something broken then? A. The angle cock was broke off then.

Q. That is what I say; the angle cock was broken off, was it? A. Yes, sir.

Q. And that let out all the compressed air? A. Yes, sir.

Q. And jammed your brakes on the engine, did it? A. Yes.

Q. Now, how many pumps are there on that engine that pump compressed air? A. Well, I don't know; I think it is one.

Q. One pump? A. Yes, I think so.

Q. Is it the same compressed air that works the brakes on the engine which also rings the bell? A. I should think so.

Q. Don't you know it is? A. I don't know it is.

Q. On this engine don't you know it is? A. I dont know whether it is air or steam that works that bell.

Q. You do not? A. No, sir.

Q. You have been working around that engine for months? A. Yes.

Q, Don't you know whether air or steam works the bell? A. That is not my business.

THE COURT: He is a brakeman.

Q. Have you not heard the engineer tell about it? A. Well, I have never gotten in any conversation about it.

Q. Never talked about it? A. No, sir.

Q. Were you here yesterday when he was testifying? A. Yes, sir.

Q. Didn't you hear him testify about that? I don't remember.

Q. You recollect very distinctly about the ringing of the engine bell, don't you? A. Yes, sir.

Q. When did it stop ringing? A. I could not say.

Q. Why not? A. Because I went back to flag.

Q. It was ringing when you left, was it not? A. Yes, sir.

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

Q. When you left to go back after the engine came to a stop, the bell was still ringing? A. Yes, sir.

Q. You are as positive of that as you are that it was ever ringing, are you not? A. Yes, sir.

By the Court: Speaking of the engine bell?

By Mr. Dixon: The engine bell.

Q. You are speaking of the engine bell, are you? A. Yes, sir.

Q. Now as you walked back, how far did you get before you ceased to hear it ring? A. Well, I don't know; I did not pay any attention to the bell after I started to walk back.

Q. Why didn't you pay any attention to it? A. Well, I was thinking about the other train, and I was excited, and different things, and I didn't pay attention to the bell.

Q. You certainly were not paying special attention to the bell before the accident? A. Why, I paid attention that after we struck the automobile the bell was ringing.

Q. You did not pay any special attention to the bell before the accident, did you? A. Well, the

bell had been ringing all the way from Passaic Junction.

Q. You understand they always ring, don't they? A. Well, not—

Q. What? A. I would not say to that.

Q. You would not say they always ring? A. No.

Q. Why would you not say that? A. Because I don't know that.

Q. When you are on, they always ring? A. Well, more or less.

Q. What? A. More or less they are usually ringing.

Q. Why should you pay any attention particularly to the bell before the accident when you did not pay any attention to it after the accident? A. Well, I would not say to that now.

Q. You would not like to say about that? A. No, sir.

Q. As soon as the accident occurred you knew it was the important thing to know whether the bell was ringing? A. I noticed the bell because that is the first cry they always holler, the bell is not ringing.

Q. You remember that right after the accident it was ringing? A. It was ringing.

Q. Right after the accident it was ringing? A. It was ringing; yes.

Q. Why didn't you observe as you went away from it how long it continued to ring? A. I was thinking about something else. There was an express due behind me at that time.

Q. You were going down with the flag? A. Yes.

Q. That did not prevent from listening to the bell? A. I did not stop to listen to the bell that time. The express was about due.

Q. How far could you hear that bell? A. I would not say to that.

Q. Why not? A. Because they are a pretty heavy bell, and I could not give you any idea.

Q. How far did you go from this crossing to meet the other train? A. I went east of Thirty-first Street crossing.

Q. Could you not hear the bell there, if it was ringing? A. No, sir.

Q. You could not hear it there? A. I did not pay any attention.

Q. You say you were sitting on the tender, with your back in which direction? A. The east direction.

Q. Were you riding face forward? A. Yes.

Q. Face forward? A. Yes.

Q. Then, you of course, had a good view when you came up to this East Twenty-seventh Street crossing, didn't you? A. Yes, sir.

Q. What? A. Yes, sir.

Q. You were rather sitting there as a guard on the train, were you not? A. I was sitting there with the fireman.

Q. What? A. I was sitting there with the fireman.

Q. What? A. I was sitting there with the fireman.

Q. You were kind of sitting on that place to guard the engine were you not? A. Well, not exactly; it was a nice day; it was better riding up there than it would be sitting up along the hot boiler in the cab.

Q. You knew the engineer was in such a position that he could not see the crossing? A. I did not know such a thing.

Q. Well, he was? A. So he said yesterday.

Q. You don't believe that, then? A. I don't know.

Q. Don't you know enough about an engine to know that where the engineer sits he could not see

across that tender on the right hand side the way you were progressing? A. I don't know.

Q. You don't know that? A. No, sir; I am not an engineer.

Q. Didn't he put you there for the purpose of guarding him? A. He didn't put me there at all; I got there myself.

Q. When did you first see the automobile that was hit? A. As he attempted to turn up the track.

Q. Well, come here and show us on the map where his automobile was when you first saw him,—here is East 27th Street. You recognize the diagram, don't you? A. Yes, sir.

Q. Where were you when you first saw him—indicate on the map.

THE COURT: Speak up so the stenographer can hear you.

A. He was starting on the track.

Q. How near the track was he? A. Right on the track.

Q. How near the crossing was he when you first saw him? A. Two rail lengths.

Q. Heading right up the track—how far is that? A. 30 feet to the rail, and two would be 60 feet.

Q. Where was the tender in which you were riding when you first saw him with respect to the crossing? A. About ten feet away from the crossing, from the automobile.

Q. When you first saw the automobile the tender was all the way across the street, was it? A. He was west of the crossing.

Q. And the engine practically off of the street? A. Yes, sir.

Q. That is correct, is it? A. Yes, sir.

Q. And then you stumbled down and you don't know what happened? A. No, sir.

Q. Didn't the engineer give a shrill blast of his whistle when the automobile turned? A. No, sir.

Q. You didn't get any view of the automobile before that at all? A. No, sir.

Q. You didn't see the other automobile pass there? A. Yes, sir; I saw that one.

Q. Did you see the other two standing automobiles? A. No, sir.

Q. You were sitting there riding, facing it, weren't you? A. Yes, sir.

Q. And that is all you saw? A. Yes, sir.

Q. That is all.

THEODORE GROVER, a witness sworn on the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. You are the engineer on train No. 125? A. Yes, sir.

Q. I mean the engine? A. Yes, sir.

Q. You had been working at Coalburg that day? A. Yes, sir.

Q. And you were on your way back to North Paterson? A. Yes, sir.

Q. Do you remember what time you left there that day? A. We left at :35 and left the junction at :39.

Q. Were you delayed at the junction? A. Yes; to let a train go by.

Q. When you say the junction you mean Passaic junction? A. Yes, sir.

Q. And you mean 5:39 when you say 39? A. Yes, sir.

Q. As the engine left Passaic junction which part of the engine were you riding in? A. In the cab of the engine.

Q. Which side? A. Right hand side going west.

Q. Same side as the fireman? A. Yes, sir.

Q. Was that the side from which the automobile came? A. Yes, sir.

Q. After you left Passaic junction and was moving west how fast was the engine going? A. Fifteen miles an hour, about.

Q. You have made this trip several times? A. Yes, sir.

Q. You know the location of 31st Street? A. Yes, sir.

Q. And 27th Street? A. Yes, sir.

Q. After your engine passed 31st Street was there any signal given? A. Yes, sir.

Q. What was it? A. A whistle.

Q. What kind of a whistle? A. Two long and two short.

Q. And where was the engine when it was sounded? A. At the end of that lumber yard—I think it is Dillistons. I think right near the whistling post there.

Q. Was it there at the whistling post? A. Quite near to it.

Q. How close to it? A. I couldn't quite tell you how close to it.

Q. Did you hear any bell on the engine? A. The bell was starting to ring at Passaic junction.

Q. When did it stop, so far as you noticed? A. Well it stopped after—maybe three or four minutes after the accident. I did not keep any count.

Q. Are you sure it was after the accident? A. Yes, sir; yes, sir; yes, sir.

Q. Was it stopped at any time before that? A. No, sir.

Q. As you approached 27th Street did you

see anything of the automobile passing over the tracks? A. I saw one go over; I guess we were about 200 feet from the crossing or something —that went south.

Q. The one you saw was it going fast or slow? A. Well, it was going pretty good, faster than I could run, I know.

Q. Faster than the engine was going? A. Oh, yes; he must have going twenty or twenty-five as near as I can judge.

Q. After that automobile got across did you see another one? A. Yes, sir.

Q. How close was your engine to the crossing as near as you can tell at that time? A. Well, the hind end of the tank of the engine was about at that switch, about 20 feet from the crossing as near as I can tell, I guess it was about that distance, I did not measure it.

Q. Where did that automobile come from? A. That automobile came out from the north, she was going south.

Q. How fast was that going when you saw it? A. I could not tell exactly, I think may be 20 or 25.

Q. What did the driver of that automobile do, if anything, that you saw? A. This one that the accident was?

Q. Yes; the one that was hit. A. Why, when we were about to enter the crossing he wheeled his machine and went up behind the engine.

Q. That is behind the tank? A. Yes, sir. He got in about so much of the crossing, on the west side of the crossing with the wheel on the south side, the front wheel straddled the rail also the rear end of the machine on the south straddled the rail and on the north side was on the outside of the heads of the ties.

Q. What did you do when this driver did that?

A. I saw the machine coming and I yelled to the engineer—I don't whether I looked over the boiler or I didn't, put my head up, I saw that machine coming and it was so exciting to me that I don't know whether I put my head over the boiler or whether I did not put my head in the cab at all. And as soon as he went up I got up on the cab of the engine to see where he went to and I saw him then I guess he went to cross, to go over on the east bound track, and then we caught him, I could not say how far he got up behind the engine before we caught him because he was out of my sight.

Q. When you speak of his being behind the engine do you mean west of the tender? A. On the west end of the engine behind the tank. He went in the same direction we were running.

MR. COLLINS: You mean ahead of the tender?

THE WITNESS: Yes.

Q. Did you help remove the people that were injured? A. I could not say that, I know that I helped turn the machine over, there were some officers there done that, I could not say what officers they were.

Q. Before the driver of that car turned in the direction you have described did you observe whether he saw your engine or whether he looked toward you? A. He could not help to see the engine or he would not have went down the track.

MR. DIXON: Objected to and move to strike it out.

Motion granted.

Q. Before the driver of that car turned in the direction you have described did you observe

whether he saw your engine or whether he looked toward you? A. Oh, yes, he was looking right facing us, the whole three was looking facing us.

Q. You say the whole three, who do you mean? A. The old gentleman and lady and the driver was all facing us.

Q. When he was looking toward your engine where was he? A. Well he was about 20 feet I guess of the west bound track.

Q. Did he continue to look at you or what did he do? A. He did until he went west.

Q. About how far was the automobile from the railroad tracks when you first saw it? A. It was not over 20 or 25 feet.

Q. Did he slow up at any time after that? A. He did not sem to slow up much, no.

BY THE COURT: How far from the crossing were you when you first saw him?

THE WITNESS: Well about 20 feet I should judge that.

Q. Do you mean that you as you sat in the cab were about 20 feet or the end of the tank was 20 feet? A. No, the hind end of the engine, the tank was 20 from the crossing.

THE COURT: When you first saw the automobile?

THE WITNESS: Yes, sir; that is the rear end of the tank, and then I sat on the east end of that yet as near as I can judge.

Q. Was your engine backed up on the side track after that? A. She was headed in the side track that is east.

Q. She was moved on to the side track? A. Yes, sir.

Q. How long did you stay around there? A. We were there till 955 went.

Q. You mean the number of the train that came along? A. Yes, sir, she got there, I think she was a couple of minutes late, she got there 6:15 and leaves there—

Q. Do you recall another train No. 917 coming along while you were there? A. Yes, sir.

Q. Where were you when 917 and 955 came? A. On the crossing.

Q. Did the crossing bell ring for those trains? A. Yes, sir.

Q. While you were upon the crossing did you observe if anybody had any ladder up on the bell post? A. No, sir.

Q. Was there any such thing? A. No, sir; there was nobody around the bell whatever.

CROSS EXAMINATION BY MR. DIXON:

Q. You were only a conductor, you don't know much about that engine, do you? A. Oh, I know a little, no not much.

Q. Eh? A. No.

Q. Do you or don't you? A. Well, I know a little. I know a little about the air, you couple up the air, I know how that is, and such as that.

Q. You don't know whether that bell is rung by air pressure or by steam? A. Why, it is by air.

Q. You know that? A. Yes, sir.

Q. Is it the same pump that works the bell that works the air pressure for the brake? A. No.

Q. How many pumps have you got? A. We have only got one but there is a pipe runs from the pump, a small pipe there that rings the bell.

Q. What? A. There is a small pipe.

Q. Is it not the same pressure that rings the bell that operates the brake? A. I suppose it is the same pressure.

Q. Don't you know it is? A. It don't take so much pressure though.

Q. No, of course not, but you know it is the same pipe, the same tank, don't you? A. Well, we have got another line there.

Q. How long have you been a conductor? A. About 29 years.

Q. Were you ever an engineer? A. No, sir.

Q. You never studied anything about the engine? A. No, sir.

Q. But with your familiarity with the engine don't you know as matter of fact that it is the same air pressure that works the brake that works the bell? A. No; I do not.

Q. I thought you said you did know? A. Well, I suppose it is from the pump but I never looked at the air pressure on the pipe to see how it worked.

Q. In reply to a question of the court you said that the engine tank, the end of the tank was about 20 feet from the crossing? A. Yes, sir; as near as I could judge—

Q. Hold on, you don't know what I am going to ask. A. Yes; I know.

Q. —when you first saw the automobile, is that true? A. That is about 25 feet, 20 or 25 feet from the crossing.

Q. You said on your direct examination a few minutes before that it was 40 feet or more? A. No; I don't think so.

Q. I think so. Didn't you say that? A. I might have, I could not say, I don't think so though.

Q. Do you mean to say that you did not say a few minutes before you had just said that? A. I said it might have been 20 or 25 feet.

Q. Didn't you say 40 feet? A. No; I did not measure it.

Q. Of course you did not measure it. A. I could not say.

Q. You didn't measure how far the automobile was from the crossing either? A. No, sir.

Q. But you think they were both about the same distance from the crossing? A. I should think about the same distance.

Q. When you saw the automobile? A. Yes, sir.

Q. Was your head out of the window? A. Yes, sir.

Q. Were you looking for automobiles? A. I was looking backwards, that is what I was put up there for.

Q. You were looking forward, weren't you? A. Forward would be the way the engine ran.

Q. You were looking ahead of the track toward the crossing? A. Yes, sir; looking west.

Q. For the purpose of notifying the engineer if you saw any danger? You knew this was a dangerous place, didn't you? A. Oh there is quite a number of them dangerous.

Q. You knew this crossing was especially dangerous didn't you? A. Oh, yes, sir.

Q. It was so recognized, wasn't it, by all men, by you men anyhow? A. Yes, going up with there with an engine running backwards, I suppose.

Q. You had to be especially careful there, didn't you? A. Oh, we didn't run the same amount of speed.

Q. Because you knew it was a particularly dangerous crossing, this one here, 27th Street, isn't that a fact? A. It is no more dangerous than any other crossing I know of.

Q. It has got a big board fence or picket fence along there and brush, hasn't it, close up to the track? A. Yes, it has got a board fence or picket fence on one side.

Q. And brush, and small weeds, and underbrush right up to the track? A. I did not see no brush.

Q. You never saw any? A. No brush, no; there was some little weeds there, small weeds, I saw no underbrush.

Q. How high were those small weeds, how high did they grow? A. Well, in the summer time they are higher than in the fall, of course, I never measured how high they were.

Q. Were you taking special care because it is a dangerous crossing? A. Not particularly, I was watching the same as I always do.

Q. You always watch there, don't you? A. Yes, sir.

Q. How far was your tender from the crossing when the first automobile went by? A. Well now, I could not say, something like 200 feet, it might not have been that far.

Q. It might have been 50 feet? A. Oh, it was more than 50 feet.

Q. It could not have been 50 feet? A. I say it was more than 50 feet.

Q. Was the bell ringing after the locomotive came to a stop following the collision? A. On the collision? Well we might have been over the circuit, that I don't know.

Q. No, I mean the engine bell, the bell on the engine, was that ringing after the locomotive came to a stop? A. Yes, sir; it rang all the way down the crossing until after the accident.

Q. And it was still ringing when it stopped? A. Yes, sir.

Q. Was it being rung by you or by the engineer? A. It is rung by air.

Q. All the time? A. Yes, sir.

LEMUEL VAN BUSKIRK, recalled as witness on behalf of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. I want you to explain further how that automatic bell was operated and whether there was any connection between it and the angle cock or hose that you said that was broken? A. No, sir; the angle cock was connected to the train line and the bell was rung from the main reservoir pressure.

Q. The broken angle cock, had that any effect on the operation of the bell? A. Not if your brake is not on, the air brake would be effected but the air in the bell would not be effected by it.

Q. Not if the brake is not on. Where was it on this day? A. The bell on the engine as soon as we got going I pulled the bell on the engine and set it going, and left it there.

CROSS EXAMINATION BY MR. DIXON:

Q. You open your valve to ring your bell, don't you? A. That is a separate valve, yes, sir; that is not the brake valve, the air valve that is connected from the main reservoir.

Q. The valve that operates the bell is a valve that controls the air from the tank? A. No, sir; the air that comes from the main reservoir to that valve and from that valve to the bell does not go to the tank at all, it has no connection with the tank.

Q. It has to come from the same place, where is the pressure? A. From the main reservoir.

Q. That is where all the air comes from. A. That is where all the air comes from but you get it from a different valve.

Q. To allow that bell to ring you have to open that valve, don't you? A. Not the brake valve, no, sir.

Q. Not the brake valve of course but you open the air valve? A. Yes, sir.

Q. And that then gets its force from the main reservoir, doesn't it? A. Yes, sir.

Q. When the air valve is open that air is forced up through the pipe to the bell and keeps it ringing? A. Yes, sir.

Q. Now, with regard to your direct valve and coupling valve, back of your tender that was the one that was broken? A. Yes, sir.

Q. That was the one that comes from the direct tank? A. Yes, sir.

Q. From the tank? A. It has to go through the valve.

Q. From the main reservoir? A. Yes, sir.

Q. And if you break that you cannot operate your brake? A. No, sir not if you hold your brake valve down.

Q. What brake valve? A. The engineer's brake valve, you can hold that if you want to—you can have a hundred pounds in your main tank and not have an ounce in your valve if you don't hold that handle down.

Q. You said in your direct examination that that connection was broken? A. Yes, sir.

Q. And because it was broken you couldn't release your brake? A. Yes, sir.

Q. And the valve in your hand was positively out of order? A. It wouldn't release the brakes.

Q. There wasn't anything you could do that you could release them? A. If I had released mine it would have left all the oxygen run out of the main reservoir but as long as I held it it was all right.

Q. What difference did it make if you let it

out or not, your engine was not running? A. No, sir.

Q. You were stopped? A. Yes, sir.

Q. Why didn't you open it? A. I would have to stop it gradually and leave it out that way and then I would have to refill the tank with the pump.

Q. Didn't some kind hearted citizen ask you to please back up so they could get the bodies out of— A. Yes, sir.

Q. So they could get the bodies out of the wreck? A. I didn't see the bodies.

Q. And didn't you tell them that you couldn't release your brakes? A. Yes, sir.

Q. And didn't you see a man come up there with a crowbar? A. I didn't see that.

Q. Why didn't you release the air and open the brakes? A. It would simply have gone out in the atmosphere and would not have done any good.

Q. You said a moment ago that if you did that you would have exhausted your air pressure, isn't that right? A. I said that that would have all gone out of the main tank and would not have released the brakes.

Q. You were in a position that you could have released them? A. Not without being bled out.

Q. What do you mean by that? A. I would have bled out all the air in the main tank.

Q. It would have released the brakes? A. No, sir.

Q. If you had bled the air out you could have released the brakes? A. No, sir; it works with this triple action; after you release it the pump has to pump the air in again.

RE-DIRECT EXAMINATION BY MR. HOBART:

Q. You mean if you release the air you have

to refill the tank with the pumps again? A. Yes, sir.

Q. And would that release the valve? A. No, sir; not necessarily.

Q. Is that the same one that makes the bell ring? A. Yes, sir.

By Juror No. 1:

Q. Are the brakes held by the air inside? A. It is a triple action and it is held there and in order for you to release them you have to let it out gradually and then fill it again; you see it is a peculiar way it works, and with that system if you can't release your line enough to release it you have to colonize it again in order that you can release your brakes that way.

Q. That is all.

Howard Luce, sworn as a witness on behalf of the defendant, testifies as follows:

Direct Examination by Mr. Hobart:

Q. Where are you employed? A. In the signal tower, Park Avenue crossing.

Q. Is Park Avenue west of East Twenty-seventh Street? A. Yes.

Q. How far west? A. About fourteen hundred feet.

Q. Were you there on the afternoon of the twenty seventh of September, 1913? A. I was.

Q. How high was your tower above the tracks? A. The floor of the tower, you mean?

Q. Yes. A. Why, about twelve or fourteen feet, I should say.

Q. Can you see Twenty-seventh Street from your tower? A. Yes, sir.

Q. How much further east than Twenty-seventh Street can you see? A. Why, east of Thirty-first Street, around the curve.

Q. Did you see this light engine coming? A. I did.

Q. Were you in your tower at that time? A. I was.

Q. In which direction were you looking? A. East.

Q. Where was that engine when you first saw it? A. Why, just around by the curve at this side of Vreeland Avenue.

Q. Did you watch it as it came along? A. I watched it until it got out of my sight.

Q. Did you hear any whistle blown from that engine? A. Yes.

Q. What whistles did you hear? A. Two long and two short.

Q. Where was the engine when you heard that whistle, as near as you can tell from where you were? A. Why, he was not quite in my sight around the curve. I heard the whistle and just as I heard the whistle he appeared in my sight around the curve by Thirty-first Street.

Q. Did you hear another whistle afterwards? A. Yes, sir.

Q. Where was the engine then? A. Just by Thirty-first Street, west.

Q. What kind of a whistle was that? A. Two long and two short.

CROSS EXAMINATION BY MR. DIXON:

Q. Were those the last you heard? A. Yes.

Q. After Thirty-first Street? A. After he passed Thirty-first Stret that was the last.

Q. Well, the last one you heard was about at Thirty-first Street? A. West of Thirty-first Street.

Q. And how far west of Thirty-first Street? A. I could not see; he was too far away.

Q. Can you give us any idea? A. No, sir;

I cannot because he was west of Thirty-first Street; I could not tell you because I was up above that.

Q. It might have been Twenty-seventh Street, as far as you can say? A. No.

Q. How do you know? A. Because I know he was not to Twenty-seventh Street.

Q. You do not know how far from Thirty-first Street it was, do you? A. He was at Thirty-first Street.

Q. By Thirty-first Street? A. Yes.

Q. You mean he had passed over? A. Yes.

Q. But you cannot say where? A. About midway between.

Q. About midway between Thirty-first Street and Twenty-seventh Street? A. Probably a little nearer Thirty-first Street.

Q. And that was the last whistle that you heard? A. Yes.

WALTER S. CAFFREY, sworn as a witness on behalf of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. You are employed by the Susquehanna Railroad? A. Yes.

Q. As a telegraph operator, I believe? A. Yes.

Q. Were you working for that company on the twenty-seventh of September, 1913? A. Yes.

Q. Where were you located that day? A. I was agent at Dundee Lake station.

Q. Dundee Lake is east of Twenty-seventh Street crossing, is it not? A. Yes, sir.

Q. And it is between Twenty-seventh Street and Passaic Junction? A. Yes, sir.

Q. Were you there about five-forty-five in the evening of that day? A. Yes, sir.

Q. Did you see a light engine backing up on the westbound track? A. Yes, sir.

Q. Where were you when that engine approached? A. Why, standing up in the bay window of the station.

Q. Did you see it go by? A. Yes, sir.

Q. Did you notice whether there was any bell on the engine? A. Why, I heard the bell. I did not look at it but I heard the bell.

Q. As the engine passed your station? A. Yes.

Q. Did you observe anything about any whistles? A. Why, they blowed coming towards the station, I suppose for the Dundee Lake crossing.

Q. There is a crossing not very far from your station? A. Yes, about fifty feet.

Q. After the engine passed your station did you pay any further attention to it? A. No, sir.

Cross Examination by Mr. Dixon:

Q. That engine passes pretty nearly every day, does it not? A. Mostly—well, I was only there about a month taking the place of the agent who was off on vacation.

Q. I say it passes there about every day? A. I guess it does; yes.

Q. You did not know that there was an accident going to occur at Twenty-seventh Street, did you? A. No, sir.

Q. When did you learn about that? A. Why, the first indication of any trouble was when we got to Vreeland Avenue, I believe the train was stopped in order to be carted into the block.

Q. That is when you learned of it? A. That is, there was some indication of some trouble on the track somewhere.

Q. You were using the wire? A. No, sir; there was no wire there in our station.

Q. Did you hear of the accident before the next day? A. Yes, sir.

Q. When did you hear of it? A. Why, I left the station about ten minutes after six on Train 955, and as the train slackened up at the scene of the accident I got off.

Q. You went away at nine fifty-five, four or five hours after the accident? A. No; train 955.

Q. Four or five hours after the accident? A. No, sir; I left the station ten minutes after six.

Q. It was then you learned of the accident? A. Yes.

Q. That is what fixes it in your mind that you stood in the window and watched that train go by; that is what fixes in your mind the fact that you stood in the window watching this engine and hearing the bell ring? A. No, sir.

Q. What is it that fixes that in your mind? A. That the bell was ringing?

Q. On this particular day. A. Why, I heard the engine coming, and I knew it was not time for a passenger train.

Q. You heard that engine coming there every day? A. No, sir; not every day.

Q. Well, pretty nearly every day? A. Well, I suppose if I am working at that point I would

Q. What were you doing the day prior to this day you last heard the engine coming? A. I could not say on this particular engine because there are several engines coming along in the same position.

Q. What were you doing when this engine went by the time last before this occasion? A. Well, I could not just exactly say.

Q. Of course you could not? A. No, sir.

Q. Why could you say on this occasion any

more than on any other occasion? A. I was sitting there probably doing a little writing, or something of that sort, when this engine come along. Of course, not being time for a passenger time it naturally attracted my attention.

Q. It naturally attracted your attention before because this was not the first time for that train to go along there? A. No.

Q. Why don't you tell us about the last time before that when it went by and attracted your attention? A. Well, I have seen them mostly every time that I worked there, I suppose.

Q. Tell us what you were doing when it last went by before this occasion. A. Well, that would be impossible to tell.

By Mr. Hobart:

Q. You did not have an accident on any other time except this occasion? A. No, sir.

Q. Would that help you to remember what happened on this day? A. Yes, sir.

By Mr. Dixon:

Q. You just told me it did not. I asked you about that. A. That is what made me remember since that time until today.

Q. There was no accident when you looked at the engine going by? A. No, sir.

Q. You did not know there was going to be an accident? A. No, sir.

Q. You did not know there was any accident until hours afterwards? A. Until about ten minutes after.

Q. You did not know, when that engine went by, that you were going to be called upon to swear that you heard the bell ringing? A. No, sir.

Q. You did not know when that engine went by, if you were going to be called upon to swear

that the whistle was blown did you? A. No, sir.

Q. Then, why do you say that you were standing in the window and heard this bell? A. Because—

By Mr. Hobart:

Q. Finish your answer. A. Well, I just remember of standing up, that is all, and watching it going by.

Q. That is the only time there ever was an accident to that engine, as far as you know? A. As far as I know of, yes, sir.

Lemuel Paulison, sworn as a witness on behalf of the defendant, testifies as follows:

Direct Examination by Mr. Hobart:

Q. You are a railroad conductor, Mr. Paulison? A. Yes, sir.

Q. How long have you worked for the Susquehanna Railroad? A. Thirty-two years.

Q. Were you in charge of the passenger train number 917 on the twenty-seventh of September, 1913? A. Yes, sir.

Q. It was a westbound train, was it not? A. Yes, sir.

Q. Where was your last stop before you got to Twenty-seventh Street? A. Jersey City. Excuse me. Before we got to Twenty-seventh Street we were flagged at or near Thirty-first Street.

Q. Before that where was your last stop? A. We make no stops between Jersey City and Paterson.

Q. You stop at Broadway? A. Yes.

Q. So, you are an express train? A. Express train from Jersey City; yes, sir.

Q. You spoke of being flagged east of Twenty-seventh Street? A. Yes.

Q. Did your train stop? A. Yes, sir.

Q. Did you get out? A. I just got out on the platform, and the engineer proceeded; he picked the flag up.

Q. How far did it go towards the crossing? A. We went up within, I should judge, about fifty or sixty feet of the crossing.

Q. What did you do then? A. I walked up to the crossing to find out what the trouble was.

Q. Did you see a light engine standing around there somewhere? A. Yes.

Q. Was it on the side track when you got there? A. On the side track.

Q. How long did you stay around the crossing? A. I should judge probably five minutes, until they turned the automobile over so I could proceed.

Q. While you were there did you observe whether the crossing bell was ringing? A. Yes, sir; I did.

Q. Was it ringing? A. It was ringing.

Q. Where was your train while it was ringing? A. Standing about fifty or sixty feet east of the crossing.

Q. Did your train afterwards pull up over the crossing and continue on its regular way? A. Yes.

Q. Where did you board the train? A. Right at the crossing.

Q. Was the bell ringing at that time? A. The bell was ringing when I boarded the train.

CROSS EXAMINATION BY MR. DIXON:

Q. Do you remember where it started to ring? A. Where it what?

Q. Do you remember where the train was when the bell started to ring? A. Oh, no; I was on the train.

JAMES HAVENS, sworn as a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. You are an engineer employed on the Susquehanna Railroad? A. Yes, sir.

Q. Were you running the engine of train 917 on the twenty-seventh of September, 1913? A. Yes.

Q. Do you recollect being stopped before you go to the Twenty-seventh Street crossing? A. Yes, sir.

Q. After the train stopped what did you do? A. Before I got to the Twenty-seventh Street crossing?

Q. Yes, before you got to the crossing? A. Picked up the flag.

Q. By picking up the flag, you mean the trainman that had the signal? A. Yes.

Q. Did you go up to the crossing? A. Yes.

Q. Did you personally walk up? A. No, sir; I did not.

Q. Well, your train stopped, did it not? A. Yes, sir.

Q. How long did it stop? A. Five minutes at least.

Q. Did you afterwards proceed across 27th Street? A. Did I what?

Q. Did you afterwards proceed across 27th Street with your train? A. Yes, sir; I did.

Q. Did you notice anything unusual? A. Yes, sir.

Q. What did you see? A. The automobile.

Q. Were there a number of people around there? A. Yes, sir.

Q. How fast was your train moving? A. Very slow.

Q. You were riding in the cab and on the engineer's side, weren't you? A. Yes, sir.

Q. Did you notice the crossing bell? A. Yes, sir.

Q. What did you notice about it? A. It was ringing.

No Cross Examination.

Charles F. Case, sworn as a witness on the part of the defendant, testifies as follows:

Direct Examination by Mr. Hobart:

Q. You were one of the crew of train No. 917? A. Yes, sir.

Q. You were the baggage master, I think? A. Yes, sir.

Q. You recollect your train being stopped as it came up towards 27th Street in the occasion of this accident? A. Yes, sir.

Q. Did you get off the train after it stopped? A. I got off as it pulled up 27th Street.

Q. You were at the crossing as your train passed? A. I was at the crossing.

Q. Your train stopped, did it not? A. Yes, sir.

Q. How far east of the crossing did your train stop? A. I don't know exactly.

Q. Did you get off the train? A. Yes; I got off and walked up to the crossing.

Q. And then did you get on your train again? A. Yes; I walked back and got on it again.

Q. While you were at the crossing did you notice anything about the crossing bell? A. Yes; I noticed that it was ringing.

Q. Cross examine.

No Cross Examination.

BENJAMIN H. HENRY, a witness called on the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. You were also one of the crew of 917? A. Yes, sir.

Q. You were the collector? A. Yes, sir.

Q. Do you remember your train stopping? A. Yes, sir.

Q. How far east of the crossing did your train stop? A. 50 or 60 feet.

Q. Did you get off your train? A. I did.

Q. Where did you go? A. Up toward the scene of the accident.

Q. Did you go up toward the scene of the accident? A. I did.

Q. Was the crossing bell ringing? A. It was.

Q. Where was your train then? A. 50 or 60 feet back from the crossing.

Q. Where were you then? A. I went up to the crossing.

Q. What did you do? A. I got orders to go back to my train and they had to move the automobile off the track and I went back and gave the signal to start.

Q. When you went back to the train was the crossing bell ringing? A. It was still ringing.

Q. And you got on your train? A. Yes, sir.

Q. And the bell was still ringing? A. Yes, sir.

Q. And when you got back on your train where were you standing? A. On the platform of one of the cars.

Q. Was the bell still ringing as you passed 27th Street? A. It was.

Q. Cross examine.

NO CROSS EXAMINATION.

W. H. STEELE, recalled on the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. COLLINS:

Q. Mr. Steele, have you read over the stenographer's report of your testimony? A. Yes, sir.

Q. Have you any corrections you wish to make? A. I do.

Q. What are they? A. It says here on page 466—

> MR. DIXON: I didn't know there was any testimony taken. What do we know about page 466?

Q. It says here the mover, the conductor, what does that mean? A. That is a mistake. That means Mr. Grover; not the mover.

Q. Now, it says here that the bell was not ringing—what do you say about that? A. I say it was ringing when we went over the crossing.

Q. Where was it ringing? A. When we backed into the siding and on page 477 I said the bell didn't ring. I want to correct that.

Q. Which is right? A. I want to say that it was ringing.

Q. When it was backing into the switch? A. Into the siding.

Q. Was ringing for how long? A. Was ringing from the time we passed into the siding.

Q. And what is the other correction? A. The other correction is on page 486.

Q. What is it? A. The court asked me if a train going west on the westbound track as I read it would the bell ring as it passed through if the engine was in the switch, and I said no; I took it if the siding of the westbound, and I went down there and tried to demonstrate it, and I

got confused and the bell had been ringing all the time from 31st Street.

Q. You say from the siding; you mean the switch? A. It wouldn't ring then.

Q. Until when? A. Until it strikes within 20 feet of the crossing; let me explain it a little, please. We will take it this way. We had been talking about the siding, and Mr. Dixon asked me how many cars were on the siding.

Q. Well, how many were there?

Objected to.

A. I say we had been talking about the siding, directly prior to that, and my answer was to the question as to how many cars the siding would hold, and I said about 35 cars and what led me to believe that a car going westerly—

Q. —Would a train coming down the main line ring the crossing bell then? A. Yes.

Q. It would ring? A. You mean down the westbound track?

Q. Yes; in the direction that this train was coming? A. Yes, sir.

Q. So it would be possible for it to ring even if it was in on the siding? A. Yes, sir.

Q. So it would be possible for a train to come down this main line with the switch open and ring the bell? A. Yes; you see this was a double.

Q. I want to know if it is possible when it is open? A. Yes, you could open forty of them.

Q. It is what you call a trailing switch? A. Yes, sir.

Q. Didn't you understand then that the court asked you whether a train could come down this westbound track with this siding open, the switch open and if it was open if a train came down it would not ring? A. No, sir.

Q. Do you want to change that? A. Yes.

Q. That is not true. A. That is not a fact, and I understood it as it comes down the grade would be down the westbound track, and entered the siding and I got puzzled on that. We say down because there is a little grade there and that would not ring the bell until it got within forty feet of the crossing, but a train going toward Paterson—she would ring at 31st Street; that is where I got mistaken. It is down hill and I misconstrued your meaning, Judge, if you were running east on the westbound track then she would not ring.

Q. Now, Mr. Steele, let me call your attention to this. You say it is not important.

MR. DIXON: Now, Your Honor, I think that is improper to argue that out with the jury.

THE COURT: Yes; Mr. Collins, I don't think that is proper.

Q. What is the fact; when a train or engine is running westerly on the westbound track say from 31st Street on the main line toward Broadway, will it or will it not ring the bell whether the switch at the siding is open or closed? A. It would ring it if there was forty switches open.

Q. Positively? A. Positively.

Q. I noticed in the testimony that you say it is so—you say that every wire is not bonded? A. That means every rail, but not in the siding.

CROSS EXAMINATION BY MR. DIXON:

Q. Weren't you aware of the fact yesterday afternoon on cross examination that you were being asked whether or not this locomotive went back across 27th Street and entered the switch whether it rang the bell? A. Yes, sir; and I said it would.

Q. Didn't you tell me time and time again that it did not ring the bell when you sent it back to enter the switch? A. I didn't what?

Q. Didn't you give me the reason, because the switch was closed? A. Yes, sir.

Q. Didn't you tell me that? A. Didn't I tell you that the engine when she went back it would ring the bell, didn't I tell you that on page 466?

Q. I am not asking you anything about pages. Put that in your pocket or tear it up, I don't want to know anything about that; didn't you yesterday on the stand under cross examination state time and time again in reply to my question that when you started that engine to go back on the switch that the bell would not ring? A. The first time you asked me that question, I said "yes."

Q. Didn't you say time and time again that it did not do so? A. I told you the first time.

Q. Will you answer that question? A. What is the question?

Q. Mr. Stenographer, will you kindly repeat the question?

(Question repeated.)

A. I said the first time—I said yes.

Q. What? A. I said yes, the first time.

Q. Yes, what? A. Yes, sir; that it would ring the bell.

Q. That is not my question. Repeat the question, Mr. Stenographer. (Question repeated.) That it—the engine—when it went back over the crossing at the switch didn't ring the bell. A. I don't think you will find that in the minutes.

Q. Mr. Stenographer, please repeat the question. (Question repeated.) Answer that question, if you please. A. I told you that once.

Q. Will you kindly answer the question? A. I answered it.

Q. Didn't you tell it to me time and time again yesterday? A. No, sir.

Q. You didn't have that in mind then yesterday, did you? A. I may have made a mistake once.

Q. Did you make any other mistakes that you want to correct now? A. No; that is all.

Q. Wasn't your attention called by the question the question as to the fact as to whether or not the engine rang the crossing bell after it crossed the crossing? A. Yes, sir.

Q. And weren't you asked time and time again whether the crossing bell was rung by the contact? A. Didn't I tell you yes?

Q. No; you didn't. A. Not at all?

Q. No; you said it didn't ring; didn't you; didn't you tell me why it didn't ring? A. I told you the first time it went over it rang, because we went over the circuit.

Q. Didn't you say that the reason was because you had given orders to close the switch and when the switch was closed it couldn't ring; didn't you say that? A. No.

Q. Didn't you say that when the switch was closed it couldn't ring going in that direction? A. Until it strikes the crossing, until it strikes to where the rails were bonded.

Q. Didn't you say because the switch was closed it couldn't ring? A. I did not; I only said that once.

Q. How many times do you have to say a thing to make it true? A. I would like to know how many times I have to answer it to make it true.

Q. Didn't you say the reason it didn't ring was because you had given the orders to close it? A. It couldn't be closed, to receive the engine; it would have to be open.

Q. Didn't you have it reversed yesterday? A. I would have had it down the main track, if I had.

Q. I mean the testimony? A. No, sir.

Q. Didn't you say it was because of the condition of the switch that the bell would not ring when the engine went across the crossing? A. I said that in answer to the second question.

Q. That the court asked you? A. That led me to believe it was something else. That is what puzzled me.

MR. DIXON: Answer the question.

MR. COLLINS: I object to it as argumentative.

THE COURT: Yes, I don't think it is proper in that form; put it in another form, Mr. Dixon.

Q. Do you remember being examined about the controversy as to the ringing of the bell and where it occurred? A. You mean here yesterday?

Q. Yes, of course, yesterday. A. Yes, sir; I do.

BY MR. COLLINS:

Q. Speak, don't bow you head.

THE WITNESS: Yes, sir; I do.

Q. Do you remember you said it took place when the engine was west of the crossing? A. I did not catch you, Mr. Dixon.

Q. Do you remember you said it took place when the engine was west of the crossing? A. Which did?

Q. The controversy about the ringing of the bell. A. Yes, sir.

Q. Do you remember the foreman of the jury asking you about that? A. Yes, sir. And I would like to explain there that the controversy—

Q. Never mind about the explanation, just answer my questions. A. Yes, sir.

Q. Now do you remember that I asked you dis-

tinctly then whether the engine bell rang, this crossing bell when she backed in onto the switch and you said no, following that question? A. No, sir.

Q. Do you remember that? A. No, sir.

Q. Well, answer? A. No, sir; I said.

MR. COLLINS: Always speak, don't bow your head.

RE-DIRECT EXAMINATION BY MR. COLLINS:

Q. Counsel asked you about a question the foreman asked of you and you replied that the foreman had asked it and what you had said and then you said you wanted to explain and he would not permit you, please explain what you wanted to state. A. The argument about the bell that I refer to was when Mr. Lange was talking to Mr. Lord about that bell. At that time I got two or three witnesses or two or three of the men around that heard that bell and also heard Mr. Lange make that assertion to Mr. Lord and I thought that gentleman thought or meant then that was west of the crossing and the only man that said anything to me about the bell was the officer on the crossing after we backed in the switch.

Q. Where you spoke? A. Yes, sir.

THE COURT: He mentioned that yesterday.

Q. Where you spoke yesterday about the police officer calling your attention to it? A. Yes, sir.

Q. And it was then after the police officer did that that you decided to make the test? A. Yes, sir.

Q. Where was it that the police officer spoke to you, where was the engine then? A. The engine was in the switch and 917 was approaching.

Q. And when the engine was in the switch was the switch closed? A. Yes, sir.

Q. And of course, the bell could not ring? A. And the bell was ringing. Because 917 was coming in the circuit.

Q. And when 917 came the bell was ringing? A. Because she was in the circuit, understand, when that engine came on the circuit, 917, way down at Thirty-First Street.

Q. I mean before 917 came into the circuit. A. Oh, no.

Q. Before 917 came into the circuit and the switch was closed opened to an engine in the siding and then closed, would it ring? A. No, sir.

Q. But not until 917— A. Not till 917 came in on the circuit.

RE-CROSS EXAMINATION BY MR. DIXON:

Q. What is that. If the switch is closed it won't ring? A. If the switch is—everything was tied up, that is what I mean, everything was tied up and I was trying to make everything clear.

Q. First tell me what you mean by the switch being closed. A. As you close a door.

Q. You tell me what you mean by a switch being closed? Don't be so facetious, you may be very funny, but still you don't speak strictly the truth. A. I don't want to be funny, I don't want to appear to be anything of the kind. I can show you on that card there.

Q. Just explain to me what you mean by the switch being closed. A. If the switch is thrown out and shut off from the main track properly that means closed and when it is open it means for you to take the side track.

Q. Can't you explain what you mean by the switch being closed? A. That is what I mean exactly.

Q. How are the switch rails and main rails toward each other when they are closed as you call them? A. May I show him on the card—

THE COURT: Just tell him.

WITNESS: Well, that is all I can show him there how it is closed and how it is opened.

THE COURT: He wants to know how the rails are from each other.

THE WITNESS: One rail is up against the stock rail of the main track and the other point is away from it.

Q. One rail against the stock rail? A. Yes, sir; one point against the stock rail.

Q. Which is the stock rail? A. The stock rail is the main rail on the main track.

Q. There are two rails? A. Yes, sir; and the other rail the point is away from it, open entirely.

Q. That is what you call a closed switch? A. Yes, sir.

Q. When that switch is closed the trains on that track will not ring the bell? A. Who said so?

Q. Is that the fact or is it not? A. It will ring the bell if anything comes in on the circuit, if a train comes in on that circuit it will ring the bell.

Q. Well the bell never will ring unless a train is on the circuit? A. Yes.

Q. It will? When? A. Why laying a bar across the track will ring the bell.

Q. Laying a bar across the track will ring the bells, eh? A. Yes, sir.

THE COURT: Making the circuit, in other words?

THE WITNESS: Making the circuit.

Q. Does that often happen? A. Very seldom.

Q. You were not talking about laying a bar

across the track were you when you were testifying? A. No, sir.

Q. You did not have that in mind? A. No, sir.

Q. Well you told us at some time the bells would not ring, now when was it the bells would not ring when the train was on the circuit? A. Going east on the westbound track the bell would not ring going into that siding until she struck forty feet west of that crossing.

Q. Oh, well, we know that the circuit does not commence at forty feet west, we have neard all of that, but you have told us that sometimes when the train was in the circuit the bell would not ring, now when was that? A. I did not tell you anything about that.

Q. You never told any such thing as that? A. When the train was in the circuit? No, because common sense would teach you better than that.

THE COURT: You just said when the switch was closed in the way you have indicated the bell would ring; suppose the switch is not closed would the bell ring?

THE WITNESS: Just the same.

THE COURT: It does not make any difference then whether the switch is open or closed?

THE WITNESS: Well you close the switch before the main line.

THE COURT: You said in answer to a question of Judge Collins that the switch being closed an engine comes on the bell would ring, why is it necessary to emphasize the fact that the switch was closed when it does not make any difference whether it was open or closed?

THE WITNESS: You could not run the main line if it was not closed.

THE COURT: Could not a train come down on the westbound track with the trailing switch open?

WITNESS: You know what would happen then.

THE COURT: She would go through the switch.

MR. COLLINS: Your Honor misunderstood me, I was calling attention to the fact that it was closed.

THE COURT: Do you mean to say a switch running in the same direction with the track—

WITNESS: The same point? I will show you if you let me have one of those cards.

THE COURT: Would it run right through that switch when it is opened or closed?

MR. COLLINS: No, they can run—

MR. DIXON: Now, are you going on the stand, Judge Collins, if you are kindly be sworn.

MR. COLLINS: It is only a matter of common knowledge.

MR. DIXON: Never mind the common knowledge. We would like to hear what this expert says about it. If he don't know, nobody does. We will see about it.

BY MR. DIXON:

Q. You have kind of switched your switch again, now which is closed and which is opened? Suppose the point of the switch is in contact with the major rail or whatever that is, the stock rail, you said that was closed, didn't you? A. No, I said whenever a switch is closed—

Q. Now, then, the Court's apparently difficult

question as I understand it is: (Illustrating with writing paper) we will assume these are the two rails and here is the switch which runs up to that rail and it is closed, now if the car is backed down here and backed into the siding, suppose a train comes along here, when it is closed, won't the flange of that open up and go right ahead? A. Yes, sir.

Q. That is what the Court I understood wanted to know.

THE COURT: Exactly.

WITNESS: Yes, sir; then you break the switch.

Q. Then you break the switch? A. Yes, sir, you break your switch and the man going anyways into the switch would simply go on the ground.

Q. No, wouldn't he go right along? A. No.

Q. You opened the switch, then the train goes right on, doesn't it? A. Yes, sir, you run up against that point and you go on the ground.

THE COURT: That is going in the other direction towards the switch, that is the point of the switch?

THE WITNESS: Yes, sir, the point of the switch.

THE COURT: This is a trailing switch?

THE WITNESS: It would break your lever, break your rods or bend them up so they will kink up in the middle here and both points are away from the stock rail then your next man comes along and he will take them both outside of the rails and he will go till his gauge is wide enough to let him drop in and he drops in and they will holler for the wreckers.

By Mr. Collins:

Q. Are you somewhat hard of hearing? A. A little bit.

Q. Now listen to me and be sure you understand, when the switch points on this switch, if you please, are so set, that an engine or train can go into the siding as you did take this one into the siding so that the engine will go into the siding do you call that open or closed? A. That is open.

Q. When it is set so that an engine coming in the same direction I speak of, in this case, she could not go into the siding but down on the main track, do you call that closed or open? A. Closed.

Q. Now, you have said that a train coming toward the switch and it is open it would run into the switch if it is going the other way so it does not connect with the siding at all, as for example a train running west, what would happen to the track here past this siding? A. What would happen?

Q. Yes, for it to run properly the switch ought to be closed I understood you? A. Yes, sir.

Q. Now, suppose it is open by carelessness or otherwise, what will happen? A. Wreckers immediately.

The Court: That is a train running west?

Witness: That is a train running west on the eastbound track and running against the point.

Q. No. The trouble is you don't listen. You say that for a train running west on the westbound track this siding although it is intended to be entered from the west nevertheless should be closed? A. It should be closed. I see, I get you.

Q. Suppose it was open what will happen? A. She will trail right through it.

Q. She might leave the rails? A. She won't leave the rails, she will go all right.

Q. What did you mean when you said she would break the switch? A. She would just simply break the switch, and go on, just simply shove the point of that away from the stock rail, that point which should be away from the stock rail, up against the stock rail and kink your rod up in the center and probably break the cogs in the stand.

Q. And when you said she would break the switch you don't mean by the word break that she would tear the iron apart? A. I mean she would simply break the switch stand.

Q. Break the switch stand? A. Yes, sir.

Q. She would not do anything to the points? A. She will trail right through that switch all right, she cannot do any damage at all, she will go right on.

Q. Will she do any damage to the switchpoints themselves? A. Not unless there is frost, it might be the rod is so heavy, if it is a big heavy rod it might break the points off.

Q. But she might break the cogs of the switch handle? A. She will break them every time.

By Mr. Dixon:

Q. How do you know she will? A. Don't get mad.

Q. I thought you were a little hard of hearing? A. I can hear you easy, you don't need to holler as hard as that.

Q. I did not mean to be hard except that you should not miss the question; how do you know that she will always break the cog in the switch handle? A. Well, as a rule it is always found broken.

Q. How do you know? A. Because I have been and examined one this morning that they ran through last night and found it broken.

Q. Is that the reason because you found one broken this morning? A. Ninety-nine per cent. you will find broken.

Q. Then they don't always break do they? A. Well that is about the average.

Q. Well, do they? A. That is about the average.

Q. Look at this photograph, this is Exhibit No. D-5, look at it with the foreman of the jury, that shows this switch looking in the direction from which the engine came, doesn't it? A. Yes, sir, it came from down here.

Q. We are looking toward the east? A. Yes, sir.

Q. Looking into the switch southwest? A. Yes, sir.

Q. Now, there are two rails in that track? A. Two points.

Q. Two points; and the point of one rail is against the most northerly rail of the track and that you call the stock rail? A. Yes, sir.

Q. Is that switch in that photograph open or shut? A. Closed.

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

Q. Looking at the other rail of that siding it is not against the main track rail is it? A. No, sir.

Q. Is that a stationary rail or not? A. Yes, sir. It works from this lever.

Q. Do both of those rails work? A. Yes, sir, here is your connection, see the bolts run through and run right in between those two ties, this stand is arranged with a cog and a lever and you raise it up and turn it in that position that brings that point against that stock rail and this one away from it, then the train is going—

Q. Away from it, where, which way? A. The other point over against that stock rail and this

point away from it, away from this stock rail that leaves it so that you can go into the siding, enter the siding.

Q. It spreads the rails then, does it? A. No, it does not spread them, it just simply changes the position of them, puts them against the stock rail and pulls them away from the stock rail.

Q. It must spread them then, it must be further apart than they are there? A. No, sir, the same gauge.

Q. That is how many inches away from it now? A. That is supposed to be four inches.

Q. Four inches away from that rail? A. The stock rail, yes, sir.

Q. If you were going to move it towards the south— A. You will bring this point over here away from this stock rail on this side.

Q. From that one to the north? A. That way toward the center of the track.

THE COURT: They both move the same way the same distance when you move them?

Q. Is this stock rail a solid straight rail all the way through there or is a piece taken out at the point which swings? A. Here is the joint right there and there is the other one, that is the solid rail that leads from the main track onto the switch, this point fits to the side of that stock rail.

Q. At the time when the switch is open do both of those points travel to the south? A. Yes, sir.

BY MR. DIXON:

Q. Looking at the picture it appears that the southerly point, we will call it, the southerly point is now against the rail, is it not? A. The main line.

Q. Is against the main line rail? A. Yes, sir.

Q. It is now closed? A. Yes, sir.

Q. If it is opened the point will be moved towards the north, would it? A. To the south.

Q. How is it going to get across that main rail towards the south? A. It is not going through there at all, this rail, the switch rail is coupled with the end of each point and when you move the switch rail you move both points.

Q. If that were open would this rail that I now indicate which is the curved rail towards the south, would that open to the south or open to the north? A. That rail stays perfectly rigid where it is, this is the one that moves this point the one on the bevel.

MR. DIXON: I cannot understand that.

MR. COLLINS: Just explain, he don't seem to understand; this one that is now a few inches from the stock rail moves to the stock rail?

WITNESS: Yes, sir.

MR. COLLINS: At the same time the straight one moves there?

WITNES: Yes, sir.

MR. COLLINS: The straight one, not the curved one?

WITNESS: Yes, sir.

MR. COLLINS: Do you understand him, gentlemen? Mr. Dixon thought that the curved one was moved but it is the straight one.

MR. DIXON: Then there is no straight track?

JOSEPH A. BERGEN, sworn as a witness on the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. You are clerk of the Grand Jury of Passaic county? A. Yes, sir.

Q. And were you such clerk for September Term 1913? A. Yes, sir.

Q. Did that Grand Jury have before it the matter of the investigation of this accident at 27th Street? A. Yes, sir.

Q. Were you present at the session of the Grand Jury when witnesses were called on that subject? A. I was.

Q. Do you recollect Father Edwin Lange being called as a witness? A. May I refer to my notes.

Q. You took notes at the time, did you? A. Yes.

Q. Please refer to your notes. A. (Referring to notes.) Reverend Edwin B. Lange.

Q. He was one of the witnesses before the Grand Jury? A. Yes.

Q. Did he testify as to this accident? A. Yes.

Q. Did he, in his testimony, before the Grand Jury say that he heard a bell ring?

MR. DIXON: One moment.

BY MR. DIXON:

Q. What are you referring to? A. Referring to the notes taken.

Q. What notes? A. Taken in the Grand Jury room.

Q. Who took those notes? A. I did.

Q. What are they—in typewriting? A. No, sir; and not in shorthand either.

Q. In longhand? A. Yes, sir.

Q. Cannot you testify with respect to this with-

out referring to the notes? A. No, sir; because there were a number of witnesses there. That is a year ago.

Q. Do you mean to say that your notes show everything that was said? A. Do I need to say that? No, sir. Shall I look to see if he said anything about the bell?

By Mr. Hobart:

Q. Yes; look and see if you have any record of his having testified on the subject of the bell? A. "I heard bell."

By Mr. Dixon:

Q. What? A. "I heard bell."

Q. "I heard bell"? A. "I heard bell."

By Mr. Hobart:

Q. Anything further on that subject? A. Nothing else as to the bell.

Cross Examination by Mr. Dixon:

Q. That is your interpretation of what he said, made at the time or sometime afterwards? A. Made at the time.

Q. Didn't he say "I thought I might have heard a bell?" A. I have written here that he said "I heard bell."

Q. You know he did say that, don't you? A. I know he didn't say it.

Q. Do you think that Father Lange on the witness stand said "I heard bell"? A. In answer to a question. I make no notes of questions. I do not put the question and answer down as it happens, I merely take notes of what the witness says.

Q. That is not a verbatim statement of what he said? A. No, sir.

Q. Do you think he said "I heard bell"? A. I don't think so. I have written it here that he said "I heard bell."

Q. You did not put down all he said about the bell? A. No. I do not know that he said anything else about the bell.

Q. You don't know whether he said "I heard a bell a second before the collision," or anything of that sort? A. I have written that he said "I heard bell."

Q. You know he did not say just those three words only about the bell? A. Oh, he said many other words.

CHARLES S. CLEVELAND, sworn as a witness on the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. You are in the employ of the Erie Railroad at this time? A. Yes, sir.

Q. You were at one time in the employ of the Susquehanna Railroad? A. At the time of the accident, do you mean?

Q. Yes; at the time of the accident? A. Yes; I was in the employ of the New York, Susquehanna and Western Railroad.

Q. At what point? A. At Passaic Junction.

Q. Do you recollect engine 125 passing your tower on that afternoon? A. I do.

Q. Were you in the tower? A. I was in the station.

Q. At the station? A. Yes.

Q. At the station known as Passaic Junction? A. Yes.

Q. Did you hear any whistles from that engine? A. Yes, sir; I did.

Q. What whistles and when? A. There was four whistles, that I first heard, then I heard two, and he blew a signal for the crossing at Passaic Junction station.

Q. How do you remember that? A. Well, if you had my block sheet there I can show you the block record.

Q. What does that have to do with it? A. I can show you where I can prove my statement that the train ahead was not out, and he did not have to block, and he had to blow, and after he got it, he had to acknowledge it, and he had that crossing.

Q. When you say "He had to acknowledge it" what do you mean? A. When a train gets a signal that they don't have at first, they acknowledge it with two whistles.

CROSS EXAMINATION BY MR. DIXON:

Q. Where were you? A. Passaic Junction.

Q. That is three miles away from this place? A. Yes.

Q. That is where you heard the whistle? A. Eh?

Q. Where were you when you heard the whistle? A. He signaled the whistle is right out in front of the station, probably fifty feet west of the station.

Q. What station? A. Passaic Junction.

Q. You were at Passaic Junction? A. Yes.

Q. And you heard the whistle? A. Yes.

Q. Is that the whistle you are swearing about? A. That is the whistle that was blown there for the block.

Q. Is that the whistle that you are testifying about? A. Yes.

Q. That he blew at Passaic Junction? A. Passaic Junction.

FIORE PISCE, sworn as a witness on the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. Do you understand English? A. Little bit, not much.

Q. Are you employed by the Susquehanna Railroad? A. What?

Q. Do you work for the Susquehanna Railroad? A. Yes, sir.

Q. Did you work for that Company September of last year? A. Yes, sir.

Q. What position did you have; what kind of work did you do? A. Filling up lights, fixing up lights, lamp man.

Q. Did you have anything to do with watching the crossing bells? A. Yes, sir.

Q. What did you do with them? A. Well, I come to East 27th Street, take a book, and stay when the train passes, and I see the bell ring, and I put it in the book, I mark it in the book.

Q. Do you keep a record in the book? A. Yes, sir.

Q. (Showing witness.) I show you a book marked Section No. 8. A. No. 8.

Q. Section No. 8? A. Yes.

Q. Do you know where 27th Street crossing is? A. Yes.

Q. Is that in Section 8? A. Yes, sir.

Q. Now, look at this book. Is that book in your writing? A. Sure.

Q. What have you got on the top of the page that I show you? A. Here?

Q. Yes. What is that? A. 27th Street.

Q. Is that 27th Street crossing? A. Yes.

Q. What have you on the other side? A. September.

Q. What year? A. 1913.

Q. On the side of the page are some figures? A. That is the date.

Q. That is the day of the month, is it? A. Yes.

Q. Did you make any test or observation of the crossing bell on the 27th day of September? A. Here (indicating).

Q. Have you got it in your book? A. Sure.

Q. Tell us what you did about that bell on the 27th of September, 1913. A. Eastbound, one train passed, seven thirteen No. of train 916; and westbound nine forty four, and the number of the train 903.

Q. When you say seven thirteen, do you mean in the morning or afternoon? A. In the morning.

Q. When you say nine forty four, is that the morning? A. Yes.

Q. Have you got down in the book anything about the bell, whether it was ringing or not? A. Sure, I have it here (indicating).

Q. How have you got it? A. Bell ring, here, O. K.

Q. O. K.? A. Yes, and this is my sign.

Q. This is your name over here on the page? A. Yes.

Q. That is your name is it? A. Yes.

Q. Is this all in your writing? A. Yes.

Q. Did you write it down at the time? A. Yes.

CROSS EXAMINATION BY MR. DIXON:

Q. Where is the record of the westbound trains on that day? A. This (indicating).

Q. All of this? A. Yes.

Q. You only keep the record of one train that travels each day, don't you? A. One train a day, one east and one west.

Q. One train east and one train west? A. One train east and one train west.

Q. Where is that train that you say went west on that day, of which you have a record? Point it out. A. What?

Q. The train that went west on that track across 27th Street crossing on the 27th day of September? A. Here (indicating) see.

Q. That is it? A. Yes.

Q. That is nine forty four? A. This is the time—nine forty four.

Q. Nine forty four in the morning? A. In the morning, and this is the number of the train, 903.

Q. Now, do you stand at the crossing when they go by? A. Sure.

Q. To hear the bell ring? A. Oh, yes.

Q. Sometimes they ring and sometimes they do not? A. No.

Q. They do get out of order, don't they? A. What?

Q. The bells. Sometimes there is something the matter with them? A. No. What do you mean—sometimes ring and sometimes not?

Q. Yes. A. Sure.

Q. Sometimes they do not ring? A. Sometimes they do not ring, and I have got to make a report.

Q. You have to make a report sometimes? A. If there is no ring, I make a report.

Q. And sometime they got out of order in a few minutes, don't they? A. What?

Q. They let a train pass sometimes without ringing—get stuck? A. Yes. If I see the bell don't ring I come to Broadway station and make a report. If the bell don't ring, If the bell rings I put it in the report, O. K.

Q. You are not sure when a train runs by, whenever a train runs by, you only make a report on one train? A. One train. One train east and one train west.

Q. You were not guarding the crossing, were you; you were not a flagman? A. No flagman.

Q. What did you do? A. Lamp man.

Q. Do you go along and look at the wire, too? A. No.

Q. You just go there and stay there for one train to pass? A. For one train to pass, and I see the bell ring and put it in the book.

Q. Where is there anything in this book that shows that that train went by? A. 903, number of train, that is the time (indicating) and this time this train passes. This here (indicating) is the number of the train.

CHARLES CAVANAGH, sworn as a witness on the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. HOBART:

Q. You are employee of the Susquehanna Railroad? A. Yes.

Q. In what position? A. Signal repair man.

Q. Were you so employed on the 27th of September, 1913? A. Yes, sir.

Q. What section of the road did you cover? A. From Passaic to Butler.

BY THE COURT:

Q. That includes East 27th Street? A. Yes, sir.

BY MR. HOBART:

Q. Did you personally make any inspection of the crossing bells? A. Yes, sir.

Q. With particular reference to the bell at 27th Street, do you know when that bell was first put in? A. Yes, sir.

Q. When was it? A. June 4th, 1909.

Q. How often was it your custom to make in-

spection of the bells in the month of September, 1913? A. Every two weeks.

Q. How did you make the inspections? A. Go up to the bell and see that it rings and inspect it for a train.

Q. Is there any other way of testing the bell except by watching the train? A. Yes.

Q. I notice that you have a book before you. Is that a book kept by you? A. Yes, sir.

Q. Can you tell when was the last time you tested or observed this 27th Street bell before the accident of the 27th of September—the last time before that? A. September 24th.

Q. 1913? A. 1913.

Q. What hour was it that you inspected it? A. 2:49.

Q. P. M.? A. P. M.

Q. What did you do in the way of inspection, that is, how did you test the bell? A. Cleaned the track battery wires.

Q. What did you do in the way of testing the bell or watching to see how it worked? A. By a train.

Q. By a train passing while you were there? A. Yes, sir.

Q. And did the bell work all right? A. Yes, sir.

Q. When were you there next after the 24th of September? A. September 27.

Q. What hour? A. 7:40 for one train.

Q. 7:40 A. M.? A. P. M.

Q. And when else? A. And 7:52 P. M.

Q. How did you inspect the bell at that time? A. Standing at the crossing and watching the trains go by.

Q. Which direction did those trains go—the one at 7:40 and the one at 7:52? A. 921 west; 958 east.

Q. Which one went at 7:40? A. Well, that I don't know.

Q. You have not got that? A. No; I have just the time and the number of the train.

Q. They were both within a few minutes? A. Yes.

Q. 7:40 and 7:52? A. Yes.

Q. How did you come to go there that evening? A. I got a message to go there and inspect the bell and see that it rung.

Q. Did you make any observation of the wires while you were around there? A. No, sir.

Q. Did you make any repairs to the bell at that time? A. No, sir.

Q. Why not? A. Because it was not necessary.

Q. Reference has been made to a battery box. Do you know what that is and where it is located? A. Yes, sir; there are three of them there.

Q. Where are the batteries, or were they on the 27th of September, 1913? A. There was two on the track and one behind the crossing bell.

Q. Are the boxes locked—the battery boxes? A. The battery on the track is an iron chute; they are locked.

Q. Who has the key? A. I have.

Q. Anybody else? A. Yes; the battery man.

Q. He is under your direction? A. Yes.

Q. Was he there with you that night? A. No, sir.

Q. Do you know where he was or anything about him on that day? A. He was in Paterson. He went to the show, I believe.

Q. Were all the batteries locked? A. Yes.

Q. A separate key for each one? A. No, sir; the same key.

Q. The same key operates all of them? A. Yes.

Q. When you were there at 7:40 on the evening of September 27th, 1913, were the battery boxes locked? A. I never looked.

Q. Did you unlock them? A. No, sir.

Q. Will you tell us generally how these batteries operate, and how they operate the bell? A. Well, there are two sets of batteries there. Which one do you want?

Q. With particular reference to the westbound track. A. There is a track battery on that and there is a battery that rings the bell.

Q. Is there a separate battery for each track? A. Yes, sir.

Q. Let us limit ourselves to the westbound track. Where is the battery located for that track? A. 1468 feet east of the crossing.

Q. East of what part of the crossing—the center of the crossing or the side or what? A. Center of the crossing.

Q. Where is the other battery? A. Behind the poll.

Q. Near the ground? A. Yes; in the ground.

Q. Will you tell us how that bell is operated, or how it was on this day?

THE COURT: Is there any doubt about the general method of operating this bell?

MR. HOBART: I do not think there is.

MR. COLLINS: There was some misunderstanding in the testimony of Mr. Steele. It ought to be made plain.

THE COURT: I understand that when the train comes into the circuit, it rings the bell, and when it leaves the circuit, that shuts it off—that is, if the bell is working properly?

Q. With particular reference to the wires, reference has been made to some bonding wires. Tell us what those are and where they are located? A. The bonding wire is from one rail to the other to carry the current.

By The Court:

Q. The rails carry the current? A. Yes.

Q. And where the rails are separated, the bond carries the current? A. Yes.

By Mr. Hobart:

Q. In case the wire breaks, what happens? A. There are two wires there.

Q. Suppose one wire breaks? A. It will ring.

Q. Suppose both wires break? A. Sometimes it will ring a bell all the time, and sometimes it won't.

Q. If one wire breaks— A. It will work right along.

Q. Do you mean it will ring the bell all the time? A. No, sir; it works all right; the other wire protects it.

Q. You have two wires to make sure, in case one wire breaks, that it will work? A. The other wire will carry the current.

Q. So that if there were one of the wires broken, it will work? A. Yes.

Q. (Showing witness.) Is this one of the bonding wires? A. That is a bonding wire.

The Court: Mr. Hobart, you may ask about the switch.

Q. You know where the switch is at East 27th Street? A. Yes.

Q. You are familiar with the general construction as it was then? A. Yes.

Q. A train coming west on the westbound track, if the switch is open, will the bell operate? A. The bell will work just the same.

Q. If the switch is closed? A. Just the same.

Mr. Hobart: I offer this wire in evidence.

CROSS EXAMINATION BY MR. DIXON:

Q. Suppose the engine were going in the opposite direction, from the west to the east side of East 27th Street and the switch were open, would the bell ring? A. What is that?

Q. (Repeated by stenographer.) Suppose the engine were going in the opposite direction, from the west to the east side of East 27th Street and the switch were open, would the bell ring? A. Yes.

Q. Would it ring whether the switch were open or closed? A. Yes.

Q. It would make no difference? A. No, sir; not a bit.

Q. These wires do occasionally break, don't they? A. Yes.

Q. And you repair them? A. Yes, sir.

Q. Do you put any marks there to show when they are out of repair? A. No, sir.

Q. Nobody does? A. No, sir.

Q. No marks on the rail? A. No, sir.

Q. Or on the wire? A. No, sir.

Q. Or on your fish plate? A. No, sir.

Q. Do they put marks at all on the fish plate for any purpose? A. No, sir; no marks.

Q. Any chalk marks? A. No, sir.

Q. Or numbers? A. No, sir.

Q. In red? A. No, sir.

Q. Did you never see those marks anywhere? A. No, sir.

Q. Did you never see those marks anywhere along the system of the Susquehanna Railroad, on its tracks? A. I never took notice of them.

Q. Did you inspect these wires yourself? A. Yes.

Q. And you inspected the wires in this system on the twenty-fourth yourself? A. The battery shoot.

Q. These wires? A. Not these wires; no, sir.

Q. You didn't inspect the bonding wires at that time? A. No, sir.

Q. Did you inspect them on the twenty-seventh? A. No, sir; it was dark.

Q. Did you inspect them after the twenty-seventh within a few days? A. No; I don't think I did.

Q. Didn't you change that system within a few days after the accident? A. I don't know when they changed it.

Q. When did they change it? A. I don't know.

Q. You were there? A. Yes, sir.

Q. Have you not a record of it? A. No, sir.

Q. How is it you didn't keep a record of that? A. I don't know.

Q. Where is your repair book? A. Right here.

Q. You mean to say that you have no record of the change in the system of this line anywhere? A. No, sir.

Q. And when is the last time you inspected this line on Twenty-seventh Street—this signal? A. I guess it would be December 19th.

Q. Why do you guess? A. I know it was.

Q. How do you know it was? A. I have it right here.

Q. Now don't you know that in that time—in December—you had changed the whole system at this place? A. No, sir.

Q. At this place? A. No, sir; I guess you are mistaken in that.

Q. When did you change it? A. I don't know; do you?

Q. No; I am trying to find out from you. A. I don't know.

Q. And when you go along there to find a break in the system and found any wire that was

broken you didn't make any mark to indicate it? A. No, sir.

Q. Well, if there was a change made in the wires you would know, wouldn't you? A. In what wires?

Q. These bonding wires? A. In what way?

Q. Putting in new wires. A. Not me, no, my men; my helpers.

Q. You would keep track of that? A. No, sir.

Q. Didn't you have any record of that? A. No; not bonding wires.

Q. Not if you had any defect? A. That isn't a defect.

Q. If the wire was broken that would be a defect? A. Not always; no.

Q. Wouldn't that be a defect if one of them was broken? A. Not necessarily.

Q. Suppose there were two broken? A. Then we would know it.

Q. You say there was no repairing done in the following ten days? A. I got it here.

Q. Of this inspection of the bonding wires? A. The first one after that accident?

Q. Yes. A. October 31st, 1913.

BY THE COURT:

Q. What happened then? A. Cleaned the contact on the bell.

BY MR. HOBART:

Q. What is that? A. That is there——the contact up in the bell—that is what rings the bell.

BY MR. DIXON:

Q. And there was nothing done with the wires or bell from the time of the accident up until that time? A. No, sir.

Q. And you will swear to that positively? A. Yes, sir.

Q. And you would know if there had? A. Yes, sir.

Q. Well, now, what is the reason for cleaning that contact? A. For cleaning it?

Q. Yes. A. If it is in there for any length of time we have to look that the platinum does not wear off of it.

Q. If it gets corroded doesn't it stop? A. No, sir; it doesn't get corroded.

Q. Doesn't it sometimes bind? A. No, sir.

Q. Why do you clean it if it doesn't corrode? A. We don't exactly clean it to see if the platinum is all right.

BY THE COURT:

Q. He asks you why you do it. A. Do what?

Q. Clean it. A. To keep the cobweb out of it.

BY MR. DIXON:

Q. If it gets corroded it is liable to stick, isn't it? A. I never seen one corroded.

Q. Isn't it a fact if the armature that operates the tongue of the bell, as we call it, if that is adjusted too tight or corroded a little it will stick? A. No, sir.

Q. That isn't a fact? A. No, sir.

Q. Nothing could happen to that so it would stick? A. No, sir.

BY THE COURT:

Q. Do you mean that—nothing could happen to the bell so it could stick? A. I have never seen it.

BY MR. DIXON:

Q. Not on the Susquehanna? A. No, sir.

Q. What kind of batteries do you operate? A. On the track or bell?

Q. On the bell. A. Edison batteries.

Q. Dry or wet batteries? A. Wet batteries.

Q. The same kind as is used in houses for push button bells? A. I don't know about them.

Q. What kind of an electrician are you, anyhow? A. I don't know; I learned on the Susquehanna.

Q. And you qualify as an expert? A. No, sir; I never qualified.

Q. Was it out of order or not? A. No, sir.

Q. Did you examine the bell, armature, wires and everything? A. Yes, sir.

By Mr. Hobart:

Q. How long have you had to do with bells on Susquehanna? A. Nine years.

Q. And during those nine years you made repairs and tests of bells and wires and necessary parts connected with them? A. Yes, sir.

Q. That is all.

Charles W. Thompson, sworn as a witness on behalf of the defendant, testifies as follows:

Direct Examinaton by Mr. Hobart:

Q. You are connected with the Susquehanna Railroad? A. Yes, sir.

Q. What is your connection with the railroad? A. Signal foreman.

Mr. Collins: I could not hear you.

A. Signal foreman.

Q. You have general charge of the signal bells? A. Yes, sir.

Q. Reference has been made to the change of the system at Twenty-seventh Street; do you know when that was made? A. Yes, sir.

Q. When? A. November 26th, 1913.

Q. And what was the change made in it—installing the new block signals? A. Yes, sir.

Q. Did you personally make any observation or inspection of the bell at Twenty-seventh Street? A. Yes, sir.

Q. When was that? A. November 27th.

Q. At what time? A. Seven-forty.

Q. Was you there with Mr. Cavanagh? A. Yes, sir.

Q. Did you observe whether or not the bell rang? A. Yes, sir.

Q. Did it ring? A. Yes, sir.

Q. Any westbound trains come along? A. Yes, sir.

Q. Did the bell ring for that? A. Yes, sir.

Q. Did you make any other observations? A. Only an eastbound train.

Q. Did the bell ring for that? A. Yes, sir.

Q. Did you have a key for the battery box? A. Yes, sir.

Q. Did you notice whether it was locked or not? A. It was.

Q. Reference has been made to this bell sticking, did you notice anything about that? A. We never have any troubles like that.

Q. What would it do? A. If it was adjusted too close it would make a stroke.

Q. Do you know what kind of a bell it is? A. A Chicago bell.

Q. Is that a standard bell? A. Yes, sir.

Q. How long has it been used? A. I couldn't say we have used it for a number of years.

Q. Do you know of any way, if the bell got stuck, you could fix it by hammering it with a rock or anything that way? A. No, sir; we never fixed it that way.

Q. Cross-examine.

CROSS EXAMINATION BY MR. DIXON:

Q. If the armature got stuck wouldn't that stop the bell from ringing? A. Not that I know of.

Q. Never does that? A. No, sir.

Q. Ever see men throw coal at the signal box when it would not ring? A. No, sir.

Q. Now, I want you to look at this photograph and say whether or not it shows any of these bonding wires? A. Yes, sir.

Q. That is a bonding wire? A. Yes, sir.

Q. Does it appear to be broken? A. Appears to be twisted together; yes, sir.

Q. I am now showing you Exhibit P-6 for identification; they both appear to be broken, don't they? A. Yes, sir.

Q. If they were both broken would you expect the bell to operate properly? A. Sometimes.

Q. Sometimes and sometimes not? A. Sometimes not.

Q. Under what conditions might it operate and in what conditions not? A. If the angle bar carried it through properly it would ring but if not it would ring all the time.

Q. What do you mean when you call it the angle bar? A. The connecting bar on the rails.

Q. If it rang all the time it would shortly exhaust the battery? A. No; it would last some days.

Q. Do you know whether you put some marks on the rails to indicate where a break is? A. Yes, sir; I do.

Q. What do you put on? A. I don't put on anything.

Q. Why is this red chalk mark put on? A. I don't know.

Q. Never saw it? A. Yes, sir.

Q. The red chalk mark appears? A. I don't know that it is red.

Q. Did you ever see any in this system? A. Not that I recall.

By Mr. Hobart:

Q. You said when both wires were broken? A. Yes, sir.

Q. Then the bell might ring continuously? A. Yes, sir.

Q. Suppose one wire was broken? A. It would ring properly.

Q. And what was the time of your inspection? A. Between—from ten days to two weeks.

Q. After the accident? A. Yes, sir.

Q. Did you make the inspection yourself? A. No, sir; my helper.

Q. Would he come to you and report? A. He would make reports and turn in a report and also make a note in his inspection book.

Q. Is that the book Mr. Cavanagh spoke of? A. Yes, sir.

Q. You know the reports would be reported in that book? A. Yes, sir.

By Mr. Dixon:

Q. What was the section that you had charge of? A. Jersey City to Wilkesbarre and Middletown—it is Sussex now.

Q. How long is that? A. About a hundred and seventy-five miles.

Q. And you have the junction at Garfield and Little Ferry? A. Not Garfield.

Q. Hackensack? A. Yes, sir.

Q. And you have to inspect all of that? A. Yes, sir.

Q. Practically you are the only man that inspects that? A. No; I have a helper.

Q. How many men do you have? A. Five.

Q. And you have to see if all these batteries are filled over all this territory? A. No; the helpers see to that.

Q. The five men under your control? A. I have twelve or fourteen men.

Q. That is all.

Defendant Rests.

The Court: At this time we will take a recess until two o'clock.

AFTER RECESS.

MR. DIXON: If the Court please, I would like permission to reopen the plaintiff's case for the purpose of offering the Carlyle Mortality Tables; we have just secured the data in Bender's Law Diary for 1910, used in the Supreme Court of New York.

THE COURT: There is no objection to that, is there?

MR. HOBART: Which is the table?

THE COURT: Indicate the part that you think is relevant.

MR. HOBART: You don't want the whole book in?

MR. DIXON: No, just that table.

MR. HOBART: Which is it you are going to put in?

MR. COLLINS: The Carlyle Mortality Table don't attempt to fix the value; the Carlyle Table merely gives the expectancy of life of a person at different ages. Whatever the Carlyle Table says for a person sixty-one years old is the reasonable expectancy of life we do not object to here, although it is out of order and out of time. I dont' think they are necessary. We seldom ever use them ourselves, but if they want to show what is the expectancy of life for a person sixty-one years old as that is given in those tables, they can do it. Is the Carlyle Table in there?

MR. DIXON: We want to follow that up with the offer of the Chancery Table founded upon the Carlyle Table.

THE COURT: The Carlyle Table is admissible.

MR. COLLINS: The Carlyle Table has

been held by the Court of Errors to be admissible, if they have a copy of the Carlyle Table let them put it in.

MR. DIXON: The Carlyle Table has not been held not to be legal evidence and I think it is legal evidence showing the value of an income based upon the Carlyle Table.

THE COURT: Why would not the Carlyle Table be admissible?" And if the Chancery Tables are founded on them, they would simply show the value of a capital fund at the present value.

MR. COLLINS: That is a matter of calculation, a matter of reckoning; and in the case of *Williams v. Camden,* I had the honor of speaking to the Court in that case; you will find it says that approved tables of mortality proved by witnesses can be offered in evidence.

THE COURT: But what I am asking is, why should not the plaintiff be entitled to prove the present value of a dollar, for instance, at the age of sixty-one, if you are going to capitalize it?

MR. COLLINS: That is a matter of calculation; it is not a table; and the Chancery Tables are based on one percentage, one rate, and we cannot tell what rate. I told Mr. Dixon there was no objection to his putting in the Carlyle Table if he wants to. He is out of time, anyhow.

MR. DIXON: I know that; we do not deny that, and I am asking permission to do it.

MR. COLLINS: That is as far as we are willing to consent.

THE COURT: I will let the Carlyle Table

in. I do not think it will be particularly beneficial as to the other.

MR. DIXON: The Carlyle Tables are of little benefit; but the other table which is based on the Carlyle Table and is used by the Courts—I think Judge Parker in the case of *Horandt v. West Jersey* used it—that is the table gives the figures. The Carlyle Tables are of very little use without it.

MR. COLLINS: That is all we consent to.

MR. DIXON: That is what the other table is based on, but if you object to it, I withdraw the offer.

MR. COLLINS: We do not object to the Carlyle Tables, if you have got them. If you have not got them, you cannot offer them.

MR. DIXON: This is the Table that is used by the Courts in New York and it is compiled on the Carlyle Table; it is known as the Chancery Table. I have been trying for three weeks or more to find it, or to find out where I could get the Carlyle Table and I have not been able to find it. I don't know of anybody who has got it.

MR. HOBART: If you had asked me I could have loaned you mine.

MR. DIXON: Have you got one?

MR. HOBART: Not here. I have one in the office.

MR. DIXON: I went to pretty near everybody but to Collins & Corbin.

MR. HOBART: I have it in the office.

JOSEPH LANGE, recalled as a witness on behalf of the plaintiffs in rebuttal, testifies as follows:

DIRECT EXAMINATION BY MR. DIXON:

Q. A young man, I think his name was Curzon, testified that as your automobile approached this crossing he ran out and signalled you or called to you, notified you something about a train coming; did any such thing as that happen? A. No, sir.

Q. Did any young man run out to give you any warning of any kind? A. No, sir.

Q. Was there any young man in the street? A. No, I did not see any.

Q. Did anybody shout anything to you? A. No, sir.

No Cross Examination.

JOHN LANGE, recalled as a witness on behalf of the plaintiff in rebuttal, testifies as follows:

DIRECT EXAMINATION BY MR. DIXON:

Q. As you followed your brother's car, approaching this crossing, did any young man run out from the sidewalk and hail your brother or warn him or shout? A. No, sir.

Q. Did any young man appear in the roadway at all? A. No, sir.

Q. Did you hear anybody shout any warning? A. I did not.

No Cross Examination.

PETER J. ROGERS, recalled as a witness on behalf of the plaintiff in rebuttal, testifies as follows:

DIRECT EXAMINATION BY MR. DIXON:

Q. How many trips did you make from the place where the locomotive stopped to the hospital before any ambulance arrived? A. There were two trips made, I made one and Boyle made one.

Q. And there was two made before the ambulance arrived? A. Yes, sir; the ambulance was just leaving the hospital when we got there with the second load.

Q. Do you know the Curzon boy? A. Yes, sir.

Q. Did you see him run out from the sidewalk into the street and hail the Lange boy as he approached? A. The boy was not there at the time of the accident.

Q. He was not in the street at all at the time of the accident? A. No, he was not.

Q. Do you know when he came up there? A. I did not see him at all. When we arrived there at the wreck, I guess I was the first one there, and after me came Boyle and after Boyle came Paxton and Dr. McAllister.

Q. You did not know these Langes before the accident happened? A. No, I did not.

Q. Did you see any of the wreckage of the automobile along the track? A. Yes, sir, all of it strewn from the crossing on.

Q. What did you see? A. The tonneau of the car—

MR. COLLINS: I object to this, it is not rebuttal.

THE COURT: It does not seem to be.

MR. DIXON: Yes, for they introduced evidence to show that the automobile was

running up the track a hundred and fifty feet before it was struck, it got a hundred and fifty to two hundred feet up before it was struck.

MR. HOBART: It is part of their affirmative case.

THE COURT: No, I think it is rebuttal; I will permit it.

Objection overruled. Defendant excepts.

Q. Where was the first part of the automobile that you found strewn on the track? A. The tonneau of the car laid about thirty feet west of the crossing.

Q. Was there any part of the car that you noticed which lay any nearer the crossing than that? A. Why, yes, there were some tools a little closer than the body of the car. There was a pump and a hose in connection with the tire pump and a tire and one of these spark plugs.

Q. Did you see any people making tests of an automobile down there after the accident, about a month or so ago? A. Yes, sir.

Q. On how many occasions? A. I have seen them on two different occasions.

Q. On two days? A. On two days.

Q. Where did you observe those tests from? A. From the spot in the first place, and from my porch in the second place.

Q. On any occasion did you see them drive that automobile up and stop it on the track?

MR. COLLINS: Objected to as immaterial. And it is not identified as the occasion. There were other people made tests there, as doubtless the witness knows. The grand jury went down there and made tests.

MR. DIXON: I withdraw the question.

CROSS EXAMINATION BY MR. HOBART:

Q. Where were you when the accident happened? A. Standing in front of my driveway.

Q. How far from the crossing? A. Four hundred and fifty feet.

Q. You don't know whether Curzon was in the street at that time or not, do you? A. I know that he was not, because there was no one on the street when I looked down.

Q. You don't know where Curzon was when the accident happened do you? A. He was not within the range of vision.

Q. You did not see him? A. He was not there; I did not see him at that spot, no.

Q. You don't know where he was? A. Certainly not.

Q. And you did not know anything about the accident until you heard the crash? A. That is all.

THOMAS G. PAXTON, recalled as a witness on behalf of the plaintiff in rebuttal, testifies as follows:

DIRECT EXAMINATION BY MR. DIXON:

Q. You were watching the automobile as the engine struck it, weren't you? A. No, sir.

Q. You were there in the street, you have described where you were? A. I was standing at the corner of my house.

Q. Do you know this Curzon boy? A. Not personally, no.

Q. Have you seen him before? A. No, sir.

Q. When the Lange automobile was struck was there any boy in the street there between you and the crossing? A. Not as I saw.

Q. Did you look as soon as you heard the crash? A. Yes, sir, I ran out of the gate.

Q. Was there anybody in view between you and the crossing there? A. Mr. Rogers in Mr. Boyle's automobile and my boy.

Q. Those are all? A. That is all I saw.

Q. Did you observe the wreckage that was strewn along the track, of the automobile? A. Yes, sir.

Q. What was the first part of the wreck that you saw?

MR. COLLINS: Objected to as not rebuttal.

Objection overruled. Defendant excepts.

A. I picked glass of a windshield up on the crossing.

Q. Where was that? A. About six feet on the crossing.

Q. From what part of the crossing? A. From the west end of the crossing.

Q. When you say the west end of the crossing, what do you mean by the west end of the crossing? A. Well, there is a west and east side of the crossing.

Q. What is there to designate the side of the crossing? A. Why, there is plank crossing.

Q. And the first that you saw was this glass six feet west of that? A. Yes, sir.

Q. What was the next part of it that you saw? A. The tonneau of the car.

Q. Where was that? A. Well, between twenty and thirty feet west of the crossing.

Q. What after that? A. Tools and tires and things spread along the track.

CROSS EXAMINATION BY MR. HOBART:

Q. Did you see any marks of the automobile wheels? A. Where they drug along the ties.

Q. You could see them clearly, could you? A. Yes, sir.

-PLAINTIFF RESTS.

TESTIMONY CLOSED.

MR. HOBART: I ask for the direction of a verdict on behalf of the defendant on the following grounds:

First. There is no evidence of negligence to go to the jury so far as the defendant is concerned.

Second. That the case shows clearly that there was contributory negligence on the part of the driver of this car, which negligence was attributable to the decedent.

Thirdly. The case shows that there was contributory negligence on the part of the decedent himself; and,

Fourthly. On all the preceding points that have been mentioned, the evidence in favor of the defendant is so overwhelming that a verdict rendered contrary thereto would have to be set aside.

THE COURT: On what theory do you think that the negligence of the driver is imputable to the father?

MR. HOBART: He was a minor son, under the control of his father, presumably; about nineteen years of age at that time.

Motion denied. Defendant excepts.

Mr. Collins then sums up for the defendant.

Mr. Dixon then sums up for the plaintiffs.

Charge.

The Court then charged the jury as follows:

THE COURT: Gentlemen of the Jury, you must try this case according to the evidence that is before you on all parts of the case. You must not be moved by sympathy, or by reason of the fact that on one side there is a widow and children, and on the other side there is a railroad company; because both parties are on an even footing, and your oath is to try the case according to the evidence. So help you God.

Now, the mere fact that there was an accident is not sufficient for you to find a verdict for the plaintiff in this case.

Mr. Lange was injured on the Twenty-seventh of September, 1913, by a collision with a locomotive at the Twenty-seventh Street crossing.

We all understand and realize that a railroad company in running its trains over highways cannot stop at every highway and look and see whether people are coming. You can very well realize that they could not run railroads that way; and if you were on a train of that kind, you would be a long time getting from here to New York. So the law permits the railroad companies to run their trains across the highways without stopping and looking to see who is in their way.

But the law does impose a duty upon a railroad company, and that duty is to give certain signals when its trains approach a crossing, by very reason of the fact that they do not stop and are not expected to stop. And that duty is set out in the Railroad Act, as follows:

> "A bell of weight not less than thirty pounds,"

and it has been shown before you here that this bell weighed that, so there cannot be any dispute about that part of it.

> "A bell of weight not less than thirty pounds, shall be placed on each engine, and rung continuously in approaching a grade crossing of a highway, beginning at a distance of at least three hundred yards from the crossing and continuing until the engine is across said highway. Or a steam whistle shall be attached to each engine and be sounded, except in cities, at least three hundred yards from the crossing and at intervals, until the engine shall have crossed the highway."

Now, the Railroad Company is not called upon to give both of those signals; the duty, you see, is, that (except in cities) they must ring this bell at the distance that the statute states and continuously until the time the statute provides.

So that is the first question that you must take up, was the bell rung or the whistle blown? Was the Company negligent? The statute fixes the duty that is cast upon them, did they ring that bell as provided by the statute?

Well, if they performed their duty in that particular, gentlemen, and the bell was rung, as called for by the statute, or the whistle was blown in lieu of the bell, then they performed their full duty, and they are not guilty of any negligence.

So you see, the first question is whether that was done, or not done; and there, of course, you have a question of fact that you must determine from the mass of testimony that is here; and you must determine, if you find negligence against the Company, from a fair preponderance of the evidence, that the railroad company was negligent in not following this section of the statute.

I shall speak of the crossing bell later.

Now, if you find that the railroad company did give the necessary signal, then, I say, they were not negligent. If you find that they did not give the necessary signal, then, of course, you must go to the next stage of the case, and see whether there was any contributory negligence.

Now, in that, you would naturally take up first, the boy Joseph, what his actions were, and, then, what the actions of the father were.

This is the law with reference to contributory negligence, if you find that there was such on the part of the boy:

> "Where a person receives an injury by collision with a railroad while riding by invitation and without hire, in a carriage driven and owned by another, the negligence of the driver is not imputable to him."

In this case, as I recall the testimony—you will have to trust to your recollection, however—the son Joseph said that he owned the car, that it was licensed in his name, and that he drove it, that he chose the course that they were to take, that he selected this particular road to go and that it was his car and he was driving it.

The Court has also stated the law in this way:

> "If the relation of master and servant, or principal and agent, or mutual responsibility in a common enterprise, did not in fact exist between the deceased and the driver, the negligence of the driver is not imputable to the deceased. The fact that the deceased was a guest did not relieve him from exercising ordinary care; one who while riding in the private conveyance of another is injured by the negligence of a third party, may recover against the latter, notwithstanding that the negligence of the driver of the conveyance in driving his auto contributed to the injury,

where the person injured is without fault and had no authority over the driver."

So you see, gentlemen, if the deceased, Mr. Lange, had no authority over the driver, and was not negligent himself, and the relation of master and servant or principal and agent or mutual responsibility in a common enterprise did not exist, then it does not make any difference how negligent the boy was, and that negligence could not be imputed to the father.

Now, as to the duty of the father—

THE FOREMAN: Would that be true if the boy were under twenty-one?

THE COURT: It does not make any difference.

I charge you that it does not make any difference. If he was under twenty-one, if he was the man in charge of that car, if he owned it, and these relationships which I have indicated to you did not exist and the deceased had no control over the car, then the negligence of the son is not imputable to the deceased, any more than the negligence would be imputable to him if the driver was somebody who was not his son.

Now then, as to the duty of the father: The duty of the father under the circumstances was to use that care which a reasonably prudent man would use under those circumstances. So you see, you have to take into consideration what were the circumstances. You can readily see that if a man was driving in a car and he saw that the driver was going recklessly onto a crossing and into a train, and he sat there and made no effort whatever to save himself, if he had an opportunity, for instance, to jump out in time, or if he had an opportunity to stop the driver, and did not do it, of course, he would be guilty of contributory negligence. Because a man could not take advantage of his own carelessness and then

charge it up to somebody else. But, as I stated to you before, you have to take into consideration the situation of the man at the time. Here was a man riding in the back of the car, apparently talking with a lady sitting next to him—I think you will recall what the evidence is—approaching a crossing; there is no evidence whether he had gone over that before or not; and he must exercise that care which an ordinarily prudent man would under the circumstances in which he found himself.

Now, if, under the circumstances in which he found himself, he did all that any ordinarily prudent man would do, then he would not have been guilty of contributory negligence and you could not charge it against him.

That brings us down then to the crossing bell.

There is no statutory requirement that a railroal company shall put a crossing bell at a crossing. It is not required to put it there, under the law. I might say in that particular, too, that the fact that the railroad company puts a crossing bell there, does not relieve it from the other duty which the statute provides of ringing a bell on the engine, as I have already pointed out to you. That duty remains with it, whether it puts up a crossing bell there or not.

Now, with reference to the crossing bell, this is the law as it has been laid down by our statute:

> "Whenever any railroad whose right of way crosses any public street or highway, has or shall install any safety gates, bell or other device designed to protect the travelling public at any crossing, or has placed at such crossing a flagman, any person or persons approaching any such crossing so protected as aforesaid, shall during such hours as a posted notice at such crossing shall specify, be entitled to assume that such safety gate

or other warning appliances are in good and proper order and will be duly and properly operated, unless a written notice bearing the announcement 'Out of Order' be posted in a conspicuous place at such crossing, or that the flagman will guard the crossing with sufficient care whereby such traveller or travellers will be warned of any danger in passing over said crossing. And in any action for injuries to person or property, or for death caused at any crossing protected as aforesaid, no plaintiff shall be barred of the action because of the failure of the person injured or killed to stop, look and listen before passing over said crossing."

Now, that is what the statute says the rule is on the subject. That the traveller may assume that the warning appliances are in good and proper order and will be duly and properly operated, unless such notice is given. That is what the traveller might assume, gentlemen.

Now, the railroad company in putting these appliances there and assuming to use them for the protection of life there, have taken this duty upon themselves:

"Where a railroad company assumes to protect a highway crossing, for instance, by a bell, it is responsible for injury received at that crossing by travellers on the highway which have resulted solely from the negligence in not keeping that bell in order, and that responsibility exists notwithstanding the company is under no legal obligation to so protect the crossing."

That is to say, gentlemen, where they have assumed to erect a bell of this kind for the purpose of protecting the travelling public, they assume certain obligations, and those are, that they must use reasonable care to see that the bell is in working order.

It may also be stated this way:

> "If the crossing bell was not ringing before the train reached the crossing in time to give due warning to the driver on the automobile of the approach of the train, the plaintiffs are not entitled to recover on that ground unless the evidence shows that the failure of the crossing bell to ring was caused by defendant's negligence."

Or, in this way:

> "If the crossing bell did not ring in time to give due warning of the approach of the train, the plaintiff cannot recover on that ground unless the evidence shows that the defendant knew the bell was out of order, or that the bell was out of order a sufficient length of time before the accident to charge the defendant with knowledge that it was out of order."

You see, gentlemen, if this bell got out of order at the last minute, you could not charge the defendant company with negligence. Because they had to have reasonable time in which to exercise that care which the law imposes upon them. And that is the reason for the rule, and that is the rule that is to be taken in connection with the statute that I have just read to you.

That brings you down to this, gentlemen: if you find that the railroad company exercised the care which the law casts upon it and that it was not guilty of negligence, then that ends the case; then your verdict will be no cause of action; or, if you find, gentlemen, that the railroad company was negligent, and that the deceased was also negligent, and that his negligence contributed to the injury, then, of course, the plaintiff cannot recover; because, if Mr. Lange himself was negligent, and the company was negligent also—that is, the father I am speaking of now—then, of

course, the plaintiff cannot recover; because a man cannot be negligent himself and then have people recover for him.

If you find that there was no contributory negligence, and that the railroad company was negligent, then, of course, you come to the question of damages.

The statute on that subject is this:

> "That the representatives of a deceased person may sue for the exclusive benefit of the widow and next of kin of the deceased person, and the jury may give such damages as they shall deem fair and just with reference to the pecuniary injury resulting from such death to the wife and next of kin of the deceased person."

You have heard all the testimony here, gentlemen, of the income, etc. Mr. Lange, as I recall it, was sixty-one years of age; his wife was fifty-eight.

MR. DIXON: Nearly sixty-two, sir. That is, sixty-one years and nine months. We figured it sixty-two.

THE COURT: They had six children. You will recall that testimony and also that the testimony was that his salary was forty-eight hundred dollars a year, and that there was a gratuity of twenty-four hundred dollars.

There has also been some discussion here, gentlemen, about his patents, but you have not before you any evidence of income that he received from the patents and cannot consider that in any way, because you have not any evidence before you that he received any income that would not go on after his death.

You have heard the testimony of the widow, in which she says that he gave her a hundred dollars a month and some other sums, what she says, I

think you will recall, amounted to something like twenty-five hundred dollars. That the boy Joseph was being given about six hundred dollars, I think, or from six hundred to a thousand dollars, and that the daughter Dorothy was being given about six hundred dollars a year.

Now, this is the rule that our Courts have laid down, by the highest Court, on that subject:

> "What the plaintiff is entitled to recover—of course, if recovery is had at all—is a capital fund, so to speak, which shall represent the present value of all the pecuniary loss which will fall upon the widow and next of kin by the premature taking off of the intestate; that fund is to be ascertained by taking into account all of the possibilities. The intestate might have died by the course of nature shortly after the accident; he might, if he lived, have suffered financial reverses; the wife, had he lived, might have died long before he did; so might the next of kin. And nothing is to be added for loss of society or wounded feelings or anything else which cannot be measured by money and satisfied by pecuniary recompense."

So you see, gentlemen, you must take into consideration all of these things. What is the probability of it? How long Mr. Lange might have lived? What is the probability that his wages would have continued as they were, or that the business in which he was engaged would have given this bonus of twenty-four hundred dollars each year? Would the wife have lived? Mr. Lange might, as this decision says, have died the next day. He was sixty-one; how long do you think he would have lived?

All of these things you have got to take into consideration in determining the sum you award, if you come to that. And with the question of a capital fund, Judge Collins has given you an

illustration. Suppose, simply by way of illustration, that you find that the loss to the widow, that the pecuniary loss to the widow and next of kin would be a thousand dollars a year, that he was going to live ten years, and that they were going to live ten years; you could not say, "Well, a thousand dollars a year, ten years, that is ten thousand dollars." For the reason, don't you see, gentlemen, that you give the money at once, and if you turn ten thousand dollars into the hands of the representatives of the widow and next of kin, at the very first year, they would have not only the ten thousand dollars, one tenth of it, but also have the interest on the ten thousand dollars. So what you must do is to fix a capital fund, as the Court has expressed it, in order to fix the amount that you find.

Now, are there any corrections to be made before the jury retires?

MR. DIXON: I think your Honor misstated one thing; you said Mr. Lange had only gone over this road on this occasion, when you meant probably that day, as the evidence is that he went over it twice at least.

THE COURT: My memory is, gentlemen, that the father, Mr. Lange, went over it—

MR. DIXON: He went up that road with his son and came back with him.

THE COURT: Whatever the jury will remember about; it is entirely up to your recollection, gentlemen, you paid closer attention than I did.

Have you any exceptions, Mr. Hobart?

MR. HOBART: We have certain exceptions; do you wish us to take them now?

THE COURT: I would like to hear them now before the jury retire.

MR. HOBART: Before the jury retire?

THE COURT: Yes.

MR. HOBART: All right, sir.

THE COURT: I charge this request, gentlemen, of the defendant:

> "If the crossing bell was ringing in time to give the driver of the automobile due warning of the approach of the train, the defendant was not negligent with respect thereto."

That is true. That is to say, if the defendants put the bell there, and assumed the duty of ringing it, and they did ring it, of course, they were not negligent in that particular.

Is there anything further?

MR. HOBART: There are only exceptions.

I ask an exception to your Honor's refusal to charge Request No. 1.

Allowed.

MR. HOBART: The defendant excepts to that part of your Honor's charge which dealt with the question of the provisions of the Crossing Statute, from which the jury might infer that there is any statutory duty on the part of the company to blow the whistle in cities. That is not required at all by the statute.

THE COURT: Well, I don't think I said that, but I say this, gentlemen, as Mr. Hobart says, there is no duty upon the railroad company to blow a whistle when the train approaches a crossing; what I do say, if I have not already said it, is, that if they did blow that in place of the bell, that then they did perform their duty. I think that is what I said before.

MR. HOBART: I also take exception to that part of your Honor's charge which dealt with the question of imputable negligence, which in effect charges that the negligence of this boy Joseph could not be imputed to the decedent, his father.

THE COURT: Whatever I said on that I will allow an exception on.

MR. HOBART: Even though the boy was under the age of twenty-one years, whatever was said in connection with that.

THE COURT: Whatever I said on that.

MR. HOBART: The defendant also excepts to that part of your Honor's charge which dealt with the question of the application of a certain statute which your Honor read, being commonly known as the Crossing Statute of 1909, as we think that statute has nothing to do with this case; in the first place it is unconstitutional for certain reasons which I do not expect your Honor to rule on, but I desire to make the point; in the second place, there is no proof here that there is any sign on this crossing to indicate during what hours of the day this crossing was to be protected.

THE COURT: The Court of Errors just settled that in *Brown v. Erie R. R.*

MR. HOBART: I am not sure that they settled that in this case, and I desire to make the point.

The defendant also excepts to what I think was perhaps a misstatement of the evidence on the part of the Court and to which I think I ought to call your Honor's attention, that is, in dealing with the question of damages, your Honor stated that the decedent gave his wife one hundred dollars a month, and then, in addition, certain other sums; I except to that as stated by your Honor, because it appears that the hundred dollars a month was for the household expenses, which, of course, included the living and board of the decedent himself.

THE COURT: Gentlemen, that is undoubtedly true as Mr. Hobart says, and you will take all of the evidence that was given in connection with

the giving of that hundred dollars, and give it all consideration in determining what, if any, pecuniary loss there was to the widow.

MR. HOBART: That is all.

MR. DIXON: I desire to except to your Honor's charge of the requests made by the defendant as lately charged; also to your Honor's charge in which you stated the rule of the relationship existing with the boy Joseph, either of master and servant, or agent or engaged in a common enterprise. I think as a matter of law none of them existed.

Exception allowed.

The Jury then retire.

REQUEST OF THE DEFENDANT WHICH WAS DENIED.

1. There is no evidence to justify a verdict against the defendant by reason of alleged failure of the crossing bell to ring.

Refused. Exception allowed.