

NEW JERSEY
Court of Errors and Appeals.

FRANK DONEY, <i>Plaintiff-Appellant,</i> <i>vs.</i> MORRIS COUNTY TRACTION COM- PANY, <i>Defendant-Appellee.</i>	}	<i>Action at Law.</i> <i>On Appeal</i> <i>from a Judg-</i> <i>ment of Morris</i> <i>County Cir-</i> <i>cuit Court.</i>
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Plaintiff's Brief.

This action was brought by the plaintiff in the Morris County Circuit Court, and at the conclusion of the plaintiff's case on motion of the defendant's attorney a judgment of non-suit was ordered by the Trial Judge upon the ground that the plaintiff himself was guilty of negligence contributing to his injuries. The plaintiff, a boy nineteen years of age, was riding as a companion in the rear part of a sand wagon, the body of which was made of slats and planks, and was sitting crosswise. The wagon was proceeding in a westerly direction on a much used macadam road between Dover and Kenville, along which many automobiles were constantly travelling. The team was driven by the owner, Emanuel Stark, who sat on the front seat with Bert Ebner. The defendant operated a trolley line on the southerly side of the public highway. As the team approached a crossroad which they were intending to take, and had just turned to go over the track, a trolley car was approaching going in an easterly direction at a rapid rate of speed coming

down the hill after they turned to go across the track. Plaintiff's *back was toward* the approaching trolley car.

The undisputed and overwhelming proof is that the trolley car ran at a rapid rate of speed without checking its speed or sounding any alarm of its approach until within forty or fifty feet of the crossing. Evidence of Frank Doney, beginning at page 1; Elbert Ebner, beginning at page 29; Charles Corcoran, page 45; David R. Kernough, page 52; George H. Garigus, page 54; August Birnbaum, page 59; Minnie Gardner, page 63; Frederick S. McConnell, page 67; Lafayette Cosmor, page 75; Rachel Coslet, page 78.

It was in the evening and dark, and the car was lighted by an electric light which could be seen a considerable distance. The evidence of the owner and driver of the team, Emanuel Stark, page 44 A, and 44 B, shows that the car was running fast and that he saw the light when it was several hundred feet away but thought that he had ample time to cross before the trolley car would reach the crossing.

The evidence of Bert Ebner, who was on the front seat of the wagon, page 32, lines 10-20:

Q. As it came down the hill, did you notice whether it slackened its speed or not? A. It did not slack up.

Same page, lines 30-40:

Q. Was there any warning given before the car came to the crossing, and if so, when was the crossing warning so given? A. *The first that I heard of it was when it was very close on to us and we were on the track.*

Q. About how far? A. Well, I should say fifty

or sixty feet, seventy-five feet, something like that.

Top of page 33:

Q. When the warning sound was first given fifty or sixty feet away, how far from the tracks were you? A. Just on the track nicely; that is, the wagon, the front end of our wagon about on—

Q. The front end of the wagon was on the track? A. About that time.

Q. When the car first sounded the warning, fifty or sixty feet away; is that right? A. About that, I should think.

Same page, lines 30-40:

Q. When did the car slacken up? A. It was when we were about being near ready to hit us, I should judge.

Q. Did it slacken up when it came down the hill? A. It came down quite fast.

Q. I say, did it slacken up as it came down the hill? A. It did not seem to have.

Q. Now, could you give us any idea how fast it was coming? A. I don't understand how fast they do run those cars.

Q. Tell us as near as you can, Mr. Ebner? A. I should say 20 to 25 miles an hour.

Page 36.

Q. As you were pretty near to the crossing where you knew that the track over the crossing was, did you look to see where the trolley car was? A. I saw it was up the track several hundred feet, I should think.

Page 37, lines 20-30:

Q. Did you see the car coming? A. I saw the car coming, yes, sir.

Q. When did you first realize that there was go-

ing to be trouble? A. When we were on the crossing.

Q. Well, the last time, in a place of safety, so that you could stop at, where was the car? A. Up the track.

Q. How far? A. Oh, several hundred feet, way this side of the stopping place, coming down.

Bottom of page 37 and top of page 38:

Q. Did you realize that if you kept agoing, and that the car kept coming, that there was going to be a smash? A. *I did not think it was coming so fast, to make a smash-up. I thought we had sufficient time. I would have hopped off if I thought that there was going to be any danger.*

Q. When you saw the car approaching you, what made you think that you had enough time to make the crossing if the car kept going ahead? A. *I thought that it wouldn't come so fast.*

Q. Were that any automobiles coming down the road? A. I did not notice any. I had noticed several of them along the road, but I did not notice any at this particular point.

The plaintiff was merely a companion riding in the wagon and exercised no control whatsoever over the driver of the team. Not knowing whether the light shown was the light made by a trolley car or an automobile, the plaintiff himself simply did nothing but trusted to the driver of the team, assuming that if the light was caused by a trolley car, both the driver of the team and the motorman of the trolley car would use the legal care required. From the evidence of the driver of the team and Bert Ebner, who sat on the front seat with him, they saw the approaching car but supposed they had sufficient time to cross the track before the trolley car would reach the crossing and Ebner says, "I would have hopped off if I thought there

was going to be any danger." Even their contributory negligence was a question for the jury:

Conrad vs. Elizabeth Railway Co., 41 Vr., 676.

Consolidated Traction Co. vs. Glynn, 30 Vr., 432.

Zolpher vs. Camden Sub. Ry. Co., 40 Id., 417.

The Camden, Gloucester and Woodbury Railway Company vs. Preston, 30 Vr., 264.

The Consolidated Traction Company vs. Haight, 30 Vr., 577.

Hughes vs. Camden and Suburban Ry. Co., 36 Vr., 203.

Zolpher vs. Camden & Sub. Ry. Co., 40 Vr., 418.

Peterpollo vs. Pub. Ser. R. Co., 79 Atl. Rep., 307.

By what stretch of imagination can it be made to appear that the plaintiff himself was contributorily negligent when he did not even know that the trolley car was approaching, and received no warning thereof from any source? The most that the defendant charges against the plaintiff is that he saw a light shining so that it lighted up his surroundings, which, so far as he knew, might have been a trolley car or an automobile, as the road and trolley ran parallel with each other. Under the above cited cases, even though he knew it was a trolley car approaching, and not an automobile, and did not jump from the wagon, still, whether he was guilty of contributory negligence would have been a question for the jury because he even might have assumed as the driver and Ebner did, that they had

ample time to cross in advance of the trolley car, but his position is stronger than this because of the fact that he was not aware that it was a trolley car that was approaching, and because it was at a place where the light was as likely to have been caused by an automobile as a trolley car. In the case of Behr v. Traction Co., 30 Vr., 481, the plaintiff was asleep when the driver of the wagon drove on the track in front of a trolley car and in that case it was held that the negligence of the plaintiff, who was asleep, was a question for the jury.

I respectfully submit that in this case both the negligence of the defendant company, and the contributory negligence of the plaintiff are questions for the jury under all of the cases above cited.

WM. C. GEBHARDT,
Attorney of Plaintiff-Appellant.

New Jersey Court of Errors and Appeals.

FRANK DONEY,
Plaintiff-Appellant,

vs.

MORRIS COUNTY TRACTION COM-
PANY,
Defendant-Appellee.

Action at Law.
On appeal from
Morris
County Circuit
Court.

BRIEF ON BEHALF OF DEFENDANT- APPELLEE.

Plaintiff sought recovery for injuries sustained by him on November 18th, 1913, when a wagon in which he was riding was struck by a trolley car operated by defendant company. At the close of plaintiff's case the Trial Judge granted a motion for a non-suit on the ground that the plaintiff was guilty of contributory negligence. The correctness of this ruling is the only question raised by this appeal. A statement of the case is rendered necessary because of the failure of appellant to set forth completely in his brief the facts of the case. The accident occurred at Mine Hill, on a public highway between Wharton and Kenil in Morris County. The tracks of the defendant company are on the southerly side of the highway. Plaintiff was riding on the rear part of a wagon, the body of which was made of planks. The horses harnessed to the wagon were driven by the owner, Emanuel Stark. The wagon was proceeding in a

westerly direction along the highway and, at the place where the accident occurred, was crossing the trolley tracks of defendant company for the purpose of proceeding along a cross road which plaintiff and his companions intended to take. The cross road intersected the public highway near the point where the accident occurred. Plaintiff testified that he was sitting with his back to the right-hand side of the wagon and was facing the left (9), and that as the wagon turned to go across the track his back was toward the approaching east-bound trolley car (9); subsequently he said that, as he came up the road, his back was to the trolley (24), and he was facing the track (23-25). He then acknowledged that on a previous trial of this cause he had stated that his back was to the trolley track and said he had made a mistake in so testifying (24). Asked on direct-examination "When was the first that you knew that a trolley was coming", he answered, "As soon as it got on top of the hill I seen a light" (10). He further testified that, having seen a light coming down the hill, he knew that either a traction company car or an automobile was approaching and that he had that fact in mind (22); that to reach his home the wagon must cross over the tracks of the defendant company (22); he knew that the wagon was going across the tracks (26); he knew that the trolley car had not yet passed the point where the cross road intersected the highway (22); he realized that if he went over the track and the trolley car was near to that point he was likely to get struck (22); he did not turn his head or look (23); he made no effort to see whether it was a trolley car or an automobile which was approaching (25); although he could have ascertained that fact by merely turning his head sideways (25). Questioned as to his reason for his failure to look he replied "If you have got to turn your head for every little light you would have your neck worn out" (26); and again in response to the question:

“ Why didn't you turn your head ?” he replied, “ Because I did not feel like it, how is that ?” (26). When asked why he didn't turn his head, he replied: “ I didn't think it (the car) was going to run into anybody * * * it was not my place to look; it was the driver's place to look (27) * * * I did not feel like looking around ” (27); he further testified that there was nothing to prevent him from getting off the wagon and that he could have done it in a second (28).

LAW.

The Trial Court properly granted the motion for a non-suit.

It is our contention that it was the duty of Doney, as a passenger, to use reasonable care and prudence for his own safety; that the evidence in the case *conclusively* showed that the injuries sustained by him were proximately caused by his failure to use such care and prudence, and that, therefore, he was properly non-suited.

Confessedly it is the law in this State that one who, while riding in the 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 contributed to the injury, where the person injured is *without fault* and has no authority over the driver.

Mittelsdorfer *vs.* West Jersey, &c., R. R. Co., 77 N. J. L. 698, 700.

But the fact that plaintiff was a guest did not relieve him from the duty of exercising ordinary care.

Mittelsdorfer *vs.* West Jersey, &c., R. R. Co. (*supra*).

Knowing of a dangerous condition, having time and opportunity to avoid danger, and neglecting to

avail himself of such opportunity or even to observe the nature of the danger which threatened him, plaintiff cannot successfully claim exemption from the consequence of his negligence on the ground that he was a passenger.

He cannot sit silently by and permit the driver of the vehicle to encounter or enter into open danger without protest or remonstrance and take his chances and then, when injured, successfully maintain an action for damages for injuries proximately resulting from such neglect. Under such circumstances he is properly deemed guilty of contributory negligence *as a matter of law*. It was his duty in the exercise of ordinary care and prudence to warn the driver or to have left the vehicle, for admittedly he could have done so with safety.

We concede that where it is a fairly debatable question upon the evidence whether the plaintiff was guilty of negligence contributing to his injury the case should be submitted to the jury. But in the case at bar there is but *one conclusion* to be drawn from the testimony of plaintiff, namely, that he was guilty of contributory negligence.

Where this fact clearly appears the Court should grant the motion for a non-suit.

N. Y., L. E. & W. R. R. Co. *vs.* Steinbrenner, 47 N. J. L. 161, 162.

In the Steinbrenner case plaintiff occupied the rear seat in a carriage. He 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 the plaintiff listened all the time, and made it his particular business to look and see whether any train was coming. In the case at bar none of the precautions taken by the plaintiff in the Steinbrenner case were taken by Doney.

Where there is something which a passenger individually should have done in the exercise of due care to avoid injury and fails so to do he is properly deemed guilty of contributory negligence.

Horandt *vs.* Central R. R. Co. of New Jersey, 73 Atl. Rep. 93, at page 95:

“In using the highway all persons are bound to use reasonable care to prevent collisions and accidents. * * * A passenger, though he has no control over the driver, is bound to exercise due care and caution, as well as the driver. It is no less the duty of the passenger, where he has opportunity to do so, than of the driver to learn of danger and to avoid it if practicable.”

Farley *et al.* *vs.* Wilmington and New Castle Electric Ry. Co., 52 Atl. Rep. 543 (Del.), cited with approval in Mittelsdorfer *vs.* West Jersey, &c., R. R. Co. (*supra*).

In the case of Lake Shore and M. S. Ry. Co. *v.* Boyts, Appellate Court of Indiana (45 N. E. 812), cited with approval in Mittelsdorfer *vs.* West Jersey, &c., R. R. Co. (*supra*), the Court said:

“But even if the negligence of the driver cannot be imputed to the appellee the appellee must still show that he was free from negligence contributing to the injury. And the same rule would not apply where the guest was riding inside a closed carriage, without opportunity to discover danger, and inform the driver of it, that would apply where the guest was seated at the driver’s side, and had the same opportunities with the driver to discover and avoid danger.”

In the Mittelsdorfer case the Court said that the irresistible inference from the testimony was that plaintiff did not look because she had observed that the driver appeared to be looking. No such evidence appears in the case at bar. Neither did it appear in the Mittelsdorfer case what opportunity the plaintiff had for observation

up and down the track. In the case at bar plaintiff had ample opportunity for observation (25).

In the brief of appellant it is stated that in the case of *Behr vs. Consolidated Traction Co.*, 59 N. J. L. 477, the Court held that the question whether the plaintiff, who was asleep when the accident occurred, was guilty of contributory negligence, should be submitted to the jury. This is erroneous. The Court in that case held that the objection of defendant that plaintiff should have been non-suited could not be raised on appeal as the point was not made at the trial.

It is respectfully submitted that the judgment of non-suit should be affirmed.

KING & VOGT,
Attorneys for Defendant-Appellee.

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Stark

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Morris County Circuit Court.

FRANK DONEY,
Plaintiff,

vs.

MORRIS COUNTY TRACTION COM-
PANY,
Defendant.

Action at Law.

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To Messrs. King & Vogt, Attorneys of Defendant:

Please take notice, that the defendant appeals from the whole of the judgment entered in the above stated cause on the following grounds: 20

1. Because the said Court erred in its decision that on the evidence a judgment of non-suit should be entered against the plaintiff and in favor of the defendant.

2. Because said judgment is contrary to law and the evidence, because plaintiff was not guilty of contributory negligence.

3. Because the trial of justice rendered a judgment of non-suit in favor of the defendant and against the plaintiff contrary to the law of the land and to the injury of the plaintiff. 30

WM. C. GEBHARDT,
Attorney of Plaintiff.

COMPLAINT.

The Morris County Traction Company, the defendant in this cause, was summoned to answer unto Frank Doney, the plaintiff therein, in an action at law upon the following complaint:

MORRIS COUNTY CIRCUIT COURT.

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FRANK DONEY,

*Plaintiff,**vs.*MORRIS COUNTY TRACTION COM-
PANY,*Defendant.*

Complaint.
Judgment
Record.

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Plaintiff, Frank Doney, who resides in the Town of Dover, in the County of Morris, and State of New Jersey, and being an infant under the age of twenty-one years, Richard Doney has been appointed his next friend to prosecute the action, says that:

1. The defendant, on the 18th day of November, 1913, was the owner and operator of an electric street railway, running and extending through the Village of Mine Hill, to the Town of Dover, in the County of Morris, and State of New Jersey.

2. On said 18th day of November, 1913, the said plaintiff was riding in a wagon drawn by horses, on the public highways between his home and the Village of Mine Hill, where the public highways lead from Mine Hill to Dover, and from Mine Hill to the south, and was then and there riding on said public highways, and was crossing the track of the said defendant company in a prudent and a careful manner, when the said defendant company, by its

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COMPLAINT

servants then and there negligently and carelessly propelled one of its electric cars at an excessive and dangerous rate of speed, and without giving any warning of its approach to said crossing.

3. By means of the premises, the said car of the said defendant ran into and collided with the horses and wagon, in which the said plaintiff was riding, with great force and violence, by reason whereof the said plaintiff was greatly bruised, wounded and injured, and two of said horses were killed, and the harness and wagon broken and destroyed. 10

4. By reason of the said bruises, wounds and injuries, so received as aforesaid, said plaintiff has suffered great pain, and will in the future suffer great pain, and has been hindered and prevented from attending to his necessary and lawful business and affairs, and will in the future be hindered and prevented from attending to his necessary and lawful business and affairs, and has laid out and expended large sums of money, and will in the future be compelled to lay out and expend large sums of money endeavoring to be cured of the injuries so received as aforesaid. 20

The said plaintiff, Frank Doney by Richard Doney, his next friend, demands \$10,000 damages. 30

WM. C. GEBHARDT,
Attorney of Plaintiff.

ANSWER AND GENERAL DEFENSE

The defendant answered as follows:

The defendant, a corporation of the State of New Jersey, with its principal office in Morristown, New Jersey, says that:

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1. It admits the first paragraph.
 2. It denies the second paragraph.
 3. It denies the third paragraph.
 4. It denies the fourth paragraph.

General Defense.

The defendant, as a general defense to said action, says that:

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1. The plaintiff carelessly and negligently drove in and upon the track of the Morris County Traction Company when and at the time he could have seen and did know that the entrance thereon was dangerous.

2. That the plaintiff had no right to enter upon the track of the Morris County Traction Company at the time and place that he did.

KING & VOGT,
Attorneys of Defendant.

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The plaintiff replied as follows:

FIRST REPLICATION—Plaintiff *denies* all the allegations in the answer.

SECOND REPLICATION—Plaintiff *denies* that he negligently drove on the track of the defendant company.

THIRD REPLICATION—Plaintiff had a right to drive upon the track of the defendant company at the time and place that he drove upon it.

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WM. C. GEBHARDT,
Attorney of Plaintiff.

ACTION AT LAW
MORRIS CIRCUIT COURT.

MORRIS COUNTY TRACTION COM-
PANY,

ats.,

FRANK DONEY.

} *Action at Law.*
} *On Trial.* 10
} *Non-Suit.*

The evidence on the part of the plaintiff being closed, and the attorney of the defendant moving the Court for non-suit, the Court after argument of counsel, orders judgment of non-suit be entered in favor of the defendant and against the plaintiff with costs.

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Costs taxed at eighty-four dollars and eighty-seven cents \$84.87

GEORGE S. SILZER,
Judge.

On motion of KING & VOGT,
Attorneys of Deft.

Judgment signed June 8, 1915.

Record in Book "C" of Abstract of Judgments,
page 164. 30

FRANK DONEY—Direct
MORRIS COUNTY CIRCUIT COURT.

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FRANK DONEY,
Plaintiff,

vs.

MORRIS COUNTY TRACTION COM-
PANY,

Defendant.

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Transcript of testimony taken in the trial of the
above stated cause, at the Court House in Morris-
town, N. J., on June 7th, 1915.

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

For the plaintiff, WILLIAM C. GEBHARDT.

For the defendant, KING & VOGT.

FRANK DONEY, sworn in his own behalf, testifies
as follows:

Direct examination by Mr. Gebhardt.

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Q. How old are you Frank? A. Twenty-one.

Q. When were you twenty one? A. Last Tues-
day.

Mr. KING—Then shouldn't this suit continue
in his individual name?

THE COURT—Yes.

Mr. KING—He has become emancipated and
I consent to the change of the record.

40

THE COURT—By the consent of the party, I
understand that this suit is brought by
the witness himself.

FRANK DONEY—Direct

Mr. GEBHARDT—I did not know that he had become of age.

Q. Where do you live, Frank? A. Mine Hill.

Q. Did you have an accident on the eighteenth of November, 1913? A. Yes, sir.

Q. What was your work? What were you doing for a living? A. Shoveling sand. 10

Q. Where were you shoveling this sand? A. Down at the sand pit there, Phillips'.

Q. Speak up? A. Down at Phillips' sand pit.

Q. Where is that? Near Dover or what? A. No; half way between Dover and Mine Hill.

Q. What part of the work did you do? A. Helped loading sand.

Q. Well, how did you load it? A. With a shovel.

Q. Shoveling it into a wagon; is that what you mean? A. Yes, sir. 20

Q. How long had you been working at that. A. I could not just say, now.

Q. About how long—a month, two months, three months, or what? A. About two months.

Q. What had occurred on that date—the eighth of November, as you were going home? A. Got hit with the trolley.

Q. Well, where? A. At Gardner's Corner.

Q. Where is Gardner's Corner? A. Right at the top of Mine Hill. 30

Q. Where had you been that day? A. Just been coming home from work.

Q. What time was it? A. About six o'clock.

Q. Please state whether it was daylight or dark, or how dark it was? A. It was quite dark.

Q. Where were you going? A. Going home.

Q. As you started to go home from your work, what road did you take? A. Started right—

Q. What public road did you take to go from 40

FRANK DONEY—Direct

your work to the place where the trolley car crosses the road? A. The Turnpike Road; straight road from St. Mary's; right up.

Q. Runs from what town to what town? A. Runs from Dover right into Mine Hill; Wharton to Mine Hill.

10 Q. What kind of a road was that—main road? A. It is a tar road; tar road.

Q. What shape was it in up to this point? A. In pretty good shape.

Q. How? A. In pretty good shape.

Q. How? A. In pretty good shape.

Q. Well, in what way? A. Well, it was all fixed up new.

Q. What kind of a road was the other road that you went into in order to get to your home? A. 20 Madison—

THE COURT—The Succasunna Road, you mean?

Mr. GEBHARDT—Yes; the Succasunna Road?

A. Dirt road.

Q. Now, just tell how and where you were sitting in the wagon? A. I was sitting on the hind part of the wagon.

30 Q. How close to the extreme end? A. Right in the back end of it.

Q. What kind of a wagon was it? A. Slat wagon; dirt wagon.

Q. Slat, you say? What do you mean by slat? A. Well, the bottom come out of it; pull the bottom out of it.

Q. What was it made up of?

40 THE COURT—Made of slats that can be moved?

FRANK DONEY—Direct

WITNESS—A lot of planks.

Q. What were the sides of it made out of? A. Out of boards; planks.

Q. How did you sit in the wagon? A. On one side, and feet crossed over on the other.

Q. Which way was your back; toward Dover or the other way? A. Back toward Gardner's barn.

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THE COURT—As you were coming along, which way were you facing—toward the back of you or toward the east side?

WITNESS—Toward the side.

THE COURT—Which side? On which side were you looking—the right or left?

WITNESS—Left.

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THE COURT—And your back was to the right?

WITNESS—Yes.

Q. After you turned to go across the crossing in this Dover Turnpike, which way was your back then? A. Toward the trolley.

Q. You mean toward the trolley? A. Well, my back was toward the trolley.

Q. Toward the trolley that was coming east, you mean? A. Yes, coming down the hill.

30

Q. Now, can you give the jury a good idea of the kind of noise that the wagon made going over this road as you sat there A. It made so much noise I could not hear a trolley—

Mr. KING—Just a moment; that is a conclusion.

Mr. GEBHARDT—Oh, no; made so much noise that he could not hear.

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FRANK DONEY—Direct

Mr. KING—So far the answer is perfectly good?

Q. What were you going to say, Frank?

10 Mr. KING—I object to that. He has answered and said it made so much noise that he could not hear.

Mr. GEBHARDT—He was saying something else when you interfered.

Mr. KING—That is not responsive.

THE COURT—I will permit him to finish his answer.

Exception.

20 A. I could not hear whether it was a trolley car or what it was, coming.

Q. What was the first that you knew a trolley was coming? A. I did not know that any trolley was coming; seen the light; I did not know whether it was a trolley or automobile, or what it was.

Q. When was the first that you knew that a trolley was coming? A. As soon as it got on top of the hill I seen a light.

30 Q. No, no, no.

Mr. KING—Yes, oh, yes.

THE COURT—Was it on top of the hill? What do you mean?

WITNESS—Right there by Gardner's barn.

THE COURT—Does that show on the map.

40 Mr. KING—That is way down below. You go up one hill and then a straight stretch and then up another hill.

FRANK DONEY—Direct

Q. What occurred when you were—as you drove on? A. The first thing I knew we got struck; that is all I know.

Q. Got struck by what? A. By a trolley.

Q. Where were you sitting at the time? A. In the hind end of the wagon. 10

Q. Did the trolley come from your back or toward your face? A. Come towards my back.

Q. When did you first know that there was a trolley there? A. Did not know that there was any trolley there.

Q. Please state whether or not you heard the trolley coming? A. No; first heard no trolley.

Q. Did you hear any sound of any kind? A. No, sir.

Q. What was the first thing you did know? A. The first thing I did know I took a ride. 20

Q. What do you mean by that? A. Got knocked out.

Q. Do you know what become of the wagon, of your own knowledge now? A. No, I don't know. I heard afterwards—

Q. Never mind what you heard. Just tell us what you know yourself. A. No, I don't know.

Q. Who was driving the wagon that night. A. Mr. Stark. 30

Q. Who is Mr. Stark? A. He is the man that owns the team.

Q. How did you come to be riding with him? A. We were working together and I rode on the back of the wagon.

THE COURT—You will have to speak out louder.

Q. Did you pay Mr. Stark anything to ride with him? A. No, sir. 40

FRANK DONEY—Direct

Q. Were you working for him or not? A. I was not.

Q. How did you come to be riding with him then? A. Well, we was working together with the team.

10 Q. For whom? A. For Drake Brothers.

Q. Please state whether you heard any whistle or anything sounded before you were hit? A. No, sir.

Q. Who was in the wagon besides you and Stark? A. Bert Ebner.

Q. How did he come to be there? A. We met him down in Dover and picked him up.

Q. Where were they both riding? A. They was on the seat.

20 Q. Where was the seat? A. Up in front of the wagon.

Q. What was the next thing after the car struck the wagon— What was the next thing you knew? A. Knew nothing until I was in the doctor's office.

Q. What doctor's office? A. Doctor Costello.

Q. Whereabouts? A. In Dover.

Q. Do you know how long after that was? A. No, I don't.

30 Q. Do you know where you were taken from the doctor's office? A. No, sir.

Q. When did you arrive at home, as far as you know? A. I could not tell you that.

THE COURT—Where were you when you came to?

WITNESS—I was in the house.

THE COURT—In your own house.

WITNESS—Yes.

40 Q. When was that? What was the first you

FRANK DONEY—Direct

knew where you were after you were in the doctor's office? A. Well, about ten—half past ten that night.

Q. Then, where were you? A. I was home then.

Q. What condition were you in, as far as you were able to tell, yourself. A. Well, my face was scratched, had some teeth out and legs all bruised up. 10

Q. I wish you would tell the Court and jury, as best you can, Frank, in your own language, just how you were from that time on for the next six months? A. Well, my back bothered me; I had dizzy spells; my face was swelled up; could not eat nothing.

Q. Is that all you have got to say? A. That is all I know. 20

Q. How long was it before you were able to work? A. About twelve or thirteen months.

Q. Now, did you do any work in that time—the twelve or thirteen months? A. No; tried to.

Q. What did you try to do? A. Tried to spade up some gardens; went over to house and tried to work around there.

Q. Well, did you stay in the house or go out, or what? A. No; I was out around, and then my back bothered me and I had to come in and lie down again. 30

Q. Well, did you go out and play with the other boys, or not? A. I was up there, but—

Q. But what? A. I wasn't playing.

Q. Well, did you try to play? A. I tried to play.

Q. Who was your doctor after Dr. Costello? A. Dr. Cook.

Q. How long did Dr. Cook come? A. That same night; the next day—I don't know which it was. 40

FRANK DONEY—Direct

Q. How long did he continue to come? A. I don't know, now; quite a while.

Q. How many months? A. I should say about six.

10 Q. Now, when did you first go to work? I mean, now, with the intention of sticking at it? A. Either February or the latter part of February.

Q. What year? A. 1914.

Q. Nineteen—what? A. Fourteen.

Q. Do you mean this year or last year? A. Nineteen fifteen, I should say.

Q. Which do you mean? A. Nineteen fifteen.

Q. You mean this year? How many times, before you went to work in February, of this year, did you try to go to work before? A. Several
20 times.

Q. Why didn't you go to work? A. Back bothered me; I had them dizzy spells.

Q. Did the doctor give you medicine—Dr. Cook—after he had been taking care of you? A. Yes, sir.

Q. For how long? A. For quite a while.

Q. What is your condition now, with reference to being able to work? A. Well, my back bothers me yet.

30 Q. What work are you doing now? A. Now at the powder works.

Q. What is your work? A. Sorting powder.

Q. Sorting powder? Tell the Court and jury whether you stand or sit down in doing it, and whether it is heavy or light work? A. Well, it is light work; you can stand up or sit down—as you please.

Q. What were you earning in the sand pit, before you were hurt? A. \$1.75 a day.

FRANK DONEY—Cross

Cross-examination by Mr. King.

Q. How many days had you been working at the sand pit? A. I don't know, just exactly, how many days.

Q. About how many? A. I could not, just exactly, tell you now. 10

Q. Of course, you could not do that; but you can give it to me whether it was a week or two months, or how long? A. About two months.

Q. Did you work regularly? A. Yes, sir, except when it rained so that we could not work.

Q. Where did you work before that? A. I wasn't working anywhere before that.

Q. Did you ever do any work before working at the sand pit? A. Drove a store wagon for Lehman.

Q. When did you drive for him? A. Before I went to the sand pit? 20

Q. Yes. Well, tell me when you began and when you ended. A. I don't know just what date it was, when I began.

Q. How long did you work for him then? A. About four months.

Q. What wages did you get there? A. \$1.50 a day.

Q. Did you work for anybody before you worked for Lehman? A. Yes, worked for Shoemaker. 30

Q. What did you get from him? A. The same from him.

Q. How long did you work for Shoemaker? A. About a month.

Q. Is that the first one for whom you worked? A. What?

Q. Is that the first one for whom you worked? A. No, several others.

Q. At \$1.50 per day? A. No, \$1.75.

Q. Now, you claim that you now have dizzy spells? A. No, I don't have dizzy spells. 40

FRANK DONEY—Cross

Q. I wish you would show me where you claim your back hurts you? A. Right in the small part of my back.

Q. Won't you point it out to me so that the jury can see it? A. Right there (indicating); about
10 right in there.

THE COURT—Stand up.

WITNESS—Right in there (indicating).

Q. Now, turn around so that the doctor can see where you claim the trouble is. A. About right in there (indicating).

Q. Are you physically strong now? A. No, I ain't strong.

Q. What do you claim is the matter with you
20 now? A. My back bothers me.

Q. Outside of your back now? A. Nothing; nothing that I know of.

Q. What? A. Not as I know of.

Q. For how long have you been in this condition where nothing bothers you except this back? A. I could not just say now.

Q. Well, as a matter of fact you were not sick very long, were you? A. I guess I was sick pretty
30 long.

Q. Well, how long were you sick? A. Fifteen months.

Q. What? A. Fifteen months.

Q. Is that true? A. True as I am sitting here.

Q. The doctor attended you for six months, didn't he? A. Yes.

Q. The doctor attended you for six months? A. Yes; he might have attended longer than that as far as I know.

Q. Did he attend longer than that? A. I don't
40 know whether he did or not.

FRANK DONEY—Cross

Q. Why not? You know when you were being attended? A. That was not my business.

Q. Do you mean to tell the jury that you were so little interested that you could not tell whether it was six months or not? A. No, never kept tally.

Q. I did not ask you that. A. I can't answer the question then. 10

Q. You could not answer it? A. No.

Q. You don't know whether he even attended you six months? A. I know I was attended six months.

Q. How do you know that? A. Because I know.

Q. Did he attend you seven? If you were sick, why didn't he keep on attending you? A. I don't know. You will have to ask him.

Q. Did he tell you you were cured? A. No, he did not tell me I was cured. 20

Q. Did you tell him to stay away? A. No, I did not tell him to stay away.

Q. But he did stay away? Now, at the end of six months were you out doors? A. I was out around.

Q. Hadn't you been out doors thirty days after the time you were hurt? A. No, sir; I was not.

Q. You were not out doors? A. No, sir.

Q. Now, think about it; I want to be sure? A. I don't have to think; I know about it. 30

Q. When did you first go out doors, after you were struck? A. Some time in February—January.

Q. Of what year? A. Between January and February; I don't know just what date.

Q. Of what year? I want to be fair with you—was that a year after you were hurt? A. No; the same year I was hurt; in November; and I was out the following February.

Q. That is the next year, of course? A. Well, 40 the next year, then.

FRANK DONEY—Cross

Q. When you got out in February, could you get any work? A. No, sir.

Q. You could not shovel sand then, could you? A. No; I could not shovel sand.

10 Q. Did you try to drive a store wagon? A. No; I did not try to drive a store wagon.

Q. Did you try to get any work? A. No, I did not try to get any work.

Q. As a matter of fact, there wasn't very much work doing, was there? A. No; there wasn't; only that—only shoveling sand.

Q. When was it likely that your business would open up, so that you would ordinarily get a job? That would be in the spring, wouldn't it? A. Yes, yes; every spring.

20 Q. When the spring came, didn't you go over to see Stark—a man by the name of Stark? A. I did not; I never went to his house.

Q. Did you have a talk with Stark? A. No, sir.

Q. Didn't Stark offer you work on his farm? A. He wanted me to come over and cut corn before the corn was ever planted.

Q. He wanted you to cut corn before the corn was planted? A. Yes, sir; he did.

30 Q. Where did you see him? A. It was right by our house when he asked me.

Q. He is the man that drove the wagon when you were hurt? A. Yes; he was.

Q. Did he ever come over to see you? A. Yes; three or four times.

Q. You did not take that job, did you? A. No; I did not; I did not see how I could take it when there was no corn to cut.

40 Q. That would have been a very easy job; easy money; get your money for that? Didn't you watch cows on Saturday afternoon? A. No, sir; from—I watched them.

FRANK DONEY—Cross

Q. What? A. I watched cows.

Q. How long did you watch cows over there?

A. Well, all day.

Q. Did you go home at night? A. Went home at night.

Q. How far is your home? A. Boarded; stayed there then. 10

Q. How long did you board there and stay with him? A. I don't know, now; I was there over a month; I don't know just how long I was over there.

Q. Let me feel your muscle; you are working now; let me feel the muscle of your left arm; oh, punch up; punch up; come on; won't you do it? A. No; I have not got ambition.

Q. You haven't got ambition to do that; then you ought to get a job. Is your right arm as hard as your left one? A. No. 20

Q. Have you any more ambition in the right arm than you have in the left? A. I suppose I have.

Q. What? A. I suppose I have.

Q. In this job you have, you must sit down, mustn't you? A. Sit down or stand up.

Q. Were you told that if you did not go to work that you would get a substantial sum of money from the traction company? A. I was not. 30

Q. What? A. No, sir.

Q. Do you know a man by the name of Provost? A. Provost?

Q. Yes. A. I do.

Q. Does he live at Wharton? A. Where?

Q. Wharton. A. No, sir; he lives in Mine Hill.

Q. Did he live there when you got injured? A. He did.

Q. How old a man is he? A. I could not say; about twenty-five or thirty. 40

FRANK DONEY—Cross

Q. So that now you don't claim that you are otherwise injured than in this condition of your back? Let me ask you about your back; how does that affect you? A. If I bend over, go to lift anything heavy, it bothers me.

10 Q. Can you bend over here for us? A. No, I could not to-day.

Q. You could not bend over at all to-day? A. No, sir.

Q. Will you come and try it? A. No, sir; I could not do it.

Q. Will you bend backwards for me? A. No, and I won't bend forward.

Q. You won't bend either way? A. No.

20 Q. You were in Court before this same Judge before were you not? A. Yes, I was.

Q. Didn't you then do what I am asking you to do now? A. If I done it then?

Q. Didn't you bend backward? A. Did I bend backward?

Q. Didn't you bend yourself? A. No.

Q. Didn't you do this (illustrating with the hand)? A. No, I never did bend forward.

Q. You did not bend this way, you and I (illustrating)? A. No.

30 Q. Stand right here, where I am now, and bend over with me, together? A. Not that I know of.

Q. You say now that you refuse to come here and do that? A. I refuse to come.

Q. What? A. Yes, sir.

Q. Who told you to do that? A. That is my business.

Q. No, it isn't your business. Now, don't do that. Who, if anyone, told you not to come here and do this? A. No one told me to come.

40 Q. Did anybody tell you not to do that? A. No, nobody told me not to do that.

FRANK DONEY—Cross

Q. Why won't you do it? A. Because I refuse—

Q. Coming up this turnpike that you spoke of, I think the first time you saw the light was when you got up the first hill; isn't that the hill way below the road to Succasunna? A. No, not so very far away. 10

Q. How far down do you think it is? A. It ain't over ten minutes' walk from where the crossing is; it ain't that, ten minutes' walk.

Q. Ten minutes' walk; that is toward Dover, as I understand it? A. Yes, toward Dover.

Q. And this is up toward Mine Hill, is that right? A. I suppose; that is the way you got it facing.

Q. You have peculiar ideas about things. You came up in this direction (indicating), toward the crossing? A. Yes. 20

Q. At least ten minutes' walk? A. No, I would not say that; no more than three minutes.

Q. You said ten minutes a minute ago. Why do you say ten minute one minute and two the next? What is the trouble about it? Come, Doney, which is it ten or two? A. About three minutes' walk. I can walk down there in ten minutes easy.

Q. Yes, I think you could. Can you walk from the place down here (indicating), the intersection of the road to Succasunna, the Succasunna Turnpike—can you walk from there down to this next place where you say it would take three minutes? A. Sure. 30

Q. What? A. Sure, I can go it.

Q. How far is it from here to the railroad station? A. What railroad station?

Q. The D. L. & W. Railroad station. A. No, sir; it is not.

Q. Half as far as that? A. No.

Q. Where do you claim the point is? Is it very near the Muller cottage—speaking of the cottage 40

FRANK DONEY—Cross

on the left—is that the top of the first hill as you call it? A. No, I don't know that place. The only place I know is ———, on the side of the track.

10 Q. At any rate, when you got to the top of the hill here (indicating), you saw a light? A. No, we did not see a light until we got very near to the track.

Q. Didn't you say a moment ago, as you got to the top of the hill— A. Seen a light.

Q. As you got to the top of the hill, you saw a light? A. Yes.

Q. And you said that you did not know whether it was an automobile or a traction company's car? A. Yes, I did.

20 Q. If there was a light behind this hill, coming down the hill, you knew it was either a traction company car, or else it was an automobile? You assumed that, didn't you? Didn't you have that in mind? A. Yes, sir; I had it in mind.

Q. Now, did you look—you knew that if you went on to your home you had to cross over the traction company's tracks, on the road to Succasunna, didn't you? A. Yes, sir.

30 Q. You knew you had to turn over that; when you got to the crossing, could you see the light? A. Yes, I could see the light.

Q. Was it strong then? A. I don't know whether it was strong or not.

Q. You saw it at any rate? A. Yes, I saw it.

Q. Did you turn your head? You knew that the traction car had not passed you? A. Yes.

Q. You knew that; and didn't you know that if you went over that track and the traction car was near it, you were likely to get struck? A. Yes, I knew that.

40 Q. You knew that? A. Yes.

FRANK DONEY—Cross

Q. And you did not turn your head? A. No, I did not turn my head.

Q. Didn't look? A. No, I didn't look.

Q. Now, I have some confusion—won't you come here and look at this map; I want you to help me. Assuming that you was coming up on the wagon, and you were sitting on the back—the Judge asked you which way you were sitting, when you told the jury here at the last trial, that your face was as you said—or, rather, your back was to the track, or your back was to this side (indicating)? A. My back was facing the track. 10

Q. Were you facing the track? A. Yes, I was facing the track, when I came up the road.

Q. When you came up this road here (indicating)? A. My back was down here (indicating), toward that way. 20

Q. Your back was? A. Yes; and when we come up to turn, my back was toward the trolley.

THE COURT—His back was against the right-hand side of the wagon side, I understand him to say.

Mr. KING—Yes, Judge.

Q. Didn't you say in your other trial that your back was to the trolley? A. I did. 30

Q. Now, you say that your face was to the trolley? A. The way I showed you, would bring my back to the trolley.

Mr. KING—Judge, then we are all wrong.

Mr. GEBHARDT—His face was to the track. You are mixing up the tracks of the trolley. As he came up the hill, his face was toward the track. As he 40

FRANK DONEY—Cross

turned around, his face was back to the approaching trolley.

Q. Didn't you say before that as you came up, your back was to the trolley? A. I did.

10 THE COURT—The trolley track?

Mr. KING—The trolley track.

Q. Didn't you say on your other trial that when you rode up, that your back was to the trolley track? A. Yes, I made a mistake, I think.

Q. Why did you say that, Doney? Come. Who told you to say now on this trial— A. Nobody but myself.

20 Q. Wait a minute. Who told you on this trial to say that you were facing the trolley tracks. A. Nobody at all.

Q. When you swore on the other trial that your back was to the trolley track— A. Nobody told me.

Q. Did you tell that other jury who sat here in the other trial that your back was to the trolley track? Did you do that? A. I don't know whether I did or not.

30 Q. You said a minute ago that you did. If you did say that, why did you do that, Doney? Why did you tell the other jury that your back was to the trolley track?

Mr. GEBHARDT—He said it was to the trolley not the trolley track.

Mr. KING—Now, I am entitled to go ahead with this, without your assistance.

THE COURT—Yes, ask your question.

40 Q. Why did you do that, Doney? A. You mean the track—

FRANK DONEY—Cross

Q. No, sir; I am asking you why you told the other jury, who sat here when this case was tried before, that your back was to the trolley track, when that was not so? Why did you tell them that? Why did you, Doney? A. I don't know if I did.

Q. You don't know whether you did? A. No; I don't. 10

Q. Is it true that your back was to the trolley track, or that your face was to the trolley track? A. My face was to the trolley track.

Q. Now, looking at this map—you were down here (indicating) somewhere, when you say you saw that light? A. (Referring) Yes.

Q. And you say it was three minutes walk from this section (indicating), where you first saw the light, and looking off that way toward the trolley track? A. Looking towards the woods. 20

Q. As you were coming up toward the intersection, did you notice whether the light that you saw—and, of course, you looked, I think—was over on that side of the road, or whether it was on this side of the road (indicating)? A. I could not tell what side it was on.

Q. You did see a sharp kind of light there? A. No; I wouldn't say it was sharp or not; I could not tell whether it was a trolley or automobile. 30

Q. Did you look to see which it was? A. No; I did not look to see which it was.

Q. All you needed to do was to turn your head sideways, and then you could have seen? A. Yes; I suppose I could.

Q. And you did not do that, did you, Doney? A. No; I did not do that.

Q. I want to know why you did not, because you knew it was either a trolley or you knew it was an automobile? A. Yes. 40

Q. With that knowledge that you had, and along

FRANK DONEY—Cross

that long distance, why didn't you look? A. Well, because—I didn't know what it was.

Q. I know you did not know; assuming that, I ask you why you did not discover it; why didn't you turn your head and see what it was? A. If
10 you have got to turn your head for every little light, you would have your neck worn out.

Q. You knew that it was either a trolley or an automobile? A. Yes.

Q. And you knew you were going right across the trolley tracks when you got up there? A. Yes; I did.

Q. You knew that; and knowing that, I want you to tell the Court and jury why, if you know that, you did not turn your head just enough to look? A.
20 Well, turn your head for every little light you see—

Q. No; why didn't you turn your head? A. Because I did not feel like it; how is that?

Q. Good; very satisfactory; when you got up near to this crossing—and you knew that you were either over the crossing—did you notice when the wagon turned to go over the crossing? A. I did.

Q. You knew that? A. I did.

Q. How far were you from the crossing when
30 you first knew that the team was turning to go over the crossing? A. I could not say; I was on the hind end of the wagon.

Q. Well, was the team in the middle of the road? A. I don't know that; whether it was in the middle of the road.

Q. You knew when the wagon began to turn? A. Yes.

Q. When the wagon began to turn, you then knew that it was a trolley, or that the trolley had not passed you? A. Yes; I knew that the trolley
40 had not passed.

FRANK DONEY—Cross

Q. You knew that the trolley had not passed, because you were looking right at it? A. No; I wasn't.

Q. Well, you were looking at the trolley track?
A. Yes.

Q. So that you knew that it had not passed you? 10
A. Yes.

Q. Knowing it had not passed you, and realizing that if it were a trolley, you were willing to go ahead because you had seen a light for this distance of three minutes— A. Yes; and I thought it would not hit anybody.

Q. Now, will you wait for me; why didn't you then, realizing that danger, if there was any danger there, why didn't you turn your head? A. I did not think it was going to run into anybody. 20

Q. Why didn't you turn your head to ascertain whether that trolley was near enough to hit you, if the driver went over the tracks, and I am speaking of the time when the wagon began to turn and you noticed that it was going across? A. It was not my place to look; it was the driver's place to look.

Q. I did not ask you that—whose place it was to look; I am asking you why you did not turn your head; why didn't you do that, Doney? A. Because I did not—I did not feel like looking around. 30

Q. You did not feel like looking around, but you realized the danger, didn't you? A. I realized the danger.

Q. You did? A. I did not know a trolley was going to hit me—

Q. I did not ask you that; you realized the danger if there was a trolley car on the track, and when they started to turn over this crossing, you did realize that if there was a trolley coming down and a wagon went in front of the car, you would be likely to— A. Yes; but I did not know it was go- 40

FRANK DONEY—Cross

ing to go over; I would not have driven across if it was going to hit me.

Q. You realized, didn't you, that if the trolley didn't stop, that you were liable to get hurt? A. Yes, if it did not stop, I would.

10 Q. And did you realize—the light was somewhere when you first saw it; this light was down in the same direction? A. I don't know—it was coming down from the store.

Q. There was a light and you knew that something was approaching. A. Yes; something was coming; I didn't know just what it was.

Q. And you sat on the back of the wagon, with your feet across the wagon; that is, from side to side? A. Yes.

20 Q. Was there anything to prevent you from swinging your feet over and getting off? A. No, nothing to prevent it.

Q. How long would it take you—just a second to have done that? A. It wouldn't have taken very long to have done it.

Q. Just a second to move your legs around and get off? A. Yes, sir.

Q. And you could have done that? A. I could have done it if I knew I was going to be hit.

30 Q. Then you stuck to the wagon and thought if it hits you, let her hit, is that it? A. No, I did not think that way either.

By Mr. Gebhardt.

Q. Please state whether you knew the car was coming before it hit the wagon or not? A. No, I did not know it was coming.

MR. KING—That has been answered about five times, under my examination.

40

THE COURT—I will let it stand.

FRANK DONEY, recalled—Direct and Cross

ALBERT EBNER—Direct

FRANK DONEY, recalled, testifies as follows:

Direct examination by Mr. Gebhardt.

Q. Just tell, Frank, how many teeth were knocked out at this time? A. Well, four.

Q. Was anything the matter with your teeth before this? A. No, sir; I had a good set of teeth. 10

Cross-examination by Mr. King.

Q. Keep them clean? A. I don't know whether I do or not.

Q. What is the matter with you, Frank? A. What?

Q. What is the matter? A. Nothing the matter?

Q. Just wait a minute; you better come back. It is your case, not mine. I ask you whether you keep your teeth clean? A. Yes, I keep them clean. 20

Q. Have you been down to the dentist? A. No, I did not go down to the dentist.

Q. Were there three or four? A. Four.

ALBERT EBNER, sworn for the plaintiff, testifies as follows:

Direct examination by Mr. Gebhardt.

Q. Mr. Ebner, where do you live? A. Mine Hill.

Q. Are you the Mr. Ebner that has been spoken of as having been in this wagon the night that Doney, the boy, was injured? A. I think so. 30

Q. You have no doubt about it, have you? A. No, sir; I was the one.

Q. You had been where that day? A. To where?

Q. What was your work? A. Moulder at the Richardson & Boynton plant.

Q. What was the character of this Turnpike road as you drove up there that night? A. How do you mean? 40

ALBERT EBNER—Direct

Q. What was it, a macadam road or dirt? A. It was a macadam road.

Q. What was its condition? A. Well, the same as roads are generally; a little rough there.

Q. What kind of a wagon was this, do you know?
10 A. One of these lumber wagons, with a dirt body on to it; one of the heavy teamster wagons.

Q. Made out of what, was the body? A. Out of loose sticks, slat body, whatever they call it.

Q. Where did you sit in the wagon? A. The front end.

Q. Who was driving? A. Stark.

Q. Whose team was it? A. Stark's team.

Q. Were you and Frank Doney riding as passengers or just as friends?
20 A. Just as friends; just for accommodation to get home; that is all I was riding for.

Q. And did you see, as you went by the hill there, how Frank Doney was sitting in the wagon? A. No, I wasn't paying any attention to him; he was on the back end there.

Q. Well, was there a seat to sit on or anything back there? A. No, I don't think so; nothing but a bale there; a bale of hay.

Q. A bale of hay? A. Somewhere in the back
30 part of the wagon.

Q. How far from this crossing where you finally did cross was it that you turned to go across this road into the road? A. Before we made the turn?

Q. Yes. A. Well, I should say just as we were about in the centre of the road, I should judge.

Q. From the centre of the road the track was about how far? A. I don't know; about 15 or 20 feet or so to the rails, I should judge; 25.

Q. Did you see the horses' heads start to turn to
40 go over the track? From the time, I mean now, that you turned from the middle of the road to go

ALBERT EBNER—Direct

toward the crossing, toward the track, did you see that? Just yes or no, that is all? A. Why, I realized when we were turning; I remember looking.

Q. Now, at the time, how far away—did you see the trolley car coming at all? A. Well, I saw the reflection of the light up there, some distance away, around the store. 10

Q. How far away is that store? A. I should judge a thousand feet or more, I suppose, from the crossing.

Q. And then you saw the light? A. Yes, sir.

Q. Now, what kind of a light was this on that car? A. One of those clear, bright lights that they are accustomed to use, I suppose.

Q. Well, an electric light or what? A. Yes, sir; I suppose it is an electric light. 20

Q. Now, when you attempted to cross the tracks, and your horses' heads got near the first rail of the track, do you know whether or not you were then in plain sight of the motorman? A. Straight up the track where the trolley was? 20

Q. When horses' heads got to about the first rail of the track, how far away was the trolley car? A. I should say somewhere about around there (indicating) when we left that stop, this side.

THE COURT—Up where? 30

WITNESS—This side of the store, there is a sort of stop; I think right after we left the stop; just up there, probably half way between the store and the corner.

Q. As the trolley car approached you from the time that you first—how far away, was the trolley car when you first saw it? A. Oh, I should judge— 40

Q. I mean the trolley car itself; not the reflection

ALBERT EBNER—Direct

of the light, but the trolley car itself? A. I could not just tell.

Q. As near as you can tell? A. I should say 400 or 500 feet.

Q. How far then were you away from the track?
10 A. Just about ready to go over, I should think, or close to it.

Q. And as the trolley car came down the hill— was it down grade or how, or level? A. Coming down grade.

Q. As it came down hill, did you notice whether it slackened its speed or not? A. It did not slack up.

20 THE COURT—Is this by Mine Hill, the section through there? The stop is in the centre part of the hill?

Mr. GEBHARDT—No, the stop is a little down the side of the hill, I think.

THE COURT—The whole thing is on Mine Hill, isn't it?

Mr. GEBHARDT—Oh, yes; all called Mine Hill.

30 Q. Was there any warning given before the car came to the crossing, and if so, where was the crossing warning so given? A. The first that I heard of it was when it was very close on to us, and we were on the track.

Q. About how far? Show in this room, if you can? A. Well, I should say 50 or 60 feet, 75 feet, something like that.

Q. Then what did they do? A. They blewed the whistle sharp, several times there.

40 Q. And then what did you observe next after that was done? A. I told Stark that we were going to get hit—hit the horses.

ALBERT EBNER—Direct

Q. When the warning sound was first given 50 or 60 feet away, how far from the tracks were you?

A. Just on the track, nicely; that is, the wagon, the front end of was our wagon about on—

Q. The front end of your wagon was on the track? A. About that time.

10

Q. When the car first sounded the warning, 50 or 60 feet away, is that right? A. About that, I should think.

Q. Did you see anybody waiting there at the crossing to take the car? A. I did not notice anyone; I was not paying any particular attention.

Q. What became of the car and what became of the wagon? A. Why, the hind part of the wagon there was hit, and the wagon turned up and just stood there.

20

Q. Where was the brake? A. The brake was on the hind part.

Q. After the collision between the wagon and the car, how far did the car run? A. Well, the hind end of the car was about over the crossing.

Q. Did you have, as you drove over there, a good view of the other side of the track or not—the other side of the track, I mean? A. Up above?

Q. Yes, towards Road? A. Yes, we were coming right up the road.

30

Q. Did you see anybody around there? A. No, I did not notice anybody.

Q. When did the car slacken up? A. It was when we were about being near ready to hit us, I should judge.

Q. Did it slacken up when it came down the hill? A. It came down quite fast.

Q. I say, did it slacken up as it came down the hill? A. It did not seem to have.

Q. Now, could you give us any idea how fast it

40

ALBERT EBNER—Cross

was coming? A. I don't understand how fast they do run those cars.

Q. Tell us as near as you can, Mr. Ebner? A. I should say 20 to 25 miles an hour.

10 Q. What effect did the light have on your ability to judge how close the car was? A. Well, I could not hardly say that it had.

Q. Where were you when you first saw or realized that there was likely to be a collision? A. Right on the track.

Cross-examination by Mr. King.

Q. Had you anything to drink before you started out? A. One glass of beer, yes, sir.

20 Q. Did Stark have anything to drink? A. I don't think he did. I think he had soft stuff. I know that I had a glass of beer.

Q. What saloon did you go in? A. The North End—no, not the North End, but the Central House, I should have said.

Q. Did Stark drink soft stuff? A. I was not paying any attention; I could not say what he had.

Q. He had beer? A. No, I could not say that.

Q. How many did Stark have? A. Well, I don't remember whether he had one or not.

30 THE COURT—Stark was the driver?

Mr. KING—Yes, Ebner was with him.

Q. How long were you in the saloon? A. About five minutes, I think.

Q. Now, when you started to go up, as you got on top of the hill, the first crest of the hill, above St. Mary's, you saw the trolley car approaching, didn't you? A. Saw the light first; the electric light.

40 Q. Where was the car then? A. Somewhere the

other side of the store. I saw the reflection of the light first.

Q. Then it wasn't over the hill, was it? You saw the reflection of the light between that? A. Yes, first.

Q. What is the distance from the crest of the first rise, as you come up the hill, to this road where you were going to cross? A. I could not say. 10

Q. About how far? A. After you get over the hill, you mean?

Q. No, as you go up the first crest; as you were coming up toward the crest of the hill? A. Yes.

Q. When you got on the crest, and then along the level space? A. Yes.

Q. And then the second rise, on the other side of Beck's store? A. There is a rise by the viaduct, about. 20

Q. When you got up to the first rise, so that you saw across the level spot, where was the car then? A. The car came out—I didn't see the car, only the reflection of the light.

Q. Where did you see the reflection of the light? A. Shining down the track, or down around toward the school-house there.

Q. Where did you first see the light itself, coming into view? A. We were coming over a flat place. 30

Q. How far were you from the crossing when you first saw the light, now? A. I could not say, I was not paying any attention.

Q. You knew you were going to cross this track, didn't you, going over the crossing? A. Yes, sir.

Q. You knew if you went to your home, you would go over that way? A. Yes, sir.

Q. And the trolley was going over, too? A. Yes.

Q. You knew that you were, is that right? A. I knew we were going that way to go home. 40

ALBERT EBNER—Cross

Q. Did you? A. Yes, sir.

Q. Did you notice whether the trolley car stopped at the top of the hill? A. I think it stopped there.

Q. Did you notice whether it did or not? A. It seemed to be drawing up to stop there, but I wasn't paying any attention, much, to the trolley.

10

Q. Weren't paying any attention, were you? A. I only saw the road

Q. As you got nearer to the crossing, did you look to see where the trolley car was? A. I wasn't paying, really, much attention there.

Q. That don't answer the question. As you were pretty near to the crossing, where you knew that the track over the crossing was, did you look to see where the trolley car was? A. I saw it was up the track several hundred feet, I should think.

20

Q. How far do you think? A. Well, up somewhere around where they stopped there.

Q. How many feet is that? A. I don't know how far it is up to their stopping place at the school-house.

Q. Was that up to the school-house? A. Up somewhere around there.

Q. Where was your wagon in reference to this crossing? A. We were on the other side of the road, getting ready to cross.

30

Q. How near were you to the crossing? A. I could not say that.

Q. You could not tell me about? A. Well, 40 or 50 feet, say; or 30 feet.

Q. Then did it start after stopping at the top of the hill? A. Yes, slowed up there, as though they did stop.

Q. As you got to within 40 or 50 feet of this crossing, did you notice whether the car started again? A. The car seemed to start at that time.

40

Q. Then you knew that your wagon, or the wagon

ALBERT EBNER—Cross

in which you were riding, was going over the crossing, and you knew that there was a trolley-car coming down the track? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. You knew that the trolley car could not turn out, didn't you? A. I knew that.

10

Q. You knew all that? A. I was trusting to the drivers.

Q. Who were they? A. Stark. He was ready to cross there; I did not think he would go into any trouble.

Q. Did you say to Stark, "You see that car coming toward us, be careful and don't cross ahead of it?" A. No, sir.

Q. You did not say that? A. No, sir.

Q. Well, you did see the car coming, didn't you? A. I was presumed to see.

20

Q. Did you see the car coming? A. I saw the car coming, yes, sir.

Q. When did you first realize that there was going to be trouble? A. When we were on the crossing.

Q. Before you drew on the crossing? A. Before.

Q. Well, the last time, in a place of safety, so that you could stop at, where was the car? A. Up the track.

30

Q. How far? A. Oh, several hundred feet, way this side of the stopping place, coming down.

Q. How near were your horses to the track then?

A. Well, they were along the road, about ready for to turn over, I should say.

Q. Did you see the car coming down? A. Yes, sir.

Q. You knew that you were going across? A. Yes, sir.

Q. Did you realize that if you kept a going, and that the car kept coming, that there was going to

40

ALBERT EBNER—Cross

be a smash? A. I did not think it was coming so fast, to make a smash-up. I thought we had sufficient time. I would have hopped off if I thought that there was going to be any danger.

10 Q. I thought you said you did not notice the car?
A. I did notice the car. You asked me when I did notice it.

Q. When you saw the car approaching you, what made you think that you had enough time to make the crossing if the car kept going ahead? A. I thought that it wouldn't come so fast.

Q. Were there any automobiles coming down the road? A. I did not notice any. I had noticed several of them along the road, but I did not notice any at that particular point.

20 Q. Did this light which came down there come from the trolley head light or come from an automobile? A. Why, it was a trolley light.

Q. Is that the only light that you saw? A. The only light that I remember now.

Q. A very heavy light, was it? A. Made a bright light, yes, sir.

Q. So that when you were down at the first rise, you could see the reflection way up at Beck's store? A. You could see it up at Beck's store.

30 Q. A heavy electric search-light? A. One of those head-lights.

Q. How far was the team from the crossing when they started to turn across? A. How far was the team?

Q. When it started to turn for the crossing? A. I don't know; just in the road.

Q. That don't mean anything. About how many feet were you off that? A. Fifteen or twenty or so.

40 Q. 15 or 20 feet, and then you started over the crossing diagonally the same way the road ran? I mean as you came up here (indicating)? Did you

ALBERT EBNER—Cross

start across the track, across this here (indicating), diagonally? A. Yes, sir.

Q. Came off this way (indicating)? A. Yes.

Q. Were you driving on the near side of the macadam road or on the far side? A. I think the team was about in the center of the road.

10

Q. Then you came up there (indicating); when you got up here (indicating) then you started to turn; as you got up here (indicating) where was the trolley car then? A. Well, it was 100 feet up the track; up near the stopping place.

Q. Here (indicating) is the place where it stopped, here to here; was the car up there (indicating)? A. There are two stopping places; one at the store and one at the school-house.

Q. Here (indicating) is the school-house, and there is the car; was the car there? A. Right there, I should say.

20

Q. Well, your team was only 15 feet from this crossing, and then your wagon had passed over the crossing, so that the car struck the rear part of the wagon, and slowly ran over this point here (indicating)? A. Somewhere there, about that stopping place. I haven't any particular idea where.

Q. Is that what you mean? A. I haven't any particular idea, just the distance.

30

Q. I am asking you if that is true? Is that true? A. Well, I am trying to explain it as near right as possible.

Q. I am asking you whether that car ran from this point here (indicating), way up to the school-house, clear to that point there (indicating), where it turns in, 15 feet? A. I should say somewhere about the stopping point.

Q. How far had it gotten down the hill? A. Well, I don't know how far it had gotten. I 40

ALBERT EBNER—Cross

thought we had sufficient time. They only just left I supposed. It was dark.

Q. Did Stark strike his team with the line? A. Yes, sir.

Q. When did he strike his team with the lines?

10 A. When the team was just about on the crossing there, the hind part of the horses, just after he hit.

Q. On the crossing? A. Yes, sir; about that.

Q. When he struck the team, what did the team do? A. Why they made a jump.

Q. Where was the trolley car then? A. Pretty near on to the wagon.

Q. What happened on the trolley car? A. Why, the trolley car hit the hind part.

Q. What did you notice about the trolley car? Or didn't you notice? A. They were coming quite fast.

20 Q. Did it try to stop? A. He blew the whistle when he was near on to us.

Q. When he blew the whistle was the team on the crossing? A. Yes.

Q. The team was on the crossing then? A. Yes.

Q. Did you hear them blow up above. A. No, sir.

Q. To cut a long story short, what you did, you knew that the car was coming, and you saw it coming up the track, and you knew that if it kept on, it was going over the crossing; what you say is that while in a place of safety, you turned over on the crossing because you thought that you could get over that crossing, is that it? A. I supposed the man had time to drive across there.

Q. Were you at all blinded by the head-light? A. Well, not exactly, as I know of.

Q. That don't mean anything; were you or weren't you? A. Well, I answered yes the other time; you kind of wanted that answer.

40

ALBERT EBNER—Cross

Q. I did not want anything. I want the truth.

A. I could not answer it in any other way.

Q. All right; you say that it was so light that it blinded you, is that true? A. I wouldn't say it affected me at all.

Q. When it affected you, how far was the car away? A. I don't know as it affected me. Why do you say that? 10

Q. Don't ask me; come, say it.

THE COURT—Did it affect you, or didn't it?

WITNESS—I don't know how to answer that question.

THE COURT—You know whether it affected you or didn't? Did it or didn't it?

WITNESS—I said no before. 20

Q. Well, you said yes before. A. Mr. King wouldn't have no the other time.

THE COURT—The question is, what do you say, did it affect you or didn't it?

WITNESS—I say no.

Q. That is no? A. Yes, sir.

Q. There wouldn't be any difference at all, not a bit at all? A. It seems that way. 30

Q. Did you say yes eventually? A. I said yes to satisfy you.

RECESS UNTIL TO-MORROW MORNING.

ALBERT EBNER resumed the stand for further cross-examination.

Cross-examination by Mr. King.

Q. Mr. Ebner, in coming up this Sussex Turnpike, from down here (indicating), you came up 40

ALBERT EBNER—Cross

from Dover; there isn't any trees or shrubs or anything else between the macadam road of the track of the traction company, is there? A. No, sir; not that I know of.

10 Q. As you come over the road to the crossing, where you passed and came up toward Beck's store, to the school-house, there isn't any building or anything else between the turnpike road and the traction company tracks, is there? A. I think not.

Q. And from a point down here (indicating), as you come to the top of the hill, further over, clear up to Beck's store, the road is straight and the traction road is straight? A. Getting there near the store.

20 Q. Until you get up to the store? A. Up to the store, and turn.

Q. And there isn't anything that prevents—that is, no permanent structure, no shrubs, no trees, no anything else that prevents a man from seeing as you come up towards this road, from seeing the tracks and trolley car coming down from Mine Hill, is there? A. Only overhanging trees, is about all.

Q. Overhanging trees on the other side of the road? A. Yes, both sides there, both sides of the road.

30 Q. No, no; now, come here (referring); show me where there are any overhanging trees, from Beck's store; between the roadway, the Sussex Turnpike, and the railroad track? A. Oh, there isn't; I meant on the opposite side; there are woods on both sides.

Q. Oh, yes, woods on the other side; there was woods over here (indicating). A. Between the road and tracks, I understand you mean?

Q. Yes, there is nothing in there? A. No.

40 Q. Well, now; before you get up to this crossing you sat on the front seat? A. Yes, sir.

ALBERT EBNER—Re-direct

Q. You sat up there with the driver Stark? A. Yes, sir.

Q. How long a time did it take you, from the time you first saw the car approaching, for you to arrive at this crossing? A. Oh, I could not say; impossible for me to say.

10

Q. Well, about how long would it take the team, on a walk, to do it? A. I don't know, how fast a horse would turn in there, when the car was coming down.

Q. I am asking you about the time? A. I could not answer the time; that is impossible to answer.

Q. Where were you when you first saw the car approaching? A. Over that flat piece, below the road; when the car was below the crossing.

Q. Had you just got up to the top of the first rise? A. I could not say just where we were along the road there; that is impossible for me to just state where we were.

20

Q. You don't know? A. Not exactly, no, where we were along the road.

Q. What do you mean by that, "not exactly?" Have you any idea? A. Just below the crossing, a little ways, when the car was coming around—you mean from the store around?

Q. Yes? A. Where I saw the car? It is the length of—I saw the reflection before we went as far up to see the car.

30

Re-direct examination by Mr. Gebhardt.

Q. Now, how about the hill itself, Mr. Ebner? How about the hill itself? You say when the car was up to the school house or store, up in that neighborhood, you could see the reflection? A. Yes, when it was up in that neighborhood.

Q. How about the bend in the hill? I don't mean sideways, now; I mean in going up on the hill,

40

ALBERT EBNER—Re-direct

what is there that prevents you from seeing the car clear up to the school house? A. You mean when you get on the flat piece there?

10 Q. On what flat piece? A. Well, it isn't so much of a grade as down on the crossing, and there is a grade just above it; there is two or three grades between there.

Q. What effect did it have on the wagon, the striking of the wagon by the car? What effect did that have on the wagon? A. It hit the hind part.

Q. What did it do? A. It turned the wagon up.

Q. What become of you? A. I went into the body; tumbled in; Stark and I, the driver.

Q. Where did you go? A. I fell in the body of the wagon.

20 Q. Were you hurt? A. I got cut in the head and a shaking up.

Q. Have you any claim against the company?

Mr. KING—I object.

THE COURT—How is that proper?

30 Mr. GEBHARDT—For this reason: It appears that this man was in this same collision and was injured. The other side might claim that he would tell his story more strongly than if the story was bolstered up by acclaim of his own, and it would appear that he had some interest the other way. I want to show that the interest is wiped out; that he has no claim against the company.

THE COURT—You may answer yes or no. Have you any claim against the company?

40 WITNESS—No, sir; I settled with—

EMANUEL C. STARK—Direct

EMANUEL C. STARK, sworn for the plaintiff, testifies as follows:

Direct examination by Mr. Gebhardt.

Q. Mr. Stark, are you the Mr. Stark who has been spoken of as the driver of the team the night of the accident to Frank Doney at Mine Hill? A. Yes, sir. 10

Q. Were you driving the team that night? A. Yes, sir.

Q. Whose team was it? A. Mine.

Q. How did Frank Doney come to be riding with you? A. He was working with me.

Q. Did he pay you to ride? A. No, sir.

Q. You just let him ride free? A. Yes, sir.

Q. What part of the wagon was struck that night? A. Well, I kind of think that it struck around the brake somewhere. 20

Q. The brake of the hind wheel or the front wheel? A. The hind wheel, somewhere around the center.

Q. How was the car running? A. Well, that is hard to say.

Q. As near as you can, Mr. Stark. A. Well, probably ordinary or a little better.

Q. How was it running when it struck the wagon? A. That I could not tell you. 30

Q. About? A. I could not tell you that because I had my mind on my team.

Q. How far away was the trolley car as you drove on the trolley track? A. I could not say how far it was. To my mind it probably was two or three or four hundred feet up the track when I started to cross the tracks. I could not say that it was that far.

Q. How did it appear to you, safe to go across or not? A. Yes, sir. 40

EMANUEL C. STARK—Cross

Q. What effect did the search light have on your ability to judge the distance of the car? A. Well, I cannot hardly answer that question in a direct way.

10 Q. Well, in your own way, Mr. Stark, just as you told it to me. The jury want to know the whole situation. A. Well, they are a good light and one would think that it was farther away than what they are, sometimes.

Q. Do you know what car this was? A. No, sir.

Q. Did you learn that night? A. No, sir.

Q. Did you learn that night after the accident which car it was, whether the— A. No, sir.

20 Q. Was it the one that usually stops there or the one that does not usually stop there? A. I heard them say that it was the special, but I could not say that, only what I hear.

Q. Did you have any lantern or light with you on the wagon that night? A. No, sir.

Cross examination by Mr. King.

Q. Was any warning sounded by the trolley car before it came to the crossing? A. Yes, sir.

Q. How far away? A. Well, it might have been the length of a car; it might have been two lengths and it might have been more.

30 Q. Did it sound any before that? A. Not to my knowledge. It might have and might not have.

Q. Did you notice whether they slackened speed any before they hit you? A. No, I was paying attention to the team; I wasn't paying attention to the car for I thought it was going to hit me.

CHARLES CORCORAN—Direct

THE COURT—I told you to answer yes or no, didn't I?

Mr. GEBHARDT—That should be stricken out.

Mr. KING—After the damage has already been done. 10

THE COURT—That is just the reason why I told him to answer yes or no.

Mr. KING—I move for the withdrawal of a juror. We cannot safely go on.

Mr. GEBHARDT—It appears from the testimony—

Mr. KING—Pardon me, I am addressing the Court. Until I get through, you have no right to interrupt. It appears that the man who was injured in this accident has been settled with by the company. We have a perfect right to settle with him if we want to. I ask you to withdraw a juror and declare a mistrial. 20

THE COURT—Well, we have a very sensible jury, who will not be moved by that at all—simply listen to the evidence in this case. 30

Mr. KING—May I have an objection to your Honor's refusal?

THE COURT—Yes.

CHARLES CORCORAN, sworn for the plaintiff, testifies as follows:

Direct examination by Mr. Gebhardt.

Q. Mr. Corcoran, were you a passenger on the trolley car which ran into the wagon on which 40

CHARLES CORCORAN—Direct

Frank Doney was riding on the 18th day of November, 1913? A. Yes, sir.

Q. What part of the car were you in? A. Well, about the center.

Q. Please state—

10 Mr. GEBHARDT—Mr. King, is there any dispute about the distance from the school-house down to the crossing?

Mr. KING—I admit nothing.

Mr. GEBHARDT—It is on your map there.

Mr. KING—All right; scale it off; I don't know.

Mr. GEBHARDT—It shows 871 feet; is that about right?

20 Mr. KING—I told you I did not know. I have not even looked at the map. If it scales that, it is that, and the map is correct. There is no use of making a statement when I don't know about it.

Mr. GEBHARDT—Have you got your engineer here.

Mr. KING—Yes, sir.

30 Mr. GEBHARDT—I will take his word for it without his being under oath.

Mr. KING—Mr. Beekman.

Mr. GEBHARDT—Do you remember Mr. Beekman, how far it is from the school-house to the crossing?

Mr. BEEKMAN—I did not have the scale.

Mr. KING—Well, you will scale it.

40 Mr. BEEKMAN—I haven't got a scale here. Has anybody got a rule?

CHARLES CORCORAN—Direct

Q. Tell the Court and jury how this car ran from the school-house down to the crossing? A. You mean in reference to the speed of it?

Q. In reference to the speed of it, yes? A. Why, I could not tell, just exactly, but I would say from about 15 to 18 miles an hour.

10

Q. Now, was any warning sounded as it approached this crossing, and if so, where was the car when the warning was sounded? About how far away from the crossing? A. Well, it seemed to be—

Mr. KING—Just a moment. I object. He says he thinks it was going 15 to 18 miles an hour. He hasn't shown any knowledge. He hasn't said he looked out of the window or got a view of the distance. I think there ought to be some proof. We cannot have a mere hazard go in.

20

THE COURT—Do you know whether there was any signal given of any kind?

WITNESS—Yes; there was a whistle blew, but it seemed after the accident—when it struck this wagon.

Mr. GEBHARDT—Could the jury hear that?

30

THE COURT—He said there was a whistle blown, but it seemed after the accident, when it struck this wagon.

Q. Now, please state whether or not the car slackened up as it ran down hill towards this crossing? A. Very little.

Q. Where did it slacken up? A. When it was about to the crossing.

Q. About how far was it from the wagon? A. I should judge about from 30 to 40 feet.

40

CHARLES CORCORAN—Cross

Q. Did you see Frank Doney as he sat in the wagon that night? A. Not as he sat in the wagon?

Q. Where did the car stop after striking the wagon? A. The rear end of the car was about across the crossing.

10 Q. Where were you when you could see the motorman?
A. I wasn't taking any notice to the motorman.

Cross examination by Mr. King.

Q. Where did you sit? A. Where did I what?

Q. Sit? A. Where did I sit? About the center of the car.

Q. Which side? A. On the left.

20 Q. How often did you ride on the traction cars down that big Mine Hill? A. At that time I was riding every night.

Q. You were riding every night? A. I worked up that way.

Q. Did the car run 15 to 18 miles an hour, you say? A. Yes, sir.

Q. What were you doing, reading a paper or talking? A. Talking.

Q. Who sat with you? A. I could not just remember who I was with now.

30 Q. You could not remember that, but you were talking? A. I could not remember, no, sir.

Q. What observation did you make outside of the car to ascertain where you were? A. I don't understand you.

Q. Did you look out of the window to see where you were? A. Yes, sir.

Q. Now, when did you do that? A. I knew where I was.

40 Q. Oh, no; of course you knew. You knew that you were in a traction car of Morris County, State of New Jersey; where was your location on the

CHARLES CORCORAN—Cross

tracks. A. Do you mean where I could see the wagon?

Q. No, when you were talking with this man, or this person who sat with you, did you pay any attention to the outside country? A. Why, yes; we were not talking steadily; once in a while.

10

Q. That is not what I asked you; what did you see that fastened the place in your mind, anything at all? A. Nothing but the sound of the whistle, and then—

Q. No, no; don't do that. Of course that is all right; but get away from that. I am asking you—and you are intelligent—what did you see to fasten the place in your mind? You can answer that or say that you don't know?

MR. GEBHARDT—He does not want to say he does not know, Mr. King.

20

Q. You won't get any help from your counsel, it seems to me, this morning; let us go on and have this out; never mind about that matter. What did you see that fastened it in your mind? A. I don't remember seeing anything.

Q. Was it dark outside? A. Quite.

Q. Can you tell me whether you were talking with your friend at the time the whistle blew? A. I was not.

30

Q. Did you anticipate that there would be a collision? A. I did not anticipate it, no.

Q. You hadn't any idea that there would be a collision or an accident, had you? A. No, because—

Q. No, not because; did you? A. No.

Q. I am asking you what went through your mind? A. I don't know that.

Q. Of course, you don't know there was an accident until it occurred; isn't that right? A. Yes sir.

40

CHARLES CORCORAN—Cross

Q. Can you tell me whether you were talking with this man at the time the whistle blew? A. I was not.

Q. Now, what fixes that in your mind? A. Well, I can just remember that; that is all.

10 Q. You just remember that? A. Yes.

Q. And yet you could not remember what you said to him before? A. I do not.

Q. Don't know what you were talking about, and don't even know the man that sat there with you? A. I said I thought it was John Hall.

Q. Are you sure of that? A. I am not positive.

Q. Do you know who it was? A. Well, I could not be positive.

20 Q. Was there anything that fastened this trip before the accident in your mind or was it just the usual trip that you took each day? A. It was the usual trip.

Q. Was there anything about the motor-man or conductor or something else that fastened it in your mind? A. No.

Q. Did this car stop up at the school-house? A. That I don't remember.

Q. You don't remember that? A. No, sir.

30 Q. What stop did it make before it stopped around at the crossing? A. Mine Hill store.

Q. Who got out there, or how many got out? A. I don't know; I did not look back.

Q. And then went on down hill? A. Yes, sir.

Q. Did you notice whether the brakes were applied after the whistle were blown? A. I don't know.

Q. What? A. I don't know; must have been to stop the car.

40 Q. No, no; where there—who have you been talking to about this case? A. No one at all.

Q. Is that true? A. That is true.

CHARLES CORCORAN—Cross

Q. There isn't anything difficult about that; just talk out. Haven't you talked to someone at all?

A. No, sir.

Q. No one at all? A. No.

Q. Not anybody? A. Not anybody.

Q. Before you were put on the witness stand, did anybody talk with you? A. No, sir. 10

Q. Well, they should have done so. A. Probably should, but did not.

Q. You say that no one knew what you were going to tell, is that it? A. Of course not.

Q. What? A. Of course not.

Q. Just put you on as a hazard, on a guess, so far as you know? A. Yes.

Q. Is that right? A. Yes.

Q. What relation are you to Doney? A. No relation. 20

Q. You are not married, are you? A. I am.

Q. Are you married? A. Yes.

Q. Did you have any trouble with a man named Stark? A. No.

Q. Did your mother have any trouble with anybody by that name? A. Not that I know of.

Q. Stark was the driver of the horse, was he? A. Yes, sir.

Q. Something about a wagon that wasn't paid for; do you remember something about that? A. I never heard anything about it at all. 30

Q. That you don't know? A. No.

Q. Was the whistle sounded up at the school-house? A. I could not say.

Q. Was the search-light on this night? A. That I could not tell either.

Q. When you got off, after the accident, when you got off the car, as I assume you did, was the search-light on them? A. I come around the back 40

DAVIS R. KERNOUGH—Direct

of the car; I wasn't near the front, that I could see it.

Q. Well, did you notice it? A. I did not notice it.

10 DAVIS R. KERNOUGH, sworn for the plaintiff, testifies as follows:

Direct examination by Mr. Gebhardt.

Q. Mr. Kernough, where do you live? A. Mine Hill.

Q. You remember the night of the accident to Frank Doney? A. I remember the night.

Q. Where were you at the time? A. Sitting in the trolley car.

Q. Where did you come from? A. From Kenvil.

20 Q. As the trolley car ran down to the crossing where the accident occurred, from the school-house, just tell the Court and jury how the car ran, in reference to speed? A. The car ran down there at the rate of speed, I should judge of 15 or 18 miles an hour.

Q. Before it reached the crossing? Please state whether it sounded any warning? A. It did not; not until—did not sound any warning until very close to the crossing.

30 Q. What do you mean by very close? That don't mean anything to the jury. How many feet about? A. Well—

Q. Show us by this room if necessary? A. I could not say as to the feet, how far it was, but the whistle was sounded and the breaks were applied almost instantly then.

Q. Then what? A. The car came to a sudden stop—a jolt, and then came to a certain stop.

Q. What was the cause of it, do you know? A. This wagon.

40 Q. What? A. This wagon they hit.

DAVIS R. KERNOUGH—Direct

Q. Yes? A. Is what I suppose.

Mr. KING—I move to strike that out.

THE COURT—Yes, strike it out.

Q. Where was it when it stopped suddenly? A. Where was the trolley car?

Q. Yes? A. Why, half way across the crossing. 10

Q. Which crossing are you talking of now, Mr. Kernough? A. The road that leads up past this corner.

Q. That is known as the Succasunna Road? A. What is known as the Succasunna Road.

Q. What part of the car were you in, Mr. Kernough? A. I sat in the second seat from the back of the side aisle seats.

Q. As it ran down the hill, please state, if you know, whether or not it checked the speed at all just before it hit the wagon that you have spoken of? A. No. 20

Q. How? A. No, it did not.

Q. Did you get out of the car? A. Did I get out of the car?

Q. Yes. A. I did.

Q. How? A. I did.

Q. What did you see when you got out of the car? A. Saw a team of gray horses and wagon.

Q. Where was the wagon? A. Why, right in this road that leads to Succasunna. 30

Q. Did you see the persons who were in the wagon? A. I did not; the only man that I saw then was Mr. Stark.

Q. Did you see anything of Frank Doney? A. Not at that time, I did not.

Q. When did you see him? A. I saw him just before they took him on the trolley car.

Q. Where was he? A. Right along side of the road. 40

GEORGE H. GARIGUS—Direct

Q. What condition was he in? A. Why, he was moaning and groaning; I could not see his face.

Q. Was he standing, sitting, lying or what? A. Why, kind of sitting on the side of the road; some men there around him.

10 Q. How did they get him on the car? A. Car-
rid him on the car.

Mr. KING—No cross-examination.

GEORGE H. GARIGUS, sworn for the plaintiff, testifies as follows:

Direct examination by Mr. Gebhardt.

Q. Where do you live, Mr. Garigus? A. Whar-
ton.

20 Q. Do you remember the night of the accident,
the happening of the accident to Frank Doney? A.
Yes, sir.

Q. Where were you at the time? A. Driving to-
ward the road.

Q. Which direction? A. The same way the car
was going, coming home.

Q. What road was it on? A. On the main road,
the Turnpike.

30 Q. How far away were you from the crossing
when the accident occurred? A. Well, I should
judge I was two or three car lengths away from
the crossing.

Q. As the car came down the hill, please state
whether or not it slackened its speed in coming to
this crossing? A. It did not seem to me that it did. I
was in a covered wagon with a horse. Of course, I
could not exactly see the car. From the time that
I saw the light shining on the back of the wagon,
until it passed me, it did not slacken.

40 Q. How was it running when it passed you? A.

GEORGE H. GARIGUS—Cross

It was a pretty good clip; I was on a trot when they passed me.

Q. You say they ran at a pretty good clip? A. Yes, sir.

Q. You say that the car was three lengths from the crossing? A. I should judge so, when they passed me. 10

Q. Now, please state whether it sounded any warning as it approached this crossing as it came down to the crossing? A. I did not notice any above the curve; of course I had a covered wagon. The wagon made an awful lot of noise; I could not hear it; I was not taking notice.

Q. When did the car then first slow up or check its speed? A. Well, I could not say that it checked any until after the wagon was on the other side of the car from me; whether that struck it or not, I don't know. 20

Q. Whether what? A. Whether it struck the wagon and stopped, I don't know. I could not see the wagon after they passed me.

Cross-examination by Mr. King.

Q. Mr. Garigus, won't you please look here (referring); we will put you on the map. You came down, as you testified, towards Dover; this is Dover down here (indicating); just tell us where the accident occurred? And this (indicating) leads over to Succasunna; that (indicating) is the little wood road; you came down here (indicating). Won't you tell me how many feet you were from this crossing when you noticed the car? A. I could not tell by feet. 30

Q. About how far? A. At the school-house; might be way up here (indicating).

Q. Will you say that you were at the foot of the grade? A. No; taking this (indicating) in the shape 40

GEORGE H. GARIGUS—Cross

of the car, I was about half way; just half way down when that car passed me.

Q. Can you tell me about—the jury don't know? A. I don't know the feet. I was in a covered wagon, and could not tell you.

10 Q. Suppose this (indicating) were the crossing, what is your best guess as to distance; as far as from here to that church on the other side of the street? Can you tell me that way? A. Something like that; the length of three cars.

Q. A car is 42 feet; then that would be about 126 feet. When you were up this way (indicating) 126 feet, where was the Stark wagon? A. It was then nearly across the track. The last I saw of the Stark wagon—

20 Q. No, when you were over here (indicating), you were 126 feet, and where was the Stark wagon? A. Right here (indicating) on the crossing; the last I saw of the wagon.

Q. No—the first you saw of the wagon? A. Yes, sir; the first I saw of it.

Q. Did you see the Stark wagon before it was struck? A. I saw it going across the crossing; yes, sir.

30 Q. Where was the Stark wagon when you were 125 feet away? A. On the crossing, just at the end of the car. After that I did not see it, because the car was between that and the wagon.

Q. Well, did you see the Stark wagon before it started to go on this crossing? A. I saw it right away. This car should be right above, 126 feet off.

Q. Will you tell me where it was, in here (indicating) the Stark wagon? A. I could not say exactly; it was making a turn.

40 Q. Just beginning to make a turn? That is what

GEORGE H. GARIGUS—Cross

I am after; as you were up here (indicating), that is the first you saw of it? A. Yes.

Q. Where was the trolley car? A. Up to the school-house.

Q. Up to here (indicating)? A. I saw the light.

Q. If you were 126 feet away, somewhere in there (indicating), how do you know where this car was back of you, except that it was back of you? A. I just saw the light shining—

Q. You gathered from the way the light was shining, that it was back of the school-house, is that right? A. Coming that way.

Q. You could plainly see the light here (indicating), couldn't you? A. Not plainly; I could see the light.

Q. What is the trouble? A. Nothing.

Q. I am asking you whether you could plainly see the light? A. No, sir.

Q. Could you see the light? A. I could see the flashing from the light; not full force; it was behind me.

Q. You did see that there was something behind you? A. Yes, sir.

Q. Did you have any doubt about not knowing that it was a trolley car coming? A. Honestly I did not take notice, because I was on my own side of the road.

Q. Which was your own side of the road, the right of the road? A. The right of the road for automobiles, and I was away from the car track.

Q. On the macadam part? A. Yes.

Q. As you were there, then you did see the light from the traction car behind? A. Yes. I did not hear the traction running.

Q. You knew that there was something coming? A. Yes, sir.

Q. You spoke about being in a covered wagon;

GEORGE H. GARIGUS—Cross

this covered wagon had the sides down? A. Yes, sir.

Q. Down on each side? A. Yes, sir.

Q. Notwithstanding that, you saw—where was the reflection of this light ahead of you? A. Ahead of me, shining on the trees.

10

Q. Was that light enough so that you could see this wagon down here (indicating), or were you assisted by the light which came from the traction car? A. Not the light from the car; I had my light on the wagon.

Q. So that it was the light from the traction car that showed you this wagon, was it? A. Coming behind me.

Q. There was a light, whatever it was, coming behind you? A. Yes, sir.

20

Q. Before you got to this road, did you notice any automobile pass you? A. No, sir.

Q. There did not any pass you? A. I don't remember any.

Q. So that you are satisfied, aren't you, that the light which was coming behind you, was the light from the traction car? A. It was coming from behind.

Q. Well, it came from the traction car? A. I really could not say.

30

Q. Did any automobiles pass you coming from behind this car? A. Yes, coming down.

A JUROR—The westerly end of this road lays up into Netcong, doesn't it?

WITNESS—Yes, sir.

THE JUROR—And the easterly end of this road runs to Dover?

WITNESS—Yes, sir.

40

THE JUROR—And from Dover, at the top of this hill—it is up hill, down to Dover?

AUGUST BIRNBAUM—Direct

WITNESS—Well, it is a grade.

THE JUROR—It is all grade, down to Dover?

WITNESS—Well, in that way.

THE JUROR—Practically from the bridge, up grade.

10

WITNESS—Yes, sir.

THE JUROR—About how far down this hill is it where this crossing is? I could not locate it. I know all the crossings along that road into Netcong. I could not locate that crossing. I know that one goes up to Drakesville, and one this side of Drakesville, but I could not locate that crossing.

WITNESS—This is going up Mine Hill.

20

THE JUROR—I know; but this is right on top of Mine Hill?

WITNESS—No, right by it.

THE COURT—Do you know where the school-house is?

WITNESS—Yes, that is about a mile along there

Mr. KING—I am going to offer some photographs; I would like to put them in now. I will hand them to Mr. Gebhardt now; maybe it will straighten this up. With the consent of the other side, I hand them to the jurymen.

30

AUGUST BIRNBAUM, sworn for the plaintiff, testifies as follows:

Direct examination by Mr. Gebhardt.

Q. Mr. Birnbaum, where do you live? A. Mine Hill.

40

AUGUST BIRNBAUM—Direct

Q. Were you on the trolley car that ran into Frank Doney that night? A. I was.

Q. What part of the car were you in? A. On the hind end; just inside the door, off the platform.

10 Q. Please state, from the school house down to the crossing, how the car ran? A. Why it ran at a very good speed, 18 to 20, 25 miles an hour, I should think it was going.

Q. When did it first sound the whistle? A. I don't remember hearing a whistle blow at all.

Q. When did it first slacken up? A. When it struck the car it slapped on the brakes, and very near threw me off.

20 Q. From what? A. Threw me off the platform, because I live at West End Heights, and every time I want to get off—

Mr. KING—Just a moment. I object to that. Don't do that.

Q. Every time.

Mr. KING—Just a minute; I am objecting to it.

30 THE COURT—It doesn't make any difference how you got off.

Q. What did you do after the collision? A. Why, I got off the car and ran around to see what had happened.

Q. What did you see? A. I saw a wagon upside down, with the wheels turned upside down, the body, and the team of white horses, with a man standing by, and a crippled man, this man that was struck, I heard afterwards.

40 Q. Where was Frank Doney? A. I did not know him then. I knew him personally, when I went

AUGUST BIRNBAUM—Cross

to school with him. I seen him lying—he was lying with his head up against a tree.

Q. In what condition was he? A. Why, he was lying there, groaning.

Q. Did you go up close to him? A. I went up close and looked at him.

Q. Was he bleeding? A. He was bleeding around the head, yes, sir.

Q. What place was the car in at that time? A. What place was the car in?

Q. Yes, the car itself? A. The car was about half way across the crossing.

Q. You say the brakes were put on just as the car struck the wagon? A. I don't know what struck; there was some wreckage when the brakes went on, as if it struck something.

Q. What effect did it have on the car? A. Why, it gave a jerk, like.

Q. Well, did the jerk stop the car or not? A. tainly; stopped it pretty near instantly.

Q. Before that, had it slackened up or not? A. No, sir.

Cross-examination by Mr. King.

Q. What were you doing? A. What was I doing? Where?

Q. I want you to tell me whether you remember this, what you were doing, whether you talked with anybody? A. No, I didn't talk with anybody.

Q. I mean this night on the car? A. No, I was not.

Q. What was you doing? A. I was standing in the doorway there.

Q. Did you say that the whistle was blown or was not blown, or that you did not hear it? A. I don't remember hearing any whistle.

Q. You say the speed of that car was 18 or 20 or

AUGUST BIRNBAUM—Cross

25 miles an hour? A. Yes, sir; about that; anywhere from 20 up.

Q. From what up? A. Anywhere between 18 to 25 miles an hour.

Q. Did you take any particular notice of the speed of the car? A. Yes, sir.

10 Q. Any particular notice that night? A. Yes, sir; I did.

Q. That night? A. I did.

Q. Why? A. Because I was living at West End Heights, and was about to get up at the school-house to tell the conductor to ring the bell; because they pretty generally carry me down to Squirrel Hill.

Q. Why didn't you take a seat in the car? A. I was getting up to tell the conductor to get off; I could not sit on the car.

20 Q. Where did you get off? A. At the foot of that grade, just as you leave Gardner's Corner, coming down that grade.

Q. Show the jury where you got off, will you? A. Here (indicating) is Gardner's Point.

Q. Yes, and up here (indicating) is the school lot, see it there? See Beck's over on the other side? A. I see Beck's here (indicating) and the school-house about here (indicating).

30 Q. Where did you get off? A. Right opposite Gardner's Corner, right at the foot of this mine.

Q. That is where you wanted to get off? A. Yes.

Q. That is down to the Pole 10? A. I don't know about the pole; (referring) they stopped there, at the foot of the hill.

Q. Pole 10; there is where you wanted to get off? A. Yes, sir.

40 Q. You told the conductor when you stood up

MINNIE GARDNER—Direct

here (indicating)? A. Yes, sir; when we left the school-house.

Q. All the way from the station down here (indicating), shelter station, down at the corner, right near the school? A. Yes, Gardner's Corner.

Q. If anybody wanted to get off there, they stopped there, then, to let them off? A. Yes. 10

Q. Why, that night, did you pay any particular attention to the speed of the car? A. Never did pay any particular attention, but I always got off that way.

By Mr. Gebhardt.

Q. What do you mean, always get off what? A. Always get up to tell the conductor to let me off at West End Heights, so that they would not carry me down Squirrel Hill. 20

Q. Were you standing up or sitting down? A. I was standing up when I told the conductor; it was a crowded car, and had to get up and touch him on the arm to let him know to pull the string.

Q. Had you done that yet or not? A. No, I had not done it; I was just going to, when the crash came, and the car, going that fast, it struck before you could get down and take four steps in the car.

MINNIE GARDNER, sworn for the plaintiff, testifies as follows: 30

Direct examination by Mr. Gebhardt.

Q. Mrs. Gardner, where do you live? A. At Mine Hill.

Q. How far do you live from what has been spoken of here as Gardner's Corner? A. Why, right across the road, in a farm house there.

Q. You remember the night of the accident to Frank Doney? A. Yes, sir. 40

MINNIE GARDNER—Direct

Q. Where were you at the time? A. Out in my yard, taking my wash in; I washed that day and was taking in the clothes.

Q. Did you see the collision or not? A. Yes, sir.

10 Q. Did you see the car coming down the hill before it reached the crossing? A. Yes, sir.

Q. How did it run down hill? A. Running very fast.

Q. When did it first take its speed? A. Why, just—it whistled just before it hit the wagon. I don't think it checked its speed until it hit the wagon.

Q. Were you looking right out at it or not? A. Yes, sir; I was looking right out at it.

20 Q. Could you see from the light from the car, the surrounding ground on the other side of the trolley tracks, on the Succasunna Road? A. Yes, sir.

Q. Was there anybody standing waiting or not? A. Not that I saw.

Q. What did you do after the collision? A. Why, I went in the house and sent one of my boys out with a lantern.

Q. Did you go over there yourself? A. In about probably three minutes after.

30 Q. What did you see over there? A. Doney laid in the station with his head on a large bundle or parcel, and blood was coming from his mouth, I thought; there was blood on a parcel anyhow

Q. Was there much blood around there? A. Only on this white paper that was around this parcel.

Q. How long did you stay there? A. Oh, just about five minutes, until after they put Doney on the car.

40 Q. How did they get him to the car? A. Some men put him in, I think; went in the front way.

MINNIE GARDNER—Cross

Q. Did he walk or did they carry him or what?
A. They carried him in.

Q. Do you know who owned the wagon that was crashed into that night? A. Yes, sir; we did.

Q. What do you mean by we? A. My husband.

Q. What part of it was broken? A. The hind part. 10

Q. Who had it fixed? A. My husband.

Cross-examination by Mr. King.

Q. How far were you away from the point of the accident, Mrs. Gardner? A. Well, probably 80 feet or—80 or 100.

Q. Any further than that? A. No, I think not; just in the yard, I was.

Q. What? A. Just in my yard; that is just across the road there, probably—well, it might be 30 or 40 feet in the yard, away from the road. 20

Q. The road is 80 feet away? A. I said 100 feet; that would make 80 feet.

Q. Well, nevertheless, you say you saw it? A. Yes.

Q. Are you sure about that? A. Yes.

Q. Did you see this man, Stark, the driver of the wagon, turn over this crossing? A. Yes, sir.

Q. Where was he driving just before he turned in over the crossing, in relation to the middle of the road? A. He acted as if he was on our side of the road; on the right hand side coming up. 30

Q. On the right hand side coming up, he started to go over the crossing, did he? A. Yes.

Q. You could plainly see the light then? A. Yes, sir.

Q. He could see it? A. I don't know if he was looking; I know I could.

Q. You could see it? A. Yes. 40

Q. Didn't it go through your mind that he was

MINNIE GARDNER—Cross

doing a very foolish thing? A. I can't think on what was going through.

Q. That is what you thought? A. That is what I thought.

10 Q. There was another man, who just testified, and said that he was over the road; did you see his wagon coming down? A. No, sir; I did not. Of course there are buildings—I can only see the trolley car about—probably 100 feet. There is so much shade at the corner there, and until the cars come down that way, it shuts the view off.

Q. Can you tell me, as he turned to go in there, on the trolley track, from the right side of the road coming up, where was the trolley car then? A. I could not see.

20 Q. You could not see it because of the shade? A. I could not see it because of the shade.

Q. But the light was shining brightly on this man, wasn't it? A. Yes.

By Mr. Gebhardt.

Q. Can you tell us, when the horses were on the track, how far away the car was? A. Well, I should think—

30 Mr. KING—If this shade interfered, so that she could not see—

WITNESS—I could see the car coming up, 100 feet; probably two lengths of the car; and from there on up the road I could not see, because the shade was between us.

40 Q. Where was the wagon at that time, and the horses? A. Why, coming on up the road and then turned to go across the road.

FREDERICK S. McCONNELL—Direct

Q. Where were the horses and wagon when the car was 100 feet away or two car lengths, whatever you call it? A. I could not exactly tell that.

Q. Were the horses on the track, or was the wagon on the track?

Mr. KING—That is unfair. I ask the Court to criticise counsel on the other side. 10

THE COURT—Yes, this is leading.

Mr. GEBHARDT—A little leading. If she could not tell, I will ask another question.

Q. Did you see Doney sitting in the wagon that night? A. No, sir.

Q. Didn't notice him? A. No, sir.

20

FREDERICK S. McCONNELL, sworn for the plaintiff, testifies as follows:

Direct examination by Mr. Gebhardt.

Q. Where do you live, Mr. McConnell? A. Wharton, New Jersey.

Q. Wharton? A. Yes, sir.

Q. Do you remember the night of the accident to Frank Doney? A. Yes, sir.

Q. Did you know Frank at that time? A. Yes, sir. 30

Q. Where were you at that time? A. I was in the trolley car.

Q. Whereabouts? A. On the front end, on the right hand side, next to the motorman?

Q. Next to the motorman? A. Yes, sir.

Q. State whether or not you could see the motorman as you came down the hill? A. Yes, sir.

Q. State how the car was running from the school-house down to the crossing? A. 20 to 25 miles an hour. 40

FREDERICK S. McCONNELL—Direct

Q. State whether any warning by whistle was sounded before they reached the crossing? A. No, sir; no warning, after the whistle post whatever.

10 Q. How is that? A. Did not blow at the whistle post. There is a whistle post between where he got hit and the school-house, but he did not blow at that whistle post, as far as I can remember, at all. He did not blow until he hit the wagon, a little before he hit the wagon.

Q. State whether or not the car slackened up as it ran down the hill before it hit the wagon? A. No, sir; I did not feel the brakes on whatever.

Q. Well, could you see the motorman handling the brake or not? A. No, sir; all I saw him do was to handle the whistle—

20 Q. Could you see the motorman, or were you looking at the motorman as you came down the hill? A. Yes, sir.

Q. As you came down the hill to the crossing, did he slacken up the car? A. No, sir; I did not take notice to that at all.

Q. How? A. I did not take notice; I don't think he did slacken the car up until after he hit the wagon.

30 Q. How far did the car go after it hit the wagon? A. Just about the length of the car.

Q. Did you notice where Frank Doney was sitting in the wagon? A. Yes, sir; with his back toward the motorman.

Q. Towards what? A. Towards the motorman; I was facing the car.

Q. Did you see the collision? A. Yes, sir.

Q. Where did it hit the wagon? A. Right above the brake shoe, on the back part.

Q. On the back part? A. Yes, sir.

40 Q. What do you mean by the back part? A. Right where the tire of the wheel was.

FREDERICK S. McCONNELL—Cross

Q. The back wheel? A. Yes, sir.

Q. What did it do with the wagon? A. Knocked it out of the track, knocked the box off.

Q. What became of Frank? A. Knocked him up against the seat; his head was bleeding.

Q. Did you get out of the car or not? A. Yes, I got out. 10

Q. What did you do then? A. Walked around and looked at him.

Q. Where was he? A. Lying by a tree; his feet up against the building and his head against a tree.

Q. What condition was he in, as far as you could observe? A. Well, groaning and bleeding from the mouth, teeth.

Q. How long did you stay there then? A. Until the car got ready to go on. 20

Q. What was done with Frank? A. They carried him on into the car.

Q. Did you see anybody at the crossing as the car approached? A. No, sir.

Q. Waiting to get on? A. No, sir.

Q. Were you where you could see? A. Yes, sir.

Cross-examination by Mr. King.

Q. Well, young man, you apparently saw this man get struck, and you described the manner in which it was done, and observed everything else, didn't you? A. Yes, sir. 30

Q. Tell me if you sat on the side seat? A. Yes, sir.

Q. How near were you to the front window? A. Right against it.

Q. And on the right or left side? A. Right side, coming down the hill.

Q. Where did you get on the car? A. At Ken- ville, Sheridan's Corner. 40

FREDERICK S. McCONNELL—Cross

Q. Did you keep a look out of the window all the way down? A. Yes, sir.

Q. What were you doing at Kenville? A. Working at the Hercules Powder Company.

Q. Did any of the other employes come down?
10 A. Yes, sir.

Q. Were you talking with any of them? A. No, sir.

Q. Who sat next to you? A. On the other side of me, Thomas Smith.

Q. He sat on one side of you; who sat on the other? A. Because I was up against the window, on the other side.

Q. Was the shade of the window up or down? A. It was open, so that you could see right out.

Q. Was the window down? A. No, sir; the
20 shade pulled right across the windows, this way (illustrating) instead of down.

Q. Is not that true of all of the cars, that those shades are down, so that the motorman can see, and isn't that the truth on this night? A. Mr. King, I don't know what you mean.

Q. I mean that the car is shaded from the motorman, so that there is no light from the car, so that the motorman can see? A. It wasn't that night; the shades were not pulled across.

Q. Have you ever ridden on a car where the
30 shade was up, other than this one time? A. Yes, sir.

Q. What? A. Yes, sir.

Q. Where was that? A. From Dover to Whar-
ton.

Q. Who was the motorman? A. Well, I could not mention any names.

Q. What? A. What their names are?

Q. Oh, you don't know, do you? Don't hesitate;
40

FREDERICK S. McCONNELL—Cross

go ahead and say? A. I could not say what the names are.

Q. What? A. I could not exactly mention their names.

Q. Who was the conductor? A. That I don't know, any of the conductors.

10

Q. You do know some of the motormen, don't you? A. Yes, sir; I know them well by sight; by names, I don't know them.

Q. Where do you live? A. Wharton.

Q. Where does Doney live? A. Mine Hill.

Q. How near is Mine Hill to Wharton? A. Well, around the road, about between 5 and 6 miles, where he lives and I live.

Q. What? Wharton is five or six miles from Mine Hill? A. That is where he lives, Mine Hill, and where I live.

20

Q. How long have you known Doney? A. Well, I used to go to school with Doney.

Q. Very friendly with him now, aren't you? A. No, not so much friends.

Q. You haven't anything against him, have you? That is true? A. No, sir.

Q. You are quite anxious to see that he gets a substantial verdict for his injury, aren't you? A. Why shouldn't I be?

30

Q. That is the way you feel about it? A. Well, I don't know; he has a right to this.

Q. I am asking you whether that is the way you feel about it? A. Well, I am telling the truth.

Q. Did you talk with my adversary, Mr. Gebhardt, about this suit? A. No, sir; only the subpoena.

Q. Do you mean that? A. Yes, sir.

Q. Haven't you talked with him at all? A. No, sir.

40

Q. Is that true? A. Yes, sir.

FREDERICK S. McCONNELL—Cross

Q. Didn't you meet him downstairs in the sheriff's office, near the sheriff's office yesterday?

A. Yes, sir.

Q. What? A. Yes, sir.

10 Q. Why did you tell me a minute ago that you did not meet him? What is the matter with the case? A. I was a witness and in the morning—

Q. I asked you if my adversary, Mr. Gebhardt, talked to you and you said he did not; now you said yesterday you met him right down stairs, isn't that true? A. Yes, sir.

Q. Didn't you talk with him? A. Yes, sir; about dinner.

Q. About dinner? A. Where we got dinner, yes, sir.

20 Q. Didn't talk with him about anything else? A. No, sir.

Q. What? A. No, sir.

Q. Is that quite true? A. Yes, sir.

Q. Did you talk with anyone about the case? A. No, sir.

Q. You haven't talked with anybody? A. No, sir.

Q. Didn't see anybody? A. Yes, sir.

30 Q. Who did you see? A. Mr. Gebhardt, and Mr. Doney and witnesses.

Q. I mean about this suit? A. No one at all.

Q. Haven't you talked with anybody? A. No, sir.

Q. When you looked out of the curtain of the car, you say you saw this man driving the team and coming up the road, is that right? A. I did not say I saw him coming up the road at all, Mr. King.

Q. You did not see him coming up the road? A. I did not say I did.

40 Q. Well, is it true that you did, then? Put it that way? A. Yes, sir.

FREDERICK S. McCONNELL—Cross

Q. Where were you when you saw Doney and Stark coming up the road? A. In the car.

Q. Well, where was the car? A. I should judge about 100 or 150 feet away from the crossing.

Q. Is that the first that you noticed of Doney? A. Yes, sir.

Q. Was there anything to prevent you seeing Doney or this wagon if it were coming up the road before that time? A. I did not take notice.

Q. Did you see any other wagon? A. Didn't take notice to that either.

Q. Did you see the horse and man by the name of Garigus upon the road in a covered wagon, driving down towards the crossing, and go over? A. I remember meeting him after we got off the car.

Q. Do you remember seeing his wagon or the wagon prior to the accident? A. No, sir.

Q. Didn't see it? Where was Stark and this team when you first saw them? A. On the crossing

Q. How much on the crossing? A. The head of the horses was just approaching the crossing.

Q. The head of the horses were just approaching the crossing when you were about 150 feet away? A. Yes, sir.

Q. Can you tell the jury and the Court whether the light from the car threw all this crossing, team, occupants and every thing else, into a glare of light? I mean by that, you could readily see them? A. Well, no, sir; because, coming over the hill, there is a lot—

Q. Please don't do that. We have got you within 150 feet of the crossing, and we have got the horses with the heads about to enter the near first rail, that is the nearest rail to the horses; I ask you, with the car 150 feet away, whether a part of this scene wasn't as if you were looking out there in broad day light? A. No, sir.

10

20

30

40

FREDERICK S. McCONNELL—Cross

Q. Well, was is plain to you? A. Just so that the reflection of the light—it didn't throw a spreading light; but just threw a sort of dazzling light, a light upon the rails, when the car came down the hill.

10 Q. There was enough light down on the crossing so that you could see all this? A. I could not see the horses—after they got across the crossing.

Q. Don't, no, don't do that. I am asking you whether there wasn't light enough from the search-light, so that you could see the team about entering on the crossing when you were 150 feet away? Did you see them? A. Yes, sir.

Q. Could you see it plainly? A. Yes, sir.

20 Q. And the wagon—could you see how many persons were in the wagon? A. Yes, sir.

Q. How many were there? A. Three.

Q. Could you see one of them sitting near the tail board? A. Yes, sir.

Q. And two on the seat in front? A. Yes, sir.

Q. Did you see a team of horses or a single horse? A. Yes, sir; a team of horses.

Q. Could you see whether the man on the right or on the left was driving? A. On the right I think it was.

30 Q. That is where he ought to be, of course? A. Yes, sir.

Q. Could you tell the colors of the horses? A. Yes, sir.

Q. It was plain enough for that? A. Yes, sir; I could not tell, Mr. King, by the light, no.

Q. What did you tell by? A. How is that.

Q. What did you tell by? A. Well, could tell just the shape of the horses, like that.

40 Q. Was that all the aid that you had to distinguish the men in the wagon, and the wagon and

LAFAYETTE COSMORE—Direct

everything else? Did it come from the light on the trolley car? A. Yes, sir.

LAFAYETTE COSMORE, sworn for the plaintiff, testifies as follows:

Direct examination by Mr. Gebhardt.

Q. Where do you live, Mr. Cosmore? A. Dover. 10

Q. Dover, you say? A. Yes, sir.

Q. Do you remember the night of the accident to Frank Doney? A. Yes, sir.

Q. Where were you? A. On the trolley car.

Q. What part of the car? A. I do not remember.

Q. Do you remember feeling the collision or not? A. Yes, sir.

Q. How did the car run from the school-house down to the crossing where the accident occurred?

A. I do not remember exactly the way it was running. 20

Q. How? A. I do not remember exactly the way it was running—the exact speed.

Q. As near as you can give it, was it running slow or fast, or middling? A. Well, I believe it was running at pretty good speed.

Q. When did you notice that it first slackened up? A. When I heard the whistle blow.

Q. How long was that before the collision? A. A very few seconds. 30

Q. How far did the car run after the whistle blew? A. Probably 50—75 feet.

Q. Did you get out of the car after the accident? A. Yes, sir.

Q. What did you see then? A. I saw this young man lying at the station.

Q. Where was the wagon? A. I did not notice the wagon.

Q. You did not notice the wagon at all? A. No, sir. 40

NO CROSS-EXAMINATION.

LAURA PULIS—Direct

MARY V. KAISER—Direct

LAURA PULIS, sworn for the plaintiff, testifies as follows:

Direct examination by Mr. Gebhardt.

Q. Where do you live, Mrs. Pulis? A. Dover.

Q. You remember the accident to Frank Doney?

10 A. Yes, sir.

Q. Where were you? A. I was on the back of the trolley.

Q. What? A. On the trolley.

Q. Just tell the Court and jury how the trolley ran down the hill from the school-house until it got to the point where the accident occurred? A. Well, It seems it was going fast, to me.

Q. How? A. It was going fast.

Q. When did it first sound the whistle, if at all?

20 A. I don't remember hearing any whistle.

Q. When did it first slacken up? A. Just about as they were to hit the wagon.

Q. About the time they hit the wagon? A. Yes.

NO CROSS-EXAMINATION.

MARY V. KAISER, sworn for the plaintiff, testified as follows:

30 *Direct examination by Mr. Gebhardt.*

Q. Miss Kaiser, where do you live? A. Whar-
ton, New Jersey.

Q. What do you do? A. Stenographer in the Hercules Powder Company.

Q. What? A. Stenographer in the Hercules Powder Company.

Q. You remember the night of the accident to Frank Doney? A. Yes, sir.

Q. Where were you? A. On the car.

40 Q. What part of the car? A. The rear end.

EDITH O'CONNOR—Direct

Q. Where did you expect to get out? A. Whar-
ton Junction.

Q. Just tell, if you can, how the car ran from
the school-house to the crossing? A. Oh, I don't
know; it seemed to me fast.

Q. Seemed to you fast? A. Yes, sir.

10

Q. Where did it first slacken up? A. I could
not tell you.

Q. Well, did you notice the sound of the whistle,
or not? A. I don't remember anything about that.

Q. Well, did you notice the stopping of the car?
A. Oh, all of a sudden.

Q. All of a sudden; what effect did that have on
you as you sat in the car? A. I don't know.

Q. What? A. Not any, I guess.

Q. Not any? A. Oh, jarred just a little.

20

NO CROSS-EXAMINATION.

EDITH O'CONNOR, sworn for the plaintiff, testi-
fies as follows:

Direct examination by Mr. Gebhardt.

Q. Do you remember the time of the accident to
Frank Doney? A. Yes, sir.

Q. Where were you? A. On the car.

Q. Where did you come from? A. Kenvil.

30

Q. Where were you going? A. Home.

Q. Where was your home? A. In Dover.

Q. Will you please tell us how this car was run-
ning from the school-house down to the crossing
where the accident occurred? A. Why, it went
fast; I don't know just how fast.

Q. When did it first slacken up? A. Oh, I did
not notice it until it struck the wagon.

Q. Did you notice anything about the sounding
of the whistle? A. No; did not hear any whistle.

40

EDITH O'CONNOR—Cross RACHAEL COSLET—Direct

Q. Did you get out of the car after the accident?
A. No; I did not.

Cross-examination by Mr. King.

10 Q. When you say that the car was going fast, that is a relative word, isn't it? A. Yes.

Q. When you say going fast, with reference to a walk, can you tell me that, please, how fast you think the car was going? A. No, I am no judge of speed.

Q. You are not any judge of speed? A. No; I don't know.

I will now read the evidence of Emanuel C. Stark, (reads).

20 RACHAEL COSLET, sworn for the plaintiff, testifies as follows:

Direct examination by Mr. Gebhardt.

Q. Where do you live, Mrs. Coslet. A. I live at Mine Hill.

Q. Do you remember the night of the accident to Frank Doney? A. Yes, sir.

Q. As the car left Mine Hill that night, where were you? A. I was out in my yard taking down the washing.

30 Q. Did you see the car come past the school-house? A. Yes, sir.

Q. Just tell whether, as far as you saw, the car, what it was doing, how it ran? A. It ran very fast; it sounded to me as if it was going in jumps; I expected to see the car jump the track.

Q. Did it stop at the school-house? A. No, sir.

Q. Did you hear it stop at all? A. I heard it stop when it was down at the Gardner's Corner, when it struck something.

40 Q. What did you hear? A. Well, I heard the

GEORGE WHITMORE—Direct

whistle and in a few moments it seemed as if it struck something and stopped instantly.

Q. Can you tell whether it stopped before that or not? A. No, sir; not to my knowledge.

NO CROSS-EXAMINATION.

GEORGE WHITMORE, sworn for the plaintiff, testifies as follows:

10

Direct examination by Mr. Gebhardt.

Q. Where do you live, Mr. Whitmore? A. Mine Hill.

Q. What do you do? A. Carpenter.

Q. You know Frank Doney? A. I do.

Q. How long have you known him? A. Oh, probably ten years; maybe more.

20

Q. Did you work with him some time last winter? A. He worked for me.

Q. Where? A. I was erecting a house.

Q. What time was it? A. I think in December.

Q. Just state whether he was able to work or not?

Mr. KING—That is a conclusion? I object to it.

THE COURT—Yes, I think so.

30

Q. Well, state how he worked there? A. Well, he could not demand a month's pay—

Mr. KING—I object.

THE COURT—No, not what he could not do; state how he worked.

Q. How do you want me to answer that question?

THE COURT—Describe whether he worked, the manner of his working.

40

GEORGE WHITMORE—Direct

WITNESS—Well, he could not—

Mr. KING—I object.

THE COURT—No, not what he could not do.
How did he work? That is what the
Senator is asking you?

10

WITNESS—Well, if you want me to answer
that question, I cannot; that is all.

Q. Well, did he work?

THE COURT—You cannot have anything else
on your mind; put your mind on the
question that the Senator asks. How
did he work? We don't want your con-
clusions.

20

WITNESS—He really done it to the best of
his knowledge.

Q. Well, did he work steadily or not? A. He
did.

Q. And for how long? A. Well, he worked for
me every day that I had work for him.

Q. What kind of work did he do? A. Mixing
concrete and he helped me carrying lumber and
doing a different lot of jobs that I wanted done.

30

Q. Did he work right straight along, every min-
ute, like an ordinary person could, of his age? A.
Yes.

Q. What did you pay? A. Ten cents per hour.

Q. Ten cents per hour? A. Ten cents an hour.

Q. Was that the ordinary wages?

Mr. KING—I object.

A. No sir.

40

Mr. KING—I object.

GEORGE WHITMORE—Direct

THE COURT—I will let it stand.

Q. Why didn't you pay him the ordinary wages?

Mr. KING—I object.

THE COURT—I will overrule that.

10

Q. What are the ordinary wages?

Mr. KING—I object. That doesn't enter into this case.

THE COURT—How do you think that is relevant.

Mr. GEBHARDT—I want to show that the boy earned at that time, not the ordinary wages: received under the ordinary wages—to show the loss of his—not the earning power then, but—how it effected him.

20

THE COURT—I do not understand that the boy before this had been skilled as a carpenter. He was evidently a driver of teams. It isn't at all likely that he learned carpentering, because he is not a carpenter.

30

Mr. GEBHARDT—That is not the point. I don't want to show his skill as a carpenter. I want the man to state the the kind of work that this boy was doing. Was that regular wages or not.

Mr. KING—I object.

THE COURT—I will overrule that question.

Q. What were the regular wages?

40

ALONZO M. MURPHY—Direct

Mr. KING—I object to that question.

Q. Did you have men who did this kind of work?

A. I have.

10 Mr. KING—I object; first, because there isn't any regular wage shown; next, because it has no bearing upon this case, and next because there is no—

THE COURT—I do not think it is admissible, Senator.

Mr. GEBHARDT—Your Honor will grant me an exception or objection?

THE COURT—Yes.

20 ALONZO M. MURPHY, sworn for the plaintiff, testifies as follows:

Direct examination by Mr. Gebhardt.

Q. What do you do, Mr. Murphy? A. Laboring work.

Q. Have you worked with Frank Doney since the accident to him? A. Yes, sir; I did.

30 Q. What at? A. He was building a cellar for Mr. Whitmore, mixing concrete, building a cellar wall.

Q. What part of the work did Frank Doney do? A. He was helping me.

Q. What did he do? A. Well, he was trying to mix and he could not.

Mr. KING—I object; I move to strike it out.

THE COURT—Strike that out; not what he could not do. Just tell what he could do.

40 WITNESS—He was working along with me.

GEORGE WHITMORE, recalled—Direct

Q. Well, how did he work? A. Well, he worked all he could work; he could not work any more.

Mr. KING—I move to strike that out.

THE COURT—Yes, strike that out. How did he work? How he could not work is not the way he worked. 10

WITNESS—He worked away and done the best he could.

Q. When was this, Mr.—

Mr. KING—I move to strike out the last part.

THE COURT—Yes, I will strike out the last part.

A. In November. 20

THE COURT—Describe how the man worked. You can tell how he worked. In what way did he do his work, that is what the Senator wants to know?

Q. Can't you say that, Mr. Murphy? A. He really done all he could do, tried to work all he could—

Mr. KING—Just a moment. I move to strike that out. 30

THE COURT—Strike that out. Senator, I am going to let you put the carpenter back again; I think I will admit that question.

GEORGE WHITMORE, recalled by Mr. Gebhardt.

THE COURT—Mr. King, it seems to me that the plaintiff claims diminution of earning capacity, and in view of that fact— 40

FRANK MURPHY—Direct

10 he claims that he could not work as he did before; that is in the testimony, and the jury might infer the reason of the reduction in his earning capacity was by reason of his injury; therefore it seems to me that the carpenter can state what the regular wages were, and what the wages were that he received, subject of course to your cross-examination as to whether, in other cases, he was not paid full wages. I understand the Senator to mean what the men in the same occupation were getting, which is the standard—men doing the same work along side of him.

20 Q. What were the wages of the other men, doing the same kind of work? A. Twenty cents per hour.

Mr. GEBHARDT—He did state what this boy was getting.

THE COURT—Yes.

Mr. KING—No cross-examination.

30 FRANK MURPHY, sworn for the plaintiff, testifies as follows:

Direct examination by Mr. Gebhardt.

Q. What is your business, Mr. Murphy? A. Laborer,

Q. Have you worked with Frank Doney? A. Yes, sir.

Q. Since his accident? When? A. In December.

Q. What at? A. Mixing concrete.

Q. How did Frank work? A. Not very good.

40 Q. What? A. Not very good.

Q. That don't give the jury much idea, Mr.

PRANK MURPHY—Cross

Murphy? A. Well, that is one idea. Sometimes he would go at it for a few minutes and then walk away, and then come back at it again, a little while, and go at it again, and then walk away again, and try something else, one thing and another, and then come back and help me again. 10

Cross-examination by Mr. King.

Q. What work was he doing with you? A. Mixing concrete.

Q. I know, but did you mix it with a mixer? A. No, with a shovel.

Q. How many hours did he put in a day? A. Nine.

Q. What did you get? A. Two dollars. 20

Q. A day? A. Yes.

Q. For the nine hours? A. Yes.

Q. What experience had you had? Were you a laborer the same as he? A. Yes.

Q. And each had the same kind of work? A. Yes.

Q. I want to call your attention to what Mr. Whitmore says that he worked over a month, like an ordinary person, is that what you saw? A. No, that ain't what I saw.

Q. That is not what you saw. What did he do when he left the work? A. When he left mixing concrete, you mean? 30

Q. Yes? A. Well, going around and picking up some stones and putting them in; small stones.

Q. Did you want the stones in? A. Yes, sir.

Q. Was there anything out of the ordinary in doing that? A. No. We put in so much concrete, and then would go and get stones and then put them in, the two of us, after we put in so much. 40

Q. Was there anything wrong in his putting in

RICHARD DONEY—Direct

these stones? A. No, wasn't anything wrong, but he would have to wait until the two of us went at it.

Q. And for what? A. Until we got ready to put the stones in.

10 Q. That was the only thing? A. Yes, the only thing.

Q. Is that all that you noticed about it? A. That is all.

RICHARD DONEY, sworn for the plaintiff, testifies as follows:

Direct examination by Mr. Gebhardt.

Q. Mr. Doney, are you the father of Frank Doney?

20 A. Yes, sir.

Q. Were you regularly married to his mother?

A. Yes, sir.

Q. How long before the boy was born? A. Six years.

Q. How? A. Married six years before this boy was born.

Q. In a general way, state to the Court and jury what kind of health Frank had before this accident? A. Always a healthy boy.

30 Q. Do you know whether he had all his teeth or not? A. I certainly do.

Q. Well, had he? A. He had a full set of teeth.

Q. What kind of teeth were they? A. Solid, sound in every way.

Q. How old is the boy now? A. 21 years old the 25th of last March.

Q. What had he done in the way of working before the accident? A. Well, he worked in driving a store wagon; worked in the Dover Works, labor work; labor in general.

40 Q. State whether he ever worked with you or

RICHARD DONEY—Direct

not? A. Well, he never worked with me, but I offered him work.

Q. Well, what do you know about his ability to do manual labor? A. Well, he did very stout manual labor; that is, before he got injured; never heard of any complaints, anything of that sort.

10

Q. Where were you the night he was injured? A. I was over to the house, just got home, and word came that he was injured.

Q. When did you first see the boy after he was injured? A. Well, I don't suppose he was in the house not over 5 minutes before I saw him.

Q. Well, what condition was he in in a general way? Tell all about the matter? A. Well, I considered he was in an unconscious condition when I seen him; he spoke—

20

Mr. KING—Just a minute; I move to strike that out.

Q. Tell what you saw.

THE COURT—Strike it out.

A. When I came in, he laid on the lounge, groaning and moaning and seemed to be in great pain.

Q. State what he did? A. He did not seem to recognize anyone, or take notice of anything at all whatever, and then he continued that way during the night.

30

Q. When did he first seem to recognize you? A. He recognized me the next morning.

Q. What time? A. Well, I should judge about between 8 and 9 o'clock—and says to me, "Pa—

Mr. KING—Wait; wait.

Q. Never mind what he said. Who brought him home. A. Mr. Roberts and Mr. Provost.

40

RICHARD DONEY—Direct

Q. How did they bring him home? A. In an automobile.

Q. Did you see them bring him into the house?

A. No, sir; never saw them bring him in the house, but they passed me on the road.

10 Q. Was he home before you got home? A. Sir?

Q. Was he in the house when you got home? A. Yes.

Q. Your boy? A. My boy was lying on the lounge when I got back to the house.

Q. What doctor, if any, came with him? A. Doctor Costello came up there the next morning.

Q. Wasn't he home that night? A. No, sir; he was taken to Doctor Costello's office.

Q. Was he your family physician at that time?

20 A. My family doctor was in Newark.

Q. Who was he? A. Doctor Cook.

Q. How long did Doctor Costello continue to attend him? A. Just that one visit.

Q. Why didn't he continue longer? A. Because I did not think he would use my family right—

Mr. KING—Wait; it doesn't make any difference whether Doctor Costello did or not.

30 THE COURT—Why do you think that of importance?

Mr. GEBHARDT—This is the family physician.

THE COURT—That is already shown.

Q. Who was Doctor Cook? A. My family doctor.

Q. Did you look into the boy's mouth after he came home the next day? A. What is that?

40 Q. Did you look into the boy's mouth after he came home the next day? A. After he came home? He was already home.

RICHARD DONEY—Direct

Q. Well, I say, did you look into his mouth the next day? A. Yes, we looked in his mouth.

Q. Just describe to the Court and jury the condition that the boy was in, about his head? A. Well, when the doctor came, his face was swollen up because the mouth was just so as you could see; it was swollen so; all the side of his face here (indicating); I think on his left, or on his right side there indicating anyhow the side of his face was all cut and scratched, and a bad cut right in his chin, and bleeding at the mouth very rapidly; where he laid on the lounge, the pillows were all saturated with blood, where it run out of his mouth. He did not seem to know anything, or recognize anything or know he was hurt until the next day; it was three or four weeks before he could open his mouth and chew anything at all.

THE COURT—One of the jurors wants to know if you observed about his teeth the next day?

WITNESS—Well, yes; we seen that the teeth was gone.

Q. Describe the condition the boy was in for the next two or three months? A. The next Tuesday following?

Q. The next two or three months following? A. Well, he laid in my house; did not go out at all. When the weather got fine, about around the latter part of February, the doctor ordered him to walk around out in the air; that probably he would be better; and he had been out of the house from the time that he was ordered out until the latter part of February. He took a walk with his mother one afternoon to one of the neighbors there, and just about—

RICHARD DONEY—Direct

10 Q. Don't tell anything that you did not see. Don't tell what your wife told you, or anybody else; just what you saw yourself? A. That is the way he acted all the time that he was in the house; he would walk around a little more and gradually increase; in cloudy whether or anything of that sort he stayed in the house; did not go out at all.

Q. When did you try to put him to work? A. I tried to get him to work in the month of May, the latter part of May or near the first of June.

20 Q. What did you try to get him to do? A. Well, he wanted to do something; I had a piece of road to fix up, to look after; I offered to give him that and pay him the same as the rest of the men was getting; I offered him for to go into the garden, spade up some of the garden for me.

Q. Did he do any of these things? A. No, he tried to spade the garden, but could not do it.

Q. What kind of disposition had the boy before he was hurt? A. Very mild, quiet disposition.

Q. How has it been since? A. Very fierce.

Q. In what way? A. Well, he gets excitable, and do things and say things that I did not think was right.

30 Q. That don't give the jury much information? A. Well, he would flare up without any provocation whatever; sometimes in those spells, he might—

Mr. KING—No, it isn't what he might do.

Q. What did he do, not what he might do? A. That is what he is doing; he would go out and walk around and come back just as nice as he ever was, after those spells, excitable spells, and then go out. I did not hardly realize what he was doing.

40 Mr. KING—I move to strike that out.

RICHARD DONEY—Cross

THE COURT—Yes, strike it out.

Q. When did he finally go to work? A. He went to work I think it was about somewhere last February, 1915.

Q. Did you send him away from home last summer? A. I did not. 10

Q. Did he go away from home last summer? A. He went away over to my brother's for a while, yes, sir.

Q. What does your brother do? A. He kept him there.

Q. I say what does your brother do? A. He is a farmer, milkman.

Q. How long was he over there? A. I could not say just this minute how long he was there; I could not just say how long it was. I know it was several weeks. 20

Q. Were you anxious or not for the boy to get back to work? A. I was very anxious—

Mr. KING—Just a moment. Would that make any difference?

THE COURT—I will overrule the question.

Q. How long had the boy worked before this accident? How long had he worked away from home? A. He went to work somewhere around 16 years of age. 30

Q. What kind of a worker was he before the accident? A. I never heard any complaints of him at all.

Cross-examination by Mr. King.

Q. Has he been very fierce since the accident in May? A. Speak a little louder? 40

RICHARD DONEY—Cross

Q. Has he been very fierce since the accident in May? A. Has he been fierce?

Q. Yes; you said that he had a mild disposition, and then after the accident he got to be very fierce? A. I think if you kept him on there a little longer, he would have showed it to you.

10 Q. It was just about to come, was it? Was he just about to exercise that fierceness? A. Well, so far he ain't shown so much fierceness?

Q. Since he has been in Court, there hadn't been anything about him except being a mild-mannered boy, has there? As you saw him sitting there, there hasn't been anything fierce about him? Hasn't he been mild-mannered, and everything else? A. Right, yes.

20 Q. Have you any other children except this one? A. Have I got any more?—yes.

Q. Yes. A. Yes, sir.

Q. Don't you believe when a boy gets to be—well, from 18 to 20, that he begins to feel his oats and wants to fight against the old man, as they call him? Don't they all do that? A. I have never had anyone yet.

Q. Have you any children, any boy coming on to be 18 or 19, that did not think he knew a million times more than his father? A. No, sir.

30 Q. They all do, don't they? A. All obey their father.

Q. Do your children obey you? A. Yes, sir.

Q. Don't they think they know a lot more than you? A. I don't know.

Q. Don't they hate to be crossed? A. Not very much.

Q. When you tell them to do something they don't want to do, don't they snarl about it and get nasty and mad? A. No, sir.

40

ELIZABETH DONEY—Direct

Q. Yours don't? They are different from mine.
A. They are the exception then.

ELIZABETH DONEY, sworn for the plaintiff, testifies as follows:

Direct examination by Mr. Gebhardt.

10

Q. Mrs. Doney, are you the mother of Frank Doney? A. Yes, sir.

Q. Were you regularly married to your husband?
A. I certainly was.

Q. How long ago?

THE COURT—Is there any issue about that, Senator?

Mr. GEBHARDT—I am naturally anticipating— 20

THE COURT—Unless he tries to prove the contrary, why waste time on it? This is your son by this marriage?

WITNESS—Yes, sir.

Q. Have you been at home since the accident in November, 1913? A. I certainly have.

Q. Now, what condition of health was Frank in before the accident in 1913? A. Well, he had good health, as far as health is concerned. 30

Q. What have you got to say about his teeth before the accident? A. He had good teeth; never had one pulled or never had a tooth ache, to my knowledge.

Q. What have you known since the accident about his teeth? A. Well, he has lost some teeth.

Q. Were you home when he was brought home that night? A. I certainly was. 40

Q. How did they get him into the house? A.

ELIZABETH DONEY—Direct

Well, Mr. Ford and Mr. ——— brought him in, Mr. Provost.

Q. How did they bring him in? A. Well, he was standing up with the assistance of those three.

10 Q. What was done with him after you got him in the house? A. When they brought him in they wanted to put him right to bed; I said no.

Q. Never mind what you said; what was done. A. Well, they brought him into the dining room.

Q. Please state whether he seemed to know you or not? A. He did not.

Q. When did he first seem to know you? A. Well, he recognized me for a short time, and then would go off, unconscious; I don't know what you call it.

20 Q. Well, how long did that continue? A. Well, for some time, and then would rally again, and go off again, and twitch.

Q. I say how long did it continue? A. Well, for all night that way.

Q. When did he finally come to and seem to be himself? A. The next morning.

30 Q. Now, what condition, as far as hurts are concerned, was he in when they brought him home and was he in for the next week or two? A. Well, his face was scratched and bleeding, and swollen very bad; his arm was hurt, and his limbs hurt, bruised; and his back was bruised.

Q. Is that all you can tell about it? A. Yes, that is all.

Q. How? A. All that night.

Q. How long did it take the swelling to come out of his face? A. Oh, after several weeks, the swelling went down.

40 Q. How long was he in the house? A. Three months.

Q. Just tell the jury in a general way now, what

ELIZABETH DONEY--Direct

condition he was in during those three months? A. Well, he would have these dizzy spells.

Q. What do you mean by those dizzy spells? A. Well, seemed to go off; I thought unconscious.

Q. Tell the jury what he would do when he would go off unconscious? A. Well, at night, up in bed, and the day time, he would have them, and once he fell on the ground. 10

Q. Just describe that to the jury when you looked at him, when he fell on the ground? A. I did not know whether he fell over or laid down; I called to him; after a while he came in there; I said, "What is the matter?" He said, "I had a dizzy spell," and twitched.

Q. You saw him go over again? A. Yes, the next morning. 20

Q. Describe that to the jury? A. The next morning I was preparing to iron, had a hot fire, and as he stood by the stove, he toppled over; I grabbed him, seized him and sat him on a chair; he twitched; I thought he was unconscious; twitched and that. After he got out. he knew nothing of this spell.

Mr. KING—I move to strike that out.

THE COURT—Yes, strike that out.

Q. How long did these things occur after the accident? A. Well, it was more frequently after three months when he was confined to home; when he was out; I could not tell. 30

Q. You spoke of him in bed? A. Yes.

Q. Just describe what you noticed in bed? A. Well, at night he would holler out. Of course, I would go to him, arouse him and ask him what was the matter; he would make no reply. I supposed he was unconscious; and after he come out of those spells, he knew nothing of them. 40

ELIZABETH DONEY—Direct

Mr. KING—I move to strike that out. That has been stated twice.

THE COURT—Yes, it will be stricken out.

10 Q. Don't tell what he knew. You can only tell how he appeared. A. It appeared to me as if he was unconscious.

THE COURT—It appeared to you as if he were unconscious.

WITNESS—I said that the last time.

Q. Did you notice anything special or particular about his mouth? A. Yes, his mouth was swollen very bad and cut.

20 Q. I mean when he had the spells? A. Yes, he foamed at the mouth.

Q. What? A. He foamed to the mouth.

Q. How long would these spells last? A. Well, I did not exactly time them.

Q. Oh, well, an hour, five minutes or a week or what? A. Yes, must be along that, five minutes; more than that, wouldn't it.

Q. Did you see him attempt to work after the accident? A. Yes.

30 Q. When did you see him first attempt to work? A. He attempted to spade the garden for his father; he saw he could not do that.

Q. Well, how did he get along with it? A. Not very good; after he complained of his back.

Q. Did you see him recently attempt to lace up his shoes? A. Yes, sir.

Q. Where was that? A. In the kitchen.

Q. Where were you? A. I was in the dining-room and he was in an adjoining room.

40 Q. How did you come to see him? A. Well, I

ELIZABETH DONEY—Cross

heard him talking and asked him what was the matter; he said he could not stoop over—

MR. KING—Just amo ment.

Q. Don't tell what he said at all. Have you watched him when he tried to bend over, when he did not know that you were watching him? A. I certainly have. 10

Q. What did you observe? A. He could not do it.

Q. Could not do what? A. Could not bend over as he did before he was hurt.

Q. Well, what did you observe about it? How did he act? A. He acted as if his back bothered him.

Q. Now, have you observed any change in his disposition and temper since the accident? A. Yes, sir. 20

Q. What? A. Very irritable.

Q. How was he before the accident? A. Well, he was very even tempered boy before the accident.

Q. What special things have you seen him do since the accident, of that character? A. Well, he would—if you understood to cross him, he would show a very irritable temper.

Q. Mention some special time in that connection? A. Well, one Sunday he got irritable at his brother and threw a fork across the table at him, or a plate. 30

Q. Did he ever do anything of that sort before the accident? A. No, sir.

Cross examination by Mr. King.

Q. Mrs. Doney, you want your boy to have as large a verdict as possible, don't you? A. I ain't thinking nothing about the verdict, Mr. King.

Q. That is not what I asked you. If he gets a verdict, you want him to have as large a verdict as 40

ELIZABETH DONEY—Cross

possible, don't you? Is that true? A. No, it isn't.

Q. What? A. No—

Q. When we tried this case before, in October,—before, whenever it was—did you mention anything about this boy's twitching? A. I mentioned about his being unconscious.

10

Q. No, no—

THE COURT—Just answer the question. Did you mention anything about the twitching?

A. No, I did not.

Q. As a matter of fact, had he been twitching before that time? A. He certainly did, yes.

20

Q. Have you seen this expert that is to be introduced in this case—what is his name, Senator?

MR. GEBHARDT—Doctor Graham.

MR. KING—Where is he, in Court?

MR. GEBHARDT—Yes, sir.

Q. Have you seen Doctor Graham, that man over there (indicating)? A. Yes, sir.

Q. Have you been talking with him? A. I talked to him, yes, sir.

30

Q. You did not see Doctor Graham until after this trial was over before; you have seen him since the other trial—the doctor? A. Yes.

Q. How many times have you seen him? A. Once.

Q. When was that? A. Yesterday.

Q. Did the doctor ask you whether your boy had twitched? A. He asked me how he acted; I told him the best I knew how.

40

Q. Did he ask you whether your boy twitched?

ELIZABETH DONEY—Cross

Don't look over there, please? A. I ain't looking over there.

Q. You looked over this way, please—

MR. GEBHARDT—Answer the question.

10

WITNESS—Well, I will look over there if you want me to.

MR. GEBHARDT—Look at the jury and state all you know.

Q. Now, did this man ask you whether your boy twitched? A. He asked me how he acted.

Q. Since he has been in Court, has he twitched one single time? Has he, that you have seen? A. Well, he has had a great deal to get over.

20

Q. Since he has been in Court, has he twitched once? A. No, I don't know as he has.

Q. What did he twitch, if he used to twitch? What was that, head, hands, nose, feet or what? A. His hands.

Q. Has he twitched in his hands sitting in this Court for two days that you saw? A. No.

Q. Is he now, as he sits before this jury, a fair example of his ordinary condition? Is that right? A. Yes.

30

Q. Did this expert, so called, say to you, if the boy did twitch, what would be the result of it, what he thought was the matter with him? A. Yes.

Q. What? A. Yes.

Q. That is what I thought. Now, what did this man from New York, whoever he may be, tell you about this boy twitching? A. Why, he told me—asked me how he acted, and I told him. He said, "Well, them is symptoms of spells—"

40

Q. Of what? A. Of fits.

ELIZABETH DONEY—Cross

Q. Has he had any fits? A. When he had those spells, I told him then I thought he was unconscious.

Q. Just a moment. Has he had any since? A. I just answered the question.

10 Q. The doctor wanted you to see the boy, Frank, have a fit, didn't he, twitch? Didn't the doctor tell you that he wanted to see him have a fit? A. Didn't tell me he wanted to see how he had it, no; he did not.

Q. At any rate, when you were down here before, you knew very well that the boy twitched, but you did not tell the jury, did you? A. I did not think anything of it then.

20 Q. Now, you think about it. When did the boy cease twitching? A. Well, he continued that way for several months.

Q. When did he cease, after five or six months, do you think? A. I could not just tell the time.

Q. Was it five or six months? You are the mother; you ought to know? A. Yes, I am the mother, but I ain't got time to put down the dates. The physician came in and marked it down every day.

30 Q. That may be all right for you; but it will help your case if you will only tell us about it. What was it, five or six months, do you think? A. It occurred more frequently after three months that he was in the house.

Q. Then when the boy got out, did you notice that that disappeared? A. Not at all times, it did not.

Q. When did you notice the last one? A. Well, it wasn't so long ago; it got more frequently, when he was asleep—

40 Q. Now, don't do that; please don't say that.

ELIZABETH DONEY—Cross

Surely you can tell me? A. What is the question you asked?

Q. Don't you know? A. No, I don't.

Q. When did you notice the last twitching?

THE COURT—When did you last notice the twitching? 10

Q. Beg pardon; yes, when did you last notice the twitching? When did you notice the last twitching? A. I could not just tell you that.

Q. About how long ago? A. I could not tell you that.

Q. Within a year? A. Oh, yes.

Q. What? A. Yes.

Q. When? Now, when, if they were within the year? A. It was when he was asleep. 20

Q. I asked you when, not where? A. I could not tell you the date.

Mr. GEBHARDT—As near as you can, he wants it; that is all.

Q. You have answered your counsel better than you have me. Now, will you answer me? A. Well, some months before; I could not just tell you the date. 30

Q. When before that? A. I could not tell you, just the date.

Q. Since three months, how many times? A. I could not tell you how many times in three months.

Q. About how many times? A. I could not tell you, just how many times.

Q. Will you guess at it? A. I don't propose to guess in this case.

Mr. GEBHARDT—Just answer the question as best you can. 40

ELIZABETH DONEY—Cross

Q. Madam, I want to be courteous, but I am not going to let the case stand in this way; that is all there is to it. How many times did he twitch for three months?

10 Mr. GEBHARDT—Which three months?

THE COURT—That is a plain question, the only three months that she has spoken about.

A. Every night that he had those spells and sometimes he would have them two or three times in a night. I supposed he was unconscious.

Q. Of what did those spells consist? What did he do? A. Why, holler out in the night and I would
20 get up and go to him, and he would be all of a twitch.

Q. Show me what you mean by twitching? A. Jerk of the hand.

Q. Is that all, a jerk? A. He always made—

Q. Now, don't do that. What else? You saw his hand twitch; won't you show me how it was done? A. Well, grasp his hands.

Q. By grasp, you mean one hand with the other? A. Oh, no.

30 Q. What would he do? A. Just grasp his hands and held them that way (illustrating).

Q. And then what else? A. And foaming at the mouth.

Q. Each time he did this, he foamed at the mouth? A. Very nearly every time.

Q. When you were before the jury the last time, did you tell that Court and jury that this boy of yours foamed at the mouth at any time? Did you?

40 A. I don't think—no, I didn't tell them he foamed at the mouth, no.

ELIZABETH DONEY—Cross

Q. Why didn't you tell the Court and jury that?
A. Because when he had those spells. I thought he was unconscious.

Q. Why didn't you tell the Court and jury that? Why didn't you? A. I did not realize the condition the boy was in; that is why I did not tell.

10

Q. My goodness, woman, didn't you know what it was? Couldn't you see it, and weren't you here to tell us about it? A. I never thought about that; I thought it was caused by his injury.

Q. Was it froth as well as— A. No foaming, or froth.

Q. How many times did you see him froth at the mouth? A. Several times.

Q. Well, as many as how many? How many times? A. I could not just tell you how many times, but several times.

20

Q. Will you say six, ten, twenty or a thousand? Make it something? A. I should say six, then.

Q. During what intervals did you notice those frothings at the mouth? I mean what length of time from the time of the injury down? A. From the first or three months.

Q. Have you noticed it since? A. Yes, I have, here some short time ago.

Q. Where was he then? A. In bed.

30

Q. What had he been doing? A. Working; of course.

Q. What time was it? A. At night. What time of night, do you mean?

Q. Yes? A. It was after midnight.

Q. You went to see him? A. I certainly did.

Q. Anyone else there? A. No, sir.

Q. Where was your husband? A. In the bed.

Q. Did you call him? A. No, I did not call him every time—

40

ELIZABETH DONEY—Cross

Q. Now, don't say that. Did you call him this time? A. No, sir; I did not.

Q. Did you send for a doctor? A. No, sir; I did not.

10 Q. When was it, speaking about the month and day of the month? A. What?

Q. That this occurred? A. I could not tell you the date.

Q. Can you give me the month? A. It was along in February.

Q. Of what year? A. The last time, you mean?

Q. Yes? A. This last—well two or three months ago. I could not tell you just the month, the last time.

20 Q. What was the boy working at? A. Working at the Powder Works.

Q. Did he go to work the next day? A. He certainly did.

Q. Did you send for a physician to treat him? A. I did not.

Q. Did you call your husband, and arouse him? A. No, I did not.

Q. Did you arouse any other children in the house? A. No, I didn't.

30 Q. Madam, aren't you telling this to the jury because you have been talking with that man from New York, expecting that they will draw from your statement the fact that there is something the matter with his brain, isn't that true? A. No, sir.

Q. What did the doctor tell you was the matter with him? A. He did not tell me.

Q. What was this apoplexy that you spoke about a little while ago? We have had several diseases?

Mr. GEBHARDT—I don't think she said apoplexy.

ELIZABETH DONEY—Cross

Q. Was it apoplexy that you spoke about? A. I said I did not know what he called it.

Q. I thought you said epilepsy? A. Epileptic fits, or whatever they call it, I said.

Q. What did he call it? A. I could not just—

Q. What did he call it? A. I could not just tell you anything now, what he called it. 10

THE COURT—You used some word here.

Mr. KING—She used some word, yes; and I did not catch it.

THE COURT—What was the word that you used to mention it?

Q. Do you remember what it was? A. I do not.

Q. Notwithstanding that this man was your son, and notwithstanding that you were his mother and that you were interested in having him get a judgment, a trial took place in this Court House before the same Judge and jury; you were represented by Mr. Gebhardt, and I represented the Traction Company; and on that occasion you did not tell the Court and jury that your son had ever had one of these frothings at the mouth; is that right? A. No; I did not. 20

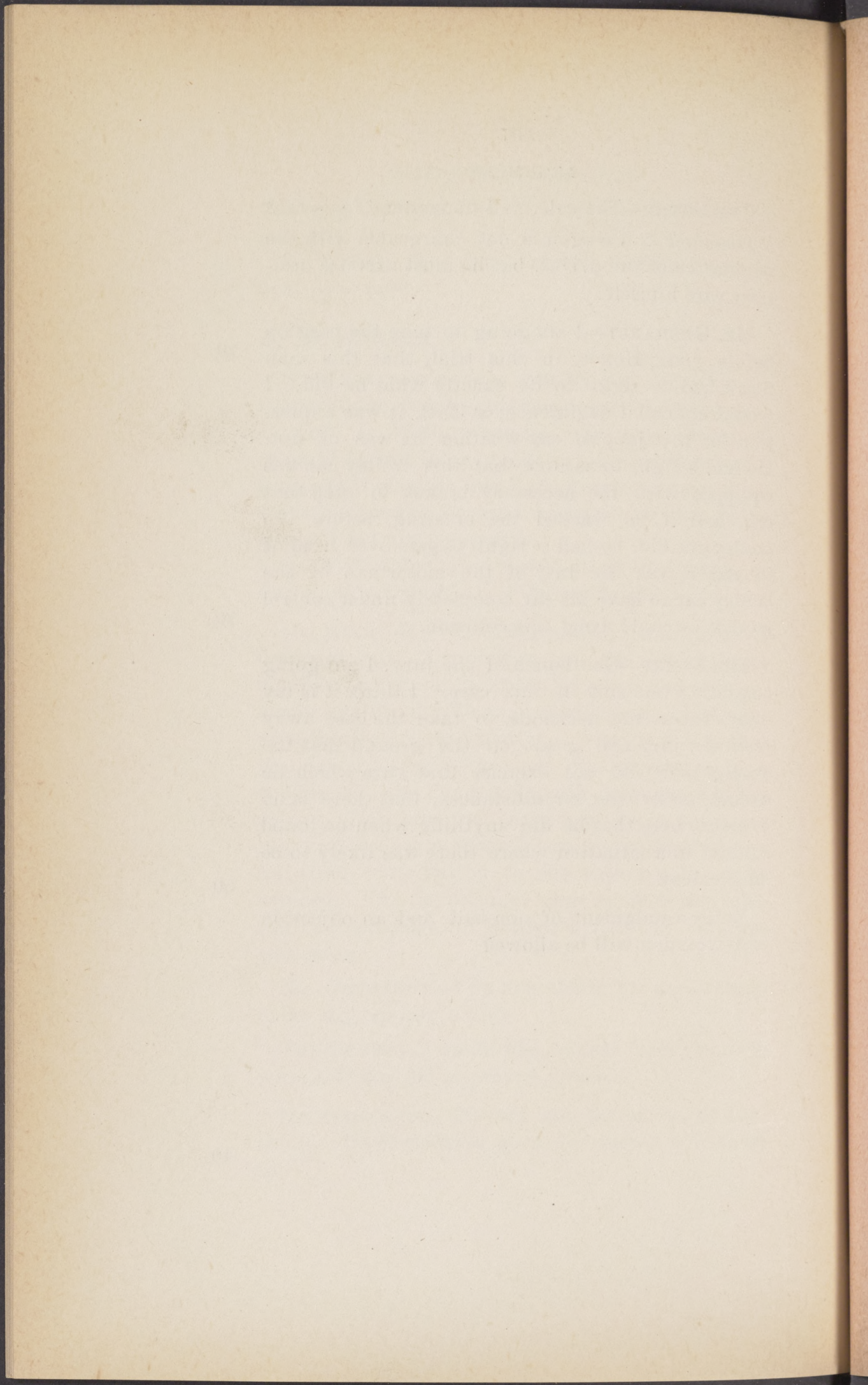
Q. And you did not tell either the Court or jury, under oath, that he ever had any of these frothings; did you? A. No, sir; because I thought— 30

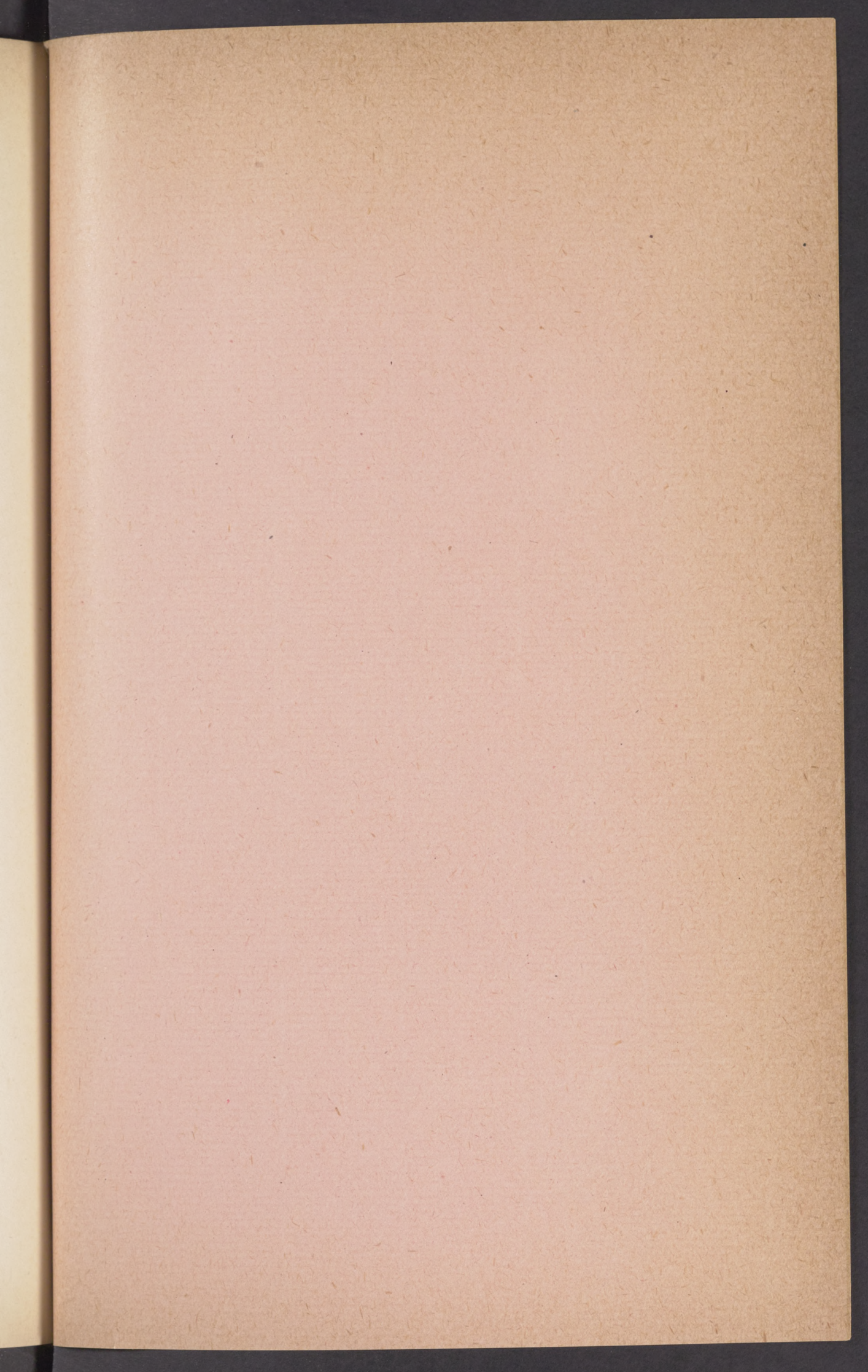
Q. No; just one minute, madam; was this doctor, now here, from over in New York, was he in Court then? A. He was not.

Q. Did you ever see the doctor before that other trial? A. No, sir.

Q. And these twichings, and these frothings, you now testify to, have you ever seen this physician from New York? A. Yes. 40

Q. And you know he is not going to testify in





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