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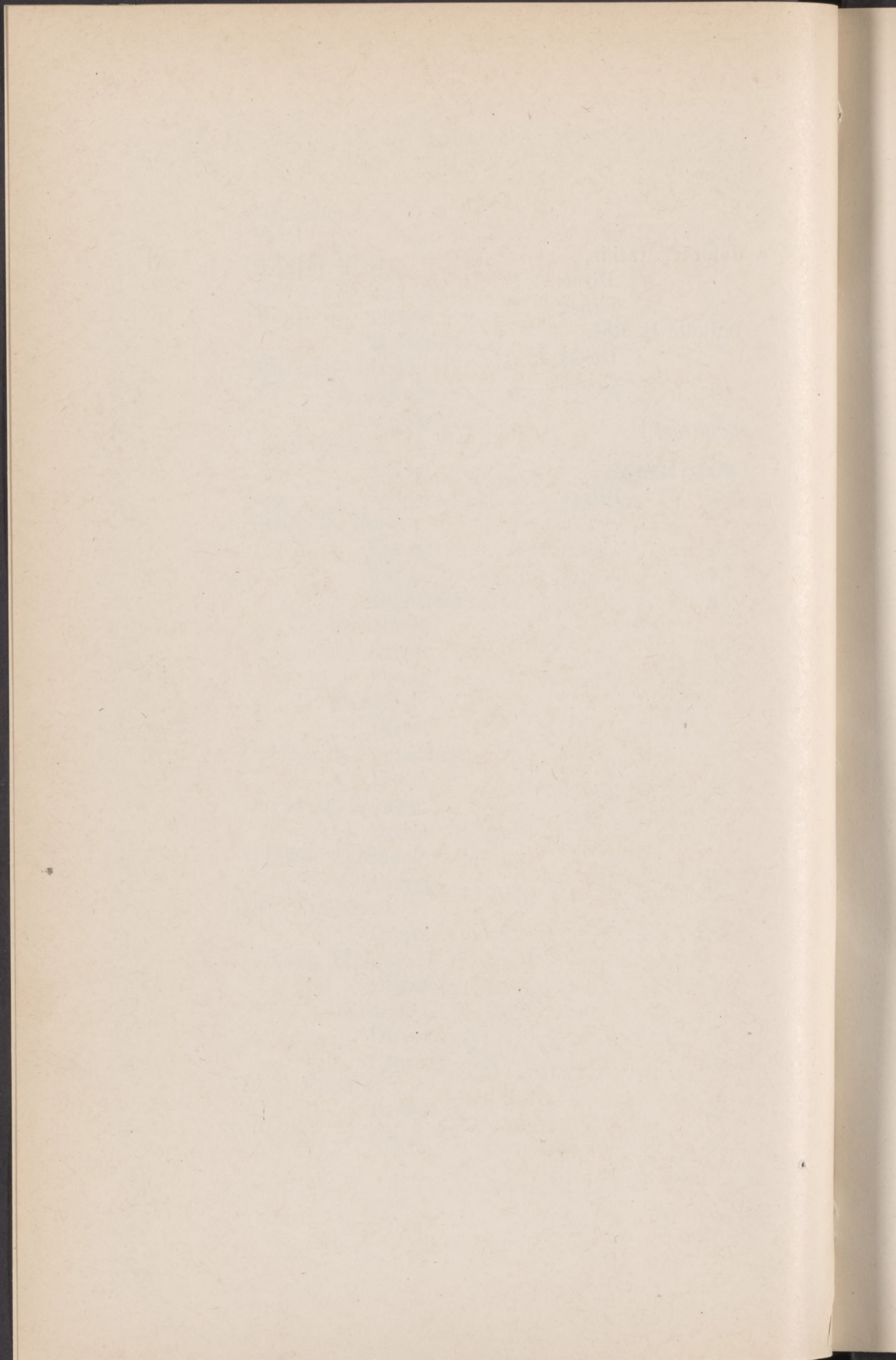
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New Jersey Supreme Court

State of Demand

ORANGE DISTRICT COURT

10

OF THE CITY OF ORANGE

HARRY SCHADEL,

Plaintiff,

vs.

IGNATZ HONIG and PUBLIC SERVICE RAILWAY COMPANY,
Defendants.

In Tort

20

Plaintiff demands from defendants the sum of Five hundred dollars (\$500.00) for the following reasons:

1. On the ninth day of December, 1923, plaintiff was lawfully driving his automobile along Bergen Street, near Watson Avenue, in the City of Newark, County of Essex and State of New Jersey. 30

2. On that day, at the place aforesaid, defendant, Ignatz Honig, by his servant, agent or employee, did operate his automobile along said street, in said city.

3. On that day, at the place aforesaid, defendants, Public Service Railway Company, by their servant, agent or employee, did operate their trolley car along Bergen Street, in said city. 40

State of Demand

4. Defendants, Ignatz Honig and Public Service Railway Company, by their servants, agents or employees, did operate their cars so negligently and so carelessly, that a collision took place on the aforesaid Bergen Street, at the place
10 where the plaintiff's automobile was being driven, with the result that the car of Ignatz Honig was thrown against the automobile of the plaintiff, doing considerable damage to the same.

By force of the collision aforesaid, plaintiff's automobile was badly damaged and rendered useless and greatly depreciated in value. Plaintiff has been compelled to expend a large sum of money for repairs to his said automobile, and was
20 for a long period of time deprived of the use of his automobile.

Plaintiff demands the sum of Five hundred dollars (\$500) from defendants, with interest and costs of this suit to be taxed.

MICHAEL BREITKOPF,
Attorney for Plaintiff.

Notice of Appeal

ORANGE DISTRICT COURT

HARRY SCHADEL,

Plaintiff,

vs.

IGNATZ HONIG,

Defendant.

10

To Michael Breitkopf, Esq., Attorney of Plaintiff:

Take notice that the defendant, Ignatz Honig, hereby appeals to the New Jersey Supreme Court from the judgment of the Orange District Court rendered in the above-stated action on the 29th day of July, One Thousand Nine Hundred and Twenty-five. 20

Dated, July 30th, 1925.

FRANK G. TURNER,
Attorney of Defendant. 30

40

Specification of Points on Appeal

NEW JERSEY SUPREME COURT

	HARRY SCHADEL,		Plaintiff,
10	vs.		
	IGNATZ HONIG,		Defendant.

The following is a specification of the points on appeal, with which the defendant is dissatisfied in point of law:

20 1. The Trial Judge erroneously charged the jury as follows:

“Either one or both of these defendants are liable.”

30 2. The Trial Court erroneously refused to direct a verdict in favor of the defendant, Ignatz Honig, on the ground that no negligence has been shown on the part of Mr. Honig.

3. The Trial Court erroneously refused to direct a verdict in favor of the defendant, Ignatz Honig, on the ground that the accident was caused entirely by the Public Service Railway Company.

4. The Trial Judge erroneously refused to order a judgment of non-suit in favor of the defend-

Specification of Points on Appeal

ant, Ignatz Honig, on the ground that no negligence had been shown on his part.

5. The Trial Judge refused to allow the attorney for the defendant, Ignatz Honig, to ask on cross-examination and require an answer from the witness, William Terhune, called on behalf of the Public Service Railway Company, to the following question: 10

“You say you never take money out of the box while the trolley car is moving?”

FRANK G. TURNER,
Attorney and of Counsel for
the Defendant-Appellant, 20
Ignatz Honig.

Testimony

ORANGE DISTRICT COURT

	HARRY D. SCHADEL,	} Plaintiff,
	vs.	
10	IGNATZ HONIG and PUBLIC SERV-	} Defendants.
	ICE RAILWAY Co., a corpora-	
	tion,	

Transcript of stenographer's notes of evidence taken in the above-entitled matter, before HON. WILLIAM V. RAFFERTY (sitting for Hon. Daniel A. Dugan), Judge, and a jury, at the Orange District Court, Orange, N. J., on Wednesday, July 29, 1925, at ten o'clock A. M.

Appearances:

Michael Breitkopf, Esq., Attorney for Plaintiff.

Frank G. Turner, Esq., Attorney for Defendant, Ignatz Honig.

James O. Boyd, Esq., Attorney for Defendant,
30 Public Service Railway Company.

(William E. Davenport, stenographer, sworn.)

HARRY D. SCHADEL, plaintiff, sworn.

Direct-examination by Mr. Breitkopf:

Q. Mr. Schadel, you are the plaintiff in this suit? A. I am; yes, sir.

Q. On the 9th day of December, 1923, were you
40 the owner of an Overland automobile? A. I was.

Harry D. Schadel—Direct

Q. Where were you on that day? A. I was visiting friends on Bergen Street.

Q. Did you have any trouble that day? Was your car damaged? A. The car was wrecked, certainly.

Q. What time of the day was this, Mr. Schadel? 10

A. If I remember rightly, it was about two o'clock in the afternoon, as far as I can remember back.

Q. What happened to your automobile? A. Why, it was completely wrecked.

Q. Did you see the accident? A. I did not; I was visiting folks at the time.

Q. What drew your attention to the accident?

A. A terrible crash. I immediately went downstairs and looked at my car and it was completely wrecked at the time. 20

Q. How far from the point of the wreck was the house which you were visiting? A. Oh, approximately, I guess, about twenty-five feet or more.

Q. You were in the house, twenty-five feet from the car? A. About that, yes.

Q. And you heard this smash and went downstairs? A. Yes, sir.

Q. What happened to the car after it was smashed? A. Why, I had to have it towed in. 30

Q. Did you have it repaired? A. No, it wasn't worth while repairing.

Q. Then what occurred to the car? A. I had to sell it for junk; I called in a junk man.

Q. What did you sell it for?

Mr. Turner: I object; is that competent?

Mr. Breitkopf: Question withdrawn. You may cross-examine.

Harry D. Schadel—Re-cross

CROSS-EXAMINATION by Mr. Boyd:

Q. Did you have any conversation immediately after the accident, Mr. Schadel? A. Immediately after the accident?

10 Q. Yes. A. I don't think so. I couldn't say for sure, because we were going to make an appointment and we had to rush right off. We hired a cab.

Q. Didn't you make a statement immediately after the accident you blamed the driver of this other car that crashed into your car?

Mr. Turner: I object on the ground it is purely hearsay.

The Court: Yes, it would be hearsay.

20 Mr. Turner: I will withdraw the objection if Mr. Boyd wants to bring in hearsay evidence.

Q. Did you make that statement, Mr. Schadel? A. I don't think so. I think I just took the numbers and went on about my business.

CROSS-EXAMINATION by Mr. Turner:

Q. What year was this car? A. A 1923 Overland Country Club.

30 Q. Did you buy the car new or second hand? A. I bought it new.

Q. This car was then about how many months old? A. Well, from June to December.

RE-CROSS EXAMINATION by Mr. Boyd:

Q. Do you know what the maker's number of that car was? A. I do not now, any more; too much time has elapsed.

40 Q. Do you know when you bought the car? A. In the month of June.

William Heller—Direct

- Q. Of what year? A. 1923.
- Q. As a matter of fact, it was a 1920 Overland, wasn't it? A. No, it was bought off of Kain & Sanborn.
- Q. You do not know what the number of it was?
A. I do not. 10
- Q. Was it a four or a six-cylinder car? A. Four-cylinder.
- Q. A four-cylinder car? A. Yes, sir.
- Q. Had that car ever been in a previous accident? A. No, sir; not that I know of.
- Q. You say you bought it in June, 1923? A. Yes, sir.
- Q. And this accident happened— A. In December, 1923. 20
- Q. Did you buy the car new? A. Yes, sir; it was sold for new to me.
- Q. It was sold as a new car to you? A. Yes, sir.
- Q. Did it meet with any accident during the time you had it? A. No, sir; it did not.
- Q. Did you buy it from a dealer? A. Yes, sir; Kain & Sanborn.
- Q. Were they the agents for the Overland car?
A. They were at that time, yes. 30

WILLIAM HELLER, sworn on behalf of plaintiff.

Direct-examination by Mr. Breitkopf:

- Q. Mr. Heller, on the 9th day of December, 1923, did you witness an accident on Bergen Street? A. Yes. 40

William Heller—Direct

Q. Where were you at the time that that accident occurred? A. Coming up Watson Avenue towards Bergen Street, on the right-hand side.

Q. About what time of the day was it? A. About two o'clock; between two and three o'clock.

10 Q. Was it a collision you saw between the automobile of Mr. Honig with the Public Service trolley car? A. Yes.

Q. How far were you from the point of collision when you saw it? A. Close to Bergen Street, about twenty-five to thirty feet from the corner of Watson Avenue.

20 Q. What did you see occur there? A. I seen Mr. Honig's car come out from the curb and the trolley car hit it and drove it against Mr. Schadel's car and drove Schadel's car up on the sidewalk.

Q. How did Schadel's car look after the accident? A. Well, just from a glance, why, the body was all caved in and the wheels were bent. That is all I noticed at first glance. It was up on the sidewalk. I just looked at where it hit his car.

30 Q. What part of Honig's car was hit by the trolley car? A. Right at the door on the left-hand side.

Q. And Mr. Honig's car was thrown up against the left rear of Mr. Schadel's car? A. Yes.

Q. How fast was Mr. Honig's car going? A. He just started out from the curb.

40 Q. How fast was the trolley car going? A. I don't exactly know. The trolley car was coming over Bergen Street and I didn't see him until he passed the crosswalk and I guess he had already applied his brakes, but I don't know. I just seen him hit the car and he stopped. He stopped in about five or ten feet.

William Heller—Cross

CROSS-EXAMINATION by Mr. Turner:

Q. How far was the trolley car away from Mr. Honig's car when you think the trolleyman had applied his brakes? A. Oh, I don't know. It all happened so quickly, I don't know how far he was away when he applied the brakes. 10

Q. How far was the trolley car from Mr. Honig's car when you first saw the trolley? A. Oh, not ten foot, because the trolley car was coming over Bergen Street. After he passed the cross-walk was when I first seen the trolley car.

Q. How far had the trolley car traveled after you first saw it? A. I don't know. Not quite the width of the street.

Q. That would be thirty feet, would it? A. Well, not quite thirty. I would say about twenty. 20

Q. When you saw Mr. Honig's automobile, was it on the trolley tracks? A. It was just turning out into the trolley tracks.

Q. How far on the trolley tracks had he gotten when you saw him? A. How far into the tracks?

Q. Yes, how far out on the trolley tracks when you first saw him? A. About a foot and a half.

Q. Was Mr. Honig's car moving at the time the trolley hit him? A. Yes. 30

Q. You said slowly? A. Yes, sir; it must be slowly, because he started in first speed, I presume.

Q. In first speed? A. Yes.

Q. What kind of a car was Mr. Honig's car? A. An Overland coupe, four-passenger.

Q. Was he in the act of turning when he was hit by the trolley car? A. He had to turn, bear to the left a little, to pass Mr. Schadel's car.

Q. He wasn't straight on the street as yet, but 40

William Heller—Cross

diagonally across the street? A. Pulling out from in back of Mr. Schadel's car, yes.

Q. Were both of his front wheels on the trolley tracks? A. No, one was, the left wheel, about—well, three and a half foot in from the right-
10 hand track, and the other wheel was just outside of the right-hand track.

Q. The left wheel was about three and a half feet in and the right wheel hadn't gotten quite in yet? A. Yes.

Q. And that is when he was hit? A. Yes.

CROSS-EXAMINATION by Mr. Boyd:

Q. How do you know what the distance was be-
20 tween the front of the trolley car and the side of Mr. Honig's automobile when he pulled onto the track? A. As I said before, about ten or fifteen feet, no more than that. I could only see half of it when the trolley passed the crosswalk of Watson Avenue.

Q. After the trolley car came in contact with Mr. Honig's car, the motorman came to an immediate stop, did he not? A. No, he moved a little bit, because he pushed two cars.

30 Q. How far would you say, about? A. Nine or ten feet.

By Mr. Turner:

Q. This place where Mr. Honig was pulling into the street, that was about at the corner of Watson Avenue, about the street intersection of Watson Avenue? A. Yes.

Q. Watson Avenue runs into Bergen Street, but does not cross it, does it? A. No.

William F. Kirst—Direct

Q. Watson Avenue is a blind street, running into Bergen Street? A. Yes.

Q. And it was at that intersection, the south intersection of Watson Avenue? A. Yes.

Q. That would be about at the south street intersection of Watson Avenue and Bergen Street? 10

A. That would be the southwest corner if the street went straight across.

WILLIAM F. KIRST, sworn on behalf of plaintiff.

Direct-examination by Mr. Breitkopf: 20

Q. Mr. Kirst, what is your business? A. I am social investigator connected with the Overseer of the Poor Department, City Hall, Newark, N. J.

Q. As such you were in the vicinity of Watson Avenue and Bergen Street in December, 1923?

A. Yes, sir.

Q. Did you witness a collision there? A. Yes.

Q. Tell us in your own words exactly what you saw. A. I was going north on Bergen Street, about two or a little after two that Sunday afternoon, when I witnessed the collision of the Public Service trolley car striking Mr. Honig's car and pushing it into the rear of another car parked in front of 893 Bergen Street. Mr. Honig's car was jammed. His door was jammed and we had to use an iron bar to pry open the door—extract him. The trolley car usually stops at the north crosswalk of Bergen Street and Watson Avenue. This Sunday it failed to stop, and— 40

William F. Kirst—Cross

Mr. Boyd: I object.

Mr. Turner: I think that is proper. He said, "This Sunday it failed to stop."

10 Mr. Boyd: I object. There is no evidence to show any obligation on the part of the trolley car to stop at that place. There is nothing in the evidence to show it is a fire stop or anything else, because on this particular Sunday there were no passengers to get on or off and it would have no bearing on this case.

The Court: I will permit it to stand.

Mr. Boyd: I pray an exception.

20 A. (Continuing.) And Mr. Honig was in the act of pulling out from this curb to avoid the car parked in front of him, and as he did so, I don't think he was more than about that far inside of the track (indicating with two hands, about a foot and a half) when the trolley car hit him and drove him fifty feet—as the marks showed on the street—up against Mr. Schadel's car and drove that onto the sidewalk.

CROSS-EXAMINATION by Mr. Turner:

30 Q. Mr. Kirst, after the car of Mr. Honig's had been hit and driven fifteen feet, how far did the trolley car travel after that? A. Why, the trolley car must have been some fifteen or twenty feet from the other side of the north crosswalk. Mr. Honig's numbers are 887 Bergen Street, right opposite—directly opposite Watson Avenue, and it was driven from 887 as far down to 893 in front of the grocery store.

40 Q. Did you see what the motorman on this trol-

William F. Kirst—Cross

ley car was doing when he hit Mr. Honig's car?

A. That I did not.

Q. Could you see him plainly standing up in front of the car or could you see him at all? A. I didn't notice that.

Mr. Boyd: I object to that question as 10
leading and ask that it be stricken out.

The Court: There isn't any direct-examination about the motorman at all.

Mr. Turner: I will withdraw the question.

Q. When you saw the trolley car, were you in a position where you could see the motorman if he was standing in front of the trolley car? A. Yes.

Q. And did you see him? A. I didn't notice 20
him.

Q. If he had been in front of the trolley car, standing up there, was there any obstruction between you and the trolley car so you could have seen him? A. Absolutely none.

CROSS-EXAMINATION by Mr. Boyd:

Q. Where were you standing on the street? A. I was going north on Bergen Street. I came from 30
a delicatessen store on Custer Avenue, and I was in front of the candy store which was on the southerly corner of Watson Avenue and Bergen Street.

Q. Do you live in that vicinity? A. Yes, opposite 884 Bergen Street.

Q. And the accident took place in front of 887 Bergen Street? A. Yes, sir.

Q. What is your business? A. I am social in- 40

William F. Kirst—Direct

investigator, connected with the Overseer of the Poor Department, City Hall, Newark.

Q. Where does Mr. Honig live, do you know?

A. I believe his number is 887 or 885, one of those two numbers. He owns the property there and
10 has a little store.

Q. Was it his store you were in that day? A. No, I was opposite.

Q. You know Mr. Honig, don't you? A. Yes.

Q. How long have you known Mr. Honig? A. The last ten years or so. Since he had the little store down there.

Q. And that is how you came to come in this case, you saw the accident? A. I happened to see
20 the accident, yes.

Q. And you have known Mr. Honig for ten years? A. Yes, sir; I have lived in the neighborhood about ten years.

Q. When Mr. Honig's car pulled out, what was the distance between Mr. Honig's car and the trolley car? A. I didn't have a chance to measure the distance. In other words, he pulled out and he was struck.

By Mr. Turner:

30 Q. You say this car was some fifteen or twenty feet beyond the north line of Watson Avenue? Is that the north or south line of Watson Avenue? A. Mr. Honig's car was parked between the north and south crosswalk and he was driven over the south crosswalk from the north side.

Q. And how far beyond the south crosswalk of Watson Avenue do you say this trolley car stopped when you say the trolley car stopped the
40 other side of the south crosswalk? About how many feet beyond? A. Three or four feet.

Ray Kingsland—Direct

Q. That is the rear of the trolley car? A. No, that is the front of the trolley car.

Q. How far did you see the trolley car travel from the time you saw it? A. From the time it struck the automobile it traveled some fifteen feet.

10

Q. After it struck the automobile? A. Yes, after it struck the automobile, because it is from 887 to 893.

RAY KINGSLAND, sworn on behalf of plaintiff.

The Court: Perhaps it would be well to draw a little diagram so the jury might better understand.

20

Mr. Boyd: In giving this sketch to the jury, of course there are no distances marked on the sketch.

The Court: No, there are no distances at all, simply a rough sketch to get the lay of the land in your minds, but there are no distances or question of feet, because it is not a perfect sketch made by a surveyor. It is simply a rough sketch to get the lay of the land in your minds.

30

Direct-examination by Mr. Breitkopf:

Q. What is your name? A. Ray Kingsland.

Q. Mr. Kingsland, what is your business? A. Garage, dealing in motor cars.

Q. How long have you been in the business of

40

Ray Kingsland—Direct

garage and dealing in motor cars? A. A little over nine years.

Q. And in the course of nine years have you bought and sold second-hand automobiles? A. Yes, sir.

10 Q. Approximately how many second-hand automobiles have you bought and sold in nine years? A. I never kept actual track of it. At least 350 to 400.

Q. And purchased new cars? A. Yes, sir.

Q. Did you know the Overland coupe belonging to Mr. Schadel? A. Yes, I did work on it a day before it was smashed up.

20 Q. What work did you do on it that day? A. I tuned it up, the water jackets and packed the pump.

Q. Did you make a thorough examination of the car that day? A. Yes, sir; I did.

Q. How much was that automobile worth that day?

Mr. Boyd: I object to that question on the ground he is not familiar with the condition of the automobile.

Q. The day before the accident?

30 Mr. Boyd: I object on the ground he did not see it before the accident.

The Court: He said a day before the accident it was in his garage and he did some work on it that day.

Q. What was it worth, in your opinion, that day? A. Well, it was a car about six months old and it was worth between five and six hundred dollars.

40 Q. Did you see it after the accident? A. Yes, I towed it in.

Ray Kingsland—Cross

Q. Did you make an examination of it? A. I did. Mr. Schadel asked me to fix it up and I said, "Mr. Schadel, it isn't worth fixing up. It is completely demolished." The walls were broken, the chassis bent, the engine snapped completely off the transmission, and the castings were snapped 10 out.

Q. How soon after the accident were you there? A. Well, about eight o'clock at night.

Q. What would you say the automobile was worth after the accident? A. It wasn't worth taking away.

Q. How much in money? A. Twenty or twenty-five dollars, whatever the junk price of motor cars is. 20

Q. What was your charge for towing it away? A. Ten dollars.

CROSS-EXAMINATION by Mr. Boyd:

Q. How old did you say this car was? A. About six months old.

Q. Did you know the number of it? A. No, sir; I did not. I didn't take the numbers of it. I didn't sell the car and I had no reason to take numbers. 30

Q. You didn't take the motor number of it? A. Not on repair work.

Q. In order to tell the age of a car, you take the motor number? A. Surely.

Q. You always tell by the motor number what year it is? A. Sometimes you can, but on an Overland you can't, some of them.

Q. On all of them, can't you? A. Not all. They put on a serial number, but it does not necessarily state the year. 40

Ray Kingsland—Cross

Q. By the number you can identify the year of a car? A. If you go back to the Overland records, yes.

Q. How was the condition of the paint on this car? A. The condition of the paint was very good
10 and the body was very good.

Q. Do you know how far the car had run? A. No, I do not.

Q. You don't know how far it had run? A. No, sir.

Q. But the condition of the car was very good? A. I didn't examine the speedometer or anything else. It was none of my business.

Q. When you examined the tires a day before
20 the accident, how were the tires? A. Well, in fair shape.

Q. What would you say the tires were worth, being in fair shape? A. Oh, ten dollars apiece.

Q. The speedometer on the car, was that broken in the accident? A. I didn't look at the speedometer. They are only minor trifles. If you wanted it turned back, you could turn it back.

Q. What do you suppose the speedometer on this car was worth? A. From fifteen to seven-
30 teen dollars. There are all sorts of prices on them. You can get them at any place.

Q. The cushions in that car, were they damaged, too? A. Not that I know of. The upholstery was fair.

Q. How about the generator of that car, was that damaged? A. I didn't do any repair on that generator.

Q. After the accident was it damaged? A. Yes, completely damaged.

Ray Kingsland—Re-direct

Q. What was the matter with the generator?
A. Crushed in, and the shaft was bent in.

Q. This car was struck in what part? A. In the left side, mostly rear. Pushed it at an angle and drove it against the curb.

Q. And it was the right front of the car that 10
came in contact with the car parked at the curb?

A. The right front of his car came in contact with the curb.

Q. All the wheels on this car were not damaged, were they? A. Two at the curb were bent in.

Q. The rear wheels were all right? A. One rear wheel was damaged.

Q. How many damaged wheels were there on 20
the car? A. Three; the two fronts and one rear.

Q. What would a rear wheel be worth? A. About \$21, maybe \$22, wire wheels.

Q. Do you want this jury to believe this car was only worth, after the accident, about \$20 to \$25? A. That is all it was worth. The wheels were bent.

RE-DIRECT EXAMINATION by Mr. Breitkopf:

Q. What about the wheels? A. That's the 30
cheapest part of a car. Labor on a car, repairing motor cars, costs lots of money.

Q. Second-hand value, ready for junk, what is that worth? A. As junk, that is hard for me to state, because prices are up and down.

Q. Was it worth over \$25? A. No, sir; I wouldn't say \$25.

Ray Kingsland—Re-cross

RE-CROSS EXAMINATION by Mr. Boyd:

Q. The individual parts were worth more than that? A. Oh, who's going to buy it?

Q. I am asking you. The individual parts had a market value? A. Yes, if you have a resale
10 of it.

Mr. Breitkopf: Plaintiff rests.

20 Mr. Boyd: I move for a non-suit as to the Public Service Railway Company, on the ground none of the testimony has shown any negligence on the part of the Public Service Railway Company. Witnesses have testified this man pulled out from the curb ten feet in front of the trolley car, ten feet at the outside, and that he was struck, and that the motorman came to a stop ten or fifteen feet after he came in contact with the Honig car. That does not show negligence on the part of the defendant, the Public Service Railway Company, and I therefore ask your Honor for a non-suit.

30 The Court: Your motion will be denied.
Mr. Boyd: I pray an exception.

Mr. Turner: On behalf of Mr. Honig I ask for a non-suit. No negligence has been shown on his part.

The Court: Motion denied.

Heyman Neiss—Direct

HEYMAN NEISS, sworn on behalf of defendant.

Direct-examination by Mr. Turner:

Q. What is your business? A. Confectionery.

Q. Where is your place of business located? A. 10
I am now located at 282 Fourteenth Avenue, Newark.

Q. On December 9, 1923, where were you located? A. 890 Bergen Street, corner of Watson Avenue.

Q. Now, do you recall December 9, 1923, in the afternoon, of an accident happening there at Watson Avenue on Bergen Street? A. Yes, sir.

Q. Did you see Mr. Honig's car that day? A. 20
Yes, sir; I was outside of my store, standing alongside of the paper stand and Mr. Honig pulled out. His wife was in the car, a boy, and another lady.

Q. When Mr. Honig pulled out, what did he do? A. When Mr. Honig pulled out what did he do?

Q. Yes. A. He put out his hand and pulled out from near the sidewalk and pulled out from the left-hand side.

Q. When you say he put out his hand, which hand did he put out? A. The left hand. 30

Q. The left side, his side toward the trolley car? A. The left-hand side. The right-hand side from the trolley car.

Q. How far away was the trolley car when Mr. Honig started to pull out? A. The trolley car was at the corner of Jeffrey Place.

Q. How far is that? A. I think about two hundred feet from that. 40

Heyman Neiss—Direct

Q. Two hundred feet away? A. Yes, sir.

Q. Was there anything in front of Mr. Honig's car or in back of his car before he started to pull out? A. In front was a car standing parked on the right-hand side, in front of **him**.

10 Q. Was there any car in back of him? A. No.

Q. When Mr. Honig started to pull out, did he have to move forward or backward to get out? A. Mr. Honig?

Q. Yes. How close was he to the other car when he started to pull out? A. From the other car?

Q. Yes. A. In front of him it was about fifty feet.

20 Q. When he pulled into the trolley track, what speed did he go out at? A. He went slow.

Q. You saw him pulling out from the curb, I suppose, before you? A. Yes.

Q. What do you say about the speed at which he pulled out from the curb, was that a slow or a fast speed when pulling out from the curb? A. Well, he pulled out slow.

Q. And you say this trolley car was about two hundred feet away when he started to pull out?

30 A. Yes.

Q. At what speed was that trolley car going at the time? A. The trolley car was going about thirty miles an hour.

Q. When the trolley car got up to Watson Avenue, did you see the motorman in the car? A. The motorman was doing something with that box. His head was bent down, making change or what I don't know. What he was doing in the trolley car I don't know.

40 Q. He was leaning over what box, the money

Heyman Neiss—Direct

box, you mean? A. The money box. His head was bent down and the trolley car was going fast.

Q. When he got to Watson Avenue did he slow up his trolley car any? A. No.

Q. Now, you know whether this is a trolley stop or not at Watson Avenue, don't you? A. 10
Yes, that's a trolley stop.

Q. A regular trolley stop? A. Yes, a regular trolley stop.

Q. And the motorman did not slow up or stop? A. No.

Q. How far on the trolley track was Mr. Honig's automobile when it was hit by this trolley car?

A. It was across from my store; across the corner of Watson Avenue.

Q. Was this trolley car a one-man car? A. A 20
one-man car.

Q. A man in front does all of the work? A. Yes.

Q. When you say he was leaning over the cash box, could you see his right arm, whether moving or not? A. I didn't see what he was doing; I was in front of my store, standing alongside of the paper stand, and I was looking on Honig and he pulled out, and in the meantime I saw the trolley car coming down Bergen Street, and when Honig pulled out I said, "Good-bye, Mr. Honig," and then I didn't see nothing, and everything was black in front of me. 30

Q. Did you observe whether the motorman tried to apply his brakes after he got close to Mr. Honig's car?

Mr. Boyd: I object. Every question, so far, has been a leading question.

The Court: Yes, they have been pretty 40
leading.

Heyman Neiss—Cross

Mr. Turner: Well, I want the facts brought out. I am asking him whether he saw the motorman try to apply his brakes.

The Court: Ask him whether he did apply his brakes.

10 Mr. Turner: If they deny he applied his brakes I will withdraw the question.

Q. Did you see this motorman do anything at all with reference to his brakes? A. After the accident?

Q. No, before. A. No, I didn't see him. I saw his head was bent down to the cash box in the front, but I didn't see what he was doing there.

20 Q. Did you hear any sound such as brakes make when applied on a trolley car? A. No, I didn't see nothing.

Q. Did you hear any sound at all up to the time of the accident? A. No.

CROSS-EXAMINATION by Mr. Boyd:

Q. What is your name? A. Heyman Neiss.

Q. And you run a store? A. I run a store.

Q. Where? A. Now I got it at 282 Fourteenth Avenue.

30 Q. How far is that away from where Mr. Honig runs his store? A. That's far, about 35 blocks. Mr. Honig's store is in the Weequahic section and I am on Fourteenth Avenue.

Q. Was Mr. Honig down visiting you on the day of this accident? A. No.

Q. You have known Mr. Honig for quite a while? A. Yes.

40 Q. How long have you known Mr. Honig? A. I know him since I have the store in Bergen

Heyman Neiss—Cross

Street. I sold the store there and now I got a store in Fourteenth Street.

Q. You used to have a store across the street from Mr. Honig? A. Yes.

Q. And you have known him a long time? A. Quite a few years. 10

Q. Quite good friends? A. I am a good friend with him, why not? I never had nothing with him.

Q. You say you were standing in the doorway when this accident happened? A. I was standing alongside of the paper stand.

Q. Alongside of the paper stand? A. Yes.

Q. On which side of the street were you standing? A. Towards this way (indicating), on the left-hand side. 20

Q. Now, while our trolley car was going south, you were on the right-hand side of the trolley car or the left-hand side of the automobile? A. I was on the left-hand side of the trolley car.

Q. So you were on the opposite of the street from where this accident happened; is that right? A. Yes.

Q. You were talking to Mr. Honig, were you? A. Mr. Honig, no. 30

Q. Hadn't you spoken to Mr. Honig that morning? A. No, I didn't see him Sunday morning at that time.

Q. When did this accident happen? A. In the afternoon.

Q. Well, you may have seen him in the afternoon? A. I saw him in his store across the street but I didn't talk to him.

Q. You didn't talk to him at all that day, Sunday? A. No. 40

Heyman Neiss—Cross

Q. You say you were standing near the paper stand? A. Yes.

Q. When you saw this trolley car coming? A. Yes.

Q. And you say the trolley was two hundred feet away? A. Two hundred feet from Jeffrey Place to Watson Avenue, about two hundred feet.

Q. Did you see Mr. Honig get into his automobile? A. Yes, sir.

Q. Where was the trolley car when you saw Mr. Honig get into his automobile? A. The trolley car was at Jeffrey Place at that time.

Q. That is, when he got into his automobile? A. No.

20 Q. You saw the accident, didn't you? A. Yes, I saw it.

Q. Where was the front of the trolley car when Mr. Honig came out of the store to get into his automobile? A. The front of the trolley car was crossing Jeffrey Place.

Q. Then he got into his automobile? A. They were in the automobile already.

30 Q. Now, then, you saw him in the automobile or getting into the automobile when the trolley car crossed Jeffrey Place? A. He was in the automobile.

Q. Where was the trolley car when he started to get into the automobile? A. I don't remember where it was. I didn't pay attention to all the trolley cars.

Q. Where was the trolley when you saw the trolley car first? A. When I saw the trolley car first it was on Jeffrey Place.

40 Q. What called your particular attention to the trolley car two hundred feet away? A. I was

Heyman Neiss—Cross

standing and I was looking in the street and I saw a trolley car coming.

Q. You saw it coming? A. Yes.

Q. Where was Mr. Honig then, when you saw the trolley car crossing Jeffrey Place? A. Mr. Honig was pulling out from the curb. 10

Q. About how many miles an hour would you say he was going when pulling out from the curb? A. He went very slow.

Q. About how many miles an hour? A. I can't judge how many miles.

Q. You drive a car? A. Yes, I drive a car.

Q. How long have you driven a car? A. I drive about a year.

Q. You know about how fast the automobile was going when pulling out from the curb, don't you? A. I can't judge how many miles. He pulled out from the curb. 20

Q. Was he going four or five miles an hour?

Mr. Turner: I object to that question. With a car coming out diagonally from the curb it is impossible to go four or five miles an hour. You have to make your turn. You don't go any number of miles per hour. It would take a very rare expert to estimate that. Surely, an ordinary driver is not competent. 30

The Court: He can give his best judgment.

Mr. Turner: He says he couldn't tell. Now for counsel to try to exact some answer, that is not proper. He said he was going slowly and he can't tell how fast the automobile was going, in miles. Counsel is trying to cause him to say he was going 40

Heyman Neïss—Cross

one, two or five miles an hour, so he can use that as an argument.

The Court: We will permit the witness to give his best judgment as to the speed of the car or how fast it was going, his best judgment only.

10

Q. Give me your best judgment how fast this automobile was going when it pulled out from the curb. A. I can't tell. I didn't look at his speedometer. He pulled out very slow, but I can't tell how many miles. I can't judge.

Q. When he started to pull out from the curb, where was the trolley? A. At the corner of Jeffrey Place.

20

Q. When he got halfway to the rail, where was the trolley car then? A. The trolley car was running. When he was on the track the trolley car was near Watson Avenue.

Mr. Boyd: Repeat the question.

Q. (Question repeated by stenographer.) A. The trolley was near Watson Avenue.

Q. The trolley car was near Watson Avenue? A. Yes, sir.

30

Q. How far would you say the trolley car was north of the corner of Watson Avenue when Mr. Honig's car was halfway to the rail? A. About one hundred feet.

Q. When Mr. Honig's car was three-quarters to the rail, how far was the trolley car from the north corner of Watson Avenue? A. I can't tell you how many feet it was. I can't judge it. See, I didn't pay attention to it. Why should I tell anything that I don't know for sure how many feet it was?

40

Heyman Neiss—Cross

Q. You are not sure about the distance at all, are you?

Mr. Turner: I object. He didn't say that. Counsel has asked him when Mr. Honig's car was three-quarters to the rail **how far away was the trolley car from the** 10
north corner of Watson Avenue. I submit it is an unfair question.

The Court: Well, it is a pretty difficult test.

Mr. Turner: Counsel could not answer it himself.

Mr. Boyd: I am only asking approximately. I am not pinning him down to the exact number of feet. I want to get it 20
approximately.

Mr. Turner: If the Court please, the witness said when the automobile was half-way over the tracks, the trolley car was one hundred feet away.

Mr. Boyd: I will withdraw the question.

The Court: I wish counsel would get down to the facts in the case and proceed.

Q. How far away was the trolley car when Mr. Honig drove onto the tracks? A. Well, I will tell you the truth. This was a quick job. When 30
Honig pulled out, the trolley car came along and hit him. I can't judge how many feet. It is a quick job.

Q. As soon as Mr. Honig pulled out on the track he was hit; isn't that so? A. No. Mr. Honig pulled out and was in the middle of the track and the car came along fast and hit him. I didn't see nothing. I said, "Good-bye, Honig," and that's all I saw. 40

Heyman Neiss—Cross

The Court: You just listen to counsel's questions. If you don't understand them, tell counsel you don't understand them. Don't answer any questions you do not understand. If you do understand them, answer the questions as best you can.

10

Mr. Boyd: Read the last question.

Q. (Question repeated by stenographer as follows): "As soon as Mr. Honig pulled out on the track he was hit; isn't that so?"

Mr. Boyd: Answer that yes or no.

A. When Honig pulled out—

Q. Why not answer that question yes or no? A. What is the question?

20 Q. (Question repeated by stenographer.) A. Yes.

Q. After the trolley car hit Mr. Honig's car, it pushed it into this other automobile, didn't it?

A. Yes.

Q. How far did the trolley car go? A. I didn't see nothing at the time. I fainted away. Everything got black in front of me.

Q. In front of what store did this accident happen? A. In front of Mr. Denk's store, the butcher shop, grocery and butcher shop.

30

Q. Do you know what number that butcher shop is? A. No, I don't know the numbers. Eight hundred and eighty something; 885 or something.

Q. What was the number of the place you were standing in front of? A. 890; across the street.

Q. Is 890 just opposite the butcher shop? A. Yes.

40

Heyman Neiss—Re-direct

RE-DIRECT EXAMINATION by Mr. Turner:

Q. Mr. Neiss, how far on the trolley tracks had Mr. Honig gotten when he was hit by the trolley car? A. About twenty-five foot.

Q. No; I say how far across the trolley tracks had he gotten? A. Across the trolley tracks? 10

Q. Where were the wheels of his automobile when it was hit by the trolley car? A. On the tracks.

Q. Well, you say on the tracks. Do you mean on the rails or between the rails? A. Mr. Honig's car?

Q. Yes. A. I think on the trolley tracks.

Q. Well, now, you see on the trolley tracks means the whole width of the track. A. It was on the right-hand side. 20

Q. And did you hear any alarm or gong or bell from this trolley car before it got to Watson Avenue? A. No.

Q. It did not sound any warning? A. No.

Q. Did the trolley car sound any bell at any time up to the time of the accident?

Mr. Boyd: I object as leading.

The Court: Objection sustained.

Q. And did you see the motorman of this trolley car after the accident? A. After the accident? 30
Yes, I saw him.

Q. Now, you testified that he was leaning over at the time he hit Honig's automobile. Which way was he leaning? What part of his head, if any of it, could you see? A. The motorman's head?

Q. Yes. A. I couldn't see his head.

Q. You couldn't see his head at all? A. No.

Q. Was there anything to prevent your seeing 40

William F. Kirst—Direct

his head if he was standing there? A. What is that?

Q. Was there any obstruction to prevent your seeing his head if he was standing there? A. No, Mr. Honig was in front, that's all.

10 Q. You did not see the motorman's head at all? A. No.

Q. Did you see his shoulders? A. I saw his shoulders, yes.

Q. You did see his shoulders? A. Yes.

Q. But you couldn't see his head? A. No.

Q. There was glass in front of him? A. Yes.

Q. So, if his head had been there you could have seen it, couldn't you?

20 Mr. Boyd: I object.

The Court: Objection sustained.

Q. Now, after the accident did you see the same motorman, after the accident? A. In about three or four minutes I went across the street. My wife bring me over a glass of water and I went across the street to see if Mr. Honig was there and he was in the car.

30

WILLIAM F. KIRST, re-called.

Direct-examination by Mr. Turner:

Q. Mr. Kirst, did you see what, if anything, Mr. Honig did before he started to pull out towards the trolley tracks? A. Yes, I saw Mr. Honig hold out his left arm.

Q. You could see that plainly, could you? A. Yes, I seen that.

40

Q. Did you hear any bell or gong from this

William F. Kirst—Cross

trolley car before it hit Mr. Honig? A. I didn't notice.

Mr. Boyd: I object to that as leading and I ask that the question and answer be stricken out.

The Court: Strike it out. 10

Q. Did you hear any sound at all from this trolley car before hitting Mr. Honig? A. I paid no attention.

Q. Tell us, Mr. Kirst, how far it is, about from the upper rail, the right-hand rail, to the right-hand curb. A. I should judge there is a distance of eight feet. Bergen Street there is fairly wide.

Q. You say about eight feet? A. Yes, sir.

CROSS-EXAMINATION by Mr. Boyd: 20

Q. Which side of the street were you standing on, Mr. Kirst? A. I was standing on the right-hand side of the street and this happened on the left-hand side; I was walking north.

Q. Which side would that be, so we can get the directions straight? A. If you were facing in the same direction in which the trolley car was going, you would be on the left or right-hand side of the street.

Q. So you were on the opposite side of the street from where the accident happened? A. Yes, sir; the car was coming towards me. 30

Q. And right opposite the place where the accident happened? A. Yes.

Q. As a matter of fact, the window on this car was closed after the accident? A. Mr. Honig's car?

Q. Yes, the left-hand window, opposite the driver's seat. A. To his left the window was 40 smashed.

Ignatz Honig—Direct

Q. If that window was smashed, it must have been closed?

Mr. Turner: I object as a conclusion and entirely improper.

The Court: Objection sustained.

10

IGNATZ HONIG, defendant, sworn.

Direct-examination by Mr. Turner:

Q. On December 9, 1923, where did you live?

A. At 887 Bergen Street.

Q. And on that day were you the owner of an automobile? A. Yes, sir.

Q. What kind of a car was it? A. A Durant coupe.

Q. Will you tell us about 2:45 in the afternoon where you were, what you were doing and what happened. A. My car was parked in front of my building, 887 Bergen Street, facing Watson Avenue. I was waiting for my family to come out and take them for a ride. I was sitting in the car. When they came out they got in the car. I had my hand right on the window, put my hand out, this way (indicating), and I didn't see any car coming; it was far away. When I pulled out about a second or so, I heard a crash and I found myself in front of Denk's butcher shop and where I stopped. The trolley car was about ten feet ahead of my car and I tried to get out and I couldn't get out. The door was smashed in and some people come out with an iron crowbar and forced the door open and I got out and I saw Mr. Schadel's car was wedged into my car. Mr.

40

Ignatz Honig—Direct

Schadel's car was on the sidewalk in front of the butcher shop and my car was near the curb.

Q. Now, how far did your car move after it was hit by the trolley car? A. Well, from 887—about seventy-five feet.

Q. And was it moved forward or sideways? A. 10
Forward. I was hit sideways and I was moved forward.

Q. When you were hit sideways, did it turn your car over? A. No, sir; Mr. Schadel's car was right over in front of me and it shoved my car into Mr. Schadel's car.

Q. You say you were shoved; were you shoved the whole distance? A. I suppose so.

Q. As far as you know? A. Yes. 20

Q. When you made your observation, that is, when you looked before you started to turn into the street, did you see this trolley car at all? A. I saw the trolley car on the other side of Jeffrey Place.

Q. How many feet away was that? A. Well, it's about two hundred or a little more. I don't know exactly the distance.

Q. From the time you saw that trolley car up at Jeffrey Place until the time it hit you, did you 30
hear any warning sound from that trolley car? A. No, sir; not at all.

Q. Now, is there a trolley stop there at Watson Avenue? A. Usually trolley cars stop there.

Q. On which corner does it usually stop? A. Right on the corner before Watson Avenue.

Q. Which is it, the north or south corner? A. The south.

Q. Does it stop at the far or the near corner? 40
A. Right on the corner.

Ignatz Honig—Direct

Q. Where was your car parked in relation to Watson Avenue? A. Right opposite Watson Avenue, in the center.

Q. Would you say between the north and south curbs of Watson Avenue if Watson Avenue was
10 extended across Bergen Street? A. Yes, sir.

Q. Now, how fast did you drive or move your car as you turned into the street from the place you were parked? A. I had it in first speed, the usual speed. I don't know how fast the speed is.

Q. Were there any other automobiles coming either way when you started to turn out? A. I didn't see any automobiles at all.

Q. Did you look both ways? A. Yes, sir.

20 Q. Were there any other trolley cars other than this trolley car that was two hundred feet away? A. One was going in the other direction.

Q. Had it passed you or not? A. I can't remember that.

Q. The car coming in the other direction? A. Oh, yes.

Q. Had it gotten up to Watson Avenue? A. No, it didn't stop at Watson Avenue at all, just passed.

30 Q. Had these two trolley cars passed each other as yet? A. Not in front of Watson Avenue but further up, I think.

Q. Now, did you see this motorman on this trolley car before the car hit your automobile? A. I couldn't see him; no, sir.

Q. Did you see the motorman after the trolley car hit your automobile? A. After I was hit, his car stopped ten or twelve feet ahead of me and he come over to me and he was laughing.

40 Q. Laughing? A. Laughing, yes.

Ignatz Honig—Cross

Q. How long did he laugh? A. Just a second or so.

Q. Did he say anything?

Mr. Boyd: I object.

Q. You can't tell what the motorman said now. When the motorman was laughing could he see the damage that had been done to the plaintiff's automobile? A. I don't know whether he saw it or not. It was right there in front of him. 10

Q. Could he see the damage that had been done to your automobile? A. Yes, I think so.

Q. It was in front of him? A. It was right there. He took my number.

CROSS-EXAMINATION by Mr. Boyd:

Q. Where is your place of business, Mr. Honig? A. 887 Bergen Street. 20

Q. And would you say it is thirty-five blocks away from your place of business to where this accident happened?

Mr. Turner: I object. The witness did not say that.

Q. Was this in front of your store where the accident happened? A. Yes, sir; right in front of my store. 30

Q. You say trolley cars usually make stops at that corner? A. Nine out of ten.

Q. They stop there for the purpose of picking up passengers? A. Yes, picking up passengers or getting off.

Q. If no one gets off or on, cars do not stop? A. They usually slow down there.

Q. They usually slow down? A. Yes.

Q. This trolley car, after hitting your car, only went ten to fifteen feet? A. No, sir; about eighty- 40

Ignatz Honig—Cross

five feet. I am located at 887 Bergen Street and after the car stopped it was right in front of the flower shop and that is about 893.

Q. How many feet would you say that was?

A. About seventy-five or eighty feet, at least.

10 Q. That is how far it went? A. That is where the car stopped.

Q. You know how long a trolley car is, don't you? A. Not exactly.

Q. How long would you say it is? A. About fifteen or eighteen feet.

Q. They are about forty-two feet long. Would you say that is about right? A. I don't know. I didn't measure a trolley car.

20 Q. When you got out of your car, where was the trolley car? A. I didn't get out of my car.

Q. After the accident, where was the trolley car with relation to your car? A. About ten or twelve feet down in front of the flower shop.

Q. In front of the flower shop? A. Yes, sir.

Q. Were there any other cars parked along Bergen Street? A. Mr. Schadel's car was in front of me.

Q. Was there any car in front of Mr. Schadel's?

30 A. I didn't see any. I don't think there was any. After the accident I didn't see any car.

Q. You say this trolley car pushed your car eighty feet after the accident? A. Yes, sir.

Q. This car of Mr. Schadel's, what store was that parked in front of? A. There is a tailor shop right next to me at 889.

Q. And his car was parked in front of that tailor shop next to you? A. Yes, sir.

40 Q. Where was Mr. Schadel's car after the acci-

Ignatz Honig—Cross

dent? A. After the accident the two cars were together, right in front of Denk's butcher shop. Mr. Schadel's car was up on the sidewalk.

Q. How many doors is that away from your store? A. Four doors.

Q. Now, you were in the car waiting for your family to come out? A. Yes, sir. 10

Q. How long had you been sitting in the car waiting for your family to come out? A. About five or six minutes.

Q. When did you look up the street to see where the trolley car was? A. When I was ready to pull out.

Q. When you were ready to pull out? A. Yes, sir.

Q. Where did you see the trolley car was then? A. On the other side of Jeffrey Place. 20

Q. From the front of your car to the trolley track was about how many feet? I mean between the front of your car and the trolley track? A. Eight or ten feet, I guess.

Q. And you moved from a standing position at the curb to the trolley track and you were struck? A. Yes, sir.

Q. When you started to move that eight feet, the trolley car was up across Jeffrey Place? A. Yes, sir. 30

Q. Do you know how fast you traveled that distance of eight feet? A. I couldn't travel fast; I had it in first speed.

Q. How fast would be two or four miles an hour? A. I haven't any idea. I know I wasn't going very fast. I had it in first.

Q. Would you say you were going as fast as a man could walk? A. I had it in first speed. 40

Stanley L. Reed—Direct

Q. Would you say you were going as fast as a man could walk? A. I couldn't understand that question.

Q. How long had you been driving a car at the time this accident happened? A. I have driven
10 a car for the last four or five years.

Mr. Turner: The defendant, Ignatz Honig, rests.

STANLEY L. REED, sworn on behalf of the defendant, Public Service Railway Company.

20 Direct-examination by Mr. Boyd:

Q. Mr. Reed, what is your business? A. An automobile mechanic.

Q. And with whom are you connected? A. The Dunham Automobile Company, of Newark, New Jersey.

Q. How long have you had experience in the automobile business? A. Twenty-five years.

Q. Did you make an examination of this car belonging to the defendant in this case? A. I
30 did.

Q. At the request of the defendant? A. I did.

Q. When was that examination of this automobile made? A. The 15th day of January, 1924.

Q. What damage did you find to this automobile?

By Mr. Breitkopf:

Q. What are you using?

A. A notation I made at the time.

Stanley L. Reed—Cross

Q. These notes you took off as you made the examination?

A. Yes.

By Mr. Boyd:

Q. What damage did you find to this automobile? A. I found the automobile had been struck in the left rear and there was needed a new rear fender, axle housing, left rear wheel, left rear fender and left rear side panel was pushed in. 10

Q. What would it cost to make these repairs? A. \$54.25, plus the parts, \$55.45, making a total of \$109.70.

Q. Would that place the car in as good a condition as it was before the accident? A. Yes, sir.

Q. What was the serial number of this automobile? A. The serial number was 58,755. 20

Q. What kind of a car was it? A. An Overland four-door sedan.

Q. Of what year? A. 1920.

Q. What did you say that serial number was, again? A. 58,755.

Q. What was the condition of the paint on this car? A. Very poor.

CROSS-EXAMINATION by Mr. Breitkopf: 30

Q. When did you find out this was a 1920 car? A. Well, my knowledge of automobiles and the information from the Overland Company and also the information from the book of models that was printed by the different automobile companies.

Q. As a matter of fact, didn't you learn that was a 1920 car this morning when you were looking at that book over there and that is when you found out it was a 1920 automobile; isn't that right? A. No, sir; I didn't look at any book. 40

Stanley L. Reed—Cross

Q. Didn't you look at a book in that man's hand over on that side there? A. No, sir; I did not. It is on this paper, if you doubt my words (referring to a paper in witness's hand).

Q. I am asking you if you looked. A. The copy
10 Mr. Boyd has will bear out what I have in my hand.

Q. Didn't you look at the book of automobiles in that man's hand? A. Positively not.

Q. Did you see me looking at you when you were looking at this book? A. I saw you looking at me two or three times this morning. I spoke to you.

Q. When you were sitting there talking to that
20 young man, did you see me looking at you? A. I did not.

Q. And you made a thorough examination of this car? A. I did.

Q. Did you see anything the trouble with the generator? A. I couldn't start the car; there was no battery in it.

Q. Did you look at the generator? A. I did.

Q. What was the matter with it? A. I don't know; I couldn't start the car. I couldn't start
30 the motor because there was no battery in it.

Q. Did you look at the motor? A. I did.

Q. Did you find that the motor was cut right off? A. I couldn't examine the motor because I couldn't start it.

Q. Couldn't you see that the motor was cut off from its base? A. No, sir; it was not.

Q. You didn't look at it, did you? A. I did.

Q. Was it cut off? A. No, sir.

Q. Did you look at the chassis? A. I did.
40

Stanley L. Reed—Cross

Q. Was that twisted? A. That automobile was in very bad condition.

Mr. Breitkopf: If the Court please, I object to the answers of these questions. Witness will not answer my questions.

The Court (addressing witness): Please 10
confine yourself to the questions counsel puts to you.

Q. Was the chassis of this car twisted? A. No, sir.

Q. Did you look at it? A. I did.

Q. How long have you been in the investigating business?

Mr. Boyd: I object to that. Witness testified he was an automobile mechanic. 20

Q. Well, an automobile mechanic? A. How long have I been an automobile mechanic?

Q. Yes. A. I started in the automobile business in 1899.

Q. You have had considerable experience looking at wrecks, haven't you? A. Yes.

Q. From your experience as a repair man, will you say that an automobile struck at the left rear, striking the right curbstone, the car would shift on the chassis? A. It may bend the chassis and 30
perhaps shift the body.

Q. Would it bend the chassis? A. Possibly.

Q. Would it twist it? A. What do you mean, put it out of square?

Q. Yes. A. Possibly; yes, sir.

Q. You just made a cursory examination of this car, didn't you? A. I looked all over the automobile.

Q. How many days after the accident? A. The 40

Stanley L. Reed—Re-direct

accident happened on December 9th and I looked at it January 15th, 1924.

Q. What would you say the car was worth when you looked at it? A. Fifty dollars.

10 RE-DIRECT EXAMINATION by Mr. Boyd:

Q. What would you say it was worth before the accident?

Mr. Breitkopf: I object unless he saw it.

The Court: There is no testimony so far he saw the car before the accident.

Q. What would a car with that serial number be worth—what would the market value of that car be with the serial number such as quoted in
20 December, 1923? A. Fifty dollars.

Q. I mean before the accident? A. The market value of that automobile, previous to the accident, 1920 model, is worth fifty dollars as the market value, trade-in value.

By Mr. Turner:

Q. That is its value before there is any accident at all, fifty dollars? A. Yes, sir.

Q. That is the market value of a second-hand car? A. Yes, sir.
30

By Mr. Breitkopf:

Q. What was it worth after the accident? A. Probably fifteen to twenty dollars, at the most.

Q. And it would take \$120 to put it back in shape? A. Yes, sir.

Charles B. Lounsbury—Direct

CHARLES B. LOUNSBURY, sworn on behalf of defendant, Public Service Railway Company.

Direct-examination by Mr. Boyd:

Q. What is your name? A. Charles B. Lounsbury. 10

Q. What is your business? A. An automobile salesman.

Q. For whom are you an automobile salesman?
A. Edward Knight Sales Company of East Orange.

Q. Have you had any experience with the sale of Overland cars? A. I have.

Q. How long have you had experience in buying—rather selling Overland cars? A. For the past year Overland cars exclusively, but I have handled other cars and in them a good many used cars which were Overlands. 20

Q. Have you the agency for the Overland car?
A. No, only employed as a salesman.

Q. The company has the agency for the Overland car? A. Yes, sir.

Q. Can you tell the Court and jury what model, maker's number 58,755 would be? 30

Mr. Breitkopf: I object. There is no testimony what that serial number is.

Mr. Boyd: Then I will withdraw the witness and put on Mr. Reed again to show where he got this number from.

Stanley L. Reed—Cross

STANLEY L. REED, re-called.

Direct-examination by Mr. Boyd:

Q. Mr. Reed, where did you get this number 58,755 from? A. Under the front seat cushion on
10 the right-hand side of the seat riser. In other words, where the seat sits down in the frame.

Q. That is the maker's number of this car? A. Positively. That is, I took it from the brass plate.

Q. Of this car of Mr. Schadel's? A. Harry B. Schadel.

Q. That was his car? A. I took it for granted it was. That is the name given to me.

20 Q. Was Mr. Schadel present when you made an examination of this car? A. No, sir.

CROSS-EXAMINATION by Mr. Breitkopf:

Q. How do you know it was the same car? A. It was the same car as what?

Q. How do you know it was Mr. Schadel's car? A. Well, when I was given the call I was told to go to 210 Badger Avenue, Newark, and look at an automobile belonging to Mr. Schadel of 605
30 Stuyvesant Avenue, an Overland sedan with wire wheels.

Q. Who gave you that information? A. Mr. Schroeder of the Public Service Company.

Mr. Breitkopf: I ask that the testimony of this witness be stricken out from the evidence as hearsay evidence. There is no testimony that it was Mr. Schadel's car.

The Court: What testimony do you refer to?

40

Mr. Breitkopf: All of the testimony as

Harry D. Schadel—Direct

to the value of this automobile; the repairs that were made to it and the serial numbers, everything concerning this witness's testimony be stricken out because there is no testimony whose car he examined, and the information supplied to him is nothing but hearsay. 10

The Court: There is no proof here, so far, that is the license number of this man.

Mr. Boyd: May I ask one question: Do you deny that is the license number of your car, 37270?

Mr. Breitkopf: I do not know what the license number is.

Mr. Boyd: I will withdraw Mr. Reed from the stand and I will call Mr. Schadel as my own witness. 20

HARRY D. SCHADEL, plaintiff, re-called on behalf of defendant, Public Service Railway Company.

Direct-examination by Mr. Boyd: 30

Q. What was the license number of your car?

A. Why, I don't remember. This happened a year ago last December, so you can imagine.

Q. You were not present when an examination of your car was made, were you, on the part of the mechanic from the Public Service Railway Company? A. No, sir; no one came to see me whatsoever on either side.

Q. Where was your car put after the accident? 40

William Terhune—Direct

A. From what Ray told me, he towed the car into Badger Avenue.

Q. He towed the car into Badger Avenue? A. Yes.

Q. You say this was a four-door sedan car, with
10 wire wheels? A. Yes.

Q. Was there a push button for the lights on this car, or how did you light the lights? A. There was a push button for the lights.

Q. There was a push button for the lights? A. Yes, sir.

Mr. Boyd: I have proven that this car was examined at the place where the plaintiff claims his car was. It was a four-door
20 sedan with wire wheels and push buttons.

The Court: I do not see how that can be. There are any number of Overland cars with wire wheels and they have push buttons for the lights.

WILLIAM TERHUNE, sworn on behalf of the defendant, Public Service Railway Company.

30 Direct-examination by Mr. Boyd:

Q. Mr. Terhune, do you recall the number of this automobile? A. No, I do not.

Q. You do not recall it? A. No, I do not.

Q. What kind of an automobile was it? A. Now, which one was it? There were two automobiles in the accident.

Q. The car that was parked at the curb? A. I think it was a closed car.

40 Q. You don't remember the license number? A. No, I do not.

Ray Kingsland—Direct

RAY KINGSLAND, re-called on behalf of the Public Service Railway Company.

Direct-examination by Mr. Boyd:

Q. Do you know the number of the license plate on this automobile? A. No, sir; I do not. That 10 is something I never do look at.

Q. Where did you examine the car? A. In my garage and from there I took it up.

Q. Was it at this Badger Avenue garage for some time? A. That I don't know. I don't know when I sold it. I put it in the Badger Avenue garage in an open lot. It wasn't worth garage room.

Q. It was put in an open lot? A. Yes. 20

Q. Where was this open lot? A. On Badger Avenue.

Q. Where did this car stand in this open lot? A. Well, I left it about in the middle of the lot. I don't know whether anybody moved it or not.

Q. Were there any cars in there outside of that one? A. That I couldn't say; I don't remember. There is a building that sits on the ground.

Q. It was the only four-door sedan car in that lot at that time, wasn't it? A. Yes, at that time, 30 the afternoon of the 10th day of December.

Q. On the 10th day of December that was the only car that was in there? A. Yes.

Q. And that is the car that belonged to the plaintiff in this case? A. Yes, sir.

Mr. Boyd: Does your Honor still hold that the testimony is not admissible?

The Court: Apparently there has been no testimony that enlightens me on the sit- 40

Stanley L. Reed—Direct

10 uation so far as the facts appear on the face of it. This man says it was there on a certain day. The examination took place approximately a month afterwards. What happened in the meantime I do not know. The evidence does not seem sufficient so far. I do not want to be too exact on it, either. Nobody here, so far, testified that any license number has been taken off by anybody, of that particular car.

Mr. Boyd: May I recall Mr. Reed?

The Court: You may.

20

STANLEY L. REED, re-called on behalf of the defendant, Public Service Railway Company.

Direct-examination by Mr. Boyd:

Q. Who told you that this was Mr. Schadel's car? A. Mr. William Schroeder.

Q. Did he go up there and point the car out to you in the yard? A. No, sir.

30 Q. How did you find out this was the car? A. He called me on the telephone and asked me to go there at this place and make an examination of this automobile.

Q. And when you went up there, who did you see up there? A. A colored man. This automobile stood under a shed in a sort of junk yard. It wasn't in the garage; it was just an open shed.

Q. You saw this colored man? A. Yes, sir.

40 Q. Do you know what garage had control of that place? A. No, I do not. It was a sort of

William Terhune—Direct

storage place for old broken-up cars with a lot of different rear axle housings.

Q. When you went to this colored man, you asked him where the car was and he showed you this car? A. Yes, sir.

Q. Did he or did he not tell you that was Mr. Schadel's car? 10

Mr. Breitkopf: I object.

The Court: There is no proof this man knows it was Mr. Schadel's car.

Mr. Boyd: That is as far as I can go.

The Court: Of course, counsel has objected to it, and under the strict matters of evidence, I am certainly bound not to receive that testimony, because there is no proof here at all. 20

Mr. Boyd: Then, your Honor, I can go no further on that proof. I will withdraw Mr. Reed from the stand.

WILLIAM TERHUNE, re-called on behalf of defendant, Public Service Railway Company.

30

Direct-examination by Mr. Boyd:

Q. Mr. Terhune, what is your business? A. I am a milk man now.

Q. What were you on the day of this accident? A. A motorman.

Q. And were you a motorman on this trolley car involved in that accident? A. Yes.

Q. You were proceeding in a southerly direction down Bergen Street? A. Yes, south on Bergen Street. 40

William Terhune—Direct

Q. When you got in the vicinity of Watson Avenue, tell the Court and jury what happened?

A. On coming up from Sylvan Avenue I got up at Jeffrey Place and I checked the car at Jeffrey Place. There were two men and a lady standing
10 on Jeffrey Place and I got by there and there were a couple of automobiles standing there. I rang the gong from Jeffrey Place until I hit this automobile. That automobile gave no warning whatsoever until I was on top of him. I didn't have two or three feet from him when he came out in front of me on the track.

Q. How far did you push him after you came in contact with him? A. Oh, I wouldn't say over
20 ten feet. When I hit him he went up the street.

Q. And you came in contact with the left side of the automobile? A. With the left side of the automobile, yes.

Q. About how fast were you going when you came in contact with him? A. I wasn't going over fifteen miles an hour.

Q. There has been a lot of testimony in this case about there being a stop there. What kind of a stop is there on that corner? A. We only
30 stop by request, whenever a person wants to get off or on. Jeffrey Place is a check-up. At that street you can see them coming out of Watson Avenue. For that reason you check at Jeffrey Place and Watson Avenue you can see anything coming, and only when passengers want to get off and on there is a dead stop. There is no dead stop there.

William Terhune—Cross

CROSS-EXAMINATION by Mr. Breitkopf:

Q. Mr. Terhune, the first car was thrown into the other car that was parked at the curb? A. The first car ran into the car parked at the curb.

CROSS-EXAMINATION by Mr. Turner: 10

Q. You said at the time of this accident you were running about three miles an hour? A. Fifteen miles an hour.

Q. And how far had you been running at the rate of fifteen miles an hour? A. I checked my car at Jeffrey Place after rising the hill from Hawthorne Avenue.

Q. Did you stop at Jeffrey Place? A. No, just checked. 20

Q. How far is it from Jeffrey Place to Watson Avenue? A. Well, I couldn't just say how far it is. I wouldn't say two hundred or two hundred and fifty or one hundred and fifty. Around two hundred feet.

Q. Before you got to Jeffrey Place, did you go up a hill? A. Yes.

Q. How much of a hill is that? A. Quite a little grade.

Q. After you got up the hill, you checked your car down to fifteen miles an hour? A. Yes. 30

Q. Before you slowed up to fifteen miles an hour, how fast were you going? A. I wasn't going much faster than fifteen miles an hour up the hill.

Q. Were you going twenty miles an hour up the hill? A. No, I wouldn't say more than around fifteen to eighteen miles.

Q. And you checked your car and was still go- 40

William Terhune—Cross

ing fifteen miles an hour? A. I wouldn't say over or under fifteen—about fifteen.

Q. You didn't go any slower when you got on the level than going up the hill? A. Oh, yes.

10 Q. Although you knew you weren't going to stop at Watson Avenue? A. I had no call for Watson Avenue.

Q. Nobody was standing there to get on or rang the bell to get off? A. No.

Q. You could see down Watson Avenue? A. I could see Watson Avenue.

Q. Did you see the defendant at all—Mr. Honig? A. No, sir; not until I hit him.

20 Q. You did not see him until you hit him, did you? A. No.

Q. That is the first time you saw Mr. Honig, when you hit him? A. About two or three or four feet away.

Q. Within two or three feet of him? A. Yes.

Q. That is the first time you saw him and hit him? A. Yes.

30 Q. Now, what were you doing up to the time you got within two or three feet of where the accident happened? A. Ringing my gong and looking straight ahead for the cars parked on the street.

Q. Ringing your gong? A. Yes.

Q. What did you ring your gong for? A. For the cars parked on the street.

Q. For the cars standing there? A. For anybody who walked between those cars.

40 Q. Then it was not for the cars you were ringing; it was for people you were ringing? A. For anybody walking between those cars.

William Terhune—Cross

Q. When did you start to ring your gong? A. At Jeffrey Place.

Q. You started to ring your gong at Jeffrey Place? And did you ring your gong from Jeffrey Place until the time you got to Watson Avenue? A. I wouldn't say continuous ringing, four 10 or five times.

Q. That was in the middle of the block? A. Yes.

Q. What did you ring your gong for in the middle of the block? A. I am just after telling you, I rang the gong in case somebody walked between the cars.

Q. In the middle of the block? A. Certainly.

Q. And you rang about five times? A. Yes. 20

Q. That would mean about every forty feet you rang the gong, didn't you? A. Yes.

Q. Had you done that all that afternoon from the time you started out? A. Any place I think dangerous.

Q. You rang your gong every forty feet? A. That's what it's there for.

Q. Every forty feet? A. Not every forty feet; whenever it is necessary.

Q. Well, wherever there is an automobile 30 parked in the street, you ring the gong? A. Yes.

Q. There were automobiles parked all along the street? A. Not all along the street.

Q. Well, there were that Sunday? A. No.

Q. Every time you saw an automobile parked along the street, you rang the gong? A. Yes.

Q. Although you didn't see any people? A. No, you can't see people standing in front of a car.

Q. Yet, after you had been so careful all that 40 afternoon, you did have an accident, didn't you?

William Terhune—Cross

How close to this automobile were you when you rang your gong the last time? A. Well, I would say the length of the car.

Q. The length of the car? A. Yes.

10 Q. Where was this automobile when you rang your gong the length of the car away? A. At the curb.

Q. He was standing still at the curb? He hadn't moved out yet? A. No. When I seen the car coming out four feet in front of me, I had no chance to stop whatsoever.

Q. You rang your gong every forty feet, but don't slacken down your speed any, do you? A. Oh, yes.

20 Q. Oh, now, how much did you slacken your speed? A. At that time I was going fifteen miles an hour.

Q. What is your regular speed? A. Around fifteen miles an hour.

Q. Then you didn't slacken your speed any? A. No, it wasn't necessary. I had my car under control.

Q. What do you mean, under control? A. That is, I can stop within eight to ten feet.

30 Q. From eight to ten feet? A. Yes.

Q. You could stop your car running at fifteen miles an hour within eight to ten feet? A. Positively.

Q. Of course, it took this automobile some time to get from the curb in front of you into the trolley tracks, didn't it? A. I don't know; it doesn't take so very long.

40 Q. It took him a little while, didn't it, to get from the curb over to the trolley tracks? A. Well, I would say a couple of seconds.

William Terhune—Cross

Q. A couple of seconds? A. Yes.

Q. And did you see him when he first started to turn to go over to the trolley tracks? A. Yes.

Q. The very first start of his turning, you saw it? A. Yes.

Q. How far away was your trolley car from 10 him—from the point where he went on the trolley tracks when you first saw him making the turn?

A. I was about four feet from him when he turned on my track.

Q. He had to travel about eight feet from the curb, didn't he? A. If he was standing close to the curb his right-hand wheel would.

Q. You say he traveled out from the curb and traveled a distance of about eight feet while you 20 traveled three or four; is that it?

Mr. Boyd: I object. He testified the right wheel would travel about eight feet to the left side. He didn't travel eight feet all told.

The Court: We will permit the witness to answer the question.

Q. (Question repeated by the stenographer.)

A. I wouldn't say he traveled eight feet; I didn't say he traveled eight feet. The distance from the 30 track to the curb is eight feet to his right-hand wheel, the wheel on his right-hand side. I didn't hit him on the right-hand side; I hit him on the left-hand side, which is only two feet.

Q. You said, however, didn't you, that he came in front of your car a distance of three or four feet from the car? A. Four feet.

Q. And that is the first time you seen him? A. Positively the first time I seen him.

William Terhune—Cross

Q. And that was when he got on the trolley tracks? A. Yes.

Q. You didn't see him when he first started to turn from the curb? A. No, I didn't see him when he first started to turn from the curb because he
10 pulled into me.

Q. You were not looking really when he started to turn from the curb, were you? A. I wasn't looking for him.

Q. You didn't see this man until you hit him? A. I saw him when he came over on my path.

Q. That is, when he got on the trolley track and that is the time you saw him? A. When he was pulling out on the track.

20 Q. That is the first time you saw him, wasn't it? A. Certainly. What other time could you see him if he was standing at the curb?

Q. Then you had been forty feet away from Watson Avenue the last time you rang your gong, hadn't you? Isn't that so? A. Yes.

Q. Why didn't you ring your gong when you got to Watson Avenue? A. Well, I wasn't right at the corner.

30 Q. No, you weren't right at the corner, but why didn't you ring your bell when you got to Watson Avenue? A. Well, I didn't have time to ring it again yet.

Q. But you hit him between the north and south-bound curbs of Watson Avenue. Why didn't you ring your gong when you first got to Watson Avenue, if you rang it every forty feet from Jeffrey Place? Can you tell us that? A. I didn't see any cause to ring it. Everything looked clear to me. As I was making the bend

William Terhune—Cross

there, I would have rung again for the other car.

Q. What bend? A. Watson Avenue. That is a little angle.

Q. When you passed Watson Avenue? A. I didn't see why I should ring again. There was 10
no reason why I should ring there when I didn't see nothing. Everything was clear.

Q. What was clear? A. Nothing on either side of me.

Q. Watson Avenue was clear? A. Yes.

Q. And you didn't see any reason to ring there?
A. No.

Q. Yet you tell us you had rung when you saw automobiles standing at the curb, didn't you? A. 20
Why, I was just after ringing before I hit him and I am traveling about forty feet. I didn't see him; I hadn't got to his car and he run square at me. There wasn't time for me to ring. I had to work my brakes.

Q. You didn't see his car at all until he was on the trolley track and you hit him? A. I noticed him when the front wheels started to come out on the tracks, about four feet from me. At the time we come together, I hit him at the front door. 30

Q. You say you didn't see him until he started to come out on the tracks? A. Yes.

Q. Now, I am asking you what were you doing before that, that you did not see him? A. What was I doing before that?

Q. Yes. A. How can you see him before he started to come out?

Q. No, what were you doing before that? A. Standing up in front of my car. 40

William Terhune—Cross

Q. What were you doing with your right hand?

A. On my brake.

Q. What were you doing with your left hand?

A. On the controller.

Q. How did you get the money out of the box?

10 A. I didn't have any money. I had six passengers in the car.

Q. Was there money in the box? A. No, sir.

Q. What time did you start on that run? A. About five o'clock in the morning—half-past five.

Q. Half-past five in the morning? A. Yes.

Q. You had the same car all the time? A. Yes.

Q. How many passengers had you carried up to 2:45? A. That I couldn't say, how many passengers I carried.

20 Q. When did you take the money out of the box? A. When I stopped.

Q. When? A. I stopped at Clinton Avenue and picked up three passengers at Clinton Avenue and I waited there for traffic to go across and while waiting for the traffic to go across I ground my money out of the box.

Q. You say you never take money out of the box while the trolley car is moving? A. The trolley car wasn't moving.

Mr. Boyd: I object to that question.

The Court: Yes, I think that is carrying it a little too far.

Mr. Turner: He should answer that question whether he does take money out of the box when the trolley car is moving. We can judge then as to his credibility.

The Court: No, I don't think so.

Louis Smilow—Direct

Q. You were the only man on this car operating it? A. The only operator on it.

Q. You collected the fares, attended to the brakes, and did everything yourself, didn't you?

A. Yes.

Q. Are you a motorman or a conductor? A. 10
A motorman.

Q. Although you did the duties of both conductor and motorman? A. Yes, sir.

LOUIS SMILOW, sworn on behalf of defendant, Public Service Railway Company.

Direct-examination by Mr. Boyd:

20

Q. Where are you employed, Mr. Smilow? A.
On Watson Avenue.

Q. What is your line of business? A. Hardware.

Q. Were you a passenger on this trolley car on the day of this accident? A. No, sir; I was standing on the corner of Watson Avenue and Bergen Street.

Q. Did you see this collision? A. I did.

30

Q. How far away was the front of the trolley car from this automobile of Mr. Honig's when Mr. Honig pulled out on the trolley track in front of the operator?

Mr. Turner: I object on the ground the question is leading.

Mr. Boyd: Question withdrawn.

Q. Did you see Mr. Honig's car before the accident? A. Yes.

Q. What did Mr. Honig do? A. I didn't see 40

Louis Smilow—Direct

him right before; I saw him a few minutes before that. I saw him when he started out. As soon as he pulled out, I thought an accident was unavoidable.

10 Q. How far was Mr. Honig's car away from the trolley car when he pulled out? A. About eight to ten feet.

Q. Where was the left front wheel of Mr. Honig's automobile when he was hit? A. It was on the track.

Q. Just got on the track? A. It was on the track; about the middle of the track.

20 Q. How far did the trolley car go after coming in contact with the automobile? A. I couldn't say exactly, but about ten or fifteen feet. It stopped right away as soon as the crash.

Q. How far did it push Mr. Honig's car and Mr. Schadel's car? A. Both cars?

Q. Yes. A. Well, it took them a little ways; dragged them in a south direction.

Q. About how many feet would you say it dragged both cars? A. About eight feet.

Q. Were you talking to Mr. Honig after the accident? A. Yes, I was.

30 Q. Did he say anything to you? A. Yes, I asked him why he didn't put out his hand.

Q. What did he say? A. No, not his hand; I asked him why he didn't look back and he said he had no business to look back.

Q. He said he didn't have to look back? A. Yes, he didn't have to look back.

40 Q. Did you notice the window alongside of the driver's seat on the left hand side of the car? A. I couldn't tell whether it was open or closed. I can't remember.

Louis Smilow—Cross

CROSS-EXAMINATION by Mr. Turner:

Q. Do you own any stock in the Public Service Company? A. No, sir.

Q. Do you work for the Public Service? A. No.

Q. Did you ever do any work for them? A. I never did. 10

Q. Are you a general contractor or a carpenter or which? A. I didn't say I was a contractor or carpenter. I am a hardware man.

Q. You never did any business with the Public Service Company at all? A. No.

Q. Where were you at the time of the accident? A. At Watson Avenue and Bergen Street.

Q. On which corner? A. On the south corner. 20

Q. Is that the corner of Watson Avenue and Bergen Street? A. Yes.

Q. Were you on the corner of Watson Avenue, or were you across the street? A. No, I was on the corner of Watson Avenue and Bergen.

Q. You were just across the street from where Schadel's car was parked, were you not? A. Yes.

Q. I understand you to say when Mr. Honig's automobile got on the trolley tracks, the trolley car was a certain distance away? How many feet was that? A. Before he hit him? 30

Q. Yes. After Mr. Honig's automobile got on the trolley tracks, before it was hit, how far was the trolley car away then? A. When he got on the trolley tracks he was very, very near.

Q. How near? A. I judge around three or four feet.

Q. And you say the trolley car hit Mr. Honig's car and pushed it how many feet? A. Pushed it about eight feet over. 40

Louis Smilow—Cross

Q. Eight feet over? Then they picked up Schadel's car? A. Yes.

Q. How far did the two cars get pushed after that? A. That obstructed my view across the street—the trolley car.

10 Q. How far did they move? A. About eight feet.

Q. Eight feet more, the two? A. No, not more; eight feet after the crash.

Q. I am asking you how far Mr. Schadel's car was pushed? A. I didn't see the distance from where it was parked before.

Q. You saw it after it was moving? A. Yes.

20 Q. How many feet did Schadel's car move after the Honig car came in contact with it? A. I saw Mr. Schadel's car after the accident, but I couldn't say how many feet it moved.

Q. How far did you see it moved after it was hit? A. It was pushed on the sidewalk. I should judge four feet from where it was parked, up on to the sidewalk.

Q. Mr. Schadel's car was pushed up on to the sidewalk? A. Yes.

30 Q. How far would you say from the south corner of Watson Avenue? A. Well, a few doors in.

Q. A few doors in from Watson Avenue? A. Yes.

Q. How many doors in from Watson Avenue was Mr. Schadel's car pushed? A. I am not very well acquainted there. I said before a few doors away.

Q. About how many doors away? A. I couldn't tell you.

40 Q. Four or five? A. I couldn't tell you.

Louis Smilow—Cross

Q. When you say a few, what do you mean by a few? A. I can't say exactly because I can't remember.

Q. Do you mean three, four, five or ten? A. Opposite Watson Avenue—

Q. Now, what do you mean by a few doors 10 away? A. Two or three doors.

Q. There are about twenty feet between those doors, so three doors would be about sixty feet?

A. I can't remember the size of the stores; I don't pass there often enough.

Q. Well, three doors away would be three average store fronts? A. Not the average store front.

Q. When Schadel's car stopped it was about sixty feet from the south part of Watson Ave- 20 nue? A. I didn't say sixty feet.

Mr. Boyd: I object.

The Court: Witness has testified nothing about sixty feet.

Q. Now, I say three doors is about sixty feet? A. I don't know.

Q. Point out in this room what you mean. A. Three doors could be three feet and three doors could be four feet.

Q. No, point out in this room what you mean. 30

The Court: Yes, something that you understand.

Q. Point out something in this room. A. From here to the rail there.

Q. From you to this rail (indicating)? A. Yes.

Q. You are pointing here to where these chairs are? A. Yes.

Q. You call that about three doors away?

Mr. Boyd: I will stipulate it is twenty- 40 two feet.

John T. Mathis—Direct

Mr. Turner: That is about twenty-four to twenty-five feet? Well, the jury can tell.

Q. That is the point where the two cars finally ended up with the trolley car right up close to them? A. Yes.

10 Q. So that from the time the trolley car struck Mr. Honig's car it traveled all that distance, didn't it? A. Well, not the trolley traveled that distance.

Q. Where did the trolley car stop? A. Right in front of Honig's car,—a little ahead of Honig's car, but the other car was hit.

Q. Both were up close together? A. Yes.

20 Q. So that the trolley car did travel all that distance, didn't it? A. Well, it did, yes.

Q. And Schadel's car was up on the sidewalk? A. Yes.

JOHN T. MATHIS, sworn on behalf of the Public Service Railway Company:

Direct-examination by Mr. Boyd:

30 Q. What is your business? A. An accountant.

Q. By whom are you employed? A. Bigelow & Company, 88 Gold Street.

Q. Have you any interest either directly or indirectly in this case? A. No, sir.

Q. Were you a passenger on this trolley car on the day of this accident? A. Yes.

Q. Where were you seated in the car? A. On the right hand part of the car, in front.

40 Q. Did you see this accident? A. I did.

John T. Mathis—Direct

Q. Did you see the Honig car before the accident? A. I didn't notice it, no, sir.

Q. Did you see him pull out from the curb? A. I did.

Q. When he pulled out from the curb how far was the front of the trolley car away from him? 10

Mr. Turner: I object. Witness did not say he noticed the car before the accident.

The Court: Question allowed.

Mr. Turner: I pray an exception.

Q. Did you notice the automobile start from the curb? A. I noticed the car when it first started to pull out, yes.

Q. How far was the front of the trolley car from the automobile when it pulled from the curb? A. 20
I judge four or five feet.

Q. That is, when he pulled from the curb towards the track? A. Yes.

Q. How far did the trolley car go after it came in contact with Honig's automobile? A. Well, it's a pretty hard thing to judge, but I judge around ten to twelve feet.

Q. In pushing the Honig automobile it went up against this car of Schadel, the plaintiff in this case? A. Yes, sir. 30

Q. How far did it push his car, do you know? A. Really, I don't. There was such excitement I jumped up, and by that time the car was practically stopped.

Q. Did you or did you not hear the motorman ring his bell at any time after he left Jeffrey Place? A. As far as I can remember the motorman was ringing his bell all the way down the block every few minutes.

Q. Did you notice the motorman just prior to 40

John T. Mathis—Cross

this car pulling out on the track? In other words, was he running the trolley car or grinding the fare box? A. Who, the trolley car?

Q. Was the motorman grinding the fare box at all? A. He was not.

10

CROSS-EXAMINATION by Mr. Turner:

Q. What kind of a car was this, Mr. Mathis?

A. A two-man car converted into one, as far as I could see.

Q. How did the seats run, crossways or lengthways? A. There is one on each side running lengthways, and cross seats follow after that.

Q. Where did you sit? A. On the right-hand side.

20 Q. Lengthways or crosswise? A. Lengthwise.

Q. How many seats were there between you and the front of the car? A. Well, I was seated on the very edge. I was ready to get out at the next corner or a couple or corners down.

Q. You were not going to get out at Watson Avenue? A. No.

Q. And you were looking out of the front of the car or straight ahead of you? A. Right
30 straight out the front of the car.

Q. What was this motorman doing just before he got to Watson Avenue? A. The same as any other motorman would do, running the car and looking out for anything ahead of him.

Q. When you say, "running the car," what do you mean by that? Did you see the motorman? A. I did.

Q. Did you see him standing there? A. I did.

Q. Did you observe him leaning over at all?
40 A. No.

John T. Mathis—Cross

Q. When you say "running his car," you mean having his hands on what? A. One hand on the control and the other hand on the brake.

Q. Did you see him use his brake at all? A. I did.

Q. Did he use his brake at all before the automobile was on the trolley track? A. He did. 10

Q. How far before the automobile came on the trolley track was it he used the brake? A. When he came to the cross street.

Q. Now, answer my question. How far before the automobile came on the trolley track was it he used the brake from the point of the accident?

A. Well, as far as I could see it, the minute he saw this car pulled out he applied his brakes immediately. 20

Q. That is not my question at all. How far from the point of the accident was it the motor-man started to apply his brakes? A. Immediately the accident happened.

Q. Immediately the accident happened? A. Yes.

Q. Up to that time he had not applied his brakes? A. He had.

Q. How far back did he apply it? A. I judge 30 three or four or five feet.

Q. Now, that is the first time he applied it? A. What do you mean?

Q. From Jeffrey Place to Watson Avenue? A. No, when he went across Watson Avenue he applied his brakes.

Q. He slowed down when he crossed Watson Avenue? A. As far as I could see.

Q. Before he got anywhere near the accident? A. Yes. 40

John T. Mathis—Cross

Q. And could you see this automobile on the right hand side? A. I should judge there were eight or ten automobiles on that side of the street.

Q. Was your back towards that side of the street? A. It was.

10 Q. You say you saw this automobile when it first started from the curb? A. I did.

Q. How many people were in it? A. Four.

Q. Could you see them personally? A. Could I see them personally? The driver you could see, that is all.

Q. And you saw him pull out to his left? A. Yes.

Q. How many feet did he move? A. Not over
20 four feet.

Q. How far away was the trolley car when he first started to pull out? A. About four to five feet.

Q. Four or five feet? A. It might have been more than that; it might have been six or eight feet. Four feet is not very far.

Q. It must have been when it got in front of the trolley car— A. Four feet from him.

Q. As a matter of fact, were you observing the
30 distance of the trolley car from the scene of the accident? You weren't making any special observations? A. No, I wasn't making any special observation, but I was new in that district, and I had an appointment down there for dinner, and I was looking for the street to get off at, and that is the reason I was looking out of the front of the car and took particular notice what was going on.

Q. Up to the time the motorman got to Watson
40 Avenue, did he apply his brakes at all from Jeff-

John T. Mathis—Cross

rey Place? A. I couldn't truthfully answer that, because I don't know the district or the streets.

Q. In that block then, had he applied his brakes at all? A. Not that I know of. Only when he came to the cross section.

Q. How fast was he going before he applied 10 his brakes? A. Twelve to fifteen.

Q. How fast after he applied his brakes? A. I judge he dropped down to about ten.

Q. After he was going ten miles an hour, this accident happened, and then the automobiles were pushed this distance you testified? A. Yes.

Q. And then he came to a stop? A. Yes.

Q. You said he had been ringing his gong every few minutes; is that right? You said that? A. 20 Yes.

Q. What did you mean by saying he had been ringing his gong every few minutes? A. Well, I should judge about every five minutes or six minutes.

Q. Of course it did not take him five minutes to travel from Jeffrey Place to Watson Avenue? A. Certainly not.

Q. It didn't take two minutes? A. I don't think so. 30

Q. It took about a half minute? A. That I couldn't say.

Q. During that particular half minute, or whatever it was, had you heard him ring his gong? A. Yes.

Q. Yes? Where? A. When he left Watson Avenue or that street the other side of the accident.

Q. Did you hear his gong from the time he left Jeffrey Place until the accident? A. Yes, I did. 40

John T. Mathis—Cross

Q. When? A. Right after we left the cross street.

Q. That is Jeffrey Place? A. I don't know the name.

Q. From that time until the accident did you
10 hear this gong? A. I heard his gong when he slowed down at the corner and the minute he approached these cars he applied his gong. He started to bang his gong, yes.

Q. And that was what attracted your attention to the accident? A. No, it was not.

Q. So, he applied his gong when he got up to these cars? A. Yes.

Q. When you say "they," you mean when he
20 got up to the defendant's car? A. No, because if I remember correctly, there were two or three cars in back of him.

Q. So that he did ring his gong, then, every five minutes, as you have testified to? A. I suppose so, yes.

Q. Not every half minute? A. I couldn't say.

Q. Has the Public Service Railway Company made any arrangements about your coming here today? A. No, sir.

30 Q. Have they agreed to pay you your day's salary? A. No, sir.

Q. Have you told them you ought to be paid? A. No, sir; I haven't told them a thing. I wasn't even at home when the summons was served.

Q. You were served with a subpoena? A. Yes, sir.

Q. Served yesterday or today? A. Yesterday they served it on my wife and my wife called me
40 up in New York and told me it was there.

John T. Mathis—Cross

Q. And you came in answer to that subpoena to testify? A. Yes.

Q. (By Mr. Boyd) Did you notice the window opposite the driver's seat after the accident? A. If I remember correctly, after the accident happened I got out of the car and looked at the one the trolley car hit, and the trolley car hit right about—well, it hit the door, and as far as I can remember, the window was all the way up and the glass was broken and smashed all over. 10

Q. You say the glass was smashed? A. Yes.

Q. What do you mean "smashed"? Was some in? A. Some pieces stuck in the frame.

Q. What part of the frame? A. Of the glass frame, in the upper part. 20

Q. What part of the frame? A. The upper part.

Q. How high up? A. That I don't know.

Q. Which doors are you talking about now? A. The left-hand door.

Q. How many doors are there? A. Two.

Q. And are those the only glass you looked at, the door glass? A. They were, yes.

Q. Did you look at the window in front of the door? A. No, I didn't take particular notice of it. 30

Q. And you knew the purpose of the question when the question was asked you about the glass? A. No.

Q. Why didn't you say you didn't look at the window in front of the door? A. He asked me about the glass in the door.

Q. (By Mr. Boyd) Did you see this man put his hand out to signal to the motorman he was going to turn out? A. I did not, sir. 40

William H. Ruf—Direct

WILLIAM H. RUF, sworn on behalf of the defendant, Public Service Railway Company.

Direct-examination by Mr. Boyd:

Q. Where do you live? A. 123 Mt. Prospect
10 Avenue, Newark.

Q. By whom are you employed? A. The West-
inghouse Electric Manufacturing Company.

Q. Have you anything to do with the Public
Service Railway Company? A. I have not.

Q. Have you any business either directly or in-
directly with the Public Service Railway Com-
pany? A. I have not.

Q. Were you a passenger on this trolley car
20 the day of the accident? A. I was.

Q. Where were you seated? A. On the left-
hand side, front.

Q. Tell the Court and jury what you observed.
A. Your Honor, I was sitting on the left-hand
side, front, of the trolley car and we were travel-
ing along, I should say, about fifteen miles an
hour, and he slowed down at the junction of Wat-
son Avenue and rang the bell several times, and
at Jeffrey Place you cross over and there were
30 cars parked there, and he also rang the bell there
and all of a sudden a car shot right out in front
of the motorman and he had no chance at all.

Mr. Turner: I object to that part of his
answer and ask that it be stricken out.

The Court: Yes, strike out, "and he had
no chance at all."

Q. Just tell what you saw. A. That is what I
saw; traveling along, as I say, before we come
to the junction he was traveling along about fif-
40 teen miles an hour, and then he slowed down and

William H. Ruf—Cross

then as he passed over he rang the gong for the people crossing in between—

Mr. Turner: I object and ask that that be stricken out.

The Court: Yes, strike it out.

Q. When this car pulled out from the curb, 10
what was the distance between the front of the trolley car and the automobile, when he pulled out in front of the trolley car? A. I judge six to eight feet.

Q. Did he come out speedily or slow? A. Very suddenly.

Q. What did the motorman do? A. He applied his brakes as soon as the car came towards him.

Q. How far did he go after the accident occurred? A. Between twelve to fourteen feet. 20

Q. Did you see any warning given by the driver of this automobile before he pulled out on the trolley tracks? A. There was none.

Q. How do you know there was none given?
A. You can't put your hand through a pane of glass.

Q. Did you notice whether the window was up?
A. I did.

Q. Did you notice whether or not the window was broken after the accident? A. It was broken. 30

CROSS-EXAMINATION by Mr. Turner:

Q. How far away were you from this automobile when you first saw it? A. I don't quite get your question.

Q. How far were you from the first automobile, the one you hit, when you first saw it? A. I judge about fifteen feet.

William H. Ruf—Cross

Q. That is the first time you saw it? A. That is the first time I saw the automobile, yes.

Q. What was the automobile doing when you were fifteen feet away from it? A. He started to pull out from the curb.

10 Q. It had started to pull out from the curb?
A. Yes, sir.

Q. And from that time until the accident did you see the motorman put on his brakes? A. I did.

Q. And did he put them on hard? A. Well, I wouldn't say hard. He shut down his speed. I don't know whether you understand me or not. I was sitting on the left-hand side, looking out.

20 Q. You know what my question is. I am asking you if you saw him put on his brakes hard.
A. I suppose it is hard; I don't know how those air brakes work.

Q. While you were traveling that fifteen feet, did you see any decrease in the speed of the car?
A. Yes.

Q. How much did it decrease? A. Well, it stopped down very quick.

30 Q. It slowed down to what speed in the fifteen feet?
A. Why, it stopped.

Q. You don't mean to say the car stopped in fifteen feet? A. Yes.

Q. You were fifteen feet away from this automobile when you first saw it? A. Yes, and by that time the automobile and trolley car had met.

40 Q. I am talking about the time he put on his brakes. He traveled fifteen feet before he got to the place where the automobile was after you first saw it. A. Your question kind of mixes me.

William H. Ruf—Cross

Q. My question is very clear. A. And I tried to explain it just the way I seen it.

The Court: You must answer the questions, of course. If you don't understand, tell him you do not understand them.

Q. You say this automobile was fifteen feet 10
away when you first saw it? A. About that distance, as near as I can judge.

Q. Did you say that the motorman then applied his brakes? A. No.

Q. When did he apply his brakes? After that?
A. I should judge about five or six feet.

Q. So he was continuing on after you saw the automobile and then the motorman applied his brakes? A. Yes.

Q. What was it that attracted your attention 20
to the automobile when fifteen feet away? A. By this automobile starting out to try to get out from the one ahead of it.

Q. You saw it start out fifteen feet from you?
A. Yes.

Q. Up to that time, the motorman had not slackened his speed at all from Watson Avenue? A. He slowed down at Watson Avenue.

Q. How much? A. I judge down to about ten 30
miles an hour.

Q. How far was he from Watson Avenue when he put on his brake? A. I didn't take any particular notice. I noticed he had been ringing the bell and slowing down at every intersection.

Q. Have you any particular relation in Watson Avenue? A. I don't know much about that part of the city, no.

Q. Have you any relations in this particular

William H. Ruf—Cross

street where the accident happened? A. I know it is the street after I get off.

Q. Did you sign a statement after the accident?

A. Yes.

Q. Who did you sign it for? A. The conductor
10 or motorman, whatever you call him there. I signed a card and gave my name.

Q. Did you ever sign a statement about this accident? A. That I don't recollect.

Q. You don't recall? A. I do not.

Q. Have you talked with anybody about the accident from then until now? A. Just a few minutes ago when I came to court.

Q. You say this man could not put his hand
20 through a pane of glass? A. Yes.

Q. Did you observe whether he put his hand out at all? A. I sure did.

Q. Will you say he did not? A. He did not.

Q. Although you were sitting in this trolley car and you were looking along Bergen Street, were you? A. Yes, along the street.

Q. You were not looking up Watson Avenue?
A. Kitty-corner across the trolley car.

Q. And you didn't look up Watson Avenue? A.
30 I don't know what you call it, but I was looking right out past and between the motorman and the side of the car.

Q. On which side were you sitting there? A. Oh, I sat on the left-hand side.

Q. Could you see the motorman all the time?
A. I sure could.

Q. Could you see what he was doing before he got to Watson Avenue? A. Looking straight
40 ahead.

William H. Ruf—Cross

Q. Did you see the motorman taking coins out of the coin box? A. Not there.

Q. Did you see him take it out? A. Yes, at Clinton Avenue, I think it is.

Q. How far from where this accident happened? A. I don't know how far, but I know several 10 blocks away.

Q. How many passengers got on in the meantime? A. Two or three at Clinton Avenue.

Q. And you didn't see him take any change out from Clinton Avenue up to this point? A. He hadn't taken any out.

Q. Will you say now he was not taking any change out before he got to Watson Avenue? A. He hadn't taken out any that I noticed. 20

Q. That you noticed? A. Yes. I noticed that he had taken it out while waiting there at Clinton Avenue or whatever it is.

Q. Were you watching him particularly from the time he left the block over from Watson Avenue until he got to Watson Avenue? A. I don't know the name of the street.

Q. Can you tell us everything the motorman did from Jeffrey Place to Watson Avenue? A. All I know is he slowed down and rang the bell 30 at different intersections.

Q. There are no intersections between those streets, are there? A. What I mean cross streets.

Q. I say, do you know everything he did from Jeffrey Place and Watson Avenue? A. I don't know as I know Jeffrey Place and Watson Avenue. All I noticed he slowed down in this street and rang the gong.

Q. And that was when the automobile was coming out from the right-hand curb, wasn't it? A. 40 It had been previous to that.

Ignatz Honig—Direct

Q. He didn't ring his gong previous to that?

A. He didn't have time.

Q. He didn't ring it, did he? A. He didn't have time. No, he didn't ring.

Q. You don't know when the motorman saw this
10 automobile, do you? A. Yes, when he got on the track.

Q. He didn't see it until then? A. He couldn't.

Q. You didn't see it until then? A. Yes.

Q. Why couldn't he see it before? A. Because he was watching ahead and had to go past this other car parked there.

Q. You think the motorman could not see as
20 much as you could see, although the motorman was in front of the car? A. I didn't say that. I was watching out the side of the car, between the motorman and the side two doors.

Q. How long have you known the motorman?

A. I didn't know him at all.

Q. Do you know the milk company he works for? A. No, sir.

Mr. Boyd: Defendant, the Public Service Railway Company, rests.

30

IGNATZ HONIG, re-called in rebuttal.

Direct-examination by Mr. Turner:

Q. Mr. Honig, do you know Mr. Louis Smilow, one of these witnesses here? A. No, sir; none of them.

Q. After this accident, did Mr. Smilow (stand
40 up, Mr. Smilow), did that man come to you and

Motion for the Direction of a Verdict

ask you a question and you said you didn't have to look back? A. I didn't see nobody.

Q. Did you have any talk with that man? A. I only saw this gentleman (indicating), the motorman.

Q. Did you have any conversation with him in 10 your life? A. No, sir; never seen him before.

Q. Have you ever seen him in your life? A. No, sir.

Mr. Boyd: I now move for a direction of a verdict in favor of the Public Service Railway Company on the ground no negligence has been shown on the part of the Public Service Railway Company, and by a greater weight of the evidence 20 the Public Service Railway Company is in no way liable for the happening of this accident.

The Court: Motion denied.

Mr. Boyd; I Pray an exception.

Mr. Turner: On behalf of the defendant, Ignatz Honig, I move for a direction of a verdict on the ground no negligence has been shown on the part of Mr. Honig, and on the further ground the accident was purely caused by the Public Service Railway Company. 30

The Court: Motion denied.

Mr. Turner: I pray an exception.

(Counsel sum up.)

• **Charge to the Jury**

Gentlemen of the Jury: This is a case brought by Harry D. Schadel against Ignatz Honig and the Public Service Railway Company, a corporation, the two defendants. Mr. Schadel brings this action against a man by the name of Honig, and
10 the Public Service Railway Company, making two defendants.

I am going but briefly into the question of the testimony. Mr. Schadel, the first witness for the plaintiff, is the owner of the car parked on Bergen Street Sunday afternoon, December 9th, 1923. The first he knew about it, he heard the crash and the car was completely wrecked. There was a man by the name of William Heller, brought
20 by the plaintiff, and he said he was coming up Watson Avenue, and the Schadel car was up on the sidewalk, and that he saw Honig's car just start out from the curbing. It was just turning into the tracks and got about a foot and a half on the tracks; that the left wheel was three and a half feet on the track and the right wheel had not gotten on the track and the car moved five or ten feet after the accident. William Kirst
30 said on the witness stand he was on Bergen Street and saw the trolley car hit the Honig car and the Honig car was jammed into the Schadel car; that it drove the car fifteen feet. He said he did not see the motorman. He said he saw a car pull out and as he pulled out he was struck. I believe that was his testimony. There was a witness, Ray Kingsland. He said he saw the car before and after the accident. It was worth about five hundred dollars before and about twenty to twenty-
40 five dollars after the accident.

Charge to the Jury

The defendant's witness, the first man by the name of Neiss, he said he saw him pull out and saw him put out his left hand. He saw the trolley car about at Jeffrey Place, some two hundred feet away and there was a car parked in front of Mr. Honig's car and I think he said that the motorman's head was bent down. That was Mr. Neiss' testimony. That it was a regular trolley stop and a one-man car, but he could not see what he was doing. Then there was the testimony of Mr. Honig himself. He said he started out from the curb, didn't hear any bell, and he was going in first speed and that he did put out his hand. 10

Then there was the testimony of the defendant corporation, the Public Service Railway Company. There was a man by the name of Louis Smilow, who claims he was standing at the corner of Watson Avenue and Bergen Street. He said he saw Honig's car pull out and that the accident was unavoidable. The trolley car went ten or fifteen feet and pushed Mr. Honig's car about eight feet. He said he had a conversation with Mr. Honig. There was a man by the name of Mathis, who was a passenger on the car; that he was sitting on the right-hand side in front of the car and he said he heard the motorman ringing the bell and that he was not at the fare box at the time and that the car moved about ten feet after the accident. Then there was a man by the name of Terhune, who was the motorman of the car. He said he checked up the car at Jeffrey Place and rang the gong and when he saw the car go on the track two or three feet from him, when 20 30 40

Charge to the Jury

he hit him, pushing the Honig car into the Schadel car; that Mr. Honig gave no signal as he started out. There was another man by the name of Ruf who testified that he was sitting in the trolley car, and he said he did not see any signal
10 given by the man and he was in a position to see.

I have given you this very briefly. You have heard it and you have got to take it as you heard it. I do not want you to take anything I have said at all, because I have told you very briefly. You must take the evidence and weigh it as you heard it. It is up to you, of course, to decide the question at issue here. The plaintiff Schadel's car was parked along the curb. He brings suit
20 against two defendants, Ignatz Honig and the Public Service Railway Company, a corporation. Either one or both of these defendants are liable. The motorman on the trolley car, of course, driving his car, must have his car under proper control at all times. He was at this time practically just beyond the intersection of Watson Avenue and Bergen Street, I believe. Now, the question for you to decide is whether or not this motorman had his car under such control at the time
30 he could have avoided this accident; whether or not he made proper observation of the road in front of him so as to avoid any accident. There is also the duty upon the part of the motorist involved in this accident. Did he, when he left the curb to start upon the street, did he make the proper observation and give the proper signal he is required to do? That is the question for you jurymen to decide, whether he did or did not.

Charge to the Jury

Now, the question of negligence. Was there negligence on either one or both of their parts? Negligence in the legal sense is the failure to observe that proper degree of care which the law demands, whereby a person suffers injury. Was there, in this particular instance, such negligence 10
by either of the parties whereby the other party was injured? It is up to you, gentlemen of the jury, to decide as to whether or not Mr. Honig was guilty of negligence whereby this accident occurred, or whether the Public Service Railway Company, a corporation, was guilty of this negligence, or whether both of them are guilty of negligence as against this present plaintiff, Harry D. Schadel. 20

As far as the damage is concerned, the damage proven by the plaintiff amounts to \$485, and there does not seem to be any contradictory or positive testimony other than that testimony for the plaintiff. There was some other testimony but it was rather indefinite and, of course, you can weigh it for whatever it may be worth, but the positive testimony brought out by the plaintiff was that \$485. The credibility of the witnesses, of course, is up to you, gentlemen of the jury. It is up to 30
you to say which one you are to believe, or do not believe. You have heard the testimony and it is entirely up to you to give credence to the witnesses as you heard them. You are not to judge by the number of witnesses, but by the credibility of their testimony, and the weight you give to their testimony.

(Jury retires.)

Judge's Certificate

Mr. Turner: Where the Court charged the jury "either one or both of these defendants are liable," the defendant, Ignatz Honig, excepts.

10 Mr. Boyd: I pray the same exception on behalf of the defendant, Public Service Railway Company.

Judge's Certificate

20 I, William V. Rafferty, Judge of the Orange District Court, do hereby certify that the foregoing is a transcript of the evidence given upon the trial of the case of Harry D. Schadel v. Ignatz Honig and Public Service Railway Company, a corporation, on July 29th, 1925, as certified by William E. Davenport, the stenographer appointed to report such evidence stenographically.

In Witness Whereof, I have hereunto set my hand and seal this 6th day of August, 1925.

30 WILLIAM V. RAFFERTY,
Judge.

Stenographer's Certificate

I, William E. Davenport, a stenographer duly appointed to report stenographically the evidence given before the Orange District Court in the case of Harry D. Schadel v. Ignatz Honig and Public Service Railway Company, a corporation, do hereby certify that the foregoing is a true 10 and correct transcript of the evidence given on the 29th day of July, 1925, before Hon. William V. Rafferty, Judge of the Orange District Court, in said matter.

In Witness Whereof, I have hereunto set my hand and seal this 5th day of August, 1925.

WM. E. DAVENPORT, 20
Stenographer.

30

40

Judgment Record.

#26175

ORANGE DISTRICT COURT

10	HARRY SCHADEL, Plaintiff, vs. IGNATZ HONIG and PUBLIC SERVICE RAILROAD Co., Defendants.	}	In Sum's is'd Oct. 29, 1924. On contract Re'ble Nov. 7th 1924. Demand \$500.00
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20	Michael Breitkopf, Ptff's Atty. Deft's Atty.
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SUMMONS RETURNED AS FOLLOWS:

I served this Summons Nov. 1, 1924, by reading the same to the defendant Honig and delivering to him a copy thereof.

JOHN E. GALLAGHER,
Sergeant-at-Arms or Constable.

30 The said defendant not being found, I served this Summons , 192 , by leaving a copy thereof at place of abode in presence of a person of the family of the age or fourteen years who was informed of the contents thereof.

Sergeant-at-Arms
Constable

Judgment Record

Plaintiff's Costs

Summons	2.50	
Mileage	.32	
Listing fee	.50	
Witness fee	6	
Venire	10
Attorney fee	24.25	
	<hr/>	
Total cost	28.57	

I served the within Summons, _____, 192____, on _____, he being the _____ of said Corporation by regarding the same to and delivering to _____ a copy thereof.

Execution
Mileage
Statement

20

Sergeant-at-Arms, Constable.

Service acknowledged this 1st day of November, 1924.

THOMAS J. SMITH.

July 29, 1925: Trial had before Hon. William V. Rafferty, Acting Judge. The following jury was 30 sworn and served:

1—George F. Wilson	7—Thomas Dickinson
2—Thomas Mathew	8—Patrick Fagan
3—George Barnes	9—Charles Coleman
4—James Dunn	10—Thomas Dickinson
5—John Merklin	11—Robert L. Hogeman
6—Benjamin Kitchell	12—Oscar Brooks

William E. Davenport, sworn as stenographer.
Harry B. Schadel, William Heiler, William F. Kust 40

Judgment Record

and Ray Kingsland, sworn and testified. Plaintiff rests. Motion for non-suit as to Public Service Railway Company, denied. Motion for non-suit as to Ignatz Honig, denied. Hyman Neiss, William F. Kirtst, Ignatz Honig, Stanley Reid, Charles B. Lounsberry, **10** Harry B. Schadel, William Terhune, Ray Kingsland, Stanley Reid, William Terhune, Louis Smilio, John T. Matthews, William H. Ruff, and Ignatz Honig, sworn and testified.

Defendants rest. Motions for direction of verdict denied. In accordance with the verdict, judgment was rendered for the plaintiff against the defendant Ignatz Honig for Four Hundred Eighty-five Dollars damages and Twenty-eight Dollars Fifty-seven cents costs, and **20** for the defendant Public Service Railway Company.

Notice of appeal filed August 4, 1925.

Appeal Bond filed August 8, 1925.

HAROLD J. CRABORD,
Clerk.

Notice of Appeal

NEW JERSEY SUPREME COURT

HARRY SCHADEL, Plaintiff-Respondent, vs. IGNATZ HONIG, Defendant-Appellant.	}	10
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To Michael Breilkopf, Attorney of Plaintiff:

TAKE NOTICE that the defendant hereby appeals to the New Jersey Court of Errors and Appeals from all of the judgment entered herein by the New Jersey Supreme Court affirming the judgment of the Orange District Court. 20

Yours respectfully,

FRANK G. TURNER,
 Attorney of Defendant-Appellant.

30

40

Grounds of Appeal

NEW JERSEY COURT OF ERRORS & APPEALS

10	HARRY D. SCHADEL,		Plaintiff,
	vs.		
	IGNATZ HONIG,		Defendant.

The following are the grounds of the defendant's appeal from the judgment of the Supreme Court, in the above cause:

- 20 1. The Supreme Court erroneously affirmed the judgment below, wherein the Trial Judge erroneously charged the jury as follows:

“Either one or both of these defendants are liable.”

- 30 2. The Supreme Court erroneously affirmed the judgment below, wherein the Trial Court erroneously refused to direct a verdict in favor of the defendant, Ignatz Honig, on the ground that no negligence has been shown on the part of Mr. Honig.

- 40 3. The Supreme Court erroneously affirmed the judgment below, wherein, the Trial Court erroneously refused to direct a verdict in favor of the defendant, Ignatz Honig, on the ground that the accident was caused entirely by the Public Service Railway Company.

Grounds of Appeal

4. The Supreme Court erroneously affirmed the judgment below, wherein the Trial Judge erroneously refused to order a judgment of non-suit in favor of the defendant, Ignatz Honig, on the ground that no negligence had been shown on his part.

10

5. The Supreme Court erroneously affirmed the judgment below, wherein the Trial Judge refused to allow attorney for the defendant, Ignatz Honig, to ask on cross-examination and require an Answer from the witness, William Terhune, called on behalf of the Public Service Railway Company to the following question:

“You say you never take money out of the box, while the trolley car is moving.” 20

FRANK G. TURNER,
Attorney and of Counsel for the
Defendant-Appellant, Ignatz Honig.

Rule on Affirmance

NEW JERSEY SUPREME COURT

10	HARRY SCHADEL, Plaintiff-Respondent, vs. IGNATZ HONIG and PUBLIC SERV- ICE RAILWAY COMPANY, Defendant-Appellant.	}	On Appeal
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20 This cause having been duly argued at the present term of this Court by Michael Breitkopf, of Counsel for Plaintiff-Respondent, and Frank G. Turner of Counsel for Defendant-Appellant, and the court having considered same, and finding no errors in the record or proceedings in the Orange District Court of the City of Orange,

30 IT IS THEREUPON ordered and adjudged that the judgment of the Orange District Court of the City of Orange be affirmed with costs; and that a record be remitted to the Orange District Court of the City of Orange, to be proceeded with in accordance with the judgment and the practice of said court.

On Motion of

MICHAEL BREITKOPF,
 Attorney of Plaintiff-Respondent.

“COPY”

Opinion

NEW JERSEY SUPREME COURT

No. 413, October Term, 1925

HARRY SCHADEL,
Plaintiff-Respondent,

vs.

IGNATZ HONIG,
Defendant-Appellant.

10

Submitted October 16, 1925; decided January 1926.

Defendant's appeal, district court.

20

BEFORE: Justice Parker Minturn and Black.

For the Plaintiff-Respondent, Michael Breittkopf.

For the Defendant-Appellant, Frank G. Turner.

PER CURIAM. The plaintiff's automobile, standing parked in the day time at the right-hand curb of Bergen Street, Newark, was seriously damaged by Honig's car being pushed into it by a south-bound car of the Public Service Railway Company. Plaintiff sued both Honig and the Company and on the trial the latter was acquitted by the jury and a verdict found against the appellant Honig. The accident occurred in this way: Bergen Street runs north and south; it has one trolley track in it, and there is a space of about eight feet between the track and the curb on each side, or not enough for more than one automobile

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Opinion

between curb and track. The plaintiff's car was parked on the west side of Bergen Street, and Honig's car was parked behind it. Honig got into his car, started the engine and undertook to pull out from behind plaintiff's car to the left
10 just as the trolley car came from the north, caught Honig behind and pushed his car into that of the plaintiff. The jury absolved the Public Service Railway Company, evidently on the theory that Honig started his car in front of the trolley car when the latter was too close to stop in the exercise of due care. The case was peculiarly for the jury.

The trial court charged, among other things,
20 that "either one or both of these defendants are liable," and this is said to be erroneous on the authority of *Dentz v. Pennsylvania Railroad Company*, 75 N. J. L. 893. The reversal in the *Dentz* case, however, was based on a portion of the charge wherein the jury was instructed that the collision along established a presumption of negligence. The instruction in the present case was not based upon any such isolated fact, but upon
30 all the evidence as it appeared in the case, taking the view of it most unfavorable to the plaintiff. There can be no doubt that the plaintiff was entirely without fault, and as the facts developed on the trial, it was in our judgment indisputable that the plaintiff's automobile would not have been injured except for the negligence of Honig or the Public Service Railway Company or both.

The second point is that the court refused to non-suit, and the third, that the court refused to
40 direct a verdict for the defendant. These are covered by what has already been said.

Opinion

The fourth and last point is that the court erred in excluding a question asked of the motorman, William Terhune, under cross-examination. There has been some testimony in the case that shortly before the accident the motorman had been seen bending over and looking down while at his post, as though he were grinding some change out of the cash box. The car was a one-man car. The motorman denied this and said that he had taken the money out sometime before when at a standstill because of traffic at another corner. Counsel for Honig then asked.

“Q. You say you never take money out of the box while the trolley car is moving?
A. The trolley car wasn't moving.”

“Mr. Boyd: (For Public Service.) I object to that question.”

“The Court: Yes, I think that is carrying it a little too far.”

“Mr. Turner: He should answer that question whether he does take money out of the box when the trolley car is moving. We can judge then as to his credibility.”

“The Court: No, I don't think so.”

Counsel abandoned the matter at this point and did not even take an exception. Of course, an exception is not necessary to review a ruling in the district court. Assuming that the matter is in such shape as to be reviewable, we think there was no error in restricting the cross-examination to this extent. In *Quellmalz v. Atlantic Coast Elec. Ry. Co.*, 94 N. J. L. 474, the Court of Errors & Appeals dealt with a general question of this kind relating to a general failure of the defend-

Opinion

ant company to install new controller boxes for several years, and that court held that the question was irrelevant under the well-recognized rule of evidence that other acts of negligence, like other crimes, are not evidential to show the commission of the particular act of negligence or particular crime. On this theory, a question as to the habits of the motorman with relation to taking money out of the cash box when the car was moving was irrelevant and, therefore, the question was properly excluded.

These considerations lead to an affirmance of the judgment.

New Jersey
Court of Errors and Appeals

HARRY D. SCHADEL,

Plaintiff,

vs.

IGNATZ HONIG,

Defendant.

On Appeal
from Su-
preme Court.

**BRIEF OF DEFENDANT, IGNATZ
HONIG.**

This is an action brought in the Orange District Court by Harry D. Schadel against Ignatz Honig and the Public Service Railway Company, to recover damages alleged to have been sustained to the plaintiff's automobile in an accident that occurred December 9th, 1923, on Bergen Street, Newark, New Jersey.

A trolley car of the defendant, Public Service Railway Company collided with the automobile of Ignatz Honig and caused Mr. Honig's automobile to collide with the automobile of the plaintiff. A judgment was rendered in favor of the plaintiff against the defendant Ignatz Honig, in the sum of Four Hundred and Eighty-five Dollars damages. The jury awarded a verdict in favor of the defendant Public Service Railway Company.

POINT I.

The Supreme Court erroneously affirmed the judgment wherein the trial Judge erroneously charged the jury as follows:

“Either one or both of these defendants are liable.”

The learned Supreme Court in writing its opinion (Case p. 97) disregarded the rule laid down in *Mettie v. De Baghian* 2 N. J. M. R. 990, 126 At. 419 which holds that such charge is erroneous because it overlooks the fact that the jury might have found that the collision occurred notwithstanding that both defendants were using due care.

It was for the jury to say whether either one or both of the defendants were liable and not for the Court to so instruct the jury. The plaintiff's case shows several acts on the part of the defendant previous to the actual collision, all of which tended to the result and might be found to be explanatory of it. These acts would not raise and would not require an inference of negligence. The Court however does not satisfy itself with simply raising an inference of negligence, but directs the jury that it must find against either one or both of the defendants. This is contrary to the rule laid down by our Court of Errors & Appeals in the case of *Dentz v. Pennsylvania Railroad Company*, 70 Atl., 164, wherein the Court holds:

“Negligence is not to be presumed from the mere fact of a moving boat colliding with another moored in a slip, when the

plaintiff's case shows several acts of the defendant previous to the actual collision, all of which tended to the result, and might be found to be explanatory of it, without requiring an inference of negligence. Presumptions in favor of plaintiff exist only in the absence, not in the presence, of explanation by him."

"Where the plaintiff's case shows the conditions under which an accident happens, and the question is raised, whether, under the circumstances specified, the conduct of the defendant was negligent, the rule '*res ipsa Loquitur*' does not apply."

In the case of *Ferdon v. McConnell*, 122 Atl., 730, our Court of Errors & Appeals has said:

"Proof that an automobile driven by another collided with the one driven by the servant, striking it on its side, which the servant did not see until the collision, nothing more being shown by the plaintiff, is not sufficient proof to justify an inference of the servant's negligence, or present a situation requiring defendant to explain."

Negligence cannot be presumed. *Bien v. Unger*, 64 N. J. L., 596.

POINT II.

The Supreme Court erroneously affirmed the Trial Judge wherein he erroneously refused to order a judgment of non-suit in favor of the defendant Ignatz Honig on the ground that no negligence had been shown on his part. At the close of the plaintiff's case there was nothing to indicate that the defendant Ignatz Honig had been guilty of negligence. There was no evidence on which an inference of negligence could have been raised. The evidence of the close of the plaintiff's case was that Ignatz Honig was driving his automobile in a careful manner and that his automobile was struck by the trolley car of the defendant Public Service Railway Company. This did not prove negligence or raise a presumption of negligence and it was error on the part of the Trial Judge to refuse this motion made on behalf of this defendant.

POINT III.

It was error on the part of the Trial Judge to refuse to order the jury to bring in a verdict in favor of the defendant, Ignatz Honig, on the ground that the accident was caused solely by the negligence of the Public Service Railway Company. At the close of the defendant's case there was nothing to indicate any negligence on the part of Ignatz Honig, but there was proof of negligence on the part of the Public Service Railway Company. The fact that a man drives an automobile on the track of the Public Service Railway Company, in a public street and is struck by a trolley car, does not indicate or raise the inference that he is guilty of negligence.

POINT IV.

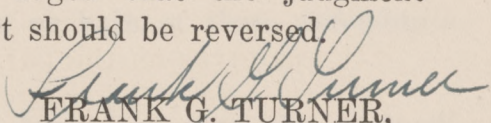
The Trial Judge refused to allow the attorney for the defendant, Ignatz Honig, to ask on cross-examination and require an Answer from the witness, William Terhune, called on behalf of the Public Service Railway Company, to the following question:

“You say you never take money out of the box, while the trolley car is moving.”

It was error to refuse to allow this question on cross-examination. The defense was that the accident happened because the motorman on the trolley car was bending over the coin-box to take out the coins and was not watching the track. As against the Public Service Railway Company, this evidence was admissible.

It was error for the Trial Court to refuse to allow this question to be asked.

It is respectfully urged that the judgment of the Supreme Court should be reversed.


FRANK G. TURNER,
Attorney and of Counsel with
Defendant-Appellant.

POINT BY

The first objection is that the evidence is not sufficient to establish the fact of the accident. It is contended that the evidence is not sufficient to establish the fact of the accident.

The second objection is that the evidence is not sufficient to establish the fact of the accident. It is contended that the evidence is not sufficient to establish the fact of the accident.

It was argued that the evidence is not sufficient to establish the fact of the accident. It is contended that the evidence is not sufficient to establish the fact of the accident.

It was argued for the first time that the evidence is not sufficient to establish the fact of the accident. It is contended that the evidence is not sufficient to establish the fact of the accident.

It is respectfully urged that the judgment of the Supreme Court should be reversed.

[Handwritten signature]

Attorney at Law

Respectfully,
[Signature]

[Signature]

[Signature]

[Signature]

New Jersey Court of Errors and Appeals.

On Appeal from Supreme Court.

HARRY D. SCHADEL,
Plaintiff-Respondent,
VS.

IGNATZ HONIG,
Defendant-Appellant.

**BRIEF OF PLAINTIFF HARRY D.
SCHADEL.**

POINT I.

**It was not error for the trial Judge to
charge as follows:**

“Either one or both of these defendants
are liable.”

The indisputable facts are that the plaintiff Schadel was lawfully parked on the right side of Bergen Street when a collision occurred at or near the spot where the plaintiff's car was parked, between the trolley car and the automobile of the defendant Ignatz Honig, as a result of which the automobile of Honig struck and damaged the standing automobile of the plaintiff. That the plaintiff Schadel was faultless is indisputable. An examination of the record and of the facts developed on the trial clearly indicate one inescapable inference and that is that the plaintiff's

automobile would not have been injured except for the negligence of Honig or the Public Service Railway Company, or both.

The defendant Honig relies upon the case of *Mettie v. DeBaghian*, 2 N. J. M. R. 990, 126 Atl. 419. The decision in that case is based upon the following charge by the Judge:

“There seems to be no question in this case but that the plaintiff is entitled to recover. He is entitled to recover from some one, and you are going to say from whom.”

The Court, with reference to this charge, says:

“This instruction seems to us palpably erroneous, for it overlooks the fact that the jury might have found that the collision occurred notwithstanding that both the motorman and the driver of the jitney were using due care in the operation of their respective vehicles.”

A careful reading of the opinion would seem to indicate that the evidence in the case, perhaps, would have justified a finding by the jury to the effect that neither one of the defendants in that case was negligent and that the accident was unavoidable. In the case at bar there is absolutely no evidence before the jury from which could be drawn the inference that the accident was unavoidable or that neither one of the defendants was negligent. On the contrary, the facts in this case and the evidence relating to the manner in which the accident happened seem clearly to indicate that this collision could not have happened if both the defendants had been exercising due care in the operation of their respective vehicles. For, certainly, it is clear that had the defendant Honig made proper observation

or proceeded cautiously to the car track from the curb where he had been standing, he surely would have seen the trolley car approaching. Even if the trolley car had been traveling at an excessive rate of speed, which fact, of course, does not appear in the record, the defendant Honig, by reason of the fact that there was nothing behind him to obstruct his view, and if he was exercising due care, could have observed the trolley car approaching him in time to avoid the collision.

The case of *Dentz v. Pennsylvania Railroad Company*, 75 N. J. L. 893, cited by the appellant, is of no avail in this case, in view of the fact that it is not asserted by the plaintiff that negligence should be presumed from the mere happening of this accident. The inference of negligence is based upon all the evidence in the case, which points to the irresistible conclusion that the accident was one which could have been avoided by the exercise of due care by either of the defendants or both of them and that, therefore, the instruction of the Court was correct.

In the case of *Brower v. Public Service*, 74 N. J. L. 493, and 64 Atl., page 1052, on page 1053, Justice Trenchard said:

“There are cases in which the Court may instruct the jury to find negligence but these are such that both the facts and the inferences to be drawn from these are indisputable, so that, if a verdict were returned against them it must be set aside as contrary to the whole of the evidence. *Moebus v. Becker*, 46 N. J. L. 41.”

It is submitted that there can be no doubt that the plaintiff was entirely without fault and as the facts developed at the trial, it was indis-

putable that the plaintiff's automobile could not have been injured except for the negligence of Honig or the Public Service Railway Company, or both.

POINT II.

The trial Judge was justified in refusing to direct judgment of non-suit in favor of the defendant Ignatz Honig, because there was ample evidence adduced on the part of the plaintiff to indicate the negligence of the defendant Honig.

The testimony of William Heller, the witness for the plaintiff, pages 10-12 of the state of the case, indicates that the defendant Honig started his car out from the curb toward the trolley track and that he was forced to bear to the left in order to clear the standing automobile of the plaintiff Schadel and that he was struck by the trolley car when he was about one and a half feet past the right-hand track and that the right wheel of his automobile was not yet on the track. It is certainly clear that from this testimony the jury had a right to infer negligence on the part of Honig in the operation of his automobile and that if he had used due care and had made proper observations before starting out from his original position, he could have avoided the accident. Heller's testimony indicates the relative positions of the trolley car and the automobile immediately before the accident and at the time of the accident, and from this evidence the jury had a right to infer that had the defendant Honig made sufficient observation at the time he started

his car and immediately afterward, and had Honig exercised due caution in proceeding on to the tracks, the accident could have been avoided. This motion was, therefore, properly refused by the trial Judge.

POINT III.

The trial Judge was justified in refusing to order a direction of verdict in favor of the defendant Ignatz Honig at the close of the entire case for the reasons set out in Point II above, and also because of the additional evidence submitted by the defendant, Public Service Railway Company. There were sufficient facts from which the jury could easily infer negligence upon the part of the defendant Honig.

POINT IV.

The trial Judge was justified in refusing to allow the attorney for Honig to ask the following question upon cross examination:

“You say you never take money out of the box while the trolley car is moving.”

The question was a very general one and could not have been admissible inasmuch as it did not apply to the specific time when the accident occurred. Moreover, the question dealt with the customs or habits of the motorman with relation to taking money out of the cash box when the car was moving and was certainly irrelevant, and therefore properly excluded. *Quellmalz v. Atlantic Coast Electric Railway Company*, 94 N. J. L., page 474.

However, the record on page 62, line 29, indicates that the question was answered by the witness and that the objection of counsel was belated and of no avail.

In any event, assuming that the question was admissible, it was harmless error for the Judge to refuse to permit an answer to the question in view of the fact that counsel had already examined the witness with reference to his conduct immediately before the happening of the accident and had also obtained from the witness testimony with reference to the taking of money out of the box at the time of the accident and for some time prior thereto.

It is respectfully urged that this judgment should be affirmed, with costs.

MICHAEL BREITKOPF,
Attorney of Plaintiff-Respondent.

