

#50  
Clerk

NEW JERSEY COURT OF ERRORS AND APPEALS.

LEARY,  
vs.  
PENNSYLVANIA R. R. Co. } BRIEF FOR LEARY.

I.

The circumstances of the accident in this case were as follows:

On the 19th day of June, 1893, at about 9.30 P. M., the plaintiff, driving two mules, hitched to an open market wagon, was approaching the defendant's tracks at a walk for the purpose of crossing. The highway, on which plaintiff was traveling, ran East and West, and for the distance of about one-half of a mile, close to and almost parallel with the tracks. It then bears to the left crossing the railroad, which bears to the right, forming what is known as the "Long Crossing." The night was dark and drizzly and the wind was blowing in the plaintiff's face from the East. The plaintiff had his back to the train which was going about 25 miles per hour in an Easterly direction. The plaintiff was thoroughly familiar with the crossing and the times of trains. The next regular train was due at that crossing at about 11.11 P. M. The train that struck plaintiff made its first trip that night. The plaintiff frankly states that his conduct was, in a measure, influenced by the fact that he knew, or believed, that no train would cross the highway before 11.11 o'clock. Behind the plaintiff, about 12 feet from the ground, were some electric lights near and along the railroad. The plaintiff, getting about 15 or 20 yards from the track, stopped and looked back and listened. He heard no bell or whistle, and saw nothing but the electric lights. He then drove slowly on to the crossing. Getting on the crossing he heard a sharp signal when consciousness left him to return, for the first time, the next day. He was badly hurt. Dennis Haggerty, who was near the crossing, says that no bell was rung, and only one blast of the whistle given. This was the blast that Leary heard. George Chambers, who was also near the crossing, says "I noticed it (the train) coming down the

railroad not saying nothing or making any fuss or nothing, and I was wondering why she should have a train out at that time of night."

Q. What do you mean by the train not saying anything?

A. Not blowing the whistle on it at all, came along very quiet.

Q. Was it making any noise?

A. No, sir.

Q. Of any kind?

A. No, sir.

Q. Was there a bell ringing?

A. No, sir; that's why I noticed it so much." (pp. 36 and 37). At about the crossing this witness heard "her blow a distress blow." This was the blast that Leary heard when on the crossing.

Chalkley Ballenger and his wife Priscilla, called by the defendant, living near the crossing, also heard "a long blow" near the crossing. This was the only blow they heard. It was undoubtedly the whistle that Leary heard when on the crossing. They say nothing about a bell.

The wind carried the noise of the train away from Leary. When he stopped the train, going at so high a rate of speed, was necessarily far up the track, probably between quarter and half a mile. The headlight may not have been in sight, or it may have been confused with the electric lights. It was a freight train with no light to be seen except the headlight. In the absence of signals, Leary, under the above circumstances, went upon the track. Such a case must have gone to the Jury by legal necessity.

Against this case the defendant produced Crispin, Maxwell, Richter, Sapp and Wells, the crew of the train, all of whom swore to signals having been given. Under cross-examination they presented a sorry plight. Wells, who was somewhat sensitive in conscience, admitted that they sometimes omitted to give the statutory signals and admitted that his testimony as to what was actually done in this instance, rested largely upon the presumption growing out of what the rules required them to do and what they usually did.

Some of these witnesses also told an incredible story about the circumstances of the wreck, such as Leary's lying on his seat, which had been knocked 15 or 20 feet through the air, as if nothing had happened, and such as Leary's strange volunteered statements that he was drunk and asleep. One of these witnesses, Richter, appreciating the fact that Leary would have to be awake to go through the toll-gate, stated that Leary accurately distinguished the place where he went to sleep, to wit, after he passed the toll-gate. Leary was awake with his eyes wide open when he went through the toll-gate, which was not far from the crossing. The judges of the facts, the Jury, heard the defense with its incongruities and contradictions, they saw face to face the witnesses who gave that defense. They rejected their story and took the truth to be what the plaintiff, Haggerty, Chambers and the Ballengers said it was. They believed that the defendant omitted to give proper warning to Leary, and that Leary was not negligent in his conduct.

## II.

In actions for personal injuries, where there are doubtful and qualifying circumstances or where some negligence on the part of the plaintiff does not *clearly* appear, the question of negligence or want of proper care, must be left to the Jury.

The C. R. R. Co., *vs.* Moore, 4 Zab. 824.

The N. J. R. R. Co., *vs.* West, 4 Vr. 430.

Penna. R. R. Co., *vs.* Matthews, 7 Vr. 531.

Bonnell, *vs.* Del., L. & W. R. R. Co., 10 Vr. 189.

Berry, *vs.* Penna. R. R. Co., 19 Vr. 141.

## III.

"A non suit is only proper where, on the plaintiff's own showing, it clearly appears that he contributed, by his own carelessness, to the accident from which he received the injury. If the evidence is open to fair debate, and leaves the mind in a state of some doubt on this subject, the case should not be withdrawn from the Jury.

Del., Lack. & Western R. R. Co., *vs.* Toffey, 9 Vr. 525, 529.

## IV.

"Where there is *conflicting testimony* on both sides in regard to a disputed fact, it is a proper question for the decision of the Jury, and this Court will not disturb their verdict."

Bank *vs.* King, 2 J. S. Gr. 45.

Moore *vs.* R. R. Co., 4 Zab. 268, 277.

## V.

The verdict of the Jury awarding one thousand dollars to the plaintiff was warranted by the evidence and was not excessive.

The Jury in making up their verdict were not bound to confine themselves to a computation of the plaintiff's pecuniary loss by reason of the accident in the manner designated by the eighth and ninth requests to charge made by the plaintiff, (pp 123, 124), but had a right to compensate the plaintiff for his physical pain and suffering in the past, and also his prospective suffering in the future by reason of the accident, of which there was ample evidence.

Goble *vs.* Del., L. & W. R. R. Co., 3 N. J. L. J. 176.

Supt. Stewart's Dig., p 155 par. 17.

Klein *vs.* Jewitt, 11 C. E. Gr. 474.

## VI.

"A verdict will not be set aside when the amount of damages is not so large that the Court can say the Jury was influenced by improper considerations.

Smith *vs.* New York S. & W. R. R. Co., 17 Vr. 713.  
or unless "the damages given manifestly show the Jury to have been actuated by *passion, partiality or prejudice.*"

Reuck *vs.* McGregor, 3 Vr. 70, 76.

Surely, so modest a verdict as this, cannot be said to have been due to any such causes.

Respectfully submitted,

JOHN W. WESCOTT,

SAMUEL K. ROBBINS,

*Attorneys for Plaintiff.*

# 5 2  
Reports

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JOHN W. WESCOTT,  
SAMUEL K. ROBBINS,

*Attorneys for Plaintiff.*

# Court of Errors and Appeals.

FEBRUARY TERM, 1894.

PENNSYLVANIA R. R. CO. }

vs. }

WILLIAM LEARY. }

On Error to  
Supreme Court.

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S. H. Grey, for plaintiff in error.

S. K. Robbins and John W. Westcott, for defendant.

## MR. GREY'S BRIEF.

This writ of error is designed to review the proceedings of the trial court. The first error is assigned upon a refusal to non-suit plaintiff below, because the evidence showed that defendant below had omitted no duty to signal the approach of its train, and that plaintiff had been guilty of contributory negligence. The facts are these :

The railroad and the turnpike along which Leary was driving his mule team, at a walk, were on nearly parallel lines for about half a mile before the crossing was reached at which the accident occurred. They are quite near, and the railroad, or any train moving on it, are in plain view from the turnpike. The night was dark and drizzly; the wind was east, the direction Leary and the train were going, so that the wind was blowing toward the train as it

and Leary approached the crossing. As Leary came along the turnpike in an open hay shelving with no cover and sitting on the driving seat, wrapped in blankets to keep out the storm, he did not look toward the railroad until he got within fifteen or twenty yards when he took some little precaution. Leary thus describes what he did (page 7, line 17; page 8, to line 15; page 9, top): "When I got within reasonable distance for taking precaution for this railroad, I took precaution, merely just turning my head, *knowing that it wasn't train time*, but I took a slight precaution; brought the team up and saw nothing but the electric light." (Page 7, lines 17 to 21): "I was looking westerly when I took precaution, when I took precaution, *a little precaution, knowing it was not train time*; I was at the lower end of Moorestown when the Holly train went down, and *knew there was no other train until 11:11 regular*; I was acquainted with all the trains on the road because I was travelling and crossing that railroad every day (page 7, line 28 to bottom); I was about fifteen or twenty yards from crossing when I took these precautions." (Page 8, top). "I just merely took precaution; pulled the team up nearly to a stop and took a little precaution, and knowed there was no train due (page 8, lines 7 to 9); I just merely turned my head that way and seen there was no light or nothing in the way, or heard nothing, and then started the team on" (page 8, lines 14 to 16); "saw nothing and heard nothing; I seen electric lights just as I turned my head and *knew it was no train time*; I drove on and urged team up; as I drove on the track I drove right on and the next thing I heard, I heard a whistle, and the next thing I knowed nothing." (Page 9, top, to line 10).

On cross-examination he describes the accident and the surroundings of the locality. "There is a distance of three-quarters of a mile where the turnpike and the railroad run almost side by side, and for that whole distance the railroad would be in the sight of any one who turned to look at the railroad; a person travelling along the turnpike and looking toward the railroad could see it for a certain distance (page 15 bottom, and page 16 top). There is no house at all for a long distance, I guess half a mile, fully

that, there is nothing between the turnpike and railroad which would prevent any one who was traveling along the turnpike, and who looked toward the railroad, from seeing the railroad. And if there was any train on the railroad you could see the train on the railroad if you looked towards it. The distance between the railroad and the turnpike along there is quite short." (Page 16.) "Chalkley Ballinger's house is quite near to the long crossing. And opposite Chalkley Ballinger's house the railroad is, I think very likely, very near indeed to the turnpike. I don't know that it is any nearer to it there than it was at some other parts of it." (Page 17, line 15.) Several hundred yards from the crossing, between four hundred and five hundred yards, there is a signal post for the crossing where the point of the switch is that connects the siding with the railroad, which the map shows. (Page 18 bottom, and 19 top to line 12.)

Leary did not look toward the railroad before he got to Chalkley Ballinger's, nor when he was opposite Ballinger's, nor after he had passed Ballinger's until he got "within about fifteen or twenty yards of the crossing." (Page 19, lines 10 to 25.) He did not nudge up his mule team until after he took precaution; they hadn't been nudged up until after he had looked. (Page 19, line 25 to bottom.) I had just pulled the team up to a slow gait so I could stop it, as a precaution, if I heard any noise, then I looked to the left.

He was asked and answered these questions. (Page 20, line 15 to bottom.)

Q. And when you looked to the left you saw the electric light, you thought?

A. Yes, sir.

Q. And you decided that it was an electric light that you saw, did you?

A. I thought it was.

Q. An electric light?

A. Yes, sir; and nothing else; I couldn't compare it to anything else.

Q. And you did not think any train was coming because you did not know there was any regular train coming along at that time?

A. I knew there was no regular train.

Q. You knew there was not any.

A. Yes, sir.

Q. And so, seeing this light, which you thought was an electric light, and knowing that there was not any regular train coming along, you decided, not hearing anything, that there was not any train there?

A. Yes, sir.

Q. And having so decided, you went across the railroad?

A. Yes, sir.

Q. Or attempted to do it?

A. Yes, sir.

From this description given by Leary it is apparent that he took no precaution of any sort as he came along traveling beside the railroad for one-half a mile, along which a "slow freight" (Haggerty, page 32, lines 5, 6; page 33, lines 17 to 20), or a "freight train not going so terribly fast" (Chambers, page 38, lines 10 to 15), was approaching, and if he had looked, in plain view. He knew this crossing and all regular trains that passed it, but he evidently felt, if he gave the matter any heed at all, that there was, as he said, no regular train likely to pass, as he had seen the train from Mt. Holly at Moorestown, and no other was due until 11:11. (Page 7, line 30.) It was his reliance upon this knowledge that prompted him to neglect any but the "little precaution," which he says he took, of slowing his mule team and looking to the left. And it was this belief that no regular train was due, and consequently, from his point of view no train was to be looked for of any kind, that led him to decide that the light he saw was an electric light, as he could not "compare it to anything else." (Page 20, lines 19-20.) And so seeing this light, which he thought was an electric light, and knowing that there was not any regular train coming along, he decided, not hearing anything, that there was not any train there, and having so decided he went across, or attempted to do so. (Page 20, line 27 to bottom.) This was certainly, as Leary said, very "little precaution," and the reason was that he did not believe any train was there. The wind being east, and Leary and the train facing it, carried the sound of the train, which Haggerty

heard as it passed along near the coach house where he was in bed, away from Leary. But Leary, knowing that the wind would carry the sound of train from him and not toward him, should have been the more, and not the less cautious.

Again the witnesses Haggerty and Chambers both say there was a whistle blown. "I heard a long whistle, and generally when we hear a long whistle and it keeps continuously blowing we know there is something the matter." (Page 31, lines 6 to 10). The whistle was blown "forinst the gravel hole, or she might be forinst Ballinger's house." (Page 31, lines 12 to 15). And Chambers says (page 37, lines 8 to 12), "the first noise I heard from it after she got past my house was down about the crossing there; I heard her blow a distress blow, and I didn't pay much account to it, what it was, not thinking anything would happen." This testimony establishes the fact that a whistle was blown; a "long whistle," as Haggerty says, or a "distress blow," as Chambers calls it, which he "didn't pay much account to as he didn't think anything would happen." The fact that these witnesses say that no bell was rung when the train passed them, Chambers, 2,000 yards from crossing; "I guess somewhere along there; quite a little distance" (page 40, lines 7 to 12); or Haggerty, 600 or 800 yards from crossing (page 34, top), are quite insignificant. The law requires a bell or whistle 300 yards from crossing, not 2,000 or 600 yards away.

Under the circumstances detailed the court erred in not granting the non-suit.

Where the facts are clear and undisputed, and show a want of ordinary care on the part of the plaintiff, the question is for the court to decide.

*Cen. R. R. v. Moore, 4 Zab., 824;*

*Aqcrigg v. N. Y & E. R. R. Co., 1 Vr., 460.*

It is a familiar rule that more vigilance and care is required in crossing a railroad track travelled by trains at high speed than in crossing an ordinary highway. This being so, there is an obligation to exercise more than ordinary care cast upon persons who approach, to cross, a railroad track.

So it has been held that if the plaintiff has been guilty

of great imprudence, which was one of the proximate causes of the injury, the law affords him no compensation in damages.

*Harper v. E. R. R. Co.*, 8 Vr., 88.

A person, on a foggy morning, approaching with a team a railroad crossing, without *waiting* to ascertain whether an approaching train was near, was struck and killed, recovery was denied.

*M. & E. R. R. ads. Haslam*, 4 Vr., 147

If a person tries the experiment of crossing in front of a train and fails, his failure is his fault.

*Blaker v. Recr. N. J. Mid. R. R.*, 3 Stew., 240.

See also *Merkle v. N. Y., L. E. & W. Ry.*, 20 Vroom, 473;

*Hamilton v. D., L. & W. R. R. Co.*, 21 Vroom, 263;

*Sheets v. Connolly*, 25 Vroom, 518.

## II.

For the reasons given, and for those hereafter stated, the refusal of the court to charge the requests of plaintiff in error, numbers 1, 2, was error.

The evidence of plaintiff in error shows that the headlight was lighted on the engine; the train running at twenty to twenty-five miles an hour, and was in plain view; the usual crossing signals given by whistle at the whistling post for this crossing. When Leary was found after the accident he was on the seat on the wagon wrapped in blankets, and he said, after he had recovered consciousness, to three witnesses, that he had been drinking and had gone to sleep after passing the last toll gate, as he knew there were no trains coming. He afterward said he didn't recollect of making any statement (page 120), but did not otherwise contradict it.

The fact of the whistle being blown was testified to by Haggerty and Chambers for Leary and by Chalkley Ballinger and wife and all the train hands for defendant below. The attempt to contradict was levelled, not at Chalkley Ballinger, but his wife, and inasmuch as it comes from the wife and daughter of Hollinshead, who owned the

wagon destroyed, it carries with it whatever weakness inheres in the statements of interested persons.

The case seems to me to be within the rule that one who says he stopped, looked and listened where, if he had done so, he could have seen or heard, and saw and heard nothing, "is conclusively presumed to have disregarded that rule of law and of common prudence."

*Myers v. B. & O. R. R.*, 150 Pa., 386;

*Lees v. P. & R.*, 154 Pa., 46.

### III.

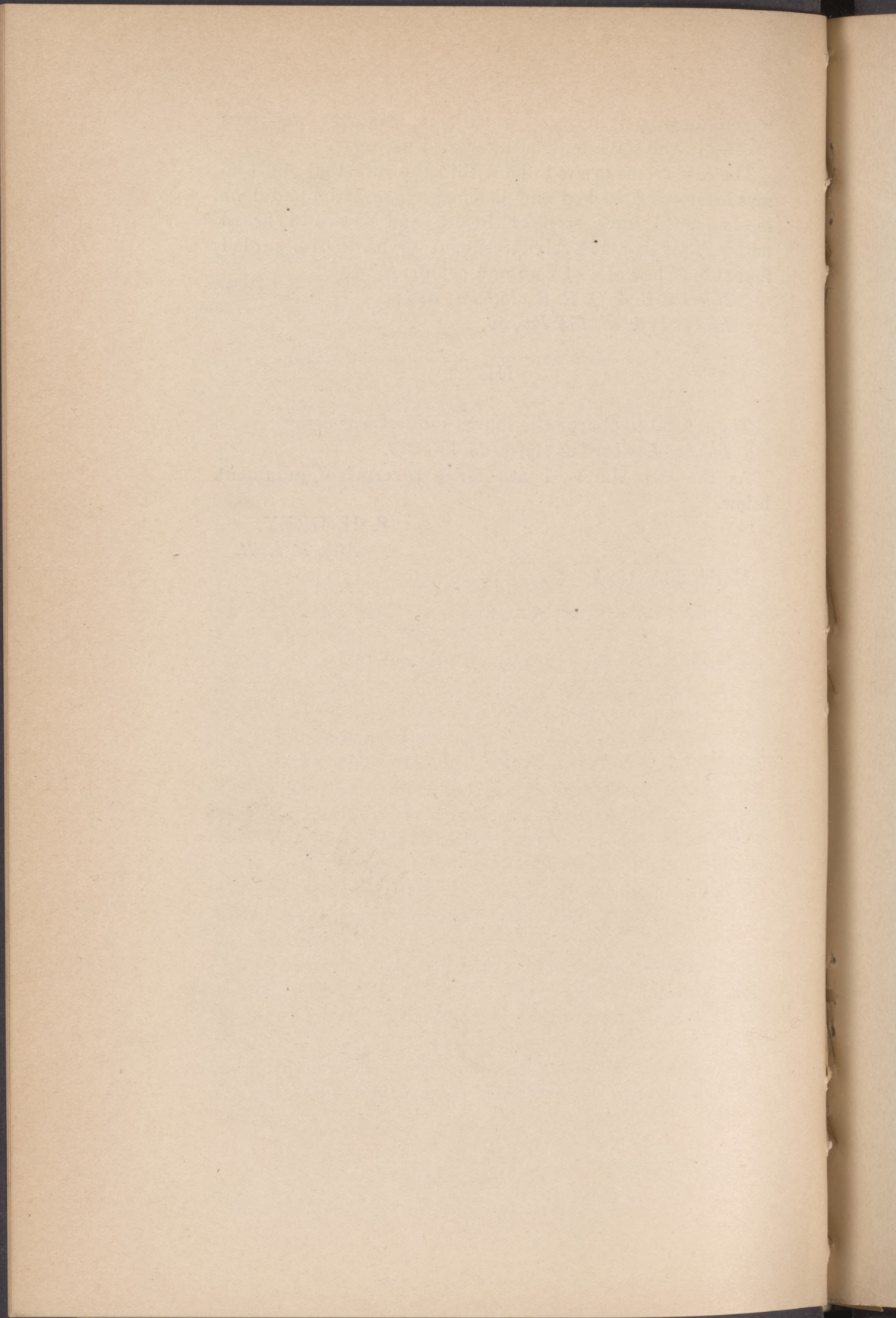
The refusal to charge the fourth request was error.

*Bahr v. Lombard & Ayres*, 24 Vr., 233.

As the case stands, I ask for a reversal of judgment below.

S. H. GREY,  
Atty. P. R. R.

March 23d, 1894.



# N. J. Court of Errors and Appeals

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PENNSYLVANIA RAILROAD COM-

PANY,

Plaintiff in Error.

vs.

WILLIAM LEARY,

Defendant in Error.

IN TORT.

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NEW JERSEY, SS. The State of New Jersey to the  
Supreme Court of Judicature, Greeting :

[SEAL.] Forasmuch as in the record and proceed-  
ings and also in the giving of judgment  
in a certain plaint which was in our Supreme Court of  
Judicature before you, between William Leary, plaintiff,  
and The Pennsylvania Railroad Company, defendant, 20  
in an action of tort, manifest error hath intervened to  
the great damage of the said The Pennsylvania Rail-  
road Company, as it is said. We being willing that  
the error, if any there be, should in due manner be cor-  
rected, and full and speedy justice be done to the parties  
aforesaid in this behalf;

Do command you, that if judgment be thereupon given and affirmed, then you distinctly and openly send, under your seal, the writ and proceedings aforesaid, with all things touching the same, to our Court of Errors and Appeals in the Last Resort in all Causes, at Trenton, on the ninth day of December next, together with this writ, that the record and proceedings being inspected, we may cause to be further done thereupon, for the correction of that error, what of right and according to the law and custom of the State of New Jersey ought to be done.

Witness our Chancellor and President Judge of our said Court of Errors and Appeals in the Last Resort in all Causes, at Trenton, this twenty-second day of November, eighteen hundred and ninety-three.

HENRY C. KELSEY,

S. H. GREY,

Clerk.

Attorney of Plaintiff in Error.

20 "Filed Jan. 29, 1894. HENRY C. KELSEY, Clerk."

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The answer of the Justices of the Supreme Court within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals in a certain schedule to this writ annexed, as within we are commanded.

30

M. BEASLEY, C. J.

## NEW JERSEY SUPREME COURT.

WILLIAM LEARY,	}	IN TORT.	
VS.			
THE PENNSYLVANIA RAILROAD COMPANY.		ON POSTEA.	IO

As yet of the tenth day of June, A. D. eighteen hundred and ninety-two.

Witness, MERCER BEASLEY, ESQUIRE,	
BENJ. F. LEE,	Chief Justice.
Clerk.	

BURLINGTON COUNTY, SS:

The Pennsylvania Railroad Company, the defendant, was summoned to answer unto William Leary, the plaintiff, in an action of tort, and thereupon the said plaintiff, by John W. Wescott, his attorney, complains for that heretofore, to wit, on the nineteenth day of June, eighteen hundred and ninety-one, the plaintiff was lawfully driving a mule team and hay shelving upon the Moorestown and Mount Holly Turnpike road, one of the public highways of the county of Burlington, to wit, at Mount Holly, in the county aforesaid, at a point where the same crosses the defendant's railroad tracks in said county; that it was dark and the plaintiff slowly, carefully and lawfully started to drive across said defendant's tracks; that while exercising said care and caution and lawfully crossing said tracks, the defendant, negligently and carelessly, without the fault of the plaintiff, drove one of its locomotive engines against the body of said plaintiff, whereby said plaintiff was thrown down, cut, bruised and permanently injured and

caused to suffer great pain and agony of body and mind and caused to expend large sums of money in his efforts to have himself cured of said injuries, all to his damage ten thousand dollars and therefore he brings his suit, &c.

And said defendant, by Samuel H. Grey, its attorney, comes and defends the wrong and injury, when, &c., and says that it is not guilty of the several supposed grievances above laid to its charge, or of any or either of them, or of any part thereof, and of this it puts itself upon the country, &c., and said plaintiff doth the like.

10 Thereupon let a jury thereupon come before the Chief Justice, or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court holden at Mount Holly, in and for the county of Burlington, on the fourth Tuesday of September, in the year of our Lord one thousand eight hundred and ninety-three, by whom, &c.

And now at this day, to wit: the eighth day of November, A. D. eighteen hundred and ninety-three, before our Supreme Court at Trenton, comes the said  
20 plaintiff, by his attorneys aforesaid, and the Justice before whom, &c., having sent hither his record made before him in these words to wit:

Afterwards, that is to say on the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and ninety-three, at a Circuit Court held at Mount Holly, in and for the county of Burlington, by his Honor Charles G. Garrison, one of the Justices of the Supreme Court of the State of New Jersey, according to the form of the statute in such case made and  
30 provided, comes as well the within named plaintiff as the within named defendant, by their respective attorneys within named, and the jurors of the jury, whereof mention is within made, being summoned also come, who to speak the truth of the within contained, being chosen, tried and sworn and affirmed upon their oaths

and affirmations, say that the defendant is guilty in manner and form as the plaintiff hath within complained against it, and they assess the damages of the said plaintiff on occasion thereof, over and above his costs and charges by him about his suit in this behalf expended, to the sum of one thousand dollars.

Therefore it is considered that the said plaintiff do recover against the said defendant his said damages by the jurors in form aforesaid assessed and found to the sum of one thousand dollars and also sixty-nine dollars and eighty-six cents for his costs and charges aforesaid by the Court now here adjudged to the plaintiff and with his assent, which said damages, costs and charges in the whole amount to one thousand and sixty-nine dollars and eighty six cents. 10

Judgment signed this eighth day of November, A. D. eighteen hundred and ninety-three.

M. BEASLEY,  
C. J.

I, Benjamin F. Lee, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in above stated cause as the same remains of record in my office. 20

[SEAL.] In testimony whereof, I have hereto set my hand and the seal of said court, at Trenton, this twentieth day of December, A. D. eighteen hundred and ninety-three.

BENJAMIN F. LEE.

30

IN THE COURT OF ERRORS AND APPEALS  
IN THE LAST RESORT, &c.

	PENNSYLVANIA RAILROAD COM-	}	ASSIGNMENT
	PANY,		
	Plaintiff in Error.	}	OF ERROR.
	vs.		
10	WILLIAM LEARY,		
	Defendant in Error.	}	

Afterwards, that is to say, on the ninth day of December, eighteen hundred and ninety-three, before this high and honorable Court here, said plaintiff in error, by Samuel H. Grey, its attorney, comes and says that there is manifest error in the trial of the above stated cause before the Supreme Court of the State of New Jersey, and in the giving of judgment therein in favor of said defendant in error, William Leary, and against said plaintiff in error, said Pennsylvania Railroad Company, in this:

That said Supreme Court, after said defendant in error, upon the trial of said cause at nisi prius (he being then plaintiff below), had submitted all his evidence in support of his said declaration to the jury selected to try the issue between said defendant in error and said plaintiff in error, the said plaintiff in error thereupon, by its attorney, moved said Supreme Court for a judgment of non-suit against said defendant in error, and thereupon said Supreme Court unlawfully and erroneously refused to order said judgment, but permitted said cause and the issue joined therein to be submitted to the jury.

2. That the said Supreme Court erroneously and unlawfully, on the trial of said cause at *nisi prius*, and contrary to the request of the defendant in error made at said trial in that behalf, omitted and refused to charge and direct the jury.

First. That there is no evidence of negligence by the defendant. Plaintiff's witnesses swear that the whistle was blown, except the plaintiff, who says he did not hear it. This is not a denial.

Second. That there is evidence of contributory negligence by plaintiff, who says that he saw a light which he judged was an electric light, when he looked in the direction from which the train came, and hearing no sound and knowing that no regular train was due until 11.11 he went on, nudging up his team after he had looked. That the railroad was in plain view of the turnpike for one-half a mile running beside it, and only a short distance away; that the railroad and any train on it could be seen by anyone on the turnpike who looked in that direction, but he did not look until he got within fifteen or twenty yards of crossing.

Third. That the weight of the testimony is against plaintiff and in favor of the defendant, and the plaintiff cannot recover without showing by clear preponderance of proof that the accident was due wholly to the negligence of the defendant.

Fourth. That the mere happening of the accident is not of itself evidence of defendant's negligence.

Fifth. That the jury cannot consider evidence of accidents at the same crossing at other times, nor evidence that the crossing is dangerous.

Sixth. That the railroad company was not legally bound to give other than the statutory signal by bell or whistle at this crossing, and if the jury believe from the evidence that such signal was given the plaintiff cannot recover.

Seventh. That the evidence is, that the headlight was lighted on the engine; that the train was in sight

of any one who looked; that the track could have been seen by the plaintiff if he had looked before he reached the crossing, and that the train could be seen by him also; that his statement that he looked and did not see cannot be accepted as true, and as matter of law the Court so instructs the jury.

Eighth. That the plaintiff cannot recover damages for loss of earning power, in view of the testimony that he has earned since May, 1892, \$175.00 per year for wheeling the mail, eight hundred yards eight times a day (six thousand four hundred yards, or four miles),<sup>10</sup> and \$229 per year for caring for the school house, besides odd chores about the post-office, his previous earnings being one dollar per day and board for nine months, and seventy-five cents per day and board for three months. There is no evidence of the value of the board, of amount of doctor's bill, or of any doctor's bill, or of payments for medicine or nursing. That in the absence of such proof the jury cannot make any allowances for these matters.

<sup>20</sup> Ninth. That in estimating his losses of earnings from June 19, 1891, to May, 1892, the jury cannot allow, if they believe that defendant's fault alone produced the injury, more than at the rate of one dollar per day for eight months of the eleven months, and seventy-five cents for the other three months, as the three months were winter months, when plaintiff says he earned seventy-five cents only.

All of which matters and things were to the great wrong and injury of said plaintiff in error. By means <sup>30</sup> whereof said judgment of said Supreme Court is erroneous and contrary to law, and said Pennsylvania Railroad Company prays that the said judgment be reversed, set aside and for nothing holden, and that it may be restored to all things which it hath lost by reason of said judgment, &c.

S. H. GREY,  
Attorney of Plaintiff in Error.

And hereupon, afterwards, to wit, on the said ninth day of December, eighteen hundred and ninety-three, said William Leary, defendant in error, by his attorney, John W. Wescott, comes into Court here and says, that as to the several errors assigned as aforesaid by said Pennsylvania Railroad Company, plaintiff in error, there is no error, either in the record or proceedings aforesaid or in the giving of judgment aforesaid, and prays that the Court here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid 10 for error assigned, and that the judgment aforesaid, in manner and form aforesaid, may in all things be affirmed.

JOHN W. WESCOTT,  
Attorney of Defendant in Error.



# NEW JERSEY SUPREME COURT.

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WILLIAM LEARY  
vs.  
PENNSYLVANIA RAILROAD COM-  
PANY. } IN TORT.

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SEPTEMBER TERM, 1893. No. 4.

Appearances: 10  
JOHN W. WESCOTT, and S. K. ROBBINS, for Plaintiff.  
SAMUEL H. GREY, for the Defendant.

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BEFORE GARRISON, J., AND A JURY.

Mr. Robbins opens the case for the plaintiff.

DR. ALFRED S. MATTSON, affirmed.

By Mr. Robbins: 20

Ques. You reside where?

Ans. Moorestown.

Ques. Are you a practicing physician there?

Ans. Yes, sir.

Ques. How long have you practiced there?

Ans. Nine years.

Ques. Are you acquainted with the plaintiff, William Leary?

Ans. Yes, sir.

Ques. How long have you known him?

Ans. Six years.

Ques. Do you remember the time of the accident that he met with some two or three years ago?

Ans. Yes, sir.

Ques. You don't remember the date of it, I suppose?

10 Ans. No, sir; I don't remember the date of the accident; I remember the date when I was sent for and first saw him.

Ques. Do you remember what year it was?

Ans. 1891.

Ques. Had you attended his family previous to that time?

Ans. Yes.

Ques. And had seen more or less of him?

Ans. Yes.

20 Ques. What was his physical condition, as you observed it, previous to that time?

Ans. Very good.

Ques. Had you ever had occasions to doctor him for anything?

Ans. Yes, on one or two occasions I prescribed for him before that.

Ques. Had he any disability of any kind which you noticed?

Ans. No.

30 Ques. Now, when were you called upon to doctor him after he was said to have been hurt?

Ans. June 23d, 1891.

Ques. Where was he when you first took charge of him then?

Ans. He was at his home.

Ques. In what condition did you find him at that time?

Ans. I found him suffering a great deal of pain, badly bruised, and bruised about the head and face, and cut, and suffering extreme pain in the back, unable to move without help.

Ques. What did these injuries indicate?

Ans. I think mainly, and most severely, a concussion of the spine.

Ques. To what cause, from your examination, would you attribute such injuries?

Ans. To some strain, or wrench, or bruise.

Ques. And was he confined to his bed at that time? 10

Ans. He was not able to go to bed for a time; he was on a couch or a lounge in the sitting room, and they were not able to get him up stairs.

Ques. How long did you continue to take charge of him after that?

Ans. I saw him at his house until the 12th, occasionally.

Ques. How did he progress?

Ans. He improved slightly and was able to limp around, and was very much crippled then, after he was 20 able to get up; but he slightly improved up to that date.

Ques. Was he able to go to work that summer?

Ans. No, sir.

Ques. And how long after that before he was able to do anything, as far as you recollect?

Ans. Well, I don't know just how long. I know that one of his first attempts to work was for me, he attempted to take care of my horses.

Ques. Was he able to do that? 30

Ans. He was not able to do that; he was not able to stand the jar of riding in the carriage, mainly.

Ques. Are you acquainted with his present condition?

Ans. Not for the past six months, except seeing him on the street and noticing his position in walking and

his action; nothing further than that for six months back.

Ques. What was his condition the last you knew of him, by actual knowledge?

Ans. Simply an improved one from the condition I left him in—crippled, in a measure.

Ques. Were those injuries of such a character that he would recover from them entirely, in your judgment?

Ans. I don't think so.

10 Ques. How would they affect him as to his ability to do work?

Ans. I don't think that he can stand work, hard work at least, ever, and they may affect him even more seriously than that eventually.

Cross-examination.

By Mr. Grey:

20 Ques. You have not visited Mr. Leary since July, 1891, as I understand it?

Ans. Yes.

Ques. About the 12th of July, 1891?

Ans. Yes; I have visited him since.

Ques. When was your last visit?

Ans. I think about six months ago; I don't remember the date of the visit exactly.

Ques. When did you make your last examination of him, if you ever made any?

30 Ans. The last examination that I made of him especially was July 12th, 1891.

WILLIAM LEARY, sworn.

By Mr. Robbins:

Ques. You are the plaintiff in this cause?

Ans. Yes, sir.

Ques. How old are you?

Ans. Fifty-six years old—will be fifty-six years old the next birthday.

Ques. What work had you been doing, what employment had you had previous to the time you met with the accident?

Ans. Farming.

Ques. By whom were you employed?

Ans. By Joshua Hollingshead.

Ques. How long, previous to the accident?

Ans. Seven years, three months and nineteen days.

Ques. What work did you do for him, what kind of work?

Ans. Such as going to market and working on the farm generally.

Ques. And where had you been on the day that this accident occurred?

Ans. I was in Philadelphia with a load of hay.

Ques. What had been the condition of your health, the general physical condition, previous to the time of this accident?

Ans. Very good.

Ques. Had you ever had any serious illness of any kind?

Ans. No, sir.

Ques. Had you lost any time while working for Joshua Hollingshead on account of sickness?

Ans. No, sir.

Ques. Were you in the habit of carting truck to Philadelphia?

Ans. Yes, sir; generally carting off of both places; off of his and his brother's during the time that I worked there.

Ques. Where is Joshua Hollingshead's farm located?

Ans. It is located on the Centreton pike.

Ques. That is the pike running from where?

Ans. Running from the Moorestown pike to Centreton, nearly one mile; about one mile from the Long Crossing, as nearly as I can come at it.

Ques. In going to and from market were you compelled to cross a railroad?

Ans. Yes, sir.

Ques. What railroad was it?

Ans. The Burlington County road there.

Ques. Do you know by what company it is operated?

Ans. Pennsylvania Railroad.

Ques. You passed over that going and coming?

Ans. Yes, sir.

Ques. Each time?

10 Ans. Yes, sir.

Ques. When was the date of this accident?

Ans. The 19th day of June.

Ques. Where had you been?

Ans. I had been to Camden with a load of hay.

Ques. What time did you go down?

Ans. I started for home about six o'clock.

Ques. In the morning?

Ans. In the morning, as near as I can come at it.

Ques. And what did you do in Camden?

20 Ans. Well, it was a rainy day; it was raining after I started. The load of hay was on the wagon, and Mr. Hollingshead requested it to go because he would like to get the wagon empty; he was harvesting, and he didn't think it would rain during the night, and I took it to Camden, and on my road going to Camden the hay got wet, and I had quite a job to dispose of it.

Ques. What time of day was it when you disposed of the hay?

30 Ans. I disposed of this hay about half past three or quarter to four.

Ques. Did you unload it yourself?

Ans. No, sir; I hired a man to pitch it off.

Ques. And what time did you start on your return?

Ans. About a quarter past five.

Ques. And at what time did you reach Moorestown?

Ans. Well, I couldn't say, about nine o'clock, as near

as I can get at it. It generally takes about four hours and a half to come up.

Ques. What kind of a night was it ?

Ans. It was a dark, drizzly night, wind blowing from the east.

Ques. It had been storming ?

Ans. Storming more or less all day.

Ques. The wind was blowing from the east ?

Ans. Yes, sir.

Ques. And what direction were you travelling as you approached this crossing ? 10

Ans. I was travelling east.

Ques. Travelling towards the east on the road ?

Ans. Yes, sir.

Ques. Now, just state what happened when you came to the vicinity of the railroad near this crossing; just state what took place.

Ans. When I got within reasonable distance for taking precautions for this railroad I took precautions, merely just turning my head, knowing that it wasn't train time, but I took a slight precaution, brought the team up and saw nothing but the electric light. 20

Ques. Where are these electric lights ?

Ans. There is one of them stands in Morris Comfort's lane end, and the other at Silas Walton's.

Ques. Well, which direction were you looking when you saw them ?

Ans. I was looking westerly when I took precautions, when I took precaution, a little precaution, knowing it was not train time; I was at the lower end of Moorestown when the Holly train went down, and knew there was no other train until 11.11, regular. 30

Ques. You were acquainted with the regular trains on the road, were you ?

Ans. I was acquainted with all the trains on the road, because I was traveling and crossing that railroad every day.

Ques. How near the crossing were you when you took these precautions that you speak of?

Ans. I was about fifteen or twenty yards.

Ques. Fifteen or twenty yards from the crossing?

Ans. Yes, sir.

Ques. And just state what you did—just tell the jury?

Ans. I just merely took precautions, pulled the team up nearly to a stop and took a little precaution, and knewed there was no trains due.

10 Ques. What did you do? State what you did?

Ans. And then drove right on.

Ques. Well, what precautions—you say you took precautions; tell them exactly what you did?

Ans. I just merely turned my head that way, and seen there was no light or nothing in the way, or heard nothing, and then started the team on.

Ques. That was in the direction from which you had come, was it, that you looked that way?

Ans. Yes, sir.

20 Ques. And how about the other direction—did you have a view?

Ans. In the other direction you could see right down the track, clear to Hartford.

Ques. Was there anything that intercepted your view of the track in the other direction?

Ans. Nothing but the elevation of the road; there is a small locust tree stands, I suppose, maybe two hundred yards above the signal post, a small locust tree that stands right in the bank of the road.

30 Ques. Is there any bend in the road?

Ans. There is a bend in the road and an elevation in the road.

Ques. How far back is that from the crossing?

Ans. I suppose about four hundred yards; four or five hundred yards; something like that. I cannot just exactly tell the distance.

Ques. You say you saw nothing and heard nothing?

Ans. Saw nothing and heard nothing.

Ques. You did see a light, you say?

Ans. I seen these electric lights just as I turned my head and knew it was no train time.

Ques. Then you drove on?

Ans. I drove on and nudged the team up.

Ques. Just state what happened?

Ans. As I drove on the track I drove right on, and the next thing I heard I heard a whistle, and the next thing I knowed nothing.

Ques. Well, what was the next knowledge you had of the matter? 10

Ans. I never knowed anything or knowed where I was till the next morning.

Ques. Then where did you find yourself?

Ans. I found myself here in Mt. Holly Hospital.

Ques. How long did you remain here?

Ans. I remained there from Friday night, from the time I was delivered there, until Tuesday morning.

Ques. Where were you taken then?

Ans. I was taken to my home by my children, by one of my children and Frank Hollingshead. 20

Ques. Where did you live?

Ans. I lived at Borden's Landing, not exactly on the Borden Landing road, on the Creek road close to Borden's Landing.

Ques. What was your condition when you came to at the hospital?

Ans. My condition was that I was in a very bad state.

Ques. Did you have any pain?

Ans. I was full of pain; didn't know anything long at a time at any time while I laid there; I was under very bad treatment, got no treatment whatever as a man should get. 30

Ques. Did your head hurt you?

Ans. My head hurt me and my back hurt me tremendously; I couldn't raise up at all.

Ques. Any bones broken, as far as you know?

Ans. No, sir; not any as I know of.

Ques. When you were taken home how did you go? In a carriage?

Ans. I went in a little market wagon.

Ques. Was your ride a pleasant one?

Ans. Not very pleasant. I was taken out and put in  
 10 a rocking chair; some of my friends came there to see me, and I stated to them that I was going to go home the next day, and they asked me how I was going. I sent word to have a—

The Court: Do not repeat the conversation.

Ques. Never mind that, it doesn't matter. Did you have any pain from the ride?

Ans. Yes, sir.

Ques. And how long did this pain continue after you  
 20 got home?

Ans. These pains continued for a good many weeks afterwards and still continue.

Ques. Were you able to do any work after that?

Ans. No, sir; didn't do any work for a year afterwards of any kind worth speaking about.

Ques. Just state how you were affected; what effects did you feel from this accident afterwards?

Ans. The effects that I felt were right through my back and kidneys.

30 Ques. When would you feel these?

Ans. Felt them whenever I went to do anything at all, especially if I happened to use a little exertion to lie down, the pains from my back would shoot right up through my stomach, and they do yet, for that matter.

Ques. Did it affect your ability to walk?

Ans. Yes, sir; it hurt me to walk; it hurt me for

a long time to walk, for six months afterwards or more.

Ques. Could you walk without cane or crutches?

Ans. I used a cane all the time for six or eight months.

Ques. And how would it affect you when you stooped over or tried to lift anything?

Ans. I couldn't lift anything at all.

Ques. Were there any evidences on your body of this injury?

Ans. Yes, sir; there is a projection on my backbone <sup>10</sup> that never was there before.

Ques. There is one there now?

Ans. There is one there now.

Ques. Was that there before this accident happened?

Ans. No, sir.

Ques. What is the character of that?

Ans. Its character is that it is a lump raised right on the backbone.

Ques. Just let the jury see it?

Ans. (The witness removes his coat and lifted his <sup>20</sup> shirt, exposing his back to the jury.)

Ques. Just state where the location of it is?

Ans. There is the location of it there (indicating); anybody can feel it right there.

Ques. This train, you said, was coming from towards Philadelphia and running eastward?

Ans. Yes, sir.

Ques. And you were sitting with your side towards it when it when it struck you; which side was towards the train, which side of your body? <sup>30</sup>

Ans. My left side was toward the train.

Ques. Were there any more bruises on that side than on the other?

Ans. I don't know that there was; no, sir.

Ques. The pain was all over you?

Ans. Yes, sir.

Ques. Were you able to go back to Mr. Hollingshead's and go to work, ever?

Ans. No, sir.

Ques. Have you been able to do any farm work since that time?

Ans. No, sir.

Ques. Have you been able to do a day's work of any kind?

Ans. No, sir; not to take it a full day's work.

Ques. What work have you done since that?

10 Ans. I have delivered the mail from the post-office to the depot.

Ques. You are living where now?

Ans. At Moorestown.

Ques. You moved away from the country then and came to Moorestown?

Ans. Yes, sir.

Ques. And what work, besides carrying the mail, if any, have you done?

Ans. I have charge of the public school-house there.

20 Ques. Can you do any more work by the day of any kind?

Ans. No, sir; very little. I do a little odd chores about the post-office.

Ques. How does it affect you when you undertake to work?

Ans. It affects me in the back, and fills me with pain.

Ques. Are these pains in any particular place?

Ans. No, sir; it is particularly in the back.

30 Ques. Are they in the vicinity of this protuberance that you spoke of?

Mr. Grey: Never mind that; that won't do; he can describe the location better than you can.

Ques. Are they any more on one side of your back than on the other?

Ans. It hurts me worse on the left side than it does on the right.

Ques. Worse on the left side?

Ans. Yes, sir.

Ques. Do you have a family?

Ans. Yes, sir.

Ques. Now, the first sound you say you heard was a blowing?

Ans. Yes, sir; that is the first I heard of it.

Ques. Then you immediately became unconscious? 10

Ans. Yes, sir.

Ques. Did you hear any bell ring?

Ans. No, sir.

Ques. Or any noise of any kind indicating the approach of a train at all?

Ans. No noise of any kind at all.

Ques. How fast were you going?

Ans. Just at an ordinary walk; probably after I slacked the team I might have nudged them a little faster, knowing I was late; I hadn't been accustomed to going as late as that, and I urged the team maybe a little faster than an ordinary walk at the time. 20

Cross-examination.

By Mr. Grey:

Ques. Did you stop after you left Camden at quarter after five that afternoon?

Ans. Yes, sir; I stopped once.

Ques. Where did you stop?

Ans. At the Spread Eagle Hotel. 30

Ques. That is between Moorestown and Camden?

Ans. Yes, sir.

Ques. Between Merchantville and Camden, is it not?

Ans. It is above Merchantville.

Ques. Between Merchantville and Moorestown, I should have said?

Ans. Yes, sir.

Ques. How long did you stop at the Spread Eagle?

Ans. I was there, I suppose, about ten minutes.

Ques. Did you have anything to drink?

Ans. I don't think I did.

Ques. Quite sure about that?

Ans. Yes, sir.

Ques. After you left the Spread Eagle where did you stop next?

Ans. I stopped at Moorestown.

10 Ques. Where did you stop in Moorestown?

Ans. Sam Baker's hotel.

Ques. Did you take anything there?

Ans. Yes; I took a glass of beer there.

Ques. Only one?

Ans. Only one, sir.

Ques. What time was it when you got to Moorestown?

Ans. Well, I should suppose it was somewhere in the neighborhood of nine o'clock; close to that.

20 Ques. And what time was it when you got up to the crossing?

Ans. Well, I should judge it was about half past nine; somewhere in that neighborhood; I cannot exactly just tell the time.

Ques. How far is it from Moorestown to the crossing?

Ans. I should judge it was about a mile and a half, maybe a little further; I cannot exactly tell; I never measured the distance.

30 Ques. Did you go at any greater speed between Moorestown and the Long Crossing than you had traveled in coming from Camden to Moorestown?

Ans. No, sir.

Ques. What was the speed in which you traveled from Camden to Moorestown—I mean what was the gait?

Ans. Well, it was an ordinary gait, about as the usual team would walk.

Ques. Was it a walk or a trot, or what was it?

Ans. Didn't trot the team at all; the team walked.

Ques. What kind of a team did you have?

Ans. A mule team.

Ques. After you left Moorestown did you keep on at the same gait that you had come to Moorestown in?

Ans. Yes, sir.

Ques. Then you were going about three miles an hour, were you?

10

Ans. Somewheres in that neighborhood.

Ques. And it was about nine o'clock, you say, when you got to Moorestown?

Ans. I think it was somewheres in that neighborhood; I can't just exactly tell the time of it; it generally takes about four hours and a half to travel the distance.

Ques. That is not the question I asked you, as to what time it generally takes. That is the time between Camden and Joshua Hollingshead's farm?

20

Ans. Yes, sir; somewheres in that neighborhood.

Ques. When you left Moorestown that night you came up along the turnpike, did you?

Ans. Yes, sir.

Ques. And before you got to the Long Crossing, about a mile before you got to the Long Crossing, you passed a toll gate?

Ans. Yes, sir.

Ques. Well, there is a distance there of three-quarters of a mile where the railroad and the turnpike run almost side by side; that is, they run on the same line, don't they?

30

Ans. Yes, sir.

Ques. And for the whole of that distance the railroad would be in sight of any one who turned to look at the railroad, would it not; a person traveling along

the turnpike and looking towards the railroad could see it?

Ans. Certainly they could see it for a certain distance.

Ques. For a distance of about three-quarters of a mile?

Ans. I won't say about that. At the lower end of the railroad you cannot see up the road.

Ques. No; we will go back to the toll-gate. After you pass the toll-gate on the turnpike and come towards the Long Crossing you pass one or two houses?

Ans. Yes, sir.

Ques. Quite near to the toll-gate?

Ans. Yes, sir.

Ques. And then between the turnpike and the railroad there is no house at all for a long distance; that is true, is it not?

Ans. Yes, sir.

Ques. And during that space there, which is, I suggested, about three-quarters of a mile, say half a mile—  
20 it is fully that, is it not?

Ans. I guess it is.

Ques. There is nothing between the turnpike and the railroad which would prevent anyone who was travelling along the turnpike and who looked towards the railroad from seeing the railroad?

Ans. No.

Ques. Nothing at all. And if there was any train on the railroad you could see the train on the railroad if you looked towards it?

30 Ans. Yes, sir.

Ques. Now, the distance between the railroad and the turnpike along there is quite short, is it not?

Ans. Between the turnpike and the railroad?

Ques. Yes.

Ans. Yes, sir.

Ques. Quite near?

Ans. Yes, sir.

Ques. You know where Mr. Chalkley Ballinger's house is, don't you?

Ans. Yes, sir.

Ques. That is on the right hand side of the turnpike, is it not, as you come toward the Centreton road?

Ans. Yes, sir.

Ques. And it was on your right hand side that night?

Ans. Yes, sir.

Ques. Well, Chalkley Ballinger's house is quite near to the Long Crossing, is it not? 10

Ans. Yes, sir.

Ques. And opposite Chalkley Ballinger's house the railroad is very near indeed to the turnpike, is it not?

Ans. I think very likely—I don't know that it is any nearer to it there than it is at some other parts of it.

Ques. After you pass Chalkley's house, going on to the railroad crossing, and after you get over that crossing, you turn right short to your left to go to Centreton, don't you?

Ans. Yes, sir. 20

Ques. And that crossing is the one which is used by people who come up the Centreton road to go to Moorestown, as well as by people who come down from Hartford to go to Moorestown along that road?

Ans. Yes, sir.

Ques. It is the same crossing, is it not?

Ans. Yes, sir.

Ques. The roads fork just there like that (indicating). Just look at this little diagram and see if it shows you how the thing is. (Diagram shown witness). Now, 30 there is Moorestown on your right hand and here is Hartford.

Ans. Yes, sir.

Ques. Very well, now. That is the railroad and the turnpike. Suppose that yellow streak there to be the turnpike.

Ans. Yes, sir.

Ques. And suppose this red streak to be the railroad with these lines here.

Ans. Yes.

Ques. That shows about the way they stand toward each other along there, don't it?

Ans. Yes, sir.

Ques. And up here opposite the thing marked "Lane"—suppose this to be Chalkley Ballinger's house where I have made a pencil square—that is about where  
10 Chalkley's house is, is it not?

Ans. Yes, sir; somewheres there.

Ques. And here where this black mark is (I believe that is black, I cannot see very well, but in some lights it is) where I have marked two stars in pencil, is the crossing, is it not?

Ans. The crossing is right there; yes, sir.

Ques. And this marked "Centreton Road" is where the Centreton road goes off?

Ans. Yes, sir.

20 Ques. And this yellow, alongside the railroad, below it on the map, is the turnpike that goes upwards towards Hartford, ain't it?

Ans. Yes, sir.

Ques. Now, were you going that night along this turnpike, and from the direction of Moorestown?

Ans. Yes, sir.

Ques. Past Chalkley Ballinger's house?

Ans. Yes, sir.

Ques. And along towards the crossing which is there,  
30 intending to turn along that Centreton road and go to Joshua Hollingshead's?

Ans. Yes, sir.

Ques. Well, now, right opposite this place here, there is a sand-pit, is there not?

Ans. Yes, sir.

Ques. And there is a siding from the railroad that runs into the sand-pit, is there not?

Ans. Yes, sir.

Ques. And then runs back and connects with the railroad some distance towards Moorestown?

Ans. Connects back where they should give the signal for the crossing ; there is where it connects.

Ques. Right there where the point of switch is that connects the siding is the signal post for the crossing?

Ans. Yes, sir.

Ques. Now, this is some distance from the crossing, is it not?

Ans. Yes, sir.

10

Ques. Several hundred yards?

Ans. Well, it is between four and five hundred yards.

Ques. And this map shows about the way the thing is laid out at that place, don't it?

Ques. Yes, sir.

Ans. Did you look towards the railroad before you got to Chalkley Ballinger's?

Ans. No, sir.

Ques. Did you look towards the railroad when you were opposite Chalkley's?

20

Ans. No, sir.

Ques. Did you look towards the railroad after you passed Chalkley's?

Ans. I did after I got within about fifteen or twenty yards of the crossing.

Ques. And your mule team was going along; you had nudged them up a little because you were late?

Ans. I did not nudge them up until after I took precaution.

Ques. Well, they had been going along, having been nudged up a little, before you looked out at all?

30

Ans. No, sir.

Ques. Then they hadn't been nudged up until after you looked?

Ans. Not until after I looked.

Ques. Now, at the time you looked, what did you do, anything?

Ans. Just pulled the team up to a slow gait so I could stop it as a precaution if I heard any noise.

Ques. You did not bring the team to a stop, but pulled it up to a slow gait?

Ans. To a slower gait, until it nearly stopped.

Ques. Then you looked, did you?

Ans. Yes, sir.

Ques. When you looked, which way did you look?

Ans. I looked on my left.

Ques. And did you look the other way at all?

10 Ans. The other way I couldn't help but look; I could look right down the track clean to Hartford.

Ques. And when you looked to your left you saw the electric light, you thought?

Ans. Yes, sir.

Ques. And you decided that it was an electric light that you saw, did you?

Ans. I thought it was.

Ques. An electric light?

Ans. Yes, sir, and nothing else. I couldn't compare  
20 it to anything else.

Ques. And you did not think any train was coming because you did not know there was any regular train coming along at that time?

Ans. I knew there was no regular train.

Ques. You knew there was not any?

Ans. Yes, sir.

Ques. And so, seeing this light, which you thought was an electric light, and knowing that there was not any regular train coming along, you decided, not hear-  
30 ing anything, that there was not any train there?

Ans. Yes, sir.

Ques. And having so decided, you went across the railroad?

Ans. Yes, sir.

Ques. Or attempted to do it?

Ans. Yes, sir.

Ques. Now, how far across the railroad had you gotten, the last time you remember about it; about where were you in relation to the railroad?

Ans. I cannot tell you anything about it at all, sir.

Ques. I am not asking you about what happened afterwards, but where were you in relation to the railroad when you say you heard a blowing?

Ans. When I heard the sound of this whistle I was right on the track.

Ques. Was the wagon then on the track, or were the mules on the track?

Ans. That I could not say, sir. 10

Ques. This thing that you had was a hay shelving, wasn't it?

Ans. Yes; a hay shelving.

Ques. An open shelving?

Ans. Open shelving.

Ques. No cover?

Ans. No cover.

Ques. And you were sitting on the driver's seat?

Ans. Yes, sir. 20

Ques. Now, weren't you asleep, Mr. Leary, before you came to the railroad?

Ans. No, sir; I was not.

Ques. You are quite sure about that?

Ans. Yes, sir; I am.

Ques. You were wrapped up in blankets?

Ans. Had the blankets thrown over me like, yes, sir; to protect me from the storm.

Ques. Was it actually storming at that time?

Ans. It was drizzling and storming at that time. 30

Ques. Did you have a bottle with you?

Ans. Yes, sir.

Ques. What did you have in it?

Ans. There was whiskey in it. It is right here to be shown to-day, the same bottle and the same whiskey.

Ques. Pretty good whiskey, was it?

Ans. I couldn't tell you about that; I didn't taste it.

Ques. It is better than it was then, for it is two years and a half older.

Ans. Well, it probably may be; somebody can taste it if they want to; it sets there in that bottle.

Ques. Where did you get that bottle filled?

Ans. I got it filled at the Spread Eagle Hotel.

Ques. That is the place where you do not think you took drink?

Ans. Yes, sir; that is the place where I did not take a  
10 drink.

Ques. But where you filled up the bottle and carried it along?

Ans. Yes, sir.

Ques. What kind of work was it that you did before this accident happened to you?

Ans. I worked on a farm—went to market, and done everything that was to be done on a farm.

Ques. And what wages did you earn?

Ans. I earned a dollar a day every day I worked.

20 Ques. Did you work all the year around at that rate?

Ans. Yes, sir.

Ques. Through the winter?

Ans. No, sir; only for nine months; for nine months I got a dollar a day.

Ques. And that was the sort of work you had been doing up to the time you were hurt?

Ans. Yes, sir.

Ques. Now, after you were hurt, when did you begin to work again in any way?

30 Ans. Well, I didn't begin to do much work of any kind worth speaking about until the fourteenth of May.

Ques. What year?

Ans. The year following.

Ques. That would be 1892?

Ans. Yes, sir.

Ques. Well, did you do any work—you say you did not do any of any kind worth speaking about—did you do any work?

Ans. I done a little work for Dr. Mattson; took care of his horse, just because he hadn't anybody; I wasn't able to do it.

Ques. You did do some there?

Ans. Yes, sir.

Ques. Was that all you did in all that period?

Ans. That was all I did in all that period?

Ques. After the first of May, 1892, or at that time, <sup>10</sup> where did you go to work?

Ans. I went to work for the United States Government, carrying the mail.

Ques. Mail carrier?

Ans. Yes, sir.

Ques. And you have been at that ever since?

Ans. Yes.

Ques. And you carry the mail from Moorestown post-office to Moorestown station; is that correct?

Ans. Yes, sir; to Moorestown station. <sup>20</sup>

Ques. How many mails a day did you carry?

Ans. I have four in and four out.

Ques. That would be eight.

Ans. Yes, sir.

Ques. And what time do you carry out or in your first mail?

Ans. The first mail in the morning is 6.40.

Ques. And when is the last at night?

Ans. About three minutes of nine—when it is on time—sometimes it is not on time; that is when she is <sup>30</sup> due there.

Ques. So that your hours of service during which you carry your mail to and fro are not quite thirteen hours a day?

Ans. No, sir.

Ques. Oh, fifteen—I was right—fourteen and a fraction?

Ans. No, sir.

Ques. How do you carry this mail?

Ans. Wheel it on a wheelbarrow.

Ques. And you are still engaged in carrying the mail, are you?

Ans. Yes, sir.

Ques. Now, in addition to carrying the mail you take care of the public school-house?

Ans. Yes, sir.

Ques. Is that in Moorestown?

10 Ans. Yes, sir.

Ques. What do you do at the public school-house?

Ans. Well, I see that it is cared for; my family sweeps it, and I see a little after the fires.

Ques. Now what do you get for carrying the mail?

Ans. \$175 a year.

Ques. And what do you get for sweeping the school house?

Ans. \$229.

Ans. And those two are your present occupations,  
20 are they?

Ans. Yes, sir.

Ques. Then, in addition to that, you do little odd jobs or chores occasionally?

Ans. Little odd chores about the post-office.

By Mr. Robbins:

Ques. Was there any other compensation besides a dollar a day for your work on the farm?

30 Mr. Grey: I object. The question ought not to be asked for this reason, that this is not a re-examination; this is not an examination in response to anything elicited on cross-examination, but it is a re-examination on the same lines as the examination-in-chief.

Mr. Robbins: The particulars of the pay were not

gone into at all on the direct examination. He simply testified that he worked for Mr. Hollingshead. Now, the other counsel has brought out the terms or price that he received, and I think it is no more than fair that he should ascertain all about them.

The Court: That was the course of the testimony. The plaintiff omitted to prove it at all; it was new testimony introduced by the defence.

Ques. Was there any other compensation that you received from Mr. Hollingshead besides the dollar a day <sup>10</sup> that you spoke of?

Ans. Yes, sir; I got a quart of milk a day.

Ques. Anything else?

Ans. Well, I got several other little things; I don't know just exactly what they was; but there was no charge made for them.

Ques. Where did you board?

Ans. I was boarding with Mr. Hollingshead.

Ques. Did you pay your board there?

Ans. No, sir; I didn't pay any board; I got a dollar <sup>20</sup> a day, and a quart of milk a day and my board.

Ques. How far do you have to carry this mail to and from the post-office?

Ans. It is about eight hundred yards.

Ques. And how long does it take you to make the trip, about?

Ans. Well, I suppose about twelve minutes, twelve or fourteen minutes, somewheres along there. I never timed myself at all.

Ques. Then you are not engaged the whole fifteen <sup>30</sup> hours in carrying it back and forth?

Ans. No, sir; not engaged the whole time at all.

Ques. What did you receive from Hollingshead from the balance of the year; you said a dollar a day for nine months—what was your pay for the remainder?

Ans. Seventy-five cents a day and my board.

DR. ABRAHAM E. CONROW, affirmed.

By Mr. Robbins.

Ques. Where do you reside?

Ans. Near Moorestown.

Ques. What is your profession?

Ans. Practicing medicine.

10 Ques. Of what medical college are you a graduate?

Ans. University of Pennsylvania.

Ques. In what department?

Ans. I graduated in the Veterinary Department, then afterwards in the Medical Department.

Ques. And how long have you been practicing medicine?

Ans. Passed my State examination last July, I think it was, or June.

Ques. And you have been practicing since that time?

Ans. Since that time.

20 Ques. Are you acquainted with William Leary, the plaintiff in this cause?

Ans. Yes, sir.

Ques. Have you had occasion to prescribe for him or treat him since you were in practice?

Ans. I have, several times.

Ques. Have you made any examination of him, any physical examination of him to ascertain his present condition physically?

Ans. At this time, do you mean?

30 Ques. At this time?

Ans. I have.

Ques. When did you make that examination?

Ans. Made one this morning.

Ques. Had you made any previous to that?

Ans. A superficial one, yes.

Ques. What condition did you find him in physically?

Ans. To-day I endeavored to locate the trouble. He was complaining of pain in the back. I found that by percussing over the left kidney that he evinced considerable pain and a very little over the right; I found an enlargement of the spinal process of the eleventh dorsal vertebra—which do you want to know, what I suppose it is due to?

Ques. Yes.

Ans. Supposed to be due to a traumatism of some kind, a blow.

Ques. What do you mean by the term used there? 10

Ans. "Traumatism"?

Ques. No; "Vertebra." Just explain to the jury so they could understand.

Ques. Well, each segment, or each bone of the backbone—we have what we call a body, then we have a ring forming a canal through which the spinal cord extends; then on each side of the body we have other transverse processes extending out on the side. Then we also have projecting out from the back another process, which we term the "spinous process," and on 20 the top of that we have a ligament attaching the superior part, but we speak of these projections as the "spinous process," and this is an enlargement of about the eleventh dorsal vertebra, or, if they wish it a little more definite, a little above the small of the back.

Ques. That was all that you observed about his?

Ans. Did I mention the tenderness upon percussion? I think I mentioned that.

Mr. Grey: You did. 30

The Witness: And the enlargement. That is all I see to-day. I see that by any sudden movement of the body he evinces considerable pain, and that is about all that I noticed there. I know the man is not perfect in other ways from other treatment that I have given him

in cases of pneumonia and in cases of pleurisy that he has sometimes, chronic pleurisy.

Ques. You are a member of the present Grand Jury, are you not?

Ans. Yes, sir.

Cross-examination.

By Mr. Grey:

10 Ques. When did he have pneumonia?

Ans. The fore part of April, I think it was.

Ques. Of one side or both?

Ans. One side.

Ques. Which?

Ans. Left.

Ques. That is a disease of the lungs, is it not?

Ans. Yes, sir.

Ques. Now, you say he suffers from chronic pleurisy?

20 Ans. Yes, sir.

Ques. That is a disease of the pleura?

Ans. Yes, sir.

Ques. And where is that located?

Ans. We have the parietal pleura, covering or lining the cavity in which the lungs are located; that is the largest.

Ques. Just stand up and put your hand on that part of the body where the pleura is found.

30 Ans. The pleura lines that part of my body (indicating). That is part of it on both sides and the back, and forms a fold down through the middle also, covering over the pericardium.

Ques. And the disease you have spoken of as "chronic pleurisy" is a disease of that part of the body?

Ans. Yes, sir.

By Mr. Robbins:

Ques. Could that be due to the same causes that produced the other?

(Objected to.)

The Court: The witness, when examined in chief, gave the information that he knew the man was not sound, because he had attended him recently for pneumonia, and also for chronic pleurisy; that was in the testimony, right or wrong. Before the cross-examining counsel took charge of the witness, if there was anything further to be said about that, it ought to have been done upon the direct examination. 10

Mr. Robbins: It was a volunteered statement.

The Court: That, none the less, makes it testimony adduced by the direct examination. It was voluntary at the time, and it was within your control to strike it out if you did not want it in. It is not proper re-direct examination.

20

(Question withdrawn.)

DENNIS HAGGERTY, sworn.

By Mr. Robbins:

Ques. Where do you live?

Ans. At Moorestown.

Ques. And with whom were you living in June of 1891?

Ans. Living with George Crispin.

30

Ques. Where does George Crispin live?

Ans. He lived in the second house from the Long Crossing.

Ques. The second house in which direction?

Ans. Towards Moorestown.

Ques. On the pike?

Ans. On the pike.

Ques. On which side of the pike?

Ans. The right-hand side.

Ques. Coming this way?

Ans. Coming this way.

Ques. That would be on the south side of the pike?

Ans. Yes, sir.

Ques. How near is his house to the turnpike and railroad?

Ans. Why, the fence along his property runs right  
10 close to the turnpike.

Ques. It is the fence along the south side of the turnpike?

Ans. Yes, sir.

Ques. And the house, does that set near the fence or back some distance?

Ans. It stands right back from the fence; well, it might be eight yards.

Ques. Were you working for him at the time this accident happened to Mr. Leary?

20 Ans. Yes, sir.

Ques. And where were you at the time this accident happened?

Ans. I was in bed.

Ques. Where were you sleeping?

Ans. Over the carriage house.

Ques. Were you sleeping at the time?

Ans. No, sir.

Ques. How long since you had gone to bed?

Ans. I might have been in bed an hour, not any  
30 more.

Ques. Were you awake when the train passed?

Ans. Yes, sir.

Ques. Did you hear it pass his house?

Ans. Yes, sir.

Ques. What did you notice about it, if anything?

Ans. Well, I didn't notice anything about it except-  
ing it went past the same as a great many others have

done, and we used to pass the remark a great many of them went past without either ringing or blowing a whistle.

Ques. Did this ring or blow a whistle?

Ans. Neither one or the other, sir.

Ques. And what was the first you heard of this accident?

Ans. I heard a long whistle, and generally when we hear a long whistle and it keeps continuously blowing, we know there is something the matter, or take it for granted that there is something the matter. 10

Ques. Where was the train when that whistle blew?

Ans. Why, she might be forninst the gravel hole, or she might be forninst Mr. Ballinger's house.

Ques. Had it gone by your house?

Ans. Yes, sir.

Ques. How long had it been since it passed your house before you heard the whistle?

Ans. Why, it might be one minute, or it might not be quite so long; I don't know exactly what length of time it takes to go that distance. 20

Ques. Had the whole train gotten by your house when the whistle blew?

Ans. Yes, sir.

Ques. And it was a long whistle, you say?

Ans. A long whistle.

Ques. Was no bell rung?

Ans. Didn't hear no bell.

Ques. Can you hear the bell ring?

Ans. I generally do hear the bell. I can hear the bell, and I can hear almost the people talk; I can hear 30 an ordinary conversation going on from where I was sleeping out in the middle of the road.

Ques. When they ring a bell, going by your house, do you hear it?

Ans. Yes, sir.

Ques. You heard no bell this time?

Ans. No, sir; didn't hear any bell, or didn't hear any whistle.

Ques. Until this was blown?

Ans. No, sir.

Ques. Did the train make much noise?

Ans. No, sir; it wasn't making much noise; it was going along—a slow freight like, or I thought it was.

Ques. And when was the first you learned of the accident?

Ans. About five or ten minutes after it occurred.

10 Ques. You went down there, did you?

Ans. I went down and met the boss I was working for and I met the son coming back from seeing what it was, and I didn't bother any more; I went back and went to bed again.

Ques. Well, you knew it was Leary that had been hurt?

Ans. They told me so; I didn't know at the time who it was that had been hurt until they told me.

20 Cross-examination.

By Mr. Grey:

Ques. How far from the crossing of the railroad, which is called the Long Crossing, was the house in which you were?

Ans. I couldn't tell you, sir; I never measured it.

Ques. Well, which side of the turnpike was it as you come from Moorestown towards Hartford, on the left-hand side or the right?

30 Ans. On the right-hand side.

Ques. That is on the same side as Mr. Ballinger's house?

Ans. Yes, sir.

Ques. And how far towards Moorestown from Mr. Ballinger's?

Ans. Pretty near two miles.

Ques. Now, Ballinger's house is just the other side of the Long Crossing, over here towards Moorestown?

Ans. Yes, sir; it is the next house to the Long Crossing.

Ques. There is a gravel pit near the Long Crossing, is there not?

Ans. Yes, sir.

Ques. And that is on the opposite side of the railroad from where Ballinger's house is?

Ans. Yes, sir.

Ques. Now, you were in bed over the carriage house? <sup>10</sup>

Ans. Yes, sir.

Ques. Well, is the carriage house on the turnpike, or is it back?

Ans. It is back from the turnpike.

Ques. At the back end of the lot, is it not?

Ans. Yes, sir; I guess it is about forty yards from the middle of the turnpike.

Ques. The train that you heard going along there was a slow freight train, you say?

Ans. Yes, sir. <sup>20</sup>

Ques. And that was the train that you heard blow about opposite Ballinger's house, opposite the sand pit, a long blow?

Ans. Yes, sir.

Ques. Ballinger's house is pretty near to that crossing, is it not, that Long Crossing?

Ans. Well, it is the next house to it, sir.

Ques. And the sand pit is a little nearer to the crossing than Ballinger's house?

Ans. One portion of it is and another portion is not. <sup>30</sup>

By Mr. Robbins:

Ques. The sand pit extends almost to the crossing; that is, it is right up to it?

Ans. It comes, you might say, close up to it, sir.

Ques. How far is your house from the crossing?

Ans. I couldn't tell you the distance; I don't suppose it is more than six or eight hundred yards.

Ques. Do you think it is that far?

Ans. I couldn't tell you exactly the distance.

Ques. How near the gravel hole is that, or the westerly end of the gravel hole?

Mr. Grey: That is not re-direct examination about anything I have called out.

10

Mr. Robbins: There is a question he answered "About two miles;" I don't think he understood the question.

(The testimony of the witness on this point was read by the stenographer, as follows: Ques. How far from the crossing of the railroad which is called the Long Crossing was the house in which you were? Ans. I couldn't tell you, sir; I never measured it. Ques. Well, which side of the turnpike was it as you come from  
20 Moorestown towards Hartford, on the left hand side or the right? Ans. On the right hand side. Ques. That is on the same side as Mr. Ballinger's house? Ans. Yes, sir. Ques. And how far towards Moorestown from Mr. Ballinger's? Ans. Pretty near two miles.)

Ques. Is the house of your employer there two miles from Ballinger's?

Ans. No, sir; no, sir.

Ques. I thought you didn't understand it.

Ans. No, sir; it is not over four hundred yards, if it  
30 is that.

Ques. Not over four hundred yards in which direction?

Ans. It stands west of Mr. Ballinger's.

Ques. Do you know what kind of a train this was?

(Objected to.)

The Court: The question is overruled.

GEORGE CHAMBERS, sworn.

By Mr. Robbins:

Ques. Where do you live?

Ans. I live at Silas Walton's; or I did at that time.

Ques. Where do you live now, I say?

Ans. I live at Woodbury.

Ques. Where were you living at the time this accident happened to Mr. Leary?

Ans. I lived at Silas Walton's.

Ques. Where is Mr. Silas Walton's place? 10

Ans. Between Moorestown and the Long Crossing.

Ques. That is between Moorestown and the Long Crossing, is it?

Ans. Yes, sir.

Ques. And on which side of the turnpike is his house?

Ans. On the left, going to Moorestown; on the right, coming this way.

Ques. Well, where were you at the time the accident happened? 20

Ans. I was sitting on the porch.

Ques. Of what house?

Ans. His tenant house; across the railroad.

Ques. That is opposite—

Ans. (Interrupting.) Right opposite the house.

Ques. Opposite Silas Walton's dwelling house and on the other side of the railroad?

Ans. Yes, sir; on the other side of the railroad.

Ques. Were you living there?

Ans. Yes, sir. 30

Ques. Keeping house?

Ans. Yes, sir.

Ques. Married man?

Ans. Yes, sir; wife and child.

Ques. Did you see this train come by that night?

Ans. I seen it come by.

Ques. Where were you when it went by?

Ans. Sitting on the porch.

Ques. Anybody with you there?

Ans. Isaac Morris, who was working for Silas Walton there.

Ques. What did you notice about this train, if anything?

10 Ans. I noticed it coming down the railroad not saying nothing or making any fuss or nothing, and I was wondering why she should have a train out at that time of night.

Ques. What do you mean by "Not saying anything?"

Ans. I said to Isaac Morris, "What does this mean?"

Mr. Grey: Don't state your conversation with Morris.

Mr. Robbins: He can state what he said to Morris.

20 Mr. Grey: I do not think he can, but the Court will have to rule upon it.

Ques. Just state what you observed with reference to the train.

The Court: The witness spoke of the train, said the train came along without saying anything; I think it is perfectly proper for him to explain what he meant when he said the "train didn't say anything."

30 Ques. What do you mean by the "train not saying anything"?

Ans. Not blowing the whistle on it at all—came along very quiet.

Ques. Was it making any noise?

Ans. No, sir.

Ques. Of any kind?

Ans. No, sir.

Ques. Was there a bell ringing?

Ans. No, sir; that's why I noticed it so much.

Ques. Did you have a conversation with your companion there about the train?

Ans. Yes, sir.

Ques. And what did you next notice with reference to it; what was the first noise you heard from it of any kind?

Ans. The first noise I heard from it after she got past my house was down about the crossing there. I heard <sup>10</sup> her blow a distress blow, and I didn't pay much account to it, what it was, not thinking anything would happen.

Ques. Did you go down there?

Ans. No, sir.

Ques. When did you first learn of the accident to Leary?

Ans. The next morning.

Ques. How far is this Silas Walton's from the crossing, about?

Ans. It is about—I couldn't tell you exactly how far <sup>20</sup> it is from there.

Ques. On which side of this place where Haggerty said he lived was it?

Ans. Which was that?

Ques. Haggerty said he lived there with Crispin; now, on which side of Crispin's is Silas Walton's?

Ans. Right-hand side.

Ques. Is it west of Crispin's, or east?

Ans. West.

Ques. It is east of Crispin's?

Ans. Yes, sir. 30

Ques. And about how far from Crispin's?

Ans. I don't know; couldn't tell that exactly.

Ques. How far east of the point where the railroad comes out to the pike and runs along without any intervening line between them is Silas Walton's?

Ans. How far out?

Ques. How far east of that point where the railroad and pike come together?

Ans. I never noticed it.

Ques. It is east of that, is it not?

Ans. Yes, sir.

Ques. Some distance?

Ans. I think it is.

Ques. Was this train going fast?

Ans. No, sir.

10 Ques. About how fast?

Ans. Well, it wasn't going so terrible fast.

Ques. Do you know what kind of a train it was?

Ans. Freight train. I noticed that.

Ques. You noticed it was a freight train?

Ans. Yes, sir.

Ques. Did the train generally pass there at that time of night?

Ans. No, sir; not before that night; not a freight train.

20 Ques. That is the first time you ever noticed one at that time of night?

Ans. Yes, sir.

Ques. You were sure there was no bell ringing?

Ans. No, sir. I am sure of that.

Ques. And no signals given at all until the crossing was reached, or very near that point?

Ans. Until the crossing; yes, sir.

Cross-examination.

30 By Mr. Grey:

Ques. Now, George, do you know where Ballinger's house is, Chalkley Ballinger's house?

Ans. I do, sir.

Ques. Well, that is on the right hand side of the

turnpike as you go from Moorestown towards Hartford, is it not ?

Ans. Yes, sir.

Ques. And the general direction of the turnpike and of the railroad along there is east and west, is it not ?

Ans. Yes, sir.

Ques. So that Ballinger's house would be on the south side of the turnpike ?

Ans. Yes, sir.

Ques. Now, you were employed by a man who lived nearer to Moorestown than Mr. Ballinger did ? 10

Ans. Yes, sir.

Ques. And his house was on the south side of the turnpike, was it ?

Ans. Yes, sir.

Ques. On the same side that Ballinger's was ?

Ans. Yes, sir.

Ques. And he had a tenant house ?

Ans. Had a tenant house.

Ques. And you lived in that tenant house ?

Ans. I did. 20

Ques. Now, was the tenant house on the turnpike ?

Ans. Yes, on the left-hand side of the turnpike.

Ques. On the left-hand side of the turnpike as you come from Moorestown to Hartford ?

Ans. Yes, sir; across the railroad.

Ques. So that the house you lived in was to the north of the railroad track ?

Ans. Yes, sir.

Ques. And when you went to the turnpike you had to cross the railroad to get to the turnpike ? 30

Ans. Yes, sir.

Ques. That is right, is it not ?

Ans. Yes, sir.

Ques. Now, was that about opposite to where your employer's house was on the turnpike ?

Ans. Do you mean where this accident was ?

Ques. No, no; the house you lived in, was that about opposite to where your employer's house was on the turnpike?

Ans. Yes, sir.

Ques. How far to the westward of Ballinger's did your employer live—that is, towards Moorestown?

Ans. I don't know; I couldn't tell exactly.

Ques. Well, about how far, a couple of thousand yards?

Ans. I don't know about that; I guess somewhere  
10 along there; I couldn't say exactly.

Ques. Quite a little distance, wasn't it?

Ans. Yes, sir.

Ques. And your house was about as far away from the Long Crossing as your employer's house was?

Ans. Yes, sir.

Ques. Now, there is quite a long way there where the turnpike and the railroad are close together, is there not?

Ans. Yes, sir.

20 Ques. You heard a whistle blown that night after the train had gone past your house?

Ans. Yes, sir.

Ques. The first railroad crossing would have been the Long Crossing, after it passed your house, wouldn't it?

Ans. Yes, sir.

Ques. And it was just before it came to that that you heard the whistle blow?

Ans. Yes, sir.

Ques. And you heard a long blast?

30 Ans. Yes, sir.

Plaintiff rests.

Mr. Grey: I desire to move to non-suit this plaintiff.

The Court: Without commenting on the testimony, the motion will be denied.

Whereupon the defendant, by its counsel, prays a bill of exception to the refusal of the Court to non-suit the plaintiff upon the defendant's motion, which is allowed and sealed accordingly.

C. G. GARRISON,  
J. S. C.

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### THE CASE FOR THE DEFENDANT.

CHALKLEY BALLINGER, affirmed.

10

By Mr. Grey:

Ques. Where do you reside?

Ans. Near the Long Crossing, near the turnpike.

Ques. I show you this map (exhibiting plan to witness). Does the turnpike which you speak of pass along in front of your house?

Ans. Yes.

Ques. Now, does the map which I show you, on which there is a yellow space marked "Turnpike," and another pinkish colored space with no mark on it, indicate the relation of the turnpike to the railroad as they are there in front of the house?

Ans. I think so; yes.

Ques. Does this pencil square which is on the south side of the turnpike, as shown on the map, show the location of your house, about where it is?

Ans. Is this Comfort's lane?

Ques. Yes.

Ans. The house is a little further towards the crossing; they are not quite opposite.

Ques. About like that (indicating)?

Ans. Yes, that is near enough.

(Counsel for defendant places second pencil square marked "2" at the point indicated by the witness).

Ques. This Long Crossing of which you speak, is that the place where the railroad crosses the Centreton road?

Ans. Yes, sir.

Ques. And shown on this map by two pencil stars; is that correct?

Ans. Yes, that is correct.

Ques. Is there a lane on the north side of the turnpike near your house?

Ans. There was; it has been cut off by a sand-hole.

10 Ques. And the sand-hole has cut it off, has it?

Ans. Yes, they are digging above it, west of it.

Ques. Had the sand-hole cut it off two years ago last June?

Ans. I think not; no.

Ques. Then there was one there at that time was there?

Ans. Yes.

Ques. And the sand-hole was to the east of that, was it?

20 Ans. Yes.

Ques. Towards the Centreton road?

Ans. It was at that time.

Ques. Do you know about how far it is from your house to the Long Crossing?

Ans. I do not; I never measured it.

Ques. Do you remember the accident which occurred to William Leary on the 19th of June, 1891, at the Long Crossing?

30 Ans. I remember the accident; I don't remember the time.

Ques. Well, you remember the accident to William Leary?

Ans. Yes.

Ques. About what time in the evening was it that this thing occurred?

Ans. It was something after nine; I couldn't say the exact time; I think it was something after nine.

Ques. Did you hear the train come along that night, before it got to the Long Crossing?

Ans. Oh, yes.

Ques. Did you hear any signal that the train gave?

Ans. I heard the blow.

Ques. The blow of what?

Ans. The whistle blew before it got to our place.

Ques. What kind of a blow was it?

Ans. I think it was a long blow that the whistle gave.

Ques. Did you have occasion, or did you hear of any-  
thing occurring which took you out of your house after  
that, that night? 10

Ans. Yes; one of the train men came and called me  
up.

Ques. How long after you heard the whistle blow?

Ans. I suppose about ten minutes; I do not remember  
exactly.

Ques. Well, did you go out?

Ans. I did.

Ques. Where did you go?

Ans. Went down to the crossing. 20

Ques. Did you see anybody there?

Ans. The train had backed there; I saw all hands.

Ques. Did you see Leary?

Ans. Yes.

Ques. What kind of a train was this?

Ans. Freight train, I think—I know it was.

Ques. Where was Leary when you saw him?

Ans. Lying on the ground.

Ques. Did you stay there until the train went away? 30

Ans. Yes.

Ques. Was Leary carried off by the train?

Ans. Put on the train.

Ques. Did you see the wagon?

Ans. Oh, yes.

Ques. Did you see the mules?

Ans. Yes.

Ques. Did you go out the next morning?

Ans. Yes.

Ques. Were things in the same condition the next morning as you had left them the night before, as far as you could see?

Ans. I think they were; yes.

Ques. Did you see anything there the next morning?

Ans. I saw what we left there that night; we took care of some of the things that night ourselves.

Ques. What did you take care of?

10 Ans. The blankets and halters, I think; and I don't know—there was two or three things—I cannot tell what they were.

Ques. Did you find any bottle there, either in the night or in the morning?

Ans. Yes, there was a bottle.

Ques. Anything in it?

Ans. Yes.

Ques. What did you do with it?

Ans. Put it in the bag and took it up to the house,  
20 I think.

Ques. Did anybody get it after that?

Ans. Oh, I think Joshua Hollingshead took it with the other things; I think he did.

Ques. Does this map, which I have already shown you, show the relation which the turnpike bears to the railroad west of Long Crossing?

Ans. I think so.

Ques. Is there not considerable distance there where they run side by side?

30 Ans. About a half mile, I think; somewhere in that neighborhood.

Ques. Where they run side by side?

Ans. Yes.

Ques. And for that half a mile, as you come from Moorestown to Hartford, that is, as you go from the west towards the east, is the railroad in view of a person travelling along the turnpike?

Ans. Oh, yes, yes; there is nothing to obstruct.

Ques. But you can see the railroad from the turnpike as you travel along, can you?

Ans. Yes.

Ques. Can you see a train as it is passing along there?

Ans. Yes; easily.

Cross-examination.

By Mr. Wescott:

10

Ques. About how far from your house is the crossing?

Ans. I could not tell you; I do not remember; I have stepped it, but I do not remember.

Ques. I know; but your memory is not so bad but that you cannot form some idea or a judgment as to distance, is it?

Ans. I suppose near two hundred yards.

Ques. That far? Your house from the crossing?

Ans. I could not say.

Ques. Is it any further than from where you sit to the main street? <sup>20</sup>

Ans. Yes; twice as far and more, too, I should think. There is quite a field, there, I know.

Ques. About how far is George Crispin's house from the crossing?

Ans. I think he is about a hundred yards or a little over from me.

Ques. So if you are a hundred or two hundred from the crossing he is about three hundred from the crossing? <sup>30</sup>

Ans. Yes.

Ques. And about how far is Silas Walton's place?

Ans. I could not tell you at all.

Ques. Well, you can give us a judgment, as you have about the other two cases?

Ans. It would be just guesswork.

Ques. Well, give us your guess?

Ans. I could not tell.

Ques. You cannot tell? How far is it beyond Crispin's?

Ans. If I was to say just what I think, Crispin's is about half-way between Silas Walton's and the crossing.

Ques. Now, you say that you can see perfectly plain a train coming along the track when you are on the turnpike?

10 Ans. Oh, yes; there is nothing to obstruct at all until it gets to the bend.

Ques. Are there any electric lights—putting yourself now in imagination in the position that the plaintiff was when he was approaching that track and looking back—are there any electric lights back of him anywhere, or were there at that time?

(Objected to as not cross-examination.)

The Court: Unless the defense put this witness on the  
20 stand for the purpose of testifying to and drawing his attention to matters of that kind it cannot be utilized at this stage of the case by the plaintiff. The cross-examination cannot go any further than the scope that was opened up by the defense, and if there is no attempt on the part of the defense to prove anything about the presence or absence of electric lights, which are substantive matters in the case, it cannot be brought in by the cross-examination. It must be admitted that this witness  
30 was not examined in chief about the presence or absence on that occasion of electric lights at that point. The question is overruled.

(Exception noted for the plaintiff.)

Ques. Have you ever travelled as the plaintiff says he was travelling, on a dark and stormy night, and looked

to see whether the track was perfectly distinct and everything on it?

Mr. Grey: I object. The testimony has been directed to physical objects and their relations to each other on the ground; his opinion has not been invited as to what he could see on a dark and stormy night, or what anybody else could see on a dark and stormy night.

The Court: The witness has testified as to what he could see from the points on the road. 10

Mr. Grey: On the turnpike, approaching the crossing?

The Court: Well, undoubtedly he may be examined as to the conditions of the atmosphere and the conditions of day and night under which he testifies that he either has or could see that far; it certainly must be pertinent examination.

(Question repeated.) 20

The Court: I do not see the impropriety of that question. He can answer it, yes or no.

Whereupon the defendant, by its counsel, prays a bill of exceptions, which is allowed and sealed accordingly.

C. G. GARRISON, J. S. C.

Ans. I have never travelled from Moorestown to Hartford on a stormy night. I always stop before I get 30 to Hartford; I always turn in at our house; I never went as far as the crossing; went from Moorestown right on direct home.

Ques. Then how distinctly you could see on such a night as the plaintiff describes you are not able to say; that is correct, is it not?

(Objected to as before. Objection overruled.)

Whereupon the defendant, by its counsel, prays a bill of exceptions, which is allowed and sealed accordingly.

C. G. GARRISON, J. S. C.

Ans. Yes.

Ques. You say you saw the mules and wagon; what condition were they in?

Ans. One was lying down and one was standing up.

10 Ques. Had they been standing there all night?

Ans. No; we put them in the stable.

Ques. Were they injured any?

Ans. I don't think they were; maybe skinned a little.

Ques. Was the wagon injured any?

Ans. Oh, it was all broke to pieces.

Ques. Where was it lying?

Ans. All about; well, I couldn't tell.

Ques. On each side of the track?

20 Ans. I think there was some on both sides; I think so.

Ques. Completely demolished, was it?

Ans. Yes; I think so.

Ques. Leary was on the ground?

Ans. Yes.

Ques. Whereabouts?

Ans. I could not tell you how far from the crossing.

Ques. On which side of the track?

30 Ans. I believe I don't remember. There was two men laid there lately, and I don't remember which is which.

Ques. You cannot distinguish between them?

Ans. No; we have so many accidents there.

Ques. It is a pretty bad place, is it not?

(Objected to.)

The Court: The difficulty is to tell what the objection is to, whether it is to the answer or the question.

Mr. Grey: To the question: "It is a pretty bad place, is it not?" I object to that.

The Court: The witness had previously made a statement of the same kind. I do not understand what the objection is, whether it is to the whole subject matter, or the question of counsel, or what.

Mr. Grey: The objection is to the whole subject matter, and particularly to the last question.

The Court: The question as to its being a pretty bad place may be stricken out. 10

Ques. Leary was in what condition when you saw him—unconscious?

Ans. Yes; I think so.

Ques. Bloody?

Ans. Yes.

Ques. Where was the blood?

Ans. There was blood on his face.

Ques. Were his clothes torn? 20

Ans. I don't remember that they were much.

Ques. Did you help pick him up?

Ans. No, I did not.

Ques. What did you do?

Ans. I didn't do much of anything until the train went away, then I went to look for the mules.

Ques. Now, about what time in the night did you say it was?

Ans. I suppose it was about half-past nine. I don't remember exactly. 30

Ques. Did you look at the clock?

Ans. No.

Ques. You are simply judging?

Ans. We went to bed.

Ques. What time did you go to bed?

Ans. About nine o'clock, and it was before we got to sleep.

Ques. Why did you tell me it was before you got to sleep?

Ans. Well, we couldn't have heard it if we had been asleep.

Ques. I did not ask you whether you were asleep or not.

Ans. Well, I am locating the time.

Ques. Was it nine o'clock when you went to bed?

10 Ans. About that.

Ques. Why do you say "about"?

Ans. Well, we are generally pretty regular about it.

Ques. Then you did not notice the clock when you went to bed?

Ans. We generally do.

Ques. Did you on this occasion?

Ans. I don't know whether I did or not.

Ques. Then your judgment is based upon the generality of your experience in going to bed?

20 Ans. Yes.

Ques. Were you pretty tired that night?

Ans. I don't remember.

Ques. Had you been working that day?

Ans. I always work.

Ques. Pretty tired that night?

Ans. Well, about as common, I guess.

Ques. Go to sleep pretty quickly, do you?

Ans. Sometimes.

Ques. Did you on that occasion?

30 Ans. No; I did not.

Ques. Cannot you tell me about how many paces your house was from that crossing when you paced it?

Ans. I could not tell.

Ques. When did you pace it?

Ans. Well, once or twice since.

Ques. And you paced it once or twice since with this case in mind?

Ans. I paced it before I came up before, and I forgot it this time.

Ques. And you say you cannot give us any idea at all as to the number of paces?

Ans. I could not guess within fifty yards.

Ques. How far is your house east of Comfort's lane?

Ans. About ten, or not over ten or fifteen yards.

Ques. Were you requested by anybody to pace this distance?

Ans. No; it was only voluntary.

10

Ques. For what purpose?

Ans. I thought some of you men might ask me, and I wanted to know for my own benefit, too.

Ques. Didn't you make a note of it—put it down?

Ans. No.

Ques. But it occurred to you somebody might ask you the distance?

Ans. Yes; if I had thought of it, I would have done it yesterday.

Ques. Well, it has entirely escaped your mind since; 20 it escaped your mind, although it was so important to you that you paced it twice?

Ans. Yes.

Ques. Escaped from your mind since then, has it?

Ans. I didn't think of it; it has been a year, nearly.

Ques. Then the importance of pacing it occurred to you over a year ago?

Ans. Well, when I was called here before.

Ques. You know Mr. Leary, don't you?

Ans. Oh, yes.

30

Ques. Do you remember having a conversation with Mr. Leary, in Moorestown, near the post-office, about a year ago, about this case?

Ans. I think I said something to him about it, or he said something to me about it; I asked him if it was going on, or something of the kind.

Ques. Well, you remember him asking you where the train was when the whistle blew, and your telling him that you did not know, you could not swear to it, you could not tell anything about it?

Ans. No, I always knew where it blew.

Ques. Oh, you always knew that?

Ans. Yes.

Ques. Did you know just at the time the accident occurred where the train blew?

Ans. I did not know how far up; I knew it was west  
10 of our lane.

Ques. How did you know that?

Ans. Well, I heard it.

Ques. I know, but did you see it?

Ans. No. Our house is close to the road. I could easily know whether it was east or opposite to us or west of us.

Ques. Under all circumstances you can locate a train on the track by the blow that it makes; is that correct?

20 Ans. Yes.

Ques. Have you given special attention to the point of locating a train by the whistle it blows?

Ans. Oh, no.

Ques. Can you locate it by the sound, any other sound that the train makes than the blowing of the whistle?

Ans. We can tell where it is.

Ques. You know it is on the track?

Ans. Oh, yes.

30 Ques. Well, within about how many feet of the actual place on the track can you come, in the night time, when you are that distance off, or in bed?

Ans. I could not tell.

Ques. Can you come every time within fifty yards?

Ans. I think I can come nearer than that.

Ques. You can come nearer than fifty yards of the

place where the engine actually is when it blows the whistle?

Ans. I think so.

Ques. Well, cannot you come within about ten or fifteen yards?

Ans. I guess so.

Ques. Now, if you can come so closely to the place a train is on a dark or stormy night, on the track when the engine blows a whistle, why cannot you tell us a little better about the distance between your house and the crossing?

10

Ans. Why, one is by ear and the other by sight.

Ques. You go better by the ear than you do by sight?

Ans. Yes.

MRS. PRISCILLA BALLINGER, affirmed.

By Mr. Grey:

Ques. You are the wife of Mr. Chalkley Ballinger, who has just left the stand?

Ans. Yes.

20

Ques. Do you remember the night that the accident happened to William Leary at Long Crossing, two years ago last June?

Ans. I do.

Ques. Do you recollect hearing this train come along that night before it got to the crossing?

Ans. I do.

Ques. Where were you when you heard the train?

Ans. I was abed.

Ques. About what time of night was it?

30

Ans. After nine o'clock a while.

Ques. Did you hear any whistle blown before it got to the crossing?

Ans. I did.

Ques. What kind of a whistle was it?

Ans. A long blow.

Ques. Your house is on the south side of the turn-pike?

Ans. It is.

Ques. Not very far from the crossing?

Ans. Not very far.

Ques. Is there any other house between your house and the crossing?

Ans. No.

Ques. What kind of a night was this, clear or rainy?

10 Ans. It was a cloudy night.

Ques. Did you go out to the crossing?

Ans. I did not.

Cross-examination.

By Mr. Wescott:

Ques. Did you know what time you retired that evening?

20 Ans. About nine o'clock.

Ques. How are you enabled to state that it was nine o'clock?

Ans. Well, we commonly go to bed about nine o'clock when we are home.

Ques. That is the one thing that enables you to say it was nine o'clock that night?

Ans. Yes.

Ques. Had you been to bed some time?

Ans. Not very long.

Ques. About how long?

30 Ans. I don't know; I couldn't say.

Ques. Long enough to get to sleep?

Ans. I hadn't been to sleep.

Ques. Had you been to bed long enough to get to sleep?

Ans. Well, it takes me longer sometimes than others to go to sleep, so I could not say.

Ques. About how far is your house from the crossing?

Ans. I could not tell you that.

Ques. Did you ever see it paced?

Ans. I have seen some of the hands of the railroad come along and do it, some of the men.

Ques. Never saw your husband pace it?

Ans. No.

Ques. Do you know where the engine was when the whistle was blown that night?

Ans. It was west of the house. 10

Ques. Well, is that toward the crossing or away from the crossing?

Ans. Away from the crossing, the west is.

Ques. How do you know it was west of the house?

Ans. Because it blew before it got to the house.

Ques. How do you know that? How far off from the house was it—a quarter of a mile or so, before it blew?

Ans. I don't know how far, but I know it was west of the house. 20

Ques. That is, now you are drawing a straight line at right angles with the railroad, and you have got the train west of that straight line; that is what you want us to understand, is it?

Ans. Yes.

Ques. Now, do you know about how far the train was west of that straight line when it blew?

Ans. I could not say how far it was.

Ques. Cannot you give us a judgment—one hundred yards, or two hundred, or three hundred, or five hundred? 30

Ans. How could I tell when I was in bed? I could not tell how far it was.

Ques. Well, might it not have been just a little east of that line now, so far as you know?

Ans. I know it was west of the line.

Ques. Yes, but how is it you are able to state that?

Ans. Because I heard it blow before it got up to the house.

Ques. Cannot you give us an idea about how far away it was from that line drawn straight from your house to the railroad; cannot you give us a judgment on the plan?

Ans. It was some distance, but I could not say how far.

10 Ques. Do you think it was as many as twenty-five yards?

Ans. I could not say. It would only be guesswork.

Ques. Well, about the distance from you to the wall there?

Ans. Oh, I should think it was further than that.

Ques. The distance from you to the street out yonder?

Ans. I don't know, only I know it was west of the house, but I could not tell you how far.

20 Ques. You are perfectly certain it could not have been just a little over that line drawn straight from your house to the railroad, a little east of it?

Ans. No, I know it was west of the house.

Ques. Have you ever talked to anybody about that point?

Ans. Not exactly on that point, except to my husband; I have talked with him about it.

Ques. And you agreed with each other that it was west?

30 Ans. We both knew it was west of the house we heard the blow.

Ques. But you discussed it with him?

Ans. With whom?

Ques. With your husband.

Ans. No, we had only talked it over; we didn't say much about it.

Ques. Why did you talk that point over?

Ans. Why, we didn't talk that over any more than the rest; we talked the case over several times; it is natural to talk accidents over.

Ques. How often did you talk about the point of locality of that engine upon the track?

Ans. I don't know. I did not keep account.

Ques. Several times?

Ans. No, not many.

Ques. As many as half a dozen times?

Ans. I could not say.

Ques. As many as twice?

10

Ans. I did not keep any account of how many times.

Ques. Do you think it would be safe to say that you talked it over with your husband twice?

Ans. I should think so; but I don't know.

Ques. What would have been your object in talking it over with him as many times as twice?

Ans. Well, we were only speaking of the accident.

Ques. No; but this particular point as to where the train was.

Ans. We did not talk of that particular point any more than the rest; we spoke about the accident.

Ques. Did you talk about that particular point of the locality of the train as often as you talked about the rest of the case?

Ans. No.

Ques. Why not?

Ans. Well, I cannot say why, but we didn't happen to.

Ques. Do you know Mrs. Joshua Hollingshead?

Ans. Yes, sir.

30

Ques. And her daughter Emma?

Ans. Yes.

Ques. Do you recollect having a conversation with them the Sunday after this injury to Leary, in the Friends' Meeting House, in Moorestown?

Ans. I talked with them; I don't remember just when it was afterwards.

Ques. Don't you remember having a conversation with them on the Sunday following this accident, when it was fresh in your mind, at that place?

Ans. I could not say whether it was the Sunday following or not.

Ques. Do you remember telling those two ladies that you and your husband were both sound asleep when this accident happened?

10 Ans. I never said we were sound asleep.

Ques. And the railroad hands came and got you up—woke you up?

Ans. I never said we were sound asleep. I said they came and called; the house was all closed and dark; and I said they came and called; but we were not sound asleep, and hadn't been asleep until after the accident.

Ques. Did you state to those two ladies, on that occasion, that you heard nothing at all until the railroad people came and woke you up?

20 Ans. Why, I never said any such thing. We heard the whistle before the train passed the house.

Ques. Didn't you use this language: "We heard nothing?"

Ans. I did not say so.

Ques. Now, how soon after the accident was it that you and your husband discussed the point where the engine was on the track when that whistle commenced to blow?

30 Ans. I could not say; I did not keep any account of how soon afterwards.

Ques. Immediately afterwards?

Ans. I could not say.

Ques. But you talked to him about the accident, didn't you, immediately afterwards?

Ans. We talked about it several times.

Ques. But cannot you give us any idea as to when

you and he settled the place that the engine was on the track when it began to blow the whistle?

Ans. No; I cannot.

Ques. Did you ever tell anybody where that engine was when it commenced to blow the whistle?

Ans. I don't remember that I ever told anybody.

Ques. Do you remember that you never did tell anybody?

Ans. I don't remember anything about it. I know I have talked about the circumstance. 10

Ques. The circumstance of where the engine was when the whistle commenced to blow?

Ans. No; I spoke about the accident; I didn't speak about the engine particularly.

Ques. Nor particularly about where it was when the whistle commenced to blow?

Ans. No.

Ques. That you have not discussed?

Ans. No.

Ques. Did you not tell Mrs. Joshua Hollingshead, on this occasion, the Sunday after the accident, at the Friends' meeting-house at Moorestown, that you did not hear the whistle blow? 20

Ans. I did not say so; she must have misunderstood me; I never said so.

Ques. Did you ever hear the whistle blow before or after that?

Ans. Why, I have heard the whistle blow many a time.

Ques. How soon after the accident was it that you noticed this whistle blowing—the next day? 30

Ans. Why, I could not say; I didn't charge my mind with it.

Ques. The next night?

Ans. I did not charge my mind with it.

Ques. Did you at any time after that night hear the engine blow—this same freight train blow?

Ans. Yes; I have heard it blow since that.

Ques. Well, how soon after that—the next night?

Ans. I did not charge my mind with it.

Ques. A week afterwards?

Ans. I could not say.

Ques. Well, before this accident did you hear this freight train blow its whistle?

Ans. That was the first night it went.

Ques. How do you know that?

Ans. Why, unless it went after we had gone to bed.  
10 It was the first time I had heard it go in the season.

Ques. But you did hear it go by afterwards?

Ans. Why, of course I did.

Ques. And heard it blow the whistle?

Ans. Why, I often hear the whistle.

Ques. Well, when it went by you heard it blow the whistle?

Ans. Yes.

Ques. Where was it when you heard it go by afterwards?

20 Ans. I didn't take any particular notice.

Ques. What?

Ans. I say I did not take any particular notice just where it was.

Ques. Was it west of the straight line drawn from your house to the railroad?

Ans. It often does blow west of the house, very often.

Ques. Does it often blow east of the house?

Ans. It is more apt to blow west than it is to blow  
30 east.

Ques. No, does it blow east of the house sometimes?

Ans. I cannot say.

Ques. Always blows west of the house.

Ans. I say it often does, I don't say it always did.

Ques. Whenever you have heard it it was always blown west of the house?

Ans. I did not always take notice of it.

HARRY H. CRISPIN, sworn.

By Mr. Grey:

Ques. Where do you live?

Ans. 329 Berkley street, Camden.

Ques. What is your business?

Ans. Locomotive engineer.

Ques. Were you the engineman in charge of the train which was running from Moorestown toward Hartford, on the night of June 19th, 1891, when Mr. Leary met with his accident at the Long Crossing? <sup>10</sup>

Ans. Yes, sir.

Ques. What kind of a train was that?

Ans. A freight train.

Ques. Do you recollect whether there was any signal given for that crossing?

Ans. Yes, sir.

Ques. What kind of a signal was it?

Ans. A crossing signal, four blows of the whistle, two long followed by two short, and then after I struck the wagon I blowed one short blow of the whistle to stop. <sup>20</sup>

Ques. Was there any other signal given beside the whistle; was the bell used?

Ans. Yes, sir; the bell was rung.

Ques. Who was ringing the bell?

Ans. The conductor sat on the left hand side ringing the bell.

Ques. What was his name?

Ans. Edwin Maxwell. <sup>30</sup>

Ques. Did you have a headlight on the engine that night?

Ans. Yes, sir.

Ques. Lighted?

Ans. Yes, sir.

Ques. Well, when you first saw this team where was it?

Ans. I did not see the team at all, sir.

Ques. You did not see it?

Ans. No, sir.

Ques. Well, after you had hit something, did you stop?

Ans. Yes, sir; right away.

Ques. And did you then see what you had hit?

10 Ans. Seen a piece of the wagon; yes, sir. I did not go back; I sent the fireman back and the rest of the crew went back.

Ques. You remained on the engine then, did you?

Ans. Yes, sir.

(Cross-examination.)

By Mr. Wescott:

20 Ques. Now, you had the conductor in the engine with you?

Ans. Yes, sir.

Ques. And you had the fireman?

Ans. Yes, sir.

Ques. And who else?

Ans. That was all, with the engineer.

Ques. What was the fireman doing?

Ans. At that time?

Ques. Yes.

Ans. I could not say.

Ques. What was the conductor doing?

30 Ans. Sitting on the left-hand side, ringing the bell.

Ques. How long had he been ringing the bell before you approached this crossing?

Ans. When he got up on the engine at West Moorestown.

Ques. Commenced ringing the bell there?

Ans. No, sir.

Ques. How long had he been ringing the bell before you approached the crossing?

Ans. That I could not say.

Ques. Why did he ring the bell?

Ans. It is always natural after we blow for a crossing, it is always natural for the conductor to ring the bell, or whoever is sitting on that side.

Ques. That is the reason he was ringing the bell?

Ans. That he was ringing the bell; yes, sir.

Ques. It was not because you knew it was a dangerous crossing?

10

Ans. A dangerous crossing?

Ques. Yes.

Ans. I don't think it is any more dangerous than any other crossing.

Ques. That was the first time out with that train, wasn't it?

Ans. The first time out that season.

Ques. The first time that season at that hour.

Ans. Yes, sir.

Ques. What time of the night was it?

20

Ans. Well, it was between 9.20 and 9.30.

Ques. That you got along there?

Ans. Let me see. We left Moorestown at 9.38.

Ques. Left Moorestown at 9.38?

Ans. West Moorestown at about 9.38.

Ques. And you got up to the crossing about what time?

Ans. I could not say.

Ques. Well, how far is the crossing from West Moorestown, the crossing where Leary was hurt?

30

Ans. How far is that?

Ques. Yes; how far is it?

Ans. The exact distance?

Ques. Oh, I don't care; about how far is it, whether it is exact or inexact?

Ans. A mile and a half, I guess.

Ques. You were going how fast?

Ans. Twenty miles an hour; twenty or twenty-five miles an hour.

Ques. Pretty good clip, eh?

Ans. No; not a very fast clip.

Ques. Twenty or twenty-five miles an hour for a freight train ain't very fast?

Ans. Twenty miles an hour? No, sir. Eight cars is all we had; that ain't a freight train; that ain't half a train.

10 Ques. How many times had you been out on that road before?

Ans. Well, I have been railroading fifteen years next July.

Ques. No; how many times had you been out on that road before?

Ans. I could not say. I have railroaded up and down that road for a good many years. I have been railroading fifteen years next July.

Ques. You had been over this crossing before?

20 Ans. Oh, yes; several times.

Ques. What were you doing just before the accident?

Ans. Sitting on the engine.

Ques. What else were you doing?

Ans. Looking out.

Ques. Where were you looking?

Ans. Looking ahead.

Ques. Was the track straight?

Ans. Straight until you get right to the bend there

3c by the crossing.

Ques. Straight as you approach the crossing?

Ans. No, sir.

Ques. Is it crooked?

Ans. Kind of a curve on the right side.

Ques. So as you approached the crossing you could not see anything on the crossing?

Ans. No, sir; it was a very dark night, but it was not a stormy night though.

Ques. But it was very dark?

Ans. Very dark night.

Ques. How far ahead could you see?

Ans. How far ahead could I see?

Ques. That is the question.

Ans. I could not answer that.

Ques. About how far ahead, with the headlight that you had, could you see?

Ans. I could not say.

10

Ques. Give us an idea.

Ans. Cannot give you an idea.

Ques. Could you see a foot?

Ans. Yes, sir.

Ques. How many feet?

Ans. I could not say how many feet; I cannot measure, running.

Ques. Could you see a hundred yards ahead of you?

Ans. No, sir.

Ques. You could not?

20

Ans. No, sir.

Ques. Not with the headlight that you had?

Ans. Not with the headlight I had.

Ques. You could not see a hundred yards?

Ans. No, sir.

Ques. Could you see fifty yards?

Ans. I cannot measure the distance, running.

Ques. Could you see fifty yards ahead of you with that light?

Ans. I cannot answer that question.

30

Ques. Why not?

Ans. I cannot measure the distance, running.

Ques. Well, haven't you been in this business so many years, or years enough, to tell about how far your headlight will penetrate the darkness, and enable you to see the track ahead of you?

Ans. Well, on a straight track I don't know how far you can see.

Ques. About how far?

Ans. I cannot tell you; I never measured it.

Ques. Do you think you can see a hundred yards?

Ans. No, sir.

Ques. Do you think you could see fifty?

Ans. I cannot say.

Ques. Do you think you could see twenty-five?

10    Ans. I cannot say.

Ques. You have not been in the business long enough, then, to enable you to say whether you could see twenty or twenty-five yards ahead of the engine, with a head-light?

Ans. I don't know whether you could see twenty-five or fifty.

Ques. Why did you look out ahead?

Ans. To see what there is on the track.

Ques. And you couldn't see the crossing ahead of you?

20    Ans. Couldn't see the crossing?

Ques. Yes.

Ans. No, sir.

Ques. Could you see Leary going on the track?

Ans. No, sir; I did not see him that night; I did not see anything until we struck him.

Ques. What did you see then?

Ans. Seen some of the wagon in the front of the engine.

Ques. On the engine?

Ans. In front of the engine.

30    Ques. What did you do then?

Ans. Stopped as soon as I could.

Ques. Where did you stop?

Ans. Well, I suppose it was just before we got to that other crossing there.

Ques. How far away was that?

Ans. It was a little over the length of the train.

Ques. And you had how many cars?

Ans. I think we had ten or twelve; of course I ain't certain; something like that; eight or ten—something like that.

Ques. Which is it, eight or twelve?

Ans. Well, I could not say; I don't know how many cars we had; I know we didn't have many cars.

Ques. You put on the sand and put on the brake, didn't you?

Ans. Put on the air, and I pulled open the sand lever 10 and blowed for brakes.

Ques. So all told you made three short blows?

Ans. Three short blows.

Ques. Yes. Now don't say anything about the long one.

Ans. No.

Ques. All told, you made three short blows?

Ans. Yes; but it was quite a while after that I made one short blow.

Ques. I am not talking about the distance between 20 the blows; you made three short blows?

Ans. Yes; but it was a good while after I made that one long one that I made a short one.

Ques. How long after that; a half an hour?

Ans. No; a minute or two.

Ques. How far can you go in a minute at the rate of twenty-five miles an hour?

Ans. How far can I go?

Ques. Yes; how far would you get down the track in a minute or two?

Ans. Why a little over half a mile. 30

Ques. You stopped in about the length of your train, I understood you to say?

Ans. A little more than the length of the train.

Ques. You are entirely accurate about that?

Ans. No, sir; not entirely. I told you it was just before we got to the other crossing there.

Ques. Then didn't you give a pretty sharp blow when you saw this fellow on the crossing?

Ans. I did not see him. As soon as ever I struck him I gave one sharp blow with the whistle.

Ques. But you didn't blow sharp before you saw him?

Ans. No, sir; only two long followed by two short.

Ques. I am not talking about the two long blasts. Where did you begin to make those two long blows?

Ans. At the whistle post, the signal post.

10 Ques. How far did you see ahead of the engine?

Ans. You see it as soon as you can get on to it.

Ques. How far ahead of the engine could you see it?

Ans. That I could not say. How far could I see it?

Ques. Yes; ahead of the engine?

Ans. I could not say.

Ques. You saw it ahead of the engine?

Ans. Yes, sir; we know the road and can very nearly locate these places.

20 Ques. Ain't that so, that you were judging and not locating this place by actual knowledge?

Ans. Sir?

Ques. Ain't that just what you were doing on that dark and stormy night, locating this place by guess?

Ans. It was not a stormy night.

Ques. Leave out the storming. It was a dark night. Ain't that just what you were doing, locating that by guess?

Ans. No, sir; I was not guessing at it; I always blow before I get at that crossing.

30 Ques. You knew that was a pike there travelled extensively by farmers at night?

Ans. Yes, sir.

Ques. And that there was danger of them being caught there?

Ans. There is danger in every crossing.

Ques. Well; that one you knew was frequently

travelled by farmers at night, coming home from and going to market, didn't you?

Ans. Yes, sir.

Ques. Did you have that in mind when you approached that crossing?

Ans. No, sir. I knew I had to blow at that crossing.

Ques. What you did have in mind was to catch your whistle post exactly at the right time, didn't you, at that crossing?

Ans. No, sir.

10

Ques. You had that in mind?

Ans. No, sir; I didn't have it in mind.

Ques. Then how are you enabled to say that you did it?

Ans. Well, I don't know as we put everything like that in our minds.

Ques. Well, you volunteered the statement here a moment ago that you watched carefully where your sign-post was.

Ans. No, sir; I did not say I watched carefully.

20

Ques. But you saw it?

Ans. Yes, sir; I saw it.

Ques. When you went by the next night did you see it?

Ans. Didn't go by the next night.

Ques. When you did go by the next time did you see that post?

Ans. I could not tell you that.

Ques. All you can tell us is that night you saw it; the night of the accident you saw it?

30

Ans. Well, it is pretty hard to pass them without seeing them.

Ques. Well, do you sometimes pass them without seeing them?

Ans. We do pass them sometimes, I suppose; yes, sir.

Ques. You suppose sometimes you pass them without seeing them?

Ans. Yes.

Ques. Do you sometimes approach a crossing without blowing?

Ans. Well, some crossings we don't blow for.

Ques. You know the law requires you to do it, don't you?

Ans. Either the whistle is blown or the bell is rung; the law says that, I believe

10 Ques. Do you sometimes approach a crossing without ringing the bell?

Ans. No, sir.

Ques. Never?

Ans. I have never, in my recollection, gone over a crossing without having the bell rung or blowing the whistle.

Ques. It don't matter how stormy or dark it is, you always have that whistle blown or the bell rung?

Ans. Try to; yes, sir.

20 Ques. Do you always succeed in doing it?

Ans. I don't ever recollect of going over any.

EDWARD MAXWELL, SWORN.

By Mr. Grey:

Ques. What is your business?

Ans. Conductor, Pennsylvania Railroad.

Ques. Were you the conductor of the freight train which collided with Mr. Leary's wagon in June, 1891, 30 at the Long Crossing?

Ans. Yes, sir.

Ques. Do you remember the accident?

Ans. Yes, sir.

Ques. Where were you on the train at the time the accident happened?

Ans. Sitting on the left-hand side of the engine room, on the front part of the box.

Ques. Were you doing anything?

Ans. Ringing the bell.

Ques. Was there any other signal besides the bell given before you got to that crossing?

Ans. Yes, sir.

Ques. What was that?

Ans. Crossing signal; two long and two short blows.

Ques. Who was fireman?

Ans. Ulysses Wells.

Ques. Did you see the team which was struck that night?

Ans. Seen it just as it came out from under the engine.

Ques. Was the train stopped?

Ans. Yes, sir.

Ques. After the accident happened?

Ans. Yes, sir.

Ques. Did you go back?

Ans. I got off just as soon as it got slowed enough so I could get off, and went back and took the flagman back to protect the train.

Ques. Did you see Mr. Leary?

Ans. I did, after I got back there.

Ques. Now, did he have any conversation with you?

Ans. Not when I went back, he didn't. He was unconscious.

Ques. Did he recover his consciousness after that?

Ans. Not until we lifted him up on the flat car.

Ques. Well, after you lifted him up on the flat car did you have any talk with him at all?

Ans. Yes, sir.

Ques. What did you say to him or what did he say to you?

Ans. He didn't know anything about where he was or what happened. I asked him where he was hurt.

There was some little blood on his face. And when I first went back to him I felt his pulse to see whether he was dead or not. He was wrapped up in a blanket, lying on his side, or with the blanket around him, lying on his side. I took the blanket off of him and felt his pulse and found there was life there yet, and as soon as the men got back I sent the flagman to the farm house above the crossing, to the east of the crossing, to get somebody to look after the horses, and I got him up on a flat car and made him as comfortable as I could on the cushion, and bathed his head with water, and he came  
10 to.

Ques. After he came to did you talk to him about where he had come from; and whether he had been to Moorestown, and what he had done there, or anything of the sort?

Ans. Yes; the first word he said when he came to he wanted to know what was the matter. I told him he had been hit by the train. I asked him where he came from, and where he belonged; he didn't tell me right away—he could not; it was only between gasps that he  
20 was talking, and after awhile I told him we would run very slow to Mount Holly; I thought I would get him a doctor there sooner than anywhere else; and we started off, and ran, I suppose, about ten miles an hour from there to Mount Holly, and on the way up we got to talking; he came to his senses, and he said he had been to Philadelphia that day, and had been drinking; he had stopped on his road at Moorestown and took a couple more, and knowing there was no trains to come across, he laid down on his wagon and went to sleep,  
30 and he didn't know any more until I was talking to him.

Ques. Was there any headlight on the engine that night?

Ans. Yes, sir.

Ques. Was it lighted?

Ans. Yes, sir.

Recess until 2 P. M.

Trial of the cause resumed at 2 P. M.

EDWARD MAXWELL, recalled.

By Mr. Grey:

Ques. You know the track along there, do you?

Ans. Yes, sir.

Ques. I show you a little map here; it has been shown to several of the other other witnesses. Mr. Leary describes it. This yellow is the turnpike, and that red or pink is the railroad. Now, the railroad track runs down <sup>10</sup> like this and crosses at that crossing, which is the place in question, and goes on towards Hartford. That is north, the upper part, and this is south, this is west and this east. You say the headlight of the engine was lit that night?

Ans. Yes, sir.

Ques. Now, could a person approaching that crossing, or that space there fifteen or twenty feet from that crossing, if he looked out to his left towards Moorestown, have seen the headlight on that engine that night? <sup>20</sup>

Ans. Yes, sir.

Cross-examination.

By Mr. Wescott:

Ques. Were there any other lights that he could have seen?

Ans. Not very handy.

Ques. Were there any others at all that he could have seen? <sup>30</sup>

Ans. There were some on the right hand side of the road; electric lights on the right hand side of the road, not within the line of the railroad.

Ques. How far from the railroad are they?

Ans. Thirty feet.

Ques. And run along parallel with the railroad?

Ans. Yes, sir. It was further up the road.

Ques. How high from the ground, about, were they?

Ans. About twelve feet, or ten feet.

Ques. These electric lights?

Ans. Yes, sir.

Ques. Weren't they on poles?

Ans. Yes, sir.

Ques. Now, you went back to see what had happened, didn't you?

10 Ans. I jumped off as soon as I could.

Ques. You went back to see what happened?

Ans. Yes, sir.

Ques. And you found Leary unconscious, lying on the ground?

Ans. Unconscious, lying on his wagon seat.

Ques. He was lying on his wagon?

Ans. On his wagon seat.

Ques. Where was the seat?

Ans. Lying on the ground.

20 Ques. Where was the rest of the wagon?

Ans. Broken up.

Ques. So that the only thing that was left whole was the seat?

Ans. Well, part of the wagon wasn't all in pieces; it was broke up.

Ques. The wagon was mashed up generally, wasn't it?

Ans. Yes, sir.

Ques. You struck him plumb, didn't you, just about  
30 amidships?

Ans. Well, the horses or mules just came out on the left-hand side of the wagon; I seen some dark object come out.

Ques. You saw the mules, and you saw the wagon, too?

Ans. No; I didn't see anything of the wagon.

Ques. Nor the horses?

Ans. The mules. There was no horses about it.

Ques. Well, whatever they were—and you struck the wagon about midway, you think?

Ans. Struck it about the front wheels, I guess.

Ques. Struck her about the front wheels?

Ans. Yes, sir.

Ques. How was the seat on the ground; how was it located?

Ans. Well, it was lying about twenty feet east of the crossing, and about twelve or fourteen from the 10 track.

Ques. And was separated from the rest of the wagon?

Ans. No; the whole business all laid there together, pretty much; some on one side and some on the other.

Ques. All tumbled there together.

Ans. Yes, sir.

Ques. Was the seat in its place over the wheels?

Ans. No, sir.

Ques. Did this man seem to be tied to his seat—  
lashed to it? 20

Ans. No; just lying there.

Ques. Just comfortably lying on the seat?

Ans. No; he wasn't lying comfortably on the seat.

He was on the seat.

Ques. Now, did you see any blanket?

Ans. Yes, sir.

Ques. Where was that?

Ans. Over him.

Ques. Over him?

Ans. Over the man; yes, sir. 30

Ques. It was not wrapped around him?

Ans. Well, it was kind of wrapped around him; I had to pull it to get it away from him.

Ques. Did you see anything else?

Ans. What else are you speaking about; what else do you mean?

Ques. Anything at all that you saw there beside the man and the blanket, and him sitting on his seat or lying on the seat?

Ans. The mules.

Ques. Where were the mules?

Ans. Tied up in a bunch. One was standing up and the other was lying down tangled up in the harness.

Ques. Was the harness pretty well broken up?

Ans. No, sir; not until I cut them. I cut them to  
10 relieve the mules to get them up on their feet.

Ques. There seemed to be a great deal of confusion there between the mules and the wagon, and the gears and all, with the exception of Leary, and he was comfortably straightened out?

Ans. No, not comfortably. He was lying on the seat.

Ques. Well, lying on the seat?

Ans. He was not comfortable. He couldn't be comfortable there.

20 Ques. Well, he was unconscious?

Ans. Yes, sir.

Ques. You have no reason to suppose a man is not comfortable when he is in a state of unconsciousness, eh?

Ans. I don't think so.

Ques. And what did you do with him?

Ans. Who?

Ques. With Leary?

Ans. Made him as comfortable as I could on a flat car,  
30 on a cushion, raised his head up, and bathed his head.

Ques. Could you make him any more comfortable by taking him off the seat, where he was lying, wrapped up in the blanket?

Ans. It is natural to suppose you would.

Ques. Were his clothes torn any?

Ans. That I could not say.

Ques. Was he bleeding?

Ans. Some blood on his face.

Ques. Did you see where he was cut?

Ans. No, sir.

Ques. A good deal of blood on him?

Ans. No, sir.

Ques. Very pale, wasn't he?

Ans. No, sir; he wasn't very pale.

Ques. Was not pale?

Ans. No, sir.

Ques. Well, did he have the bright flush of health on his cheek when you looked at him? 10

Ans. I could not tell anything about that in the night with the little lamps we had.

Ques. Now, he was unconscious all this time?

Ans. Until we put him in the flat car; yes, sir.

Ques. You brought him to by bathing him with cold water?

Ans. I supposed I fetched him to, or he came to himself, one or the other. I bathed his head with cold water.

Ques. Where was he when you held the conversation 20 with him that you have testified about?

Ans. Lying on a cushion on a flat car.

Ques. Who was there?

Ans. There was two of my brakemen and the flagman and the train dispatcher.

Ques. All there with him at that time?

Ans. Yes.

Ques. All conversing with him?

Ans. Yes, sir; all sitting right around him.

Ques. Was he drunk?

Ans. Well, I don't know anything about that. He 30 smelled of liquor, that is all I could say; I couldn't say whether he was drunk or not.

Ques. Did he talk intelligently?

Ans. Partly so; yes sir.

Ques. Partly so?

Ans. Yes, sir.

Ques. Tell us what he said. First, who began the conversation?

Ans. Well, the first word he said was, "Where am I?"

Ques. Who began the conversation?

Ans. That is the first words he said.

Ques. "Where am I?"

Ans. Yes, sir.

10 Ques. Then who spoke first?

Ans. I asked him how bad he was hurt, and he didn't make no answer for a minute; then he went away again.

Ques. Went out of his mind again.

Ans. Yes; kind of shut his eyes.

Ques. Then how long was he coming back to consciousness?

Ans. A minute or two; I suppose a minute.

Ques. Then who started the conversation?

20 Ans. He did then, and said, "Oh, my back." I asked him where he was hurt and how he was hurt, and where he felt bad at.

Ques. Did you ask him all these questions together?

Ans. Yes, sir.

Ques. What did he say?

Ans. In his talk?

Ques. What else did he say?

Ans. Talked all the way to Mt. Holly afterwards.

30 Ques. No; but what did he say after he said, "Oh, my back?"

Ans. Said his back was hurt.

Ques. Anything else?

Ans. I cannot remember word for word what he said. I asked him then where he had been.

Ques. Then he did not say anything further, and you asked him the question, where he had been?

Ans. No, we kept on talking there.

Ques. He did ?

Ans. No, I asked him where he had been.

Ques. After he said his back hurt him he quit talking, did he ?

Ans. Yes, sir.

Ques. Then you asked him where he had been ?

Ans. Yes, sir.

Ques. Did he get unconscious again ?

Ans. No, sir; not after that.

Ques. What did he say when you asked him where he had been ?

Ans. Said he had been to Philadelphia, and said he had been drinking.

Ques. Did he say that ?

Ans. Yes, sir.

Ques. He said he had been to Philadelphia and had been drinking ?

Ans. Yes, sir; and that he had stopped at Moorestown and got a couple more, and got up on his wagon and laid down, knowing there was no more trains to come up until late he went to sleep, and he didn't know nothing until he knowed where he was.

Ques. Did he say all that without your asking him any questions ?

Ans. After I asked him where he had been.

Ques. Then what else did he say ?

Ans. We let him lie in quiet again. I told the boys we had better not bother him.

Ques. Why did you let him lie quietly after he said that ?

Ans. I thought the man was suffering enough without being bothered.

Ques. Did he want to talk any after that ?

Ans. He talked after he got to Mt. Holly; yes, sir.

Ques. What did he say then ?

Ans. Said a good many things there.

Ques. What ?

Ans. I could not say because I wasn't there.

Ques. You were not there?

Ans. No; I left him in charge of the train dispatcher.

Ques. Is that all you heard him say, what you stated to the jury?

Ans. He may have said a few words more.

Ques. What was it?

Ans. I could not say; I cannot call them to mind now.

Ques. Didn't he talk all the way to Mt. Holly?

Ans. Yes, sir; off and on.

10 Ques. Not all the way?

Ans. Well, he talked on and off or off and on. I had my business to attend to and I could not stay with him all the time.

Ques. When you were with him what else did he say besides what you have told us?

Ans. Talking about his wife; what his wife would think about it.

Ques. What did he say about that?

20 Ans. Said his "poor wife" and he didn't know how they would get along, and such things as that, with him in the condition he was.

Ques. Cannot you repeat a little more exactly what he said?

Ans. I cannot draw it to my memory; it is too far back.

Ques. What is too far back for you to remember?

Ans. No; it is not too far back for me to remember some things.

Ques. What is it that it is not too far back for you to remember?

30 Ans. Ask me the question and I will tell you the conversation.

Ques. Well, you can tell the conversation he had where he said he got drunk and laid himself up on the seat and did not know anything; you remember that?

Ans. Yes; because it was my business to find that out.

Ques. Who made it your business to find that out?

Ans. Because it is customary, if any one gets hurt, to get all the information you can in regard to a thing of that kind.

Ques. Do you get information as to whose fault it is? Are you instructed to do that?

Ans. Yes, sir.

Ques. Did you undertake to find out whose fault it was on this occasion?

Ans. Didn't have any anxiety to find out whose fault it was.

10

Ques. You knew, didn't you?

Ans. Yes, sir.

Ques. Did you ever know a case where you did not know whose fault it was?

Ans. No, I don't know as I ever knowed of a case where there wasn't nobody to blame.

Ques. Did you ever know a case where you did not know, the very instant the accident happened, whose fault it was? In other words, that it was not the fault of the railroad? Did you ever know a case of that kind?

Ans. I don't know as I have.

Ques. You have known of a good many cases, haven't you, of accident?

Ans. Yes, sir.

Ques. And in all of them you have always known that it was never the fault of the railroad?

Ans. Oh, no.

Ques. Do you recall any case where you knew it was the fault of the railroad?

Ans. I cannot recall them.

30

Ques. You never were in them?

Ans. Not in that case I wasn't.

Ques. Were you ever in any case where it was your fault?

Ans. I don't think it is proper for me to answer that question.

Ques. Well, knowing that it was not your fault, what was your motive in trying to put it on Mr. Leary any farther?

Ans. Didn't have any motive at all to put it on to him.

Ques. You cannot distinctly tell any conversation, the words of it, except that which he gave you about his going to Philadelphia and getting drunk and wrapping himself in the blanket?

Ans. That is all I can remember.

Ques. Did you make a report of that to the company?

Ans. Yes, sir.

Ques. When?

Ans. The next day after the accident.

Ques. Had you been interviewed by any of the railroad people before you made the report?

Ans. No, sir.

20 Ques. How did you make the report?

Ans. I have a regular form to make it on.

Ques. Where is that?

Ans. In the superintendent's office, I suppose.

Ques. Where is Mr. Ulysses Wells, the fireman.

Ans. Where is he?

Ques. Is he here?

Ans. Yes, sir.

Ques. How many blows of the whistle were given?

30 Ans. Two long and two short approaching that crossing. The brakes were blowed right after we hit the wagon, and the brakes were blowed before we stopped again.

Ques. So there were six blasts of the whistle?

Ans. Six blasts of the whistle given around that crossing.

Ques. How many blasts after you got over?

Ans. Two after we got over, one when we hit the wagon and one afterwards. They were blowed pretty near in succession, calling the men's attention that we wanted to stop quick.

Ques. Danger signals, weren't they; what they call danger signals?

Ans. No, sir; this is only in a matter where you want to stop short.

Ques. Well, a good deal like danger signals, short, quick blasts?

Ans. I don't know what you call danger signals. 10

Ques. Why, when you see an obstruction on the track ahead of you, such as a team, or a horse or cow, — is there not a signal that you give to attract your attention?

Ans. Yes.

Ques. What do you call that, a danger signal?

Ans. That is a signal to be blown for anything to get out of the way.

Ques. Well, it is a short, quick blast?

Ans. Two or three of them.

Ques. Two or three or half a dozen, just to suit yourself about that? 20

Ans. Yes, but when you blow the brakes it is something else.

Ques. If you are right on to a man or wagon on a crossing and haven't time to give half a dozen short blasts, you give whatever you can, one or two, don't you?

Ans. We generally blow the brakes then.

Ques. No; but if you are approaching a crossing and see a man right ahead of you and haven't time to give half a dozen blasts, you would give one or two, wouldn't you? 30

Ans. I suppose we would.

Ques. And two was all the number given in this case?

Ans. There was none given in this case.

Ques. Didn't you give two long and two short?

Ans. Yes; the regular crossing signal.

Ques. I am not talking about the regular crossing signal. You have told us that several times. Now, you were on the engine ringing the bell?

Ans. Yes, sir.

Ques. Ringing it hard, weren't you?

Ans. Nothing extra.

Ques. Ringing it loud enough to attract people's attention?

10 Ans. Yes, sir. That is customary.

Ques. Where did you begin to ring this bell?

Ans. I suppose somewhere about the gravel pit.

Ques. Didn't you begin up at Moorestown?

Ans. No, sir.

Ques. How far was the gravel pit from the crossing?

Ans. I suppose about two hundred yards.

Ques. Did you look out before you got to the gravel pit?

Ans. Yes, sir.

20 Ques. And that is where you began to ring the bell?

Ans. After he was done blowing the whistle.

Ques. I didn't ask you a word about that. I asked you not when he began blowing the whistle; but whether you did not begin ringing that bell right at the gravel pit, two hundred yards away from the crossing; that is what I said. Now, if I understand your unresponsive answer to me, you want it to be understood that you waited until the long blast of the whistle was blown and then you took up the bell ringing right at

30 that point, don't you?

Ans. I did not say exactly where.

Ques. Well, that is what I understood you to say.

Ans. You misunderstood me.

Ques. Then there was an interval between the blast of the whistle and the ringing of the bell?

Ans. Yes, sir. No, not between the blowing of the

whistle and the ringing of the bell. If you will ask me a question so I will understand it I will answer it.

Ques. Now, first you blew a long blast of the whistle ?

Ans. Two long and two short.

Ques. Then took up the ringing of the bell ?

Ans. Yes, sir.

Ques. Was there an interval between the last short blast and the ringing of the bell ?

Ans. No, sir.

Ques. Not at all ?

Ans. No, sir.

10

Ques. So your point was, in the performance of your duty, to wait until the last short blast of the whistle and then immediately to come in with the ringing of the bell, was it ?

Ans. Yes, sir.

Ques. And that was to cover the statutory rules, wasn't it ?

Ans. Yes, sir.

Ques. And you had that in your mind at the time, 20 hadn't you ?

Ans. We always do have it in mind.

Ques. Didn't you have it specially in your mind that night ?

Ans. No, sir.

Ques. You knew that if you did not ring the bell and blow the whistle continuously for three hundred yards you would be at fault, didn't you ?

Ans. Oh, we don't often pick it up right away, and often times we do.

Ques. Then there are occasions when you don't have a continuous blast of the whistle and a ringing of the bell; there are such cases ?

Ans. Oh, yes; such cases often happen.

Ques. Might not this have been one of those cases ?

Ans. No, sir.

Ques. Did you see the gravel pit ?

30

Ans. Yes, sir.

Ques. Looked out and saw it?

Ans. Yes, sir.

Ques. Did you have it in your mind? Were you on the look-out for it, too?

Ans. No, sir; always look along the road whenever I am on the engine; I generally look around to see what is to be seen.

Ques. No matter how dark the night is?

Ans. It was not so awful dark this night.

10 Ques. It was not a dark night?

Ans. No, sir; not so overly dark; it had been storming through the day, and cleared up; there was no moon out.

Ques. Were the stars shining brightly?

Ans. I think they were; not brightly, but they were out.

Ques. Well, they were shining dimly?

Ans. Yes, sir.

Ques. And trying, seemingly, to peep out of the  
20 clouds?

Ans. Yes, sir; it was clearing off.

Ques. Did you watch the stars as you were approaching the crossing?

Ans. No, I don't know as I did.

Ques. Tell us all you did look out for or did see as you approached the crossing?

Ans. Well, we look out ahead and look around.

Ques. Well, tell us the objects which you saw?

Ans. I don't say that I saw anything in particular.

30 Ques. Until you neared the gravel pit?

Ans. Why, certainly; any man would see that if he looked out.

Ques. What else did you see?

Ans. There was nothing else to be seen.

Ques. Nothing but the gravel pit? Didn't you see the blowing post?

Ans. No, sir; it was not on my side of the engine.

Ques. Well, that is the only reason you did not see it?

Ans. I suppose so; yes, sir.

Ques. Did you see the crossing?

Ans. I seen it when we come to it; yes, sir.

Ques. How far away did you see the crossing?

Ans. Well, I couldn't say exactly.

Ques. About?

Ans. I didn't pay any particular attention how far away it was until we hit the wagon.

Ques. You saw the crossing before you hit the wagon, 10  
did you?

Ans. Yes, sir.

Ques. You did see that crossing before you hit the  
wagon?

Ans. Yes, sir.

Ques. And yet you did not see the wagon?

Ans. No, sir.

Ques. That is true, is it?

Ans. Yes, sir; that is what I am here for, to tell the  
truth. 20

Ques. Did you see any mules when you saw that  
crossing?

Ans. Well, not until they come out from under the  
engine; in front of the engine.

Ques. Well, you were on the same side of the engine  
that Leary was, weren't you?

Ans. I was after he got hit. He was driving down  
the other side of the engine.

Ques. How far ahead can you see with a headlight?

Ans. That all depends on circumstances. 30

Ques. Well, under the circumstances of that night  
when the stars were endeavoring to peep out of the  
clouds?

Ans. I could not say; I could not measure the dis-  
tance in a case of that kind.

Ques. Cannot you give us some judgment?

Ans. Sometimes you can see the length of three telegraph poles; sometimes two; sometimes one, and sometimes a half a one.

Ques. Well, how about a night like that?

Ans. It is according to how the headlights are burning; some burn good and some burn dim.

Ques. Was not this a good one?

Ans. I could not say.

Ques. Wasn't that a very good one?

Ans. Can't say.

10 Ques. Did you see it at all?

Ans. Yes, sir.

Ques. Don't you think it would be safe to say that you could see at least one hundred yards ahead of the headlight you had that night?

Ans. I could not say. It would not be safe to say what I could not vouch for.

Ques. Well, you could certainly see fifty yards?

Ans. I told you before I cannot say, because I could not say it and say the truth.

20 Ques. Well, is it not the truth that you were not looking ahead at all?

Ans. Oh, no; it is not.

Ques. You were looking ahead and sideways too, watching the gravel pit and anything else you could see, and the crossing and anybody that might get on it?

Ans. Yes, sir.

Ques. And knew you were approaching that crossing?

Ans. Oh, yes; knew the road.

30 Ques. Well, now, you always either have the bell rung or the whistle blown when you approach the crossing, don't you, invariably?

Ans. That is the engineer's lookout.

Ques. I mean when you are there?

Ans. When I am in the engine I generally ring the bell when I am sitting on that side; yes, sir.

Ques. Do you remember what the other fellow was at?

Ans. The fireman?

Ques. Yes.

Ans. I think he had just got up from firing and started to sit on the box; he had just been down putting in coal or something of the kind. But a case of that kind we don't pay much attention to what the rest are doing.

Ques. There is one thing you know though, that you always know, and that is that you give the proper signals? <sup>10</sup>

Ans. Well, that is what we get paid for.

By Mr. Grey:

Ques. On which side of the engine were you sitting?

Ans. On the left hand side.

Ques. On which side of the engine was the gravel pit?

Ans. On the left hand side.

20

FRANK RICHTER, sworn.

By Mr. Grey:

Ques. Where do you reside?

Ans. Camden.

Ques. What is your business?

Ans. Flagman.

Ques. What were you doing in the summer, in June, 1891?

Ans. Flagging for Ed. Maxwell, on a freight train. <sup>30</sup>

Ques. And where was your place in the train as flagman?

Ans. On the rear of the train.

Ques. Do you remember the accident that happened at the Long Crossing just this side of Moorestown, in June, 1891, when Leary got hurt?

Ans. I do.

Ques. Do you remember whether the whistle was blown that night?

Ans. It was.

Ques. Did you hear it?

Ans. Yes, sir.

Ques. Was it blown for that crossing?

Ans. Yes, sir.

Ques. After the accident happened did you see Mr. Leary?

10 Ans. I did after I got off the train and ran back; the conductor told me to go on back, that we had hit somebody.

Ques. Did you hear Leary say anything while you were running from the Long Crossing toward Mt. Holly that night?

Ans. Yes, sir.

Ques. Did you see Maxwell there?

Ans. I did; yes, sir.

20 Ques. Did you hear what Leary said to Maxwell, or whether he said anything to Maxwell?

Ans. Yes; he said he had been to Philadelphia with a load of hay, and that he stopped at Moorestown and got some drink, and he said that he had often been warned in regard about his drinking. He said that to Sapp—Mr. Sapp and I; told us that on the freight car. Mr. Sapp and I were there when he told us.

Ques. Did he say anything more as to whether he was awake or asleep?

30 Ans. Well, he said that he had went asleep after he left the toll-gate, and didn't think there would be any more trains along.

Cross-examination.

By Mr. Wescott:

Ques. He said he went asleep after leaving the toll-gate?

Ans. After leaving the toll-gate; yes.

Ques. Have you talked to anybody about this point in the case?

Ans. No.

Ques. Nobody at all?

Ans. No.

Ques. Did you make any report?

Ans. I had no occasion to make a report.

Ques. So that what you stated of the conversation with Leary you stated for the first time here to the jury?

Ans. I did; yes, sir.

10

Ques. You didn't even let your counsel know that you knew that?

Ans. I didn't know who the counsel was. That is the remark he passed.

Ques. Who was present when he passed that remark?

Ans. Mr. Sapp.

Ques. Who is Mr. Sapp?

Ans. The train despatcher in Camden?

Ques. Was not Maxwell there?

Ans. He wasn't there while he told us this about his 20 often being warned about his drinking; no, sir; there was nobody there only Mr. Sapp and I.

Ques. Where was it that you had this conversation?

Ans. Coming from Hainesport to Mt. Holly.

Ques. Leary was in the car.

Ans. No, he was on a flat car; we had him on the flat car.

Ques. Well, I don't care whether he was on or in; was anybody else present at all?

Ans. When?

Ques. When he made this statement?

30

Ans. No.

Ques. Where were the rest of the fellows?

Ans. They were up on the cars; I don't know; the conductor might have been in the engine; I couldn't answer that question.

Ques. Did the rest of them tell you that he had made a similar statement to them?

Ans. No, sir.

Ques. And you didn't know that he had made a similar statement to them?

Ans. No, sir; I don't know what he said to them.

Ques. What did he state to you?

Ans. He told me he had often been warned about his drinking.

10 Ques. Give it to us in the way he gave it to you.

Ans. What will I give you?

Ques. I want you to give it again.

Ans. He said he has often been warned in regards about his drinking.

Ques. And what else?

Ans. Why, that he had stopped at Moorestown and got two or three drinks, and after he had left the toll-gate he lay down on the seat and fell asleep.

Ques. What else?

20 Ans. That's all.

Ques. Now, which statement was it he made first to you, that he had often been warned about drinking?

Ans. That I could not answer.

Ques. How came he to make that statement to you?

Ans. How came him to?

Ques. Yes.

Ans. You will have to ask him that question; I don't know.

Ques. You hadn't had any conversation with him?

Ans. No, sir.

30 Ques. Before he made that statement?

Ans. No, sir; I wasn't there when he was put on the flat car, and what he said then—

Ques. (Interrupting.) But you had had no previous conversation with him?

Ans. With whom?

Ques. With Leary.

Ans. No, sir.

Ques. And he hauls off, on the flat car, when you and Mr. Sapp were together, and tells you that he had often been warned about his drinking?

Ans. About his drinking.

Ques. And that he stopped at Moorestown?

Ans. Yes, sir.

Ques. And he took how many drinks?

Ans. Two or three drinks, he said.

Ques. He said "two or three?"

Ans. Yes.

Ques. And then he got in his wagon?

10

Ans. I don't know nothing about that.

Ques. Didn't he tell you that he laid down on the seat and went to sleep?

Ans. He told us, that after he left the toll-gate he laid down and went to sleep.

Ques. Have you ever heard what the toll-gate man said about that?

Ans. No, sir; I don't know him.

Ques. Well, but then you heard what he said about it?

Ans. No, sir.

Ques. Don't you know he was wide awake when he went through that toll gate?

Ans. Who?

Ques. Leary?

Ans. I wasn't there.

Ques. No, but haven't you heard it said that he was?

Ans. No; I haven't heard anybody say it.

Ques. Do you know how far the toll gate is from Moorestown?

30

Ans. I do not; no, sir; never traveled in that way.

Ques. No; but have you any knowledge at all, any judgment upon the subject?

Ans. Not within a mile; no, sir.

Ques. Well, don't you know it is a mile from Moorestown to the toll gate?

Ans. No, I do not.

Ques. Don't you know that they don't let sleeping men go through the toll gate?

Ans. He said he never went to sleep until after he left the toll gate; after he went through.

Ques. When was it he made that statement to you?

Ans. While we were on the flat car, Mr. Sapp and I, he told that too.

Ques. And he fixed that fact himself, that he did not  
10 go to sleep until after he got through the toll gate?

Ans. After he left the toll gate.

Ques. And do you know that if people are asleep when they go through a toll gate they wake them up and let them pay?

Ans. I suppose the man was awake when he went through?

Ques. Why, what makes you believe that?

Ans. Because he said he never went asleep until after he left the toll-gate.

20 Ques. And he told you that more than once?

Ans. More than once?

Ques. Yes.

Ans. No; he just said that the once.

Ques. Then did he go into unconsciousness?

Ans. No; he was all right; when I had the talk with him he was all right.

Ques. Wasn't he drunk?

Ans. I don't know whether the man was drunk or not; he was hurt.

30 Ques. Was his mind wandering at all?

Ans. His mind?

Ques. Yes.

Ans. Not as I know of.

Ques. Did he say anything else?

Ans. That is all I know of.

Ques. Did you say anything to him?

Ans. No, sir.

Ques. That is all the conversation you heard—just those two statements that he made to you?

Ans. Yes, sir.

Ques. How long were you with him?

Ans. Well, I don't know how long; I couldn't say exactly; maybe fifteen or twenty minutes or twenty-five minutes.

Ques. What part of the train was that flat car in?

Ans. Right ahead of the cab?

Ques. The cab was the rear car, was it?

Ans. The cab was the rear car; yes, sir.

10

Ques. And you could go from the cab to the flat car?

Ans. Yes, sir.

Ques. About what place along the railroad were you when you went and visited Leary and got this statement from him?

Ans. We were coming from Hainesport to Mount Holly.

Ques. I know, but whereabouts along the road were you?

Ans. I don't know that; I couldn't tell you exactly the exact spot.

20

Ques. How many signals did you hear?

Ans. For what?

Ques. For anything at all?

Ans. For anything? Well, I heard the signal approaching crossings, and I heard the signal to brake.

Ques. How many signals did you hear?

Ans. Well, I heard the street crossing approaching signal, two long and two short, and I heard him blow for brakes.

30

Ques. And how many were those?

Ans. Why, six.

Ques. You heard six all told, or did you hear him blow six to put on brakes?

Ans. Heard him blow the whole six times, railroad crossings, and brakes, and when he struck him.

Ques. Did you hear the engineer say, that he only blew one blast to put on brakes?

Ans. Blew once, yes, one blast of the whistle.

Ques. You said he blew two.

Ans. He blew when he struck him and he blew again.

Ques. He blew when he struck him?

Ans. I suppose he did; I don't know.

Ques. Didn't you feel the collision between the train and the wagon?

Ans. No; never knew anything about it until we  
10 stopped.

Ques. Now, there is one thing you haven't testified about, and that is about the duration of time that the bell was ringing; wasn't that all the time?

Ans. That is a hard matter for a flagman to hear, back in the car, while there is any motion.

Ques. Didn't you hear it on this occasion?

Ans. No, sir.

Ques. Not at all?

Ans. No, sir.

20 Ques. Didn't you hear, when they stopped, that last short blast, approaching the crossing, didn't you hear the bell come right in then and keep up the noise?

Ans. No, sir.

THOMAS S. SAPP, SWORN.

By Mr. Grey:

Ques. Where do you live?

Ans. Camden.

30 Ques. What is your business?

Ans. Train despatcher.

Ques. Were you on the freight train which hit Mr. Leary in June, 1891, at the Long Crossing, this side of Moorestown?

Ans. Yes, sir.

Ques. Which part of the train were you on ?

Ans. I was in the cab.

Ques. Did you hear any crossing signal by the whistle ?

Ans. Yes, sir; I heard the regular signal blown.

Ques. Did you, after the accident had happened, see anything of Leary ?

Ans. Yes, sir.

Ques. Where was he when you saw him ?

Ans. He was lying on the seat with his blankets wrapped around him, and the seat lay on the sill of the 10 shelvings; it was right in the forks of the wagon road and the railroad; I suppose it was fifteen yards this side of the crossing, the end of the crossing.

Ques. Well, after you left the crossing and came on toward Mt. Holly that night, did you have any talk with Leary about the accident ?

Ans. Yes, sir.

Ques. Did he say anything to you as to whether he had or had not been drinking, or give you any explanation of how the thing happened ?

20

Ans. Well, he said that he had been drinking; he had been drinking in Camden; and he said he stopped in Moorestown and took a couple, and he made the remark that if he had not stopped in Moorestown and taken the two drinks he would have been over the crossing, and said he had been warned by his wife several times, and others, about drinking and going to sleep in crossing this crossing, and made the remark several times about what his poor wife would do, and family, and so forth.

Ques. Did he say anything about whether he was 30 asleep or awake ?

Ans. Yes, sir; he said he was asleep; I asked him particularly, and I don't remember whether he said Moorestown or the toll-gate, but he said he wrapped himself up in his blankets, as he was cold, and went to sleep; he said he knew there was no more trains until

the late train down from Mount Holly, and he laid down and went to sleep.

Cross-examination.

By Mr. Wescott:

Ques. Did you make a report of this?

Ans. No, sir.

Ques. You did not make any report?

Ans. I wrote a message for the conductor to the  
10 superintendent, that is all; he dictated it to me, and I wrote it; that is all; on the train.

Ques. When you saw Leary you saw him lying on a seat?

Ans. Well, that is a hard matter to tell—

Ques. (Interrupting.) You saw him lying on a seat, you said?

Ans. The seat board was under him; yes, sir.

Ques. Well, was the seat under him?

Ans. It was under him, and the sills of the shelving  
20 under that.

Ques. You are sure of that, are you?

Ans. Yes, sir.

Ques. What did you do to him when you saw him lying on this seat?

Ans. Well, Mr. Maxwell and I unwrapped him and saw there was life in him and wrapped the blankets over him again, and cut the mules loose and got them out of the way.

Ques. How many times did you have to unwrap him  
30 to get him out?

Ans. We pulled the blankets from under him where he had them around him; I suppose they got tangled more around him from being thrown.

Ques. You think he got more tangled when he was thrown than when he wrapped himself before he was thrown, eh?

Ans. They were tangled in being thrown from the shelving.

Ques. What was tangled—the blankets?

Ans. The blankets around him.

Ques. Just as if he was a bologna sausage and wrapped up in it?

Ans. Yes, sir.

Ques. And your opinion is that from the collision he was tangled right in that way.

Ans. Well, partly so.

Ques. And still left lying on the seat?

10

Ans. Yes, sir.

Ques. Now, was he lying out lengthwise?

Ans. No, sir; he was drawn up.

Ques. Which side was he lying on?

Ans. He was lying very near on his back, a little to his right.

Ques. Had the seat been thrown very far from the track?

Ans. Well, it laid I suppose four feet from the end of the ties.

20

Ques. And how far from the crossing?

Ans. About fifteen yards from the end of the crossing I suppose; not more than that, if it was that far.

Ques. What was there in the way for him to get tangled with in falling that distance on the seat?

Ans. Well, the posts of the shelving, I suppose, and the board under the seat.

Ques. Kind of a woolen mill process, by means of which they put cloth together?

Ans. Yes; something like that.

30

Ques. The pieces of timber acting as the needles?

Ans. Yes, sir.

Ques. That is entirely accurate, is it?

Ans. Yes, sir.

Ques. Now, how many signals did you hear?

Ans. I heard the regular signal for the crossing.

Ques. How many did you hear?

Ans. Two long and two short.

Ques. Did you hear any other?

Ans. Yes, sir; I heard, I suppose about that time the engine was on the crossing, I heard a call for brakes.

Ques. Were you looking out to see where you were?

Ans. I was up in the skylight, and I got down when they called for brakes because I knew there was something the matter.

10 Ques. What were you doing up in the skylight?

Ans. Sitting down.

Ques. You noticed particularly that the signals were given, of course?

Ans. Yes, sir; I did, for I was talking to the flagman at the time and they interrupted the conversation so I couldn't hear him and he couldn't hear me.

Ques. Did they give the regular signals approaching the previous crossing?

Ans. Yes, sir.

20 Ques. You noticed that particularly, did you?

Ans. Yes; the crossing west of the Long Crossing.

Ques. You noticed that particularly, did you?

Ans. Yes, sir.

Ques. When you started out of Camden did they give the correct signals at the first road?

Ans. They blowed them all along the way, I guess.

Ques. No; don't guess.

Ans. Well, they didn't blow any until they got out of Camden?

30 Ques. Well, they give signals?

Ans. Gave signals, yes; they ring the bell, of course; I couldn't hear the bell back there.

Ques. Now, where is the first road when they get out of Camden that they have to whistle?

Ans. State street.

Ques. They whistled there, didn't they?

Ans. Yes, sir.

Ques. You noticed that particularly?

Ans. Yes, sir.

Ques. And every crossing they had to whistle from there up to where they struck this poor fellow?

Ans. After they left Pavonia I didn't pay any more attention to the whistles or anything else at all until after we left Moorestown, and then I don't know that I would have paid any attention to this if I hadn't been talking to the flagman, and I couldn't hear him speak for the whistle. 10

Ques. You remember that circumstance?

Ans. Yes, sir; I do.

Ques. Can you remember anything else you did that evening?

Ans. Who—me?

Ques. Yes.

Ans. I can remember most everything that evening, yes.

Ques. What did you do just before you had this conversation with this fellow? 20

Ans. The flagman?

Ques. Yes.

Ans. I don't know as I was doing anything but riding along up in the skylight of the cab.

Ques. One question I want to ask you; you know, of course, right where the train was located on the track when this signal was blown, don't you?

Ans. Yes, sir; I do.

Ques. How do you know that?

Ans. Because I remember making a remark to the 30 flagman about the switch signal being ordinarily bright at Comfort's siding just at that time that he blew the whistle.

Ques. Don't you mean the switch signal was extraordinarily bright?

Ans. Extraordinarily bright; yes, sir.

Ques. Where was that switch signal?

Ans. It is some distance west of Mr. Ballinger's house.

Ques. How far from the crossing?

Ans. Couldn't tell you that.

Ques. About how far?

Ans. Couldn't tell you that; for I don't know.

Ques. Is there anything else that caused you to notice where the train was?

Ans. At that time? No, sir.

10 Ques. Now, after finding Leary, what did you do with him?

Ans. Put him on a flat car and brought him to Mt. Holly.

Ques. Did you assist in that?

Ans. Yes, sir.

Ques. What was the first thing Leary said to you?

Ans. The first thing he said to any one was he wanted to know where he was and what had happened.

Ques. No; to you?

20 Ans. To me?

Ques. Or anyone in your presence?

Ans. We were all there together; that was the first thing he said.

Ques. What?

Ans. He wanted to know where he was and what had happened.

Ques. Who was there?

30 Ans. The conductor and myself and some of the other brakemen; I don't know who they were, I am not acquainted with them

Ques. What was the next step in the conversation?

Ans. Well, he made the remark, after he came to, more about being warned by these different people in going to sleep in crossing the crossing.

Ques. Not about drinking, but about going to sleep crossing the crossing?

Ans. Yes, sir, and about drinking, too.

Ques. And going to sleep crossing the crossing?

Ans. Yes, sir.

Ques. That you did not tell us in your examination. What part of the conversation did he tell you—about being warned about crossing the crossings when going to sleep?

Ans. He made the remark several times.

Ques. Who was present when he made that remark?

Ans. He made it when the conductor was present and when Richter was present and I was there, and I don't know—some of the other brakemen were there.

Ques. He just seemed to volunteer this statement to you?

Ans. No, sir; we were asking him questions about how he was hurt and how bad he was, I think.

Ques. Was that all you asked him, how he was hurt and how bad?

Ans. No, sir; he had been drinking; he certainly had, or else his breath deceived him.

Ques. You smelled his breath did you?

Ans. I didn't smell his breath; I smelled the whiskey on him.

Ques. Is that what prompted you to ask him if he had been drinking?

Ans. Well, I asked him because I thought he had been drink, or something, the way he smelled of liquor.

Ques. Was he drunk when you had this conversation with him?

Ans. He was hurt so bad I couldn't tell whether he was drunk or sober.

Ques. Do you remember him stating something about going to sleep after he left the toll gate?

Ans. I don't remember what he said about where he went to sleep.

Ques. There was one witness here who said you were

present when he said he went to sleep, and that it was after he went through the toll-gate.

Ans. Well, I don't remember hearing it; he may have said it, but from the noise of the train I probably did not hear it.

Ques. You only remember hearing him say he went to sleep, but you cannot say whether it was after he left Moorestown or the toll-gate?

Ans. No, sir; I couldn't tell that.

Ques. And that he wrapped himself up in the  
10 blanket?

Ans. That he was chilly and wrapped himself up in his blanket; yes, sir.

Ques. And laid down on the seat?

Ans. And laid down on the seat and went to sleep.

Ques. That is what he told you?

Ans. That is what he said.

Ques. Did he say that a great many times?

Ans. Yes; he remarked it more than once, all the way up, and his mind seemed to run on his wife more  
20 than anything else; and his back, he complained of that all the way up.

Ques. How many times did he tell you this story? How many times over?

Ans. I could not tell you, sir; he repeated it several times.

ULYSSES S. WELLS, sworn.

By Mr. Grey:

30 Ques. Where do you live?

Ans. Camden.

Ques. Were you on the train which caused the accident to Mr. Leary in the month of June, 1891, at Long Crossing, this side of Moorestown?

Ans. Yes, sir.

Ques. What was your business?

Ans. Firing.

Ques. Do you remember whether any signal was given, by whistle?

Ans. Yes, sir.

Ques. A signal for that crossing?

Ans. Yes, sir.

Ques. Do you remember whether there was any bell rung?

Ans. There was.

Ques. Who rang it?

Ans. The conductor.

10

Ques. Where was he sitting or standing at the time he rang the bell?

Ans. Sitting up on the box, at the forward end of it.

Ques. Which side of the engine was that?

Ans. On the left.

Ques. Where were you while he was on the forward end of the box on the left side of the engine?

Ans. I had been riding there, I guess, all the way out of Camden.

Ques. Where were you, I say?

20

Ans. I was up and down at different times, firing.

Ques. Now, where were you when the bell was rung, just before Mr. Leary's team was hit at the Long Crossing; where were you then in regard to his box?

Ans. Why, just previous to coming to the crossing I got down to fire.

Ques. When you got through firing then what did you do?

Ans. Just got up and sat down.

Ques. Where?

30

Ans. On the box.

Ques. Was there anybody sitting in front of you?

Ans. I and the conductor.

Ques. So you sat on the box, on the left hand side of the box, behind the conductor?

Ans. Yes, sir.

Ques. What was the conductor doing while you sat there ?

Ans. Ringing the bell.

Ques. Was the bell being rung as you approached this crossing ?

Ans. The Long Crossing ?

Ques. Yes.

Ans. Yes, sir.

Ques. Was it rung up to the time you got to the crossing ?

Ans. Rung up until the time he dodged his head.

10 Ques. Who dodged his head ?

Ans. The conductor.

Ques. Did you see him dodge his head ?

Ans. Yes, sir.

Ques. What did you do ?

Ans. I dodged, too.

Ques. When he dodged his head what had happened ?

Ans. I heard a little crash; I didn't see anything; I heard the crash, and he blew brakes.

Ques. Who blew brakes ?

20 Ans. The engineer.

Ques. Is that all you know about it ?

Ans. Yes, sir.

Cross-examination.

By Mr. Wescott:

Ques. Didn't you hear Leary's statements about getting drunk and going to sleep ?

Ans. No, sir; that is not my place back there.

30 Ques. Well, you saw him and heard him make some statements, didn't you ?

Ans. I didn't hear anything of the kind.

Ques. You saw him after he was hurt ?

Ans. Yes, sir.

Ques. Several times on the train ?

Ans. No, sir.

Ques. Where was he when you saw him?

Ans. On the seat; lying on the seat.

Ques. Wrapped up?

Ans. He had some blankets over him; I don't know whether he was wrapped up or not.

Ques. No; but weren't the blankets wrapped around him?

Ans. I couldn't say.

Ques. Which side was he lying on?

Ans. I don't know that, either.

10

Ques. Lying on his back?

Ans. I didn't notice particularly.

Ques. Didn't you see him after that?

Ans. No, sir.

Ques. Nowhere at all?

Ans. No, sir.

Ques. Didn't go in and hear him make these statements?

Ans. No, sir.

Ques. You knew that he did make them, or had made 20 them, didn't you?

Ans. No, sir.

Ques. What?

Ans. No, sir.

Ques. Never heard that he had made these statements?

Ans. I didn't know anything about it.

Ques. You say the conductor took this seat somewhere this side of Camden and rode up with you?

Ans. I think so; I wouldn't say positive.

30

Ques. Was he ringing the bell at every crossing?

Ans. Couldn't say.

Ques. From Camden?

Ans. Couldn't say.

Ques. Did you?

Ans. Occasionally; when he did not I would.

Ques. And either he rang the bell up to the place of the accident or you did; one or the other.

Ans. Yes, sir; if he was there.

Ques. You know whether he was in the cab with you ringing the bell, don't you?

Ans. I don't know where he came on the engine at, I say; I think he got on at Camden; I wouldn't say positive.

Ques. Whether he was or not; you know the bell was rung before every crossing?

10 Ans. No, I don't.

Ques. You don't know that?

Ans. No, sir.

Ques. You know the whistles were blown if the bells were not rung, don't you?

Ans. No.

Ques. Do you mean to tell me that after you left Camden that you cannot say that at every crossing before you got there, you either blew the whistles or rang the bells?

20 Ans. Not positive; no, sir.

Ques. Well, how about the crossing next before the one that Leary was struck at—you gave the signals there, didn't you?

Ans. Yes, sir.

Ques. Both by the whistle and the bell?

Ans. I won't say positive about the whistle. I think the whistle was blown, though.

Ques. But when you approach the Leary crossing—

30 Ans. The "Leary crossing," I don't know any of that kind.

Ques. Well, the crossing where Leary was hurt—you will pardon me for getting inaccurate—the crossing where Leary was hurt, you gave the signals there? You know the signals were given there?

Ans. I believe so; yes, sir.

Ques. You believe so; but don't you know that they were?

Ans. Yes, sir.

Ques. They were ?

Ans. Yes, sir.

Ques. Now, who did the signalling ?

Ans. The engineer and the conductor.

Ques. How many blasts of the whistle were there ?

Ans. Four in approaching the crossing ; one about the time we hit, when I heard the crash I heard the engineer blow the brakes; I didn't know what the trouble was; and one shortly afterwards.

Ques. What made you dodge ?

10

Ans. Because the conductor dodged.

Ques. Do you have to dodge every time the conductor does ?

Ans. Oh, no, but I have been there ; I know what those things are.

Ques. When you approach the crossing next after Leary got hurt the signals were given there all right, weren't they ?

Ans. Yes, sir.

Ques. What caused you to recollect that ?

20

Ans. Didn't you just state at the lower crossing ?

Ques. No; at the crossing you passed next ?

Ans. At Hartford ?

Ques. Yes, Hartford; you gave the signals there, didn't you ?

Ans. Yes, sir.

Ques. What caused you to recollect it so distinctly ?

Ans. Recollect which ?

Ques. That you gave the signals ?

Ans. I didn't give any signals.

30

Ques. But you know they were given, don't you ?

Ans. The whistle was blown.

Ques. And the bell was rung ?

Ans. Yes, sir.

Ques. What causes you to recollect it so distinctly ?

Ans. The ringing and blowing? A rule that calls for it.

Ques. Ain't you relying more on a custom than on positive knowledge on that subject?

Ans. Yes, sir.

Ques. You generally testify, don't you, in a case of this sort, that the signals are always given because it is the custom to give them?

Ans. This is my first experience.

Ques. This experience?

Ans. No; this is my first experience of a thing of this kind.

10 Ques. At the crossing where you struck Leary?

Ans. No, this is my first experience in testifying.

Ques. Oh, I beg your pardon.

Ans. Granted.

Ques. That statement explains your phenomenal candor, sir. I didn't understand you. I am glad to be set straight with you, as I cannot help having some respect for you, sir. Now, let me ask you this question: Do you know where they began to give these signals along the road before approaching the crossing where  
20 Leary was struck?

Ans. Presumably at the whistling post.

Ques. You simply presume that, you don't know?

Ans. Not positive; no, sir.

Ques. Did you notice whether there was any interval between the blowing of the whistle and the ringing of the bell?

Ans. I did not, sir; I did not notice it.

Ques. You did not have your attention called to the fact that as soon as the last toot, this second toot of the  
30 whistle, was blown that the conductor jumped right in with the ringing of the bell?

Ans. No.

Ques. I understand there were two long blasts and two short ones before you got to the crossing?

Ans. Yes, sir.

Ques. Well, had you it impressed on your mind by

actual observation that the conductor, just as soon as that last toot was blown, commenced to ring the bell?

Ans. No, sir; I could not say.

Defendant rests.

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PLAINTIFF'S REBUTTAL.

HELEN HOLLINGSHEAD, affirmed.

10

By Mr. Robbins:

Ques. You are the wife of Joshua Hollingshead, are you not?

Ans. I am, sir.

Ques. And he was the gentleman with whom Mr. Leary lived at the time he met with this accident?

Ans. He was.

Ques. Do you remember having a conversation with Mrs. Ballinger, Chalkley Ballinger's wife, who was a witness here this morning, about this accident, on the Sunday after it happened, at the meeting-house in Moorestown, the Friends' meeting-house?

Ans. I had.

Ques. Did Mrs. Ballinger state to you on that occasion, or in your presence, that they did not hear the whistle blown, and did not hear the train until after the accident happened, when the train hands came and woke them up out of a sound sleep?

Ans. She said to me that she didn't hear the whistle blown; that they were waked out of a sound sleep. Those are the words she used at the meeting-house.

Cross-examination.

By Mr. Grey:

Ques. Where was this conversation?

Ans. At the Friends meeting-house in Moorestown.

Ques. In Moorestown?

Ans. In Moorestown; yes, sir.

Ques. And when was it?

Ans. The Sunday after the accident.

Ques. And how long ago was that?

Ans. Well, that would make it the 22d of June, 1891.

Ques. Did you ever have any conversation with Mrs. Ballinger about any accident there excepting this one?

10 Ans. No, sir.

Ques. Now, what was it that Mrs. Ballinger said to you, using her words exactly as she used them to you?

Ans. That they were waked up out of a sound sleep, and they didn't hear any whistle blown.

Ques. Well, did she say what waked them up out of a sound sleep?

Ans. Some one came there and called for her husband, that there was an accident on the railroad.

Ques. How did she come to tell you this?

20 Ans. We were talking of the accident.

Ques. Leary was in the employ of your husband at that time?

Ans. He was.

Ques. What day of the week was it the accident happened?

Ans. Friday.

EMMA R. HOLLINGSHEAD, affirmed.

By Mr. Robbins:

30 Ques. You are the daughter of the preceding witness?

Ans. I am.

Ques. Were you present at a conversation between your mother and Mrs. Ballinger at the Friends' meeting-house in Moorestown?

Ans. I was.

Ques. The Sunday following this accident?

Ans. Yes, sir.

Ques. Did Mrs. Ballinger say, in your presence, that they did not hear the whistle blown, or know anything about the accident at all until they were awakened out of a sound sleep by the train hands?

Ans. She did.

Cross-examination.

By Mr. Grey:

10

Ques. Where was this?

Ans. At the Friends' meeting-house, Moorestown, N. J.

Ques. And do you recollect how long ago it was?

Ans. It was the Sunday following the accident, in 1891, two years ago this June.

Ques. Did you talk to your mother about it as soon as it happened?

Ans. About the accident?

20

Ques. No; about what Mrs. Ballinger said?

Ans. Yes, sir.

Ques. How often have you talked to her about it?

Ans. Whenever the case has been brought up.

Ques. Did you ever speak to Mrs. Ballinger about her having made that statement to you or to your mother?

Ans. I have.

Ques. When?

Ans. Several times.

Ques. Where?

Ans. I spoke to her about it at the meeting-house.

30

Ques. The question is whether you ever spoke to Mrs. Ballinger about having made this statement to you and your mother?

Ans. Yes, sir; at the meeting-house, and I spoke to her to-day about it.

Ques. Did she admit to you that she had made this statement when you told her about it?

Ans. No, sir.

Ques. She always denied having said so, didn't she?

Ans. Yes, sir.

JAMES M. BRANNAN, sworn.

By Mr. Robbins:

10 Ques. Where do you live?

Ans. Moorestown.

Ques. What is your business?

Ans. Tend bar for Sam Baker.

Ques. Were you attending bar for him at the time Mr. Leary met with this accident?

Ans. Yes, sir.

Ques. Did you see anything of Leary that evening?

Ans. I seen him that evening.

Ques. Did he come into Baker's hotel?

20 Ans. He did.

Ques. How long was he there?

Ans. About a minute, or a minute and a half; long enough to get a drink and right out.

Ques. What kind of a drink did he get?

Ans. A beer.

Ques. What was his condition when he came in there?

Ans. Appeared all right to me, so far as I could see. I couldn't see anything wrong with him whatever.

30 Ques. Did he sit down or stay there any length of time?

Ans. No, sir.

Ques. What time in the evening was this?

Ans. About nine o'clock, I judge.

(No cross-examination.)

WILLIAM BIRDSALL, affirmed.

By Mr. Robbins:

Ques. Where do you live?

Ans. I live about a mile east of Moorestown on the Mt. Holly turnpike.

Ques. How far is that from the Long Crossing?

Ans. Well, it is about three-quarters of a mile, I should suppose; not more than that.

Ques. And do you recollect the night of this accident 10 to Leary?

Ans. I do.

Ques. Did you see Leary pass through the tollgate that evening?

Ans. He passed the tollgate that evening.

Ques. About what time?

Ans. I suppose about half-past nine; I couldn't tell exactly; he passed down in the morning and back in the evening.

Ques. Did he stop at the tollgate? 20

Ans. Well, he didn't make a stop at the gate. I was out at the gate. I swung the gate open as his mules came up and he went on through. He had paid his toll in the morning and therefore he had no cause to stop.

Ques. Where was he in the wagon?

Ans. He was sitting on the seat that he uses for his hay shelvings, in the fore part of the shelvings, with his knees very near the front part of the shelvings.

Ques. Was he sitting up in the seat?

Ans. Sitting up, sir, on the seat, all right. 30

Ques. Was he asleep?

Ans. No, sir; I didn't take him to be asleep; if he sleeps he sleeps with his eyes wide open; I was standing about as near to him as I am to you.

Ques. Did you see him afterwards on that night?

Ans. Did I see him?

Ques. Yes; after that?

Ans. No; not after that; oh, no; not after that; not after he passed the gate.

Ques. Do you know whether he went on down the road?

Ans. Went on towards the crossing.

Ques. How do you know that?

Ans. Well, I saw him go up the road.

Ques. Did you stand out in front of the toll-gate?

Ans. I was out in front of the toll-gate pretty much  
 10 all of the evening, if it is pleasant; that is, if it is warmish weather; and I generally stay out a good deal.

Ques. Did you hear anything at the crossing that night?

Ans. Yes.

Ques. After he had passed?

Ans. Yes, sir.

Ques. How long after he had passed?

Ans. Well, I suppose maybe ten or twelve minutes;  
 20 maybe fifteen; not more than that, I shouldn't suppose.

Ques. What did you hear or see?

Ans. Well, when the engine made two shrill whistles I saw the lights come right around.

Mr. Grey: I submit this is not rebuttal. I object to it as not rebuttal, because there has been no evidence offered on the part of the defendants to which this is addressed by way of denial or explanation.

The Court: I understand the objection is not addressed  
 30 to what has been given in testimony about his passing through the gate, but what was coming afterwards; his statement about what he heard at the railroad crossing, whatever happened at the railroad crossing, would seem to be part of the plaintiff's original case, because the defendant has offered no new testimony in regard to the fact that there was a collision there.

Ques. Well, you observed that something happened up there about ten minutes after Leary went through; is that right?

Mr. Grey: I object to that.

Mr. Robbins: I am simply trying to locate the position, and that he went on from there without wasting time.

The Court: I suppose the mere location of a point of time would be competent, showing that there were two blasts of the whistle heard afterwards is not incompetent merely for the purpose of locating a point of time, after he passed the toll-gate; beyond that the testimony is not competent. 10

Whereupon the defendant, by its counsel, prays a bill of exceptions, which is allowed and sealed accordingly.

C. G. GARRISON, J. S. C.

Ques. You observed that something was wrong at the crossing about ten or twelve minutes after Leary went through; was that so? 20

Ans. I suppose it was about that; it might have been fifteen but I don't think anything over that. There had been a team passed there just before—

The Court: Wait a minute. You had better be quiet until you are asked questions.

Cross-examination.

By Mr. Grey: 30

Ques. You were standing out enjoying the pleasant evening, after Leary passed through for some little time?

Ans. Well, I was out there pretty much all the

evening; it was about half past nine, I should suppose, and I was out there for perhaps a half to three-quarters of an hour even after that; I was waiting; the teams were travelling.

Ques. When you were outside which part of the road were you in? Were you just at the toll-house door, or were you out in the middle of the road, or where were you?

Ans. I was right on the step of the house, the porch.

Ques. Which side of the road is the toll house, as  
10 you go towards Hartford?

Ans. The toll-house is on the left of the turnpike, coming this way.

Ques. Then it is on the side of the turnpike which is close to the railroad?

Ans. Yes, sir.

WILLIAM LEARY, recalled.

By Mr. Wescott:

20 Ques. Tell the jury, if you please, how much you had been drinking on the day that you got hurt, and where you drank, and all about it?

Mr. Grey: I object, because it is not rebuttal, the plaintiff having been asked these very questions in his original examination, as to where he drank and how much he drank, and having answered them, describing that he stopped at the Spread Eagle Hotel—

30 The Court: There has been no proof offered by the defendant as to the act of drinking; there has been proof offered in regard to certain witnesses saying that they smelled liquor on him. I think this is competent in rebuttal. It was no part of the plaintiff's case to testify to a negative. The presumption of law in his favor was

that he was in all respects free from anything unusual. I think this is competent in rebuttal.

Whereupon the defendant, by its counsel, prays a bill of exceptions, which is allowed and sealed accordingly.

C. G. GARRISON,  
J. S. C.

Ques. Did you have any drinks that day?

Ans. I had some that day.

Ques. Where did you get them?

10

Ans. Well, I got a couple of them in Camden.

Ques. What did you drink?

Ans. I drank a couple of drinks of whiskey that day.

Ques. On your way home?

Ans. No; both of them before I sold out.

Ques. What time in the day was it?

Ans. It was sometime during the forenoon; it was wet and I had got wet, and I took two drinks of liquor; I think I took one of them in at Pete Verga's.

20

Ques. Did you take any after that?

Ans. No, sir.

Ques. Did you take any on your way home?

Ans. I took one glass of beer on my way home before I got to Moorestown.

Ques. Is that all the drink you had that day?

Ans. That was all I took with the exception of the glass of beer I took at Moorestown.

Ques. Were you drunk?

Ans. No, sir.

Ques. Were you under the influence of liquor?

30

Ques. No, sir; I was not.

Ques. Were you asleep?

Ans. No, sir.

Ques. Did you go to sleep after you left the toll-gate?

Ans. No, sir; I had no business to go to sleep.

Ques. Now, several witnesses, whose names I won't stop to repeat to you—I have forgotten them—railroad employes—said that you made a variety of statements to them, to the effect that you had been drinking and you had stopped in at some place, and if you hadn't stopped there you wouldn't have got caught, and that you thought there were no more trains, and that you wrapped your blankets around you and went to sleep, and that you regretted the condition your wife would be left in, and all that?

Ans. I have no recollection of making any statement to anybody of the kind. I knew nothing until the next morning, until I found out where I was.

Ques. What was the first thing you recollect after the accident, and when was it?

The Court: This was testified to before.

Ques. Were you in the habit of getting drunk?

(Objected to.)

Mr. Grey: There has been no statement made by anybody that he was.

The Court: They have not testified to any habit; it is all confined to this one single occasion.

Mr. Wescott: And that he had been warned by people.

The Court: He can testify as to whether he said he had been warned; he cannot testify to the fact of his having been warned; the only allegation is that he said he had been.

Mr. Wescott: Well he has testified to that as well as he can. That is all.

No cross-examination.

Plaintiff closes.

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DEFENDANT'S SUR-REBUTTAL.

MRS. PRISCILLA BALLINGER, re-called.

By Mr. Grey:

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Ques. Mrs. Ballinger, did you state to Mrs. Hollingshead, on the Sunday after this accident in the month of June, 1891, at the Friends' meeting-house in Moorestown, that you were sound asleep, that you did not hear the whistle, and you did not know anything about it until you were awakened by a train man?

(Objected to, on the ground that she has been asked that question).

20

The Court: Not by her own counsel; she was asked that by you, Judge Wescott. She has a right to be examined on any subject you introduced by her own counsel; you introduced and asked her that question; that opens the same question; it is sur-rebuttal.

(Exception noted for the plaintiff).

Ans. I say she must have misunderstood me.

Mr. Wescott: I object to the answer.

30

The Court (To the witness). The question, in the first place, is whether you said that or not.

The Witness: I did not say it.

Ques. Did you have any conversation with Mrs. Hollingshead at that time in reference to this matter?

Ans. We were talking together.

Ques. Now, what did you say to her at that time in reference to this matter?

Ans. I said that we had gone to bed, but we hadn't got to sleep, and one of the train hands came and called and my husband got up and went down and went out.

Ques. Did you state, at the same time and place, to or in the presence of Miss Hollingshead the same thing?

10 Ans. I think she was there and heard it at the same time.

Ques. Was the conversation which you have repeated as having taken place between you and Mrs. Hollingshead the same conversation which the daughter heard on that Sunday at the Moorestown meeting-house?

Ans. She was there and heard it. I had no conversation with her separately.

No cross-examination.

20 Both sides close.

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#### DEFENDANT'S REQUESTS.

The defendant requests the Court to charge the jury:

30 First. That there is no evidence of negligence by the defendant. Plaintiff's witnesses swear that the whistle was blown, except the plaintiff, who says he did not hear it. This is not a denial.

Second. That there is evidence of contributory negligence by plaintiff, who says that he saw a light which he judged was an electric light when he looked in the

direction from which the train came, and hearing no sound and knowing that no regular train was due until 11.11 he went on, nudging up his team after he had looked. That the railroad was in plain view of the turnpike for one-half a mile running beside it and only a short distance away; that the railroad and any train on it could be seen by any one on the turnpike who looked in that direction, but he did not look until he got within fifteen or twenty yards of crossing.

Third. That the weight of the testimony is against plaintiff and in favor of the defendant, and the plaintiff cannot recover without showing by clear preponderance of proof that the accident was due wholly to the negligence of the defendant. 10

Fourth. That the mere happening of the accident is not of itself evidence of defendant's negligence.

Fifth. That the jury cannot consider evidence of accidents at the same crossing at other times, nor evidence that the crossing is dangerous. 20

Sixth. That the railroad company was not legally bound to give other than the statutory signal by bell or whistle at this crossing, and if the jury believe from the evidence that such signal was given the plaintiff cannot recover.

Seventh. That the evidence is that the headlight was lighted on the engine; that the train was in sight of any one who looked; that the track could have been seen by the plaintiff if he had looked before he reached the crossing, and that the train could be seen by him also; that his statement that he looked and did not see cannot be accepted as true, and as matter of law, the Court so instructs the jury. 30

Eighth. That the plaintiff cannot recover damages

for loss of earning power, in view of the testimony that he has earned since May, 1892, \$175 per year for wheeling the mail eight hundred yards eight times a day (6400 yards, or four miles,) and \$229 per year for caring for the school house, besides odd chores about the post office, his previous earnings being one dollar per day and board for nine months and seventy-five cents per day and board for three months. There is no evidence of the value of the board, of amount of doctor's bill or of any doctor's bill, or of payments for medicine or nursing. That in the absence of such proof the jury cannot make any allowance for these matters.

Ninth. That in estimating his losses of earnings from June 19, 1891 to May 1892, the jury cannot allow, if they believe that defendant's fault alone produced the injury, more than at the rate of one dollar per day for eight months of the eleven months and seventy-five cents for the other three months, as the three months were winter months when plaintiff says he earned  
 20 seventy-five cents only.

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#### CHARGE OF THE COURT.

The plaintiff seeks to recover damages for injuries alleged to have been received by him from a collision between a train of the defendant and the wagon upon which the plaintiff was riding in June of 1891. There  
 30 is no question of the fact of the collision. The right of the plaintiff to call upon the defendant to compensate him for any injuries which resulted from that collision depends upon whether, in law, the defendant was negligent. Dismiss from your minds any idea—if there is any such—that a railroad company, chartered to run its cars as they are in this State, is liable to persons who

are injured merely from the effect of an accident. That is not the law at all. The rule of law is that a railroad company is only liable when injuries result solely from some fault on the part of the railroad company. In other words, so long as a railroad company is running its train lawfully and properly, no matter who is injured, the company is not obliged to compensate him.

Now, the proper manner in which a railroad company may run its trains is wholly a matter of legislative permission, and rests very largely in your knowledge. They may run them upon their rails; they may run 10 them at a much greater speed than this train was going, whether it be light or dark; they can run them at any speed (in fact, I think there is no limit as to speed, except, of course, the speed to which they are necessarily limited, by reason of their mechanical construction) provided they do what the Legislature has said they must do, and that is, that when they approach a crossing where pedestrians or vehicles are known to cross the company's road, they must give what is called the *statutory signal*, which has been by 20 the Legislature prescribed, and that is they must make a noise with a bell of a certain weight and metal, such as they carry, or that a railroad steam whistle shall be blown on the locomotive, commencing at a point distant three hundred yards from and continuing up to the time when the train crosses over the highway in question. Now, so far as the crossing in this case is concerned, that is the only signal which is necessary, and if a railroad company, operated as this was from the evidence, gave that sort of signal, then, no matter how 30 anybody got hurt by being run into, there can be no legal action for it. So that the first question is whether or not the railroad company was running its train as it had a right to do, or whether it was running it in such a way that it was negligent in the operation of the train. And the only negligence that has been alleged

in this case, as put in evidence by some of the witnesses and spoken of in the arguments of counsel, is the absence of, or failure to give, the proper statutory signals which I have just stated to you. In order to determine that point, you must take the testimony of the witnesses and decide simply the question whether you find that the railroad company did or did not give a signal, either by bell or whistle, or both, of the statutory kind, the statute requiring not that it shall give both of them, but that there shall be a noise made with one or the other over the space which I have mentioned. If you determine that the railroad company was rightfully operating its train, then your verdict shall be for the defendant. If, on the other hand, you determine that the railroad company was not properly operating this train, in so far as it was negligent, if that be your finding on the facts, then the question is whether or not this plaintiff is entitled to take advantage of that negligence, which depends upon whether he himself was careful—careful in a legal sense—for the law is absolute upon this point, that a plaintiff cannot recover against a railroad company who has been negligent, if his own conduct was not that of a reasonably careful person, and if his own lack of care to any extent contributed in bringing about the injury which was also partly caused by the negligence of the railroad company. In other words, if a railroad company is negligent, and the plaintiff also is negligent, then the plaintiff cannot recover, even though there was negligence on the part of the company.

Now, negligence in respect to a crossing of this kind consists in the behavior of the plaintiff with respect to the place of danger, a known place of danger, and the standard by which you are to judge the plaintiff is that of the conduct of an average person under similar circumstances with respect to whether such care and prudence of a reasonable kind was exercised as an average

person would and does exercise under similar circumstances. The plaintiff was not called upon to be more careful than the average of men, and he cannot, legally, be less careful than the average of men. If this accident occurred to the plaintiff because he did not exercise reasonable care and reasonable prudence in ascertaining whether a train was approaching, then he cannot recover. No one can recover for a railroad accident of this kind if it could have been avoided had he exercised reasonable care and prudence in ascertaining the approach of a train.

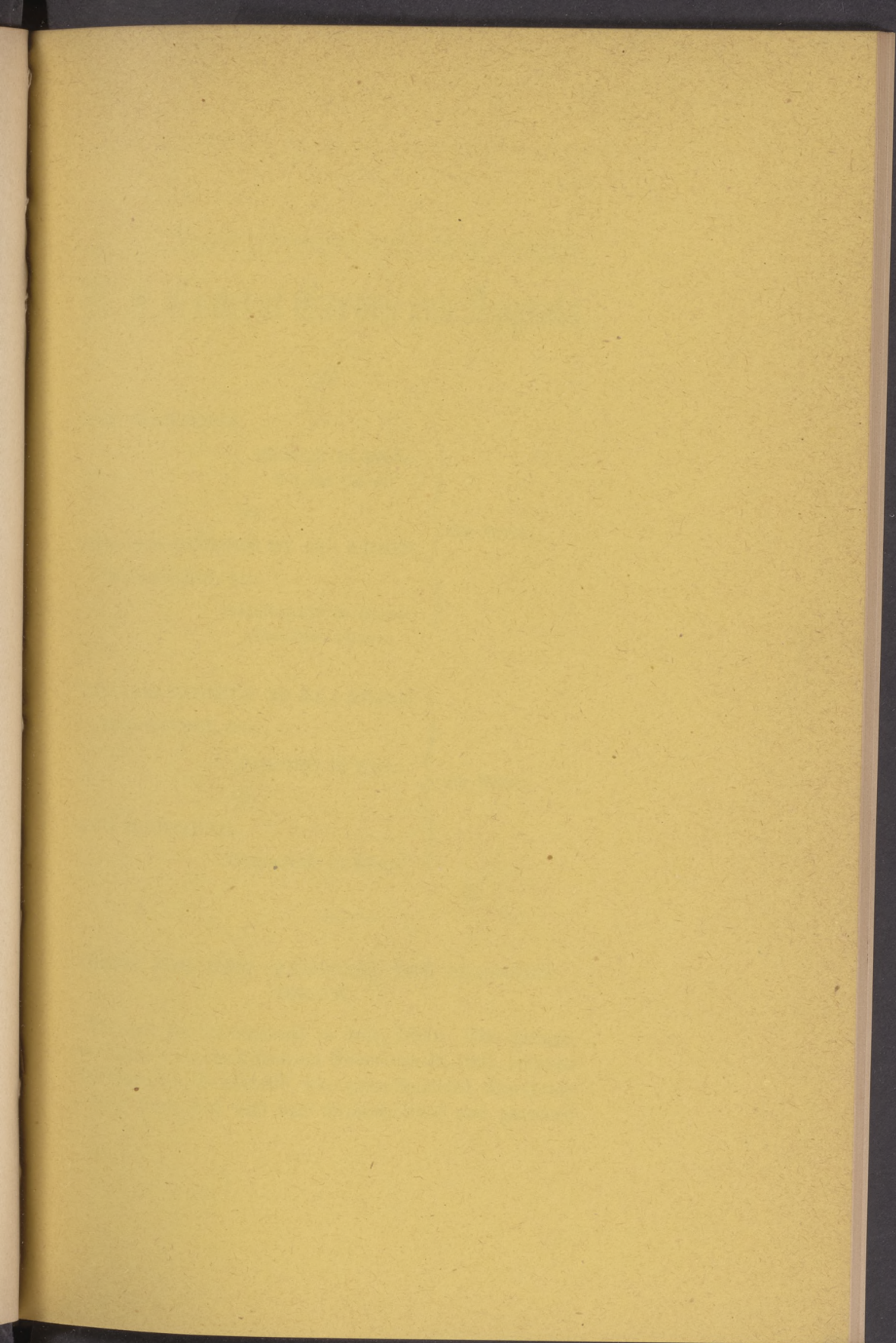
In determining whether this particular plaintiff did exercise that kind of care, you must take into consideration all of the circumstances, how far the train could be seen, how he would have had to look in order to see it, and whether, in fact, he did so look as an average man of reasonable care and prudence would have looked.

If the plaintiff is entitled to recover—in other words, if the accident occurred through no legal fault of the kind which I have described on the part of the plaintiff, 20 but solely through the negligent conduct of the railroad company in respect to the operation of its train and signals, then the duty of the jury is to assess damages upon the basis of compensating the plaintiff for those injuries which are traceable to the accident, and for those alone, such as pain and suffering at the time, for inability to continue his power of earning, in so far as it affected his receipt of wages, not only immediately after the accident but for so long a time as it continued, and also, in the future, for so much of the loss of ability 30 to earn wages and for so much of the deprivation of those functions of even a non-pecuniary kind—that is, in the man's comfort and ability to enjoy life—as are, in your judgment, shown by the testimony to have been produced by the accident. The proper measure of damages which you shall reach is a sum which will

compensate him for those matters. There is no other point upon which I need charge you, I believe.

The defendant, by its counsel, prays a bill of exceptions to the refusal of the Court to charge the jury as requested in the several requests to charge submitted by the defendant, which bill of exceptions is allowed and sealed accordingly.

C. G. GARRISON,  
J. S. C.



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