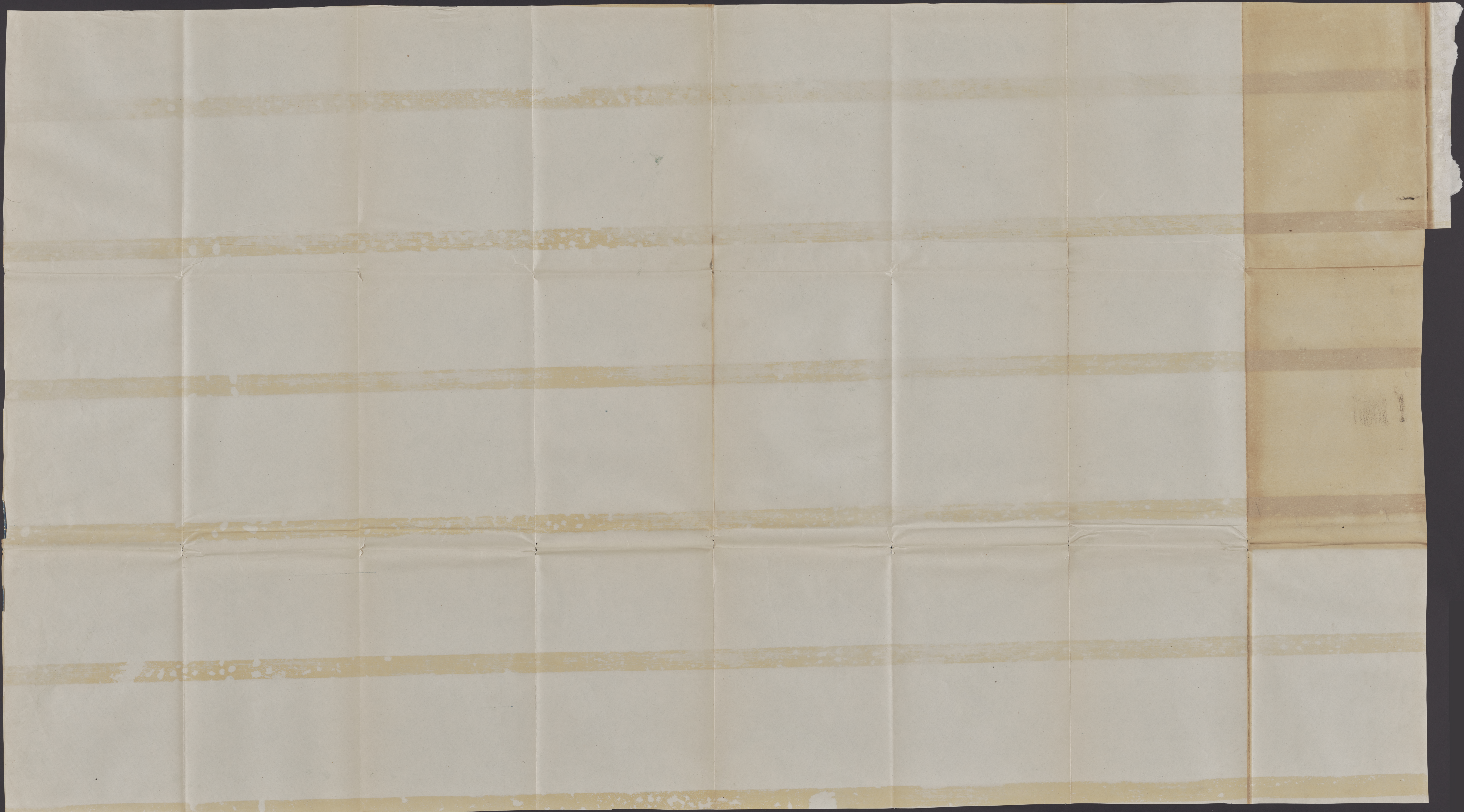


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NOTICE OF APPEAL.

(Filed August 12, 1920.)

NEW JERSEY SUPREME COURT.

FLORENCE RAMSEY, Admin- istratrix of etc., JAMES K. RAMSEY, Deceased, <i>Plaintiff,</i>	}	Action at Law. Notice of Appeal.
vs. ATLANTIC CITY RAILROAD COMPANY, a Corporation, <i>Defendant.</i>		

To David O. Watkins, Esq., Attorney of Plaintiff: 20

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

1. The trial Court refused defendant's motion for a non-suit. 30
2. The trial Court refused defendant's motion for the direction of a verdict for the defendant.
3. The trial Court charged the jury: "You must decide from the evidence and the light of the law

whether the defendant was guilty of actionable negligence which resulted in whole or in part in the death of the deceased. If you find it was not "so guilty, you would be bound to return a verdict of no cause for action, but if you find the defendant was guilty of actionable negligence, you must find whether the deceased was guilty of contributory negligence. If you find the deceased was guilty, you must cut down the amount of damages."

10

4. The trial Court refused to charge defendant's sixth request to charge, which is as follows: 6. "The existence of a hot journal on the defendant's train is not negligence in itself, nor is it a presumption of negligence on the part of any of the officers, agents or employees of the defendant company."

20

5. The trial Court refused to charge as a matter of law the following part of defendant's seventh request to charge: 7. "The location of the inter-track fence at Lawnside was open and obvious and from the length of time the said fence had been at Lawnside and from the length of time the deceased had been employed on the freight trains of the defendant company and from the experience of the deceased as a capable railroad man, he would have actual knowledge or be charged with knowledge of the existence and location of the said inter-track fence."

30

6. The trial Court refused defendant's eleventh request to charge as follows: 11. "There is no evidence in this case that the defendant was guilty of any negligence which was the proximate cause of the injury and death of the said James K. Ramsey."

7. The trial Court refused defendant's twelfth request to charge as follows: 12. "The injury and death of the said "James K. Ramsey in accordance with the evidence presented in this cause was a risk that the deceased assumed in the course of his employment."

8. The trial Court overruled the following question to the witness, Charles P. Bell: "Would you as a railroad man know that it was a dangerous thing to lean out the side of a caboose?" 10

9. The trial Court let the jury determine questions which should have been properly determined by the Court.

10. The rulings of the trial Court denied to the defendant rights and immunities to which it was entitled under the Federal Employers' Liability Act.

FRENCH & RICHARDS, 20
Attorneys of Defendant.

A true copy.

ENOCH L. JOHNSON,
Clerk.

[ENDORSED]

Service acknowledged August 11, 30
1920.

David O. Watkins,
Atty. for Plaintiff.

JUDGMENT RECORD.

NEW JERSEY SUPREME COURT.

10	FLORENCE RAMSEY, Admin- istratrix <i>ad Prosequen-</i> <i>dum</i> of etc., JAMES K. RAMSEY, Deceased, <i>Plaintiff,</i> vs. ATLANTIC CITY RAILROAD COMPANY, a Corporation, <i>Defendant.</i>	Judgment Record. Action at Law. On Postea. DAVID O. WATKINS, <i>Attorney.</i>
----	--	---

20 Atlantic City Railroad Company, a corporation, the defendant in this cause, was summoned to answer unto Florence Ramsey, administratrix *ad prosequendum* of etc., James K. Ramsey, deceased, the plaintiff therein in an action at law upon the following complaint:

(Summons issued October 15, 1918.)

30 The plaintiff, Florence Ramsey, administratrix *ad prosequendum* of etc., James K. Ramsey, deceased, of the Borough of Swedesboro, in the County of Gloucester and State of New Jersey, says that:

1. Defendant is, and at all times hereinafter mentioned, was a railroad corporation engaged in maintaining and operating a railroad in the State of New Jersey, running between the Village of Mullica Hill, in the County of Gloucester and the City of Camden, in the County of Camden.

2. On October 30th, 1917, and for sometime prior thereto, James K. Ramsey was in the employ of said defendant as a brakeman.

3. On October 30th, 1917, defendant was operating a freight train along its tracks in the County of Camden and State of New Jersey between Mullica Hill and Camden, and by reason of the negligence of the officers, agents and employees of said defendant, or some of them and of the defects and insufficiency due to defendant's negligence, in its cars, engines, appliances, machinery, tracks, roadbed, works or other equipment, one of its freight cars in said train and upon which said James K. Ramsey was employed as a brakeman, became damaged and unsafe because of a hot journal or box on one of its wheels. 10

4. Thereupon, it became and was the duty of the said James K. Ramsey to watch the said hot journal or box, to guard against accidents to said train, and to give warning to said defendant of its condition during the moving of said train until it arrived at Camden, and while performing this duty, at the request of said defendant, and while watching said hot journal or box and guarding against accidents to said train, by reason thereof, the said James K. Ramsey was struck by a fence or post at Lawnside, Camden County, New Jersey, which said fence or post was carelessly and negligently erected by said defendant on its tracks or roadbed, and was unlighted and without any warning signal or device thereon to warn said Ramsey of its dangerous and defective character and proximity to the tracks and roadbed of said defendant, and as a result thereof, said James K. Ramsey was killed. 20 30

5. The plaintiff alleges that the injury to said James K. Ramsey and from which he died, was by reason of a defect or insufficiency due to the negligence of the said defendant, in its cars, engines, appliances, machinery, track, works and other equipment.

10 6. The plaintiff also alleges that the death of the said James K. Ramsey resulted in whole or in part from the negligence of the said defendant, its officers, agents and employees.

20 7. The said defendant, at the time of the death of the said James K. Ramsey was engaged in commerce between the several States of the United States, in that the freight train upon which the said James K. Ramsey was employed and killed as above set forth, was engaged in carrying interstate freight, and was then and there operated and employed in moving interstate commerce between the State of New Jersey and various points in the State of Pennsylvania and elsewhere.

8. James K. Ramsey, at the time of his injury and death, was in no wise negligent, and his injury and death were both brought about, solely and wholly, as hereinabove set forth.

30 9. By virtue of an act of Congress, known as "An act relating to the liability of common carriers by railroads to their employees in certain cases," approved April 22nd, 1908, and various supplements and amendments thereto, jurisdiction was conferred upon the State Courts of the State of New Jersey to enforce the liability of said railroad corporations to said employees, as defined in said acts of Con-

gress, and on October 30th, 1917, aforesaid, the said defendant was a common carrier engaged in interstate commerce, and defendant became liable to plaintiff in this action by reason of said acts.

10. As a result of the injury above set forth, James K. Ramsey died as aforesaid, leaving him surviving his widow, Florence Ramsey and Stokley C. Ramsey and George H. Ramsey, children, who are his only next of kin, all of whom were dependent upon him for their support and who have, by his death, suffered loss and damage. 10

11. On March 28th, 1918, letters of administration *ad prosequendum* were issued by the Surrogate of the County of Gloucester to plaintiff who has accepted the same.

12. This suit is brought within two years from the day the cause of action accrued, for the benefit of the surviving children and the widow of the said James K. Ramsey. 20

Plaintiff demands \$20,000.00 damages.

DAVID O. WATKINS,
Attorney for Plaintiff.

(Filed December 22, 1919.)

The defendant, a corporation of the State of New Jersey, says that:

1. It admits that on October 30, 1917, it was a corporation engaged in maintaining and operating a railroad as stated in paragraph one of the complaint, but denies that at all times thereafter mentioned it has been so engaged. 30

2. It admits that the said James K. Ramsey had been in the employ of the defendant for several years prior to October 30, 1917, but avers that on the said day he was employed by defendant as a flagman on said train.

10 3. It admits operating said train mentioned in paragraph three of the complaint, but denies each and every of the other allegations in said paragraph.

4. It denies paragraph four of the complaint.

5. It denies paragraph five of the complaint.

6. It denies paragraph six of the complaint.

7. It denies paragraph seven of the complaint.

20 8. It denies paragraph eight of the complaint.

9. It denies paragraph nine of the complaint, except that part thereof which alleges, "and defendant became liable to plaintiff in this action by reason of said acts," which part of said paragraph it denies.

10. It denies paragraph ten of the complaint.

30 11. It has no knowledge of the facts alleged in paragraph eleven of the complaint, but believes them to be true.

12. It admits paragraph twelve of the complaint.

FIRST DEFENSE.

1. The defendant was not guilty of any negligence as charged in the complaint.

SECOND DEFENSE.

1. The defendant was not guilty of any negligence as charged in the complaint which caused or contributed in any degree to the injury of the said James K. Ramsey.

THIRD DEFENSE.

1. The death of the said James K. Ramsey was 10
caused solely by his negligence.

FOURTH DEFENSE.

1. The death of the said James K. Ramsey did not result in whole or in part from the negligence of any of the officers, agents or employees of the defendant nor by reason of any defect or insufficiency due to defendant's negligence in its cars, engines, appliances, machinery, track, roadbed, works, boats, 20
wharves or other equipment.

FIFTH DEFENSE.

1. The death of the said James K. Ramsey was not contributed to by the defendant's violation of any statute enacted for the safety of its employees, but the said James K. Ramsey assumed the risk of his employment.

30

SIXTH DEFENSE.

1. The said James K. Ramsey was a flagman on one of said defendant's freight trains and on and before October 30, 1917, he was fully aware of and thoroughly familiar with the existence and locations

of the inter-track fence at said Lawnside Station and the danger of striking said fence while riding on the said moving train, was obvious and the risk of such an accident was one that he assumed.

FRENCH & RICHARDS,
Attorneys of Defendant.

(Filed November 15, 1918.)

10 The plaintiff denies every allegation in the answer.

DAVID O. WATKINS,
Attorney for Plaintiff.

(Filed November 27, 1918.)

This case was tried before Judge Howard Carrow, with a jury and under amended complaint herein, at the Gloucester County Circuit, on December 1st and 2nd, 1919.

20 The jury rendered a general verdict against the defendant, and in favor of the plaintiff, for seven thousand dollars (\$7,000.00).

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of seven thousand dollars damages and her costs which have been taxed at the sum of fifty-four dollars and eighty-eight cents, making in the whole the sum of seven thousand fifty-four dollars and eighty-eight cents.

Damages	\$7,000.00
Costs	54.88

30 \$7,054.88

Judgment entered December 22, 1919.

WM. S. GUMMERE,
C. J.

I, ENOCH L. JOHNSON, clerk of the Supreme Court of the State of New Jersey, do certify that the fore-

going is a true copy of the judgment entered in the above stated cause as the same remains on file and of record in my office.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this thirteenth day of August, A. D. nineteen hundred and twenty.

SEAL OF
SUPREME COURT

ENOCH L. JOHNSON, 10
Clerk.

TESTIMONY.

NEW JERSEY SUPREME COURT

GLOUCESTER COUNTY CIRCUIT.

FLORENCE RAMSEY, Admin- 20
istratrix *ad Prosequen-*
dum, }
 Plaintiff, }
 vs. } Action at Law.
ATLANTIC CITY RAILROAD }
COMPANY, }
 Defendant. }

October Term, December 1, 1919. 30

APPEARANCES:

For the plaintiff, DAVID O. WATKINS, Esq.
For the defendant, FRENCH & RICHARDS, Esqs.

Before CARROW, J. and a jury.

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

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

10

THE CASE FOR THE PLAINTIFF.

Mr. Bradley: It is admitted in this case that letters of administration were taken out and that the employee at the time was engaged in interstate commerce.

20

JOSEPH G. IREDELL, SWORN.

By Mr. Watkins:

Q. Where do you live, Mr. Iredell?

A. Why, Woodbury now.

Q. And formerly where?

A. Mullica Hill.

30

Q. What is your occupation?

A. Railroad conductor.

Q. On what railroad?

A. Atlantic City Railroad.

Q. And how long have you been a conductor?

- A. I have been conducting since 1899.
- Q. Did you know James K. Ramsey in his lifetime?
- A. No, not all his lifetime.
- Q. No, did you know him?
- A. Yes, sir.
- Q. How long had you known him before his death?
- A. Twenty-five years.
- Q. He was a resident of Mullica Hill?
- A. Well, part of the time. 10
- Q. Now, Mr. Iredell, in October, 1917, the 30th of October, were you engaged as conductor on the Atlantic City Railroad?
- A. Yes, sir.
- Q. In what capacity, freight or passenger?
- A. Freight.
- Q. Were you on a freight train that day or night?
- A. Yes, sir.
- Q. Was Ramsey employed as brakeman on that train? 20
- A. Yes, sir.
- Q. Where was the train made up?
- A. Mullica Hill.
- Q. And what time did you leave Mullica Hill?
- A. Three-fifteen.
- Q. In the afternoon?
- A. Yes, sir.
- Q. And did you go by way of Winslow Junction?
- A. We went to Winslow Junction via Williams-town Junction. 30
- Q. Where was your destination?
- A. Winslow Junction.
- Q. Was that the end of your run?
- A. On 373.
- Q. Yes, but I mean, where was the destination of your train?

- A. Camden.
- Q. Where were you running to?
- A. Camden.
- Q. Now, what time did you leave Winslow Junction?
- A. About 8.20.
- Q. The same night?
- A. Yes, the same night.
- Q. Did anything occur on the train?
- 10 A. A hot box, yes, sir.
- Q. After you left Winslow Junction?
- A. Yes, sir.
- Q. How long after you had left Winslow Junction?
- A. Well, I can't answer that question.
- Q. About, as near as you can tell?
- A. Well, about thirty minutes.
- Q. About half an hour?
- A. Yes.
- 20 Q. Where did you next stop after leaving Winslow Junction?
- A. Williamstown Junction.
- Q. Was Ramsey on the train when you left Williamstown Junction?
- A. Yes, sir.
- Q. Did you discover this hot box before you reached Williamstown Junction?
- A. No, sir.
- Q. Now, what time, about, did you leave Williamstown Junction?
- 30 A. 8.55.
- Q. How long after you left Williamstown Junction was it that the hot box was discovered?
- A. About twenty minutes.
- Q. And where were you, what part of the train, when it was discovered?

A. In the caboose.

Q. Was the train then in motion?

A. Yes.

Q. Where was Ramsey?

A. In the caboose.

Q. What car, or how far from the caboose was the car on which the hot box was?

A. Next to the caboose.

Q. The next one ahead?

A. The next one ahead.

Q. Now, what was Ramsey's duty after you had discovered that hot box? 10

Mr. Bradley: Just a minute; I think that is rather leading. I don't think you have shown as to what his duty was, that this man knows.

Q. You had charge of the train, Mr. Iredell—you were conductor—I have shown that?

A. Yes.

Q. What was the duty of Ramsey then after this hot box was discovered? 20

A. To look out for the hot box.

Q. What is the idea of having a man watch the hot box, look out for it?

A. To see if we can get the car safe to Camden, our destination.

Q. What danger would result from a hot box?

A. Well, it has been known to burn off, cause a wreck.

Q. Now, what do you mean by burning off? 30

A. The journal.

Q. I don't want to lead you, but what do you mean—do you mean just burning the car or what?

A. The journal, burning off and allowing the truck to drop down.

Q. Would it make a flame, too?

A. Yes.

Q. Well, did Ramsey watch the hot box, if you know?

A. Yes.

Q. And for how long a time did you notice Ramsey watching this box?

A. Why, at Magnolia he started to watch it.

Q. How far was that from Williamstown Junction?

10 A. About ten miles.

Q. Now, this box was on the car immediately ahead of the car that you and Ramsey were in, you said?

A. Yes.

Q. Now, was it on the front end of that car or on the rear end?

A. On the rear end.

Q. Was it on the outside of the car or the inside?

A. On the outside.

20 Q. Was it necessary at any time before—were you watching the box, too?

A. Yes, sir.

Q. Was it necessary at any time before you reached Lawnside to lean out to see the condition of the box?

A. Yes, sir.

Q. What made that necessary?

A. Well, it is always customary to lean out.

30 Q. What makes it customary to do that? Can you see it without doing that?

A. No, sir.

Q. Now then, after you left Magnolia, did you continue with Ramsey watching the box, or what did you do?

A. I went in the caboose to finish up the reports after we left Magnolia.

Q. And where did you leave Ramsey?

A. On the rear platform when I went in.

Q. On the rear platform?

A. Of the caboose.

Q. Now, did you see Ramsey again before you arrived at Camden?

A. Yes, sir.

Q. Where?

A. He followed me, after I went into the caboose, he followed me in, went through; that was the last time he went through the caboose.

Q. Went through to the front of the car?

A. Yes.

Q. And that is the last time you saw him?

A. Yes.

Q. Did he go outside, outside of your caboose?

A. Outside.

Q. Did he have his lantern with him?

A. Yes, sir.

Q. About what time of the night was it, the best you can fix it, the last time you saw Ramsey before you got to Camden?

A. About 8.25, 9.25 rather.

Q. Was it dark?

A. Yes, sir.

Q. Now, when did you next see Ramsey?

A. At the shipyard.

Q. The New York Shipyard?

A. The New York Shipyard, Shipyard Station; it is just simply called Shipyard Station on our road.

Q. On the outskirts, of Camden?

A. Yes.

Q. And where did you find him or see him then?

A. Sitting on the next to the bottom step of the caboose, on the front.

Q. What was his position and what was his condition when you saw him?

A. His feet was on the bottom step, sitting on next to the bottom step with his arm around the grab-iron, with his head lying on his right arm and his left arm hanging down.

By the Court:

10 Q. What did he appear to be doing?

A. Just lying quiet.

Q. Well, at this time was he in a position to see the hot box?

A. He was.

By Mr. Watkins:

Q. His arm was around the grab-iron?

A. The right arm.

20 Q. Will you explain to the jury what you mean by the grab-iron?

A. It is an iron put on all cars to catch hold of, to get on.

Q. His right arm was around that?

A. Yes, sir.

Q. And his head down on his arm, you say?

A. Lying down on his arm.

Q. Was his body extended out beyond the car?

A. No, sir.

30 Q. Or his head?

A. No, sir.

Q. Was he living or dead?

A. Why, they said he was dead when they arrived, the ambulance.

Q. I mean, when you saw him?

A. That is hard for me to say; I couldn't say that.

Q. Did he ever speak afterward?

A. No, sir.

Q. Now, did you notice his head?

A. I did.

Q. State its condition as far as you could see it.

A. One side, the left side of his head seemed off, taken off, just the outside.

Q. The left side?

A. The left side.

Q. Was that the side which would be toward Camden or the direction you were going, the left side of the head? 10

A. No, that would be on the west side.

Q. Well, it would be the side toward Camden, wouldn't it, as he was sitting?

A. His face would be toward Camden, and this would be on the left side.

Q. Well, but—for instance, we will say this is the station at Lawnside; now, he was looking out, the last you knew of him, looking out from the side— 20

Mr. Bradley: I object, if the Court please; he didn't see him on this front platform, he hasn't testified that he saw him there looking out. He saw him on the back platform.

Mr. Watkins: I will withdraw that question.

Q. He was sitting on the step; now, assuming that you are sitting on that step of the car, Mr. Iredell, and assuming that Camden was in this direction, now, which side of his head was it that was battered in? 30

A. Well, the best I could tell you, the outside on the left side.

Q. On the left side?

A. On the left side.

Q. Then, what was done with Mr. Ramsey—what did you do with him or have done with him, or what was done with him?

A. After I saw him?

Q. Yes.

A. I called the brakeman, Middleton, to come hold him on the caboose until I got the train to the proper place to notify the superintendent.

Q. Did you see him after that at all?

10 A. I saw them put him in the ambulance, yes.

Q. And did you see him at all after that?

A. Not until the funeral.

Q. You saw him at the funeral, saw he was dead there?

A. Yes.

Q. Now, did you make any examination or see the fence between the tracks at Lawnside Station?

A. No, sir.

Q. How far is Lawnside from Winslow Junction?

20 A. About seventeen miles.

Q. And how far is Lawnside from the place you stopped at the New York Ship?

A. About six miles.

Q. Had you known—you said you had known Ramsey for quite a while; what was his general physical appearance, Mr. Iredell?

A. Well, he was a good—all right.

Q. A strong, healthy man?

A. Yes.

30 Q. Did you see his cap or his lantern or anything belonging to him after that?

A. Yes, in Lawnside.

Q. Where?

A. Lawnside Station.

Q. Now, when did you see his cap and lantern in Lawnside Station?

A. Probably a couple of weeks after.

- Q. Is there a fence at Lawnside Station?
A. Yes.
Q. What kind of a fence?
A. An iron fence.
Q. An iron fence?
A. Yes.
Q. Is that fence lighted at night times?
A. No, sir.
Q. About how high is the fence?
A. About four feet, I imagine. 10
Q. About how high?
A. About four feet.
Q. Is there a fence at every one of the stations?
A. No, sir.
Q. Along the road?
A. No, sir.
Q. How many stations between Lawnside and
Winslow Junction have fences between the tracks?
A. All the main stations.
Q. Well, name them. 20
A. Shipyard—
Q. No, between Lawnside and Winslow?
A. Magnolia, Stratford, Laurel Springs, Clem-
ton, Cedar Brook—I guess that is all.
Q. All iron fences?
A. I think there are.
Q. And then there are stations which have no
fences between them?
A. Yes, sir.
Q. Did you state about the height of the fence? 30
A. About four feet.
Q. And about how long is this fence?
A. About, probably 100 feet.

By the Court:

- Q. Where does it run?

A. Runs in between the track, from the road crossing at Lawnside north toward Camden.

Q. What is the object of the fence?

A. To keep the passengers getting off the train from crossing back of the train in front of another train passing or coming.

Q. Is it a customary fence on railroads?

A. I don't know that.

10 Mr. Watkins: We have shown, your Honor—I think I have answered that question by showing some places had them and some did not.

The Court: He said the main stations had iron fences.

Mr. Watkins. Yes, and he named the stations which had them.

20 Q. You mean flag stations, I suppose?

A. Flag stations that doesn't have them.

Q. All regular stations have them?

A. Have them, yes, sir.

The Court: What I was trying to find out is whether that is a customary thing on a railroad.

Mr. Watkins: Yes; that is all, I think.

30 Cross-examination.

By Mr. Bradley:

Q. Now, Mr. Iredell, Mr. Ramsey was flagman on that train, wasn't he, rear flagman?

A. That was his duty.

Q. And when you first observed this hot box, both you and Mr. Ramsey were standing on the back platform of the caboose, weren't you?

A. We smelled the smoke of the hot box.

Q. From the back platform?

A. From the inside, and went to the back platform.

Q. That is where you looked to see what it was from, the back platform, didn't you?

A. Yes.

Q. And you both looked from the back platform? 10

A. Yes.

Q. And you discovered it was the first wheel on the left-hand side in front of the caboose, isn't that right?

A. Not from the smoke; we knew it was on that side.

Q. You knew it was on that side?

A. Yes.

Q. And that could have been seen by Mr. Ramsey if he stood on the front platform, couldn't it? 20

A. Yes.

Q. He didn't have to get down on the steps to see it?

A. Not necessarily.

Q. And he could also have seen it if he had sat in the caboose and looked out of the window, couldn't he?

A. The blaze, yes.

Q. And he could have then leaned out and not hit the fence, couldn't he? 30

A. Yes, sir.

Q. In other words, if he were up in the caboose looking out of the window he could lean very far out and still have been way above the inter-track fence?

A. Been above the fence.

Q. Did you advise him to go sit there on the step and look at it?

A. No, sir.

Q. Was there any rule of the company requiring him to go sit there on the step and watch that hot box?

A. No, sir.

Q. It is not a customary place to sit, is it, when you are on a double track?

10 A. No, sir.

Q. It is considered a dangerous place with knowledge of the inter-track fence, isn't it?

Mr. Watkins: I object to the way the question is put, "With knowledge of the fence."

Mr. Bradley: I will withdraw that, if the Court please.

20 Q. How long had you worked on this line with Mr. Ramsey?

A. About six years.

Q. Did he seem a capable, experienced brakeman?

A. Yes, sir.

Q. And in that course of time would any man working in his position have observed the inter-track fences?

30 Mr. Watkins: That is objected to, would they have done it.

The Court: I suppose the jury is just as competent as this man.

Mr. Bradley: No, I think not; I want to get into the evidence that this is a perfectly obvious thing;

in order to prove assumption of risk we must show that it is an open and obvious fence.

The Court: You have proved that it is an open and obvious fence, but what an ordinary person of average prudence would do is a jury question.

Mr. Bradley: No, not what they would do; I want to show that a person of ordinary average sense would know of the existence of that fence. 10

The Court: That is a jury question; it may be a Court question, but his opinion is no better than the opinion of the jury.

Mr. Bradley: May I have an exception, if your Honor please?

The Court: What is the question?

(Question repeated.) 20

Mr. Watkins: He can't say any more than a man on the jury could.

The Court: The objection is sustained.

(Exception noted for the defendant.)

By the Court: 30

Q. If I understand you, the fence was there?

A. Yes, sir.

Q. In plain observation?

A. Yes.

Q. For anybody to see; you knew it was there, did you?

A. Yes, sir.

By Mr. Bradley:

Q. You knew it was the custom in railroading, for railroad protection, to have this fence there at the station, didn't you?

10 Mr. Watkins: I object; it is not a matter for this man to prove custom at all. He can prove what is, but not what is the custom by this witness.

The Court: He said it was a fact.

Q. Would a man of average intelligence that had been working on the railroad for five or six years as a brakeman know of the existence of that inter-track fence?

20 (Objected to.)

(Objection sustained.)

(Exception noted for the defendant.)

Q. Now, did you ever stop at Lawnside on a run?

A. We have stopped, yes.

Q. When Mr. Ramsey has been on the train?

A. Yes.

30 Q. And it was Mr. Ramsey's duty then to get off the train and go back and flag approaching trains?

A. Yes, sir.

Q. How many times have you stopped there at that station?

A. I don't know just the number of times.

Q. When Ramsey was with you?

A. Quite a few times.

Q. At that time Mr. Ramsey had gotten off the train, had he, to flag?

A. Yes.

Q. Now, a hot box on your train was a very frequent matter?

A. Yes, quite often we have them.

Q. And you had them quite frequently when Mr. Ramsey was with you?

A. Yes.

By the Court:

10

Q. Then it was no unusual occurrence?

A. No, it was no unusual occurrence.

Q. What causes a hot box?

A. Well, there are several different things which cause a hot box, quite a number of things.

Q. Well, state some of them.

A. Well, there could be packing taken out of some, they will be dry and run hot, and a crooked bearing will cause it to run hot, sand in the journal box will cause it, quite a number of things will cause it. 20

Q. Well, if bearings are properly cared for, is there any danger of a hot box?

A. Yes.

Q. Well, what will cause it—now, if the wheels, understand, the bearings, are properly looked after by competent mechanics, careful inspection, now, what will cause a hot box? 30

A. Boys going along lift the lid up and throw sand in; that oftentimes happens.

Q. Is that the only thing?

A. No, I don't know.

Q. What is that?

A. No, that is not the only thing.

Q. What else?

A. Well, there are various things that cause it.

Q. Well, let us know exactly the things that will cause a hot box. If you say a hot box has been carefully inspected by competent mechanics, I mean to say, if you say the bearings and wheels have been carefully looked after by competent mechanics, carefully inspected as they should be, is it at all probable that you will have a hot box?

10 A. It is.

Q. From what cause?

A. Why, the journals could be cut in such a way that it could not be seen from the outside.

Q. What do you mean, cut?

A. Been heated before and repacked.

Q. Well, if the journals had been looked after with proper mechanical skill, they would not have been passed, would they?

20 A. Probably they can't see that where they have been cut, unless they put in new wheels under the car.

By Mr. Bradley:

Q. Sand is also liable to get in going across crossings, isn't it?

A. They are housed in, those boxes.

By Mr. Watkins:

30

Q. You mean then it is not possible to do that?

A. Hardly, no.

By Mr. Bradley:

Q. You are not an expert on what causes hot boxes?

A. No, sir.

Q. Now, in reference to Mr. Ramsey having stopped at this station as a regular stop on other trains, how long did he work on other trains which made this a regular stop at Lawnside?

A. Why, he worked two winters on that.

Q. On a train that made Lawnside a regular stop?

A. Well, I am unable to say whether it was a regular stop, but he stopped there nearly every day.

Q. You don't know of your own knowledge why 10
Mr. Ramsey went out on the front platform, do you?

A. Other than to watch the hot box.

Q. You don't know that; it is mere presumption?

A. No, sir.

Q. He may have gone out for some purpose of his own, may he not?

A. Yes.

Q. Now, you have been asked whether he knew there was a light on this fence; it is not customary to light these inter-track fences, is it? 20

Mr. Watkins: I object; it is not a matter of custom.

The Court: The objection is overruled.

(Objection noted for the plaintiff.)

A. No, I don't know of any.

Q. Do you know of any place where there is a 30
light on these iron inter-track fences?

Mr. Watkins: That question is objected to also.

Mr. Bradley: I withdraw it.

By Mr. Watkins:

Q. Mr. Iredell, what winters did Ramsey work, that you know of, on a train which made Lawnside a regular stop, what years?

A. I think '14 and '15; I am not sure about that.

Q. 1914 and 1915 as far as you can remember?

A. Yes.

Q. Now, did you look at this hot box after you got to Camden, yourself?

A. Yes, sir.

10 Q. Did you see whether it was properly oiled in the journal?

A. You couldn't see that when it was blazing.

Q. It was blazing?

A. Yes.

Q. What makes the blaze; what is it that burns that makes the blaze?

A. Well, it is what little oil and little waste is in there, in the box.

20 Q. But if as a general thing, if the waste which is in there is properly oiled and the journal is properly greased, there is not much danger from a hot box, is there?

A. As I say, sometimes they do.

Q. Yes, sometimes occasionally, some mechanical defect, but generally it is a question of failure to oil and grease, isn't it?

A. No, there are other things that cause it.

Q. I understand that, but most of the cases?

A. Yes.

30 Q. Now, you said the hot box was blazing; was it blazing the last time you saw it before you went in your caboose and stayed in there?

A. No, sir.

Q. Was it blazing as your train stopped at New York Ship?

A. Yes.

Q. You don't know when it commenced blazing?

A. Not just when, no, sir.

By the Court:

Q. Where were you when you saw it blazing?

A. Going into New York Ship.

Q. No, but what part of the caboose?

A. I was in the caboose.

Q. You were inside, were you?

A. Looking around—no, I was on the back platform. 10

By Mr. Watkins:

Q. You were on the back platform and saw the blaze?

A. Yes.

Q. Which was quite evident. Now, the first time you knew there was a hot box, you and Ramsey on the train, was there any blaze? 20

A. No, sir.

Q. How did you detect there was a hot box on the train?

A. From the smell.

Q. Could you tell then what part of the train the hot box was on?

A. No, sir.

Q. Whether it was the car ahead of you or two or five cars ahead of you? 30

A. No, sir.

Q. Then, of course, it became the duty of Ramsey—

Mr. Bradley: I object to that; it seems to me it is his witness and he should not lead him in this way.

Mr. Watkins: Well, we have gone into that.

Q. Now then, before you went in the car and sat down and let Ramsey, or Ramsey went out the front, you understand, of his car, had you determined what car it was on?

A. We had.

Q. And what caused you to determine the particular car and the particular box that it was on?

10 A. From the smoke pouring from the box.

Q. Then it began smoking?

A. Yes, sir.

By the Court:

Q. Could that be seen from the platform?

A. Yes, sir.

Q. Of the caboose?

A. Yes.

20 Q. Well, could Ramsey have stood on the platform of the caboose and seen this smoke or blaze?

A. Yes, sir.

Q. Without getting down on the steps?

A. Yes, sir.

Q. Or without coming in contact with the fence?

A. Yes, sir.

By Mr. Watkins:

30 Q. Now, could he have seen that all the way along without getting down on the steps at times?

A. Not when it first started, no, sir.

Q. And where did you first notice it, at first?

A. Magnolia.

Q. And that was how far from Lawnside?

A. About a mile south.

Q. So that a mile south of Lawnside he could not have seen that without getting down on the side or leaning over?

A. Not when we first detected it, no, sir.

Q. You say that is when you first detected it, is it?

A. Magnolia.

Q. How fast was your train traveling?

A. About thirty miles an hour.

Q. About thirty?

10

A. Yes.

Q. Lawnside was only a mile away, about?

A. About a mile north, yes.

Q. And it is also true, is it not, Mr. Iredell, that at times it is necessary to get down on the side to determine—

Mr. Bradley: I object; this question is leading.

The Court: Oh, well, you can put it in another form, it is leading. 20

Mr. Watkins: I withdraw the question.

The Court: You may ask him whether there was any occasion for Mr. Ramsey getting down on the lower step of the car.

Mr. Watkins: I don't care to put it in that way; I will put it in my way if the Court will permit me, and I am willing to rest on the questions and answers that are already in. 30

The Court: Do you object to the question the Court has propounded?

Mr. Watkins: Oh, no; I don't object to the Court's question; I think I have answered that myself, or the witness has answered whether it was necessary or not.

The Court: I want to know whether there was any occasion for Mr. Ramsey's getting down on that step and looking at that box.

10 Mr. Watkins: The point of it is that this man did not see it just at that time, you know; the last he saw him was about a mile away from Lawnside, and it was then necessary to do it.

The Court: Well, the question is withdrawn.

By Mr. Bradley:

20 Q. When you were a mile away from Lawnside, you were on the back end of the caboose, weren't you?

A. Yes.

Q. And it wasn't necessary then to get down on the steps, was it—you could have stood up on the platform and looked around from the back with one hand on the grab-iron, couldn't you?

A. Well, you could lean over, yes.

Q. Then it was not necessary to get down there?

A. No, not particularly necessary, no.

30 Q. So when it first started at Magnolia, you were in the back; then, how long were you on the back, until you went into the car?

A. As soon as I left the cars just a little ways north of Magnolia I locked out and went in.

Q. How soon after did Mr. Ramsey come in?

A. He followed me right in.

Q. Then from that time when he went on the front platform of the caboose until the time the train arrived at the Shipyard Station you never saw him, did you?

A. No, sir.

Q. Are you a relative of Mr. Ramsey's?

A. By marriage.

Q. What relation?

A. His wife is my wife's niece.

Q. Now, you saw that blaze from the back platform?

A. At the shipyard.

By the Court:

Q. Where did you say you found Mr. Ramsey's cap?

A. I didn't find it.

Mr. Watkins: He said he saw it at Lawnside about two weeks afterward. 20

By Mr. Watkins:

Q. Mr. Iredell, did your train stop at Lawnside that night?

A. No, sir.

Q. Went right through?

A. Yes.

Q. You spoke about a curve in answer to the last question there; where was this curve? 30

A. At Magnolia.

Q. Could you see, for instance, this hot box on this curve without leaning out?

A. As the train swings the curve you can.

Q. As it swings around?

A. Yes.

Q. But when it wasn't swinging around the curve, could you have seen it?

A. Being the rear one, you could.

Q. From where?

A. From the caboose, from the platform of the caboose.

Q. From the front or back?

A. From the front.

10

MORRIS J. KEEGAN, SWORN.

By Mr. Watkins:

Q. Where do you live?

A. Gloucester.

Q. What is your business?

A. Railroad conductor, Atlantic City Railroad.

20 Q. You knew James K. Ramsey?

A. Yes, sir.

Q. And remember the time that he was killed—I don't mean the particular time, but you remember the occurrence, the fact?

A. I believe he was killed at Lawnside, yes.

Q. I didn't ask you that.

Mr. Bradley: I object and move that that be stricken out.

30 The Court: Strike it out.

Q. I say, you remember the fact of him being killed—you knew he was killed?

A. Yes.

Q. Now, when did you learn that he had been killed?

A. When I came to work the next morning the yard master told me at Camden.

Q. Did you learn the next morning?

A. Yes, sir.

Q. Now, the next morning were you at Lawnside?

A. Yes, sir.

Q. How soon, or what time in the morning?

A. 7.50.

Q. Did you examine the fence, the railroad fence at Lawnside, look at it?

A. Yes, I seen there was some blood on it; I didn't examine it. 10

Q. Well, you saw it?

A. Yes, sir.

Q. What part of the fence was it, the part toward—

Mr. Bradley: Just a minute; I object to his leading the witness.

Mr. Watkins: I will withdraw that. 20

Q. What part of the fence was it, the north or south side of the fence?

A. The lower end.

Q. Where was this blood that you saw?

A. On the first post of the fence.

Q. The upper or lower part of the fence?

A. The top.

Q. About how high was that post?

A. Well, I don't know, 4½ or 5 feet high the fence is, 4 feet anyhow. 30

Q. An iron fence?

A. Yes.

Q. Did you notice blood on any other part of the fence excepting this post?

A. No, sir, I did not.

Q. Did you notice anything but blood, anything else—hair?

A. No.

Q. Now, do you know the cap, the kind of cap that James Ramsey wore as a brakeman?

A. Yes.

Q. Did you see that cap?

A. Yes.

Q. Where was that?

10 A. In Lawnside Station; the station agent had it.

Q. Now, did you see his lantern?

A. Yes.

Q. Where was that?

A. In Lawnside Station; the agent had it.

Q. What is that agent's name?

A. I don't know what his name is.

The Court: How close is that—have you shown how close that fence is to the—

20

Mr. Watkins: To the track, you mean?

The Court: Yes.

Mr. Watkins: Probably I have not.

The Court: Does he know?

30 Q. About how close is this fence to the railroad track? It sets in between the tracks, doesn't it?

A. Yes.

Mr. Bradley: I object to about how far. If he knows how far it is, I think he ought to testify, not about how far.

Mr. Watkins: Take out the word "about."

Q. Now, how far from the track on each side is this fence?

A. Two foot.

Q. Two feet?

A. Yes.

Q. Is there a passageway of two feet between the step, the lower step of a freight car and the fence, would you say, two feet?

A. No.

Q. How much?

10

A. A foot.

Q. That is your opinion, that it was a foot?

A. That is what I said.

Q. Take the second step of the freight car, how far would that be from the end of the fence?

A. It would be further away.

Q. How much further?

A. Well, eighteen or twenty inches.

Cross-examination.

20

By Mr. Bradley:

Q. You have never measured the distance between the inter-track fence; you say the distance from the bottom step of the caboose to the fence you think is a foot; it may be two feet, may it not? You don't know—you have never measured it?

A. I said about, yes.

Q. You don't know what caused the blood there on the fence of your own knowledge, do you?

30

A. No, sir.

By the Court:

Q. Was it fresh blood?

A. No, it wasn't fresh, it was hardened on there.

By Mr. Bradley:

Q. Mr. Keegan, do you know of your own knowledge that this was Mr. Ramsey's light?

A. No.

Q. You don't?

A. No.

Q. You were told, but you do not know that of your own knowledge?

10 A. No.

Q. And you don't know of your own knowledge that it was his cap, do you?

A. Any more than he told me it was Ramsey's cap.

Q. You mean the station agent told you that?

A. Yes.

By Mr. Watkins:

20 Q. Do you know the kind of cap that Ramsey wore?

A. It is customary for him to wear one of these black silk hats with a peak.

Q. Was this hat the same kind of cap?

A. Somewhat similar, yes.

By Mr. Bradley:

Q. The same kind you all wore, wasn't it?

30 A. Pretty much, yes.

JOSEPH G. IREDELL, recalled.

By Mr. Watkins:

Q. Now, Mr. Iredell, will you tell us the distance between the lower step of the freight caboose to this fence?

Mr. Bradey: I object to that unless this witness knows the distance; I don't think you ought to speculate about it. 10

The Court: The objection is overruled.

(Exception noted for the defendant.)

A. I never measured it, I don't know.

Q. Well, in your judgment, the best of your judgment?

A. Probably a foot or eighteen inches, maybe less than a foot; I don't know, I can't say. 20

Cross-examination.

By Mr. Bradley:

Q. It may be two feet, mayn't it?

A. Yes, I can't tell.

By Mr. Watkins:

Q. Well, in your judgment, would you say it was two feet? 30

A. Two feet or less, yes.

GEORGE W. SICKLER, SWORN.

By Mr. Watkins:

Q. You are also an employee of the Atlantic City Railroad Company?

A. Yes, sir.

Q. And have been for how long?

A. Four years.

10 Q. What is your job?

A. Fireman.

Q. Were you a fireman this night on this freight train that Ramsey was on?

A. Yes, sir.

Q. Do you know whether or not there was a hot box on the train that night?

A. No, sir.

Q. You don't know that at all?

A. No, sir.

20 Q. Did you see Ramsey after you left Mullica Hill before you arrived at the shipyard?

A. Yes, sir.

Q. Where did you see him?

A. Williamstown Junction.

Q. What was he doing there?

A. Well, he and I were talking at the junction just before we pulled out.

Q. And when did you see him again?

30 A. At Gloucester Junction, the tower, lying on the ground.

Q. Where did you see him?

A. Gloucester Junction tower.

Q. Where was he when you saw him?

A. He was lying on the ground or just on a little platform there, I didn't take particular notice which; I just saw him lying there.

Q. He had been taken off the car, had he?

A. Yes.

Q. Was his cap with him?

A. I can't say.

Q. Can't you remember whether it was or not—
did you see it?

A. I can't say; I don't think it was, if I had to
say anything.

Q. Was his lantern with him?

A. I didn't see it.

Q. Was he dead at that time?

A. Well, I couldn't say; he looked to me as if he
was.

Q. You didn't hear him say anything?

A. No, sir.

Cross-examination.

By Mr. Bradley:

Q. How long had you known Mr. Ramsey?

20

A. Why, I had known him about, probably, two
years and a half.

Q. He was a capable, experienced railroad man
in your opinion?

A. In my opinion he was.

ALMA H. PINE, SWORN.

30

By Mr. Watkins:

Q. Mr. Pine, what is your business?

A. Trainman.

Q. What?

A. Brakeman on the train.

Q. Are you also employed by the Atlantic City Railroad Company?

A. Yes.

Q. How long have you been employed by them?

A. Since 1916.

Q. 1916?

A. Yes.

Q. Were you on this freight this night that Ramsey was killed?

10 A. Yes, sir.

Q. When did you talk with him last or see him last on the train?

A. Williamstown Junction.

Q. Now, what part of the train did you attend to or were you on?

A. Head brakeman.

Q. Was that on the front car?

A. In the engine.

Q. In the engine?

20 A. Yes.

Q. Where did you talk again with Ramsey after the train had left Williamstown Junction?

A. I hadn't talked to him.

Q. Did you see him again?

A. No, sir.

Q. Did you see a hot box on the train?

A. I didn't notice it until we got in Camden, close to it.

Q. Until you got in Camden?

30 A. Yes.

Q. Did you see Ramsey when you got to Camden?

A. No, sir.

Q. Didn't see him there at all?

A. No, sir.

Q. When you got to the shipyard?

A. No, sir.

Q. You never saw Ramsey again then after you left Williamstown?

A. No, sir.

Cross-examination.

By Mr. Bradley:

Q. How long had you known Mr. Ramsey? 10

A. Why, practically ever since I was a child, for the last ten years.

Q. How long had you known him in connection with your duties as a railroad man?

A. From 1916.

Q. You had worked with him?

A. Yes, sir.

Q. Did you find him a capable railroad man?

A. Yes, sir.

20

LEWIS W. MIDDLETON, SWORN.

By Mr. Watkins:

Q. What is your business?

A. Brakeman.

Q. Atlantic City Railroad Company?

A. Yes, sir.

Q. How long have you been a brakeman? 30

A. A year and five months.

Q. Were you on the road at the time that Mr. Ramsey was killed?

A. Yes, sir.

Q. On that train?

A. Yes.

- Q. What was your job on the train?
A. Brakeman.
Q. What rank or what did they call you?
A. Supposed to be the rear brakeman.
Q. Rear brakeman?
A. Ride the cars and the like of that, the rear brakeman.
Q. Were you on the rear car, do you mean by that?
10 A. No, you ride like; the rear brakeman catches and rides the cars and the middle brakeman, he cuts them, like that, and then there is the head brakeman, he throws the switches, like that.
Q. You were not on the caboose that night?
A. That is going to Camden after it left Williamstown Junction, yes.
Q. Were you on the caboose?
A. Yes.
Q. What part of the caboose?
20 A. Up in the front end, the side that Mr. Ramsey got killed on.
Q. Were you there when he was killed?
A. I was on that side.
Q. When was the last time that you saw Mr. Ramsey alive?
A. Williamstown Junction.
Q. And you were on the same side of the car that he was?
A. Up at the head end, on the same side, on the
30 cushions inside the hack, inside the caboose.
Q. Did you see him after he left Williamstown Junction?
A. Only walking out through the hack.
Q. You saw him when he walked out?
A. When he was going out for this hot box, to look for it.

Q. Could you see the hot box from where you were?

A. No, sir.

Q. And what part of the car were you on?

A. I was up at the head end on the left-hand side coming into Camden, that is the same side he got—

Q. Was that the same side the hot box was on?

A. Yes, sir.

Q. Let me understand that still further; were you on the platform? 10

A. No, sir, in the caboose, on the cushions inside.

Q. Were you looking out of the window?

A. No, sir, I was sitting there smoking my pipe.

Q. Now, Ramsey went out?

A. Yes, sir.

Q. Now, did you see him at all after he was out?

A. Not until I found him killed.

Q. Did you hear him out on the front at all?

A. No, sir.

Q. Did he have his cap on when he was out there? 20

A. I didn't take notice; he didn't have none on when I found him out there.

Q. Where?

A. Out on the front of the hack.

Q. In Camden?

A. In Camden here, yes.

Q. Did he have his lantern?

A. No, sir.

Q. Did you see his cap at all afterward? 30

A. No, sir, never saw it after that.

Q. Well, he had no cap or lantern?

A. No, sir.

Q. Now, you didn't hear him say anything or see anything of him after he went out on the front of the car?

A. No, sir.

Q. Until you found him in Camden?

A. Yes.

Q. How did you find him in Camden—what was his situation on the car?

A. Well, he was sitting with his hand around the handrail, with his face across it, head laying over like this.

Q. Was his body or head extended out?

10 A. No, sir, it was lying down and he had ahold of the railing something like this, and his head was lying on it, what was left of it. It wasn't extended out any.

Q. What was left of it—what did it look like?

A. Well, I couldn't just tell you, but it was gone off here.

Q. One side of it?

A. Yes, he was a sight.

Q. Was his body in a sitting position?

A. Yes, sir, down on the step.

20 Q. Not lying down, he was sitting?

A. It looked like he was wedged in; yes, sir.

Q. One arm was around this iron; where was the other?

A. Why, the other was lying down at his side like this, limber.

Q. Was he dead?

A. Yes, sir.

Q. Did he talk or say anything at all?

A. No.

30 By the Court:

Q. Where did you first see him after he was dead?

A. Why, going over the West Jersey cross-overs, when I pulled him to one side and held him.

Q. In Camden?

A. Yes.

By Mr. Watkins:

Q. West Jersey crossovers—let's get that.

A. The Reading crosses the West Jersey; the West Jersey runs this way and the Reading goes in this way. They both cross each other and the tower is right there.

By the Court:

Q. Was there any occasion for him to be in the position he was in for the purpose of seeing that hot box? 10

A. Well, if he couldn't see any fire, I suppose he got down there to look for that hot box, he smelled the smoke and did not know where it was.

Q. He was on the second step?

A. Yes, sir, I believe he was next to the bottom step.

Q. How many steps are there to the caboose? 20

A. I couldn't tell exactly, I think there is three.

Q. I understand you when the blaze is plain, you don't have to look out far beyond the car?

A. No, sir.

Q. But when the blaze is not plain and you smell smoke*which indicates that there is a hot box, then you have to put your head out and look carefully to find out where it is?

A. Yes, naturally you do; it is done a thousand times a year, maybe more. 30

By Mr. Watkins:

Q. What?

A. It is done a thousand times a year, look for hot boxes out the side like that. You can smell it, but you can't see it.

Q. Did you go to Lawnside afterward, stop there and see anything?

A. I don't remember, we stopped at quite a few stations where the fences were.

Q. Did the train make any stop after it left Magnolia until it arrived at the New York Ship?

A. Magnolia? Williamstown Junction, you mean.

Q. Williamstown Junction.

A. No, only slowed up going over the West Jersey
10 crossovers.

Cross-examination.

By Mr. Bradley:

Q. Now, you said when he was walking through the hack to go out front, you didn't know what he was going out there for, did you?

A. No, it is natural sometimes for a man to walk
20 out there.

Q. He may have been going out for his own purposes?

A. I don't know what he was going out there for.

Q. If you had discovered the presence of this hot box on the rear of the caboose, it would not have been necessary when you went to the front of the caboose to stoop down, would it?

A. How can you discover a hot box—

30 Q. No, if it had been discovered when he was on the rear of the caboose, then when he went to the front of the caboose he could have stood up there and watched the rear wheel, couldn't he?

A. If it was afire, he could, yes.

Q. And he could have watched it if it was only smoking, he wouldn't have to lean out of the car?

A. Not a dark night.

Q. Not a dark night?

A. No, sir, it has got to be smoking pretty bad when you can see it in the dark.

Q. How close was he to this hot box when he stood there?

A. On the front?

Q. Yes.

A. I don't know, I am no judge of distance; I imagine maybe five feet, if you are standing up.

Q. Five feet if you are standing up?

A. Yes, I am judging that, I ain't got no idea of measurement.

Q. So you say if he knew where it was, then he wouldn't have to stoop down to watch it?

A. No, he wouldn't have had to get down if he had seen the place and knew where it was.

Q. If he had known where it was without seeing the place, he wouldn't have had to get down there, would he?

A. Not if he knowed where it was, no, sir.

10

20

By Mr. Watkins:

Q. Can you remember whether or not, Mr. Middleton, this was an unusually dark night?

A. It was pretty dark to me; it was unusually dark, I imagine, like out in the country. It was pretty dark where there wasn't no lights, only places where there were lights like stations or your hand lamp around you.

30

By Mr. Bradley:

Q. There was light at this station at Lawnside, wasn't there?

A. I don't know, I didn't look out; I was going by this place in the hack.

By Mr. Watkins:

Q. Do you remember whether or not it was raining that night?

A. No, sir, I couldn't say.

10 JOSEPH G. IREDELL, recalled.

By Mr. Watkins:

Q. Mr. Iredell, do you remember whether or not it was raining that night?

A. Raining? It was not.

No cross-examination.

20

HARKER ROBINSON, SWORN.

By Mr. Watkins:

Q. Where do you work?

A. Sir?

Q. Where are you employed?

A. Atlantic City Railroad.

30 Q. How long have you been employed by the Atlantic City Railroad?

A. About three years.

Q. What is your position?

A. Fireman at the present time.

Q. Do you remember—were you a part of the crew of the train that Ramsey was on the night he was killed?

A. Yes, sir.

Q. What were you doing then—what was your occupation?

A. Brakeman.

Q. What do they call you, what kind of brakeman?

A. Well, I suppose they would call me the middle man; I never heard no particular name really—

Q. You mean by that you were stationed in the middle of the train?

A. Well, I was the middle brakeman, yes. 10

Q. That was your work then, do you mean, in the middle of the train?

A. Well, if it comes down to work, we should obey the conductor, whatever he tells us to do, we should do; we have no specified work that I can see.

Q. The conductor is boss of the train?

A. Yes.

Q. And you must do what the conductor says?

A. Yes.

Q. And on this night you saw Mr. Ramsey? 20

A. Yes.

Q. When was the last time you saw him alive?

A. Williamstown Junction.

Q. Talking with him?

A. Yes, sir.

Q. Did you see him after that?

A. Well, I seen him in the hack coming into Camden.

Q. Seen him in the hack? 30

A. Yes.

Q. Was he living then?

A. Yes, sir.

Q. And where was he when you saw him alive?

A. We were riding to Camden in the hack and I saw him in the hack.

Q. In Camden?

A. No, coming into Camden.

Q. Coming into Camden?

A. Yes.

Q. Well, where was he the last time—you say coming into Camden; where do you mean, at the West Jersey crossing?

A. No, no, I should say down around Clementon or Magnolia, somewhere when he went through the hack.

10 Q. Coming into Camden—that would sound as if you saw him alive coming right into the city; you don't mean that?

A. No, I did not see him after Lawnside, didn't see him alive after that.

Q. Didn't see him after Lawnside?

A. No, sir.

Q. Now, when was the last time you saw him alive?

20 A. As I say, I couldn't tell you exactly; we was coming into Camden; I couldn't tell you exactly where at.

Q. You mean the train was coming into Camden?

A. Yes.

Q. Was it between Lawnside and Camden that you saw him alive?

A. No, sir, between Williamstown Junction and Lawnside.

Q. You saw him alive then?

30 A. Yes.

Q. Then you didn't see him afterward until you saw him when the train stopped?

A. Down at the tower you mean?

Q. Yes.

A. I seen him immediately before then, yes; I seen him at the shipyard.

Q. The train had stopped then?

A. No, not at the shipyard, no.

Q. Well, where was he when you saw him at the shipyard?

A. Sitting on the hack step.

Q. Was he dead then?

A. I couldn't say.

Q. What was his position?

A. Sitting down there with his arm around the grab-iron and his head down.

10

Q. On his arm?

A. I couldn't say whether it was on his arm or where, because I didn't look the man over; I simply seen his back there is all; I stood in the door.

Q. You stood in the door of the caboose?

A. Yes.

Q. How close were you to him?

A. I should judge from here to that table there.

Q. And did you know that he had met with an accident?

20

A. Why, I couldn't say positive, no.

Q. Well, did you think that he had?

A. The only thing I could go by was seeing smoke from the hot journal or the blaze; I couldn't say which it was now.

Q. Could he see the smoke or blaze?

A. Yes.

Q. You saw this man sitting there in this position you indicated?

A. Yes, sir.

Q. And you didn't know whether he had been hurt or not?

30

A. No, sir.

Q. When did you first find out?

A. After the conductor and brakeman told me I went out and flagged; the orders were from the conductor.

Q. You didn't speak to him when you saw him sitting there?

A. No, sir.

Q. Now, did you see him after that?

A. After when?

Q. After this time that you say when you saw him sitting there with his arm around the brake bar or whatever it was.

A. Why, yes, seen him as he rode around to the
10 tower.

Q. The train was going all this time?

A. Yes, sir.

Q. And you saw him then when the train stopped?

A. No, sir.

Q. Where did you stop seeing him—you were seeing him while the train was going around with his head in this position; where did your vision end?

A. Got off at the crossing, went back with a light, a white light, and flagged.

20 Q. You did?

A. Yes.

Q. Then you didn't see him after that?

A. No, sir.

Q. Didn't see him when he was taken off of the car or didn't see any blood on him or anything else?

A. No, sir.

Cross-examination.

30 By Mr. Bradley:

Q. You went back and took the position he should have taken?

A. Yes, sir.

Q. Flagging the train?

A. Yes, sir.

Q. And you don't know why he went through the car of your own knowledge?

A. No, I do not.

Q. How long had you known this man?

A. Well, practically all my life.

Q. How long had you known him in connection with his railroad work, your railroad work?

A. Well, since I went railroading; that is where I first started in.

Q. And you had been on the same crew with him before this? 10

A. Yes.

Q. In your opinion he was a capable railroad man?

A. Yes, sir.

Q. In order to have looked at that hot box, that could have been seen from the platform of the caboose, couldn't it?

A. Yes.

Q. It wasn't necessary to get down there on the step to see it? 20

A. No, sir.

By Mr. Watkins:

Q. Why wasn't it necessary to get down on the step?

A. He could have leaned out of the back part of the hack or have put his head out of the gig top window and saw that.

Q. He could see a blaze? 30

A. Yes, that is, in the middle-way of the train I don't suppose he could see from the gig top; around the bottom of the hack there, of the rear car.

Q. Now, suppose it wasn't blazing?

A. Well, he could smell the smoke.

Q. How could he detect which particular box it was from by smelling the smoke?

A. Well, he couldn't tell exactly from the gig top.

By Mr. Bradley:

Q. You knew of the existence of this hot box and its location on the train before Mr. Ramsey went to the front, didn't you?

10 A. No.

Q. You didn't hear him and the conductor talking about it was on the first—

Mr. Watkins: Now, don't state the conversation.

Q. Did you hear any conversation between him and the conductor in reference to the location of this hot box?

20 A. Well, I heard them talking there, but I couldn't say what they were talking about.

FLORENCE RAMSEY, SWORN.

The Court: Have you identified the cap and lantern?

30 Mr. Watkins: I have only identified it just as we have given it here.

The Court: Is there any way of showing by the station agent—

Mr. Watkins: I presume there is; I have given it just as it was told to me. I presumed this young

man could positively identify it, but whether, under the circumstances, there is not enough in the case to identify the cap that he wore and his lantern—of course, if not, if there is going to be any question in your Honor's mind about that, I should ask that a juror be withdrawn.

The Court: I should think the proof should be definite and clear as you could make it that somebody found the cap and lantern that belonged to this man at Lawnside. 10

Mr. Watkins: Well, if your Honor is going to hold that, I will have to ask the withdrawal of a juror, or that the case be continued.

The Court: Is there any doubt about the fact?

Mr. Bradley: I don't know, if your Honor please. This is a cap that is worn by a number of employees, the same kind of cap and the same kind of lantern; I don't know anything about it. I don't know that the station agent could be able to help us out if the station agent is here; he found a cap and lantern and showed it to other people; I don't know that he could identify it as Mr. Ramsey's cap and Mr. Ramsey's lantern. 20

The Court: No, but he could tell the time and the circumstances; that would be a very important piece of evidence; he could tell whether he found the cap and what the circumstances were, if there was blood on the fence and where the lantern was found and where the cap was found. As the proof now stands, the lantern and cap were found in the station. 30

Mr. Watkins: No, not in the station; it was in the hands of the station agent, and the lantern, too.

The Court: Well, that is an item of proof that ought to be in this case.

Mr. Watkins: Yes, and the proof also is up to this time that when he was found at Camden he had neither cap nor lantern.

10 The Court: Where is the station agent, is he here?

Mr. Bradley: I don't know.

Mr. Watkins: I haven't got him; I have got the employees I could.

20 Mr. Bradley: Well, you didn't ask us to bring him.

Mr. Watkins: (After further discussion.) It is admitted by the defendant that the cap and lantern referred to in the testimony of Middleton, I think his name was, or Keegan, was found by the station agent at Lawnside about six o'clock on the morning after the accident to Ramsey along the inter-track fence near the south end, and near where the blood was on the post.

30 Q. Now, Mrs. Ramsey, you are the widow of James K. Ramsey?

A. Yes, sir.

Q. Where do you live now?

A. Woodbury.

Q. Where did you live prior to that?

A. We lived at Mullica Hill at the time; then I moved from Mullica Hill to Swedesboro.

Q. How old are you?

A. Thirty-five.

Q. How old was Mr. Ramsey at the time of his death?

A. Forty years.

Q. What family or of whom and their ages did your family consist?

A. Myself and two children.

Q. What are the names of the children?

A. Stokely and George.

10

Q. How old is Stokely?

A. Stokely is fourteen years old.

Q. How old is George?

A. Eleven.

Q. Now, what was your husband earning at the time of his death?

A. He was earning between seventy-five and ninety dollars a month.

Q. Do you mean by that his wages fluctuated?

A. Yes, sir.

20

Q. Seventy-five the minimum and ninety the maximum per month?

A. Yes.

Q. Now, what portion or part of his earnings would he use for his family?

A. He brought it all home and gave it to me.

Q. And you did the distributing?

A. Yes, sir.

Q. What was the general condition of your husband's health?

30

A. He had good health.

Q. Did he ever have occasion for a doctor that you remember?

A. Nothing, only he had broken ribs.

Q. When was that?

A. That was before he went on the railroad.

Q. How long before his death?

A. About ten years.

Q. The ten years he was on the railroad he was in good health?

A. He wasn't on the railroad but about eight years.

Q. All that time he was in good health?

A. Yes, sir.

Q. Do you remember the night of the accident?

A. Yes, sir.

10 Q. When was he brought home?

A. He was not brought home until the next morning.

Q. What time?

A. About noon.

Q. Was he then dead?

A. Yes, sir.

Cross-examination.

By Mr. Bradley:

20 Q. Now, Mrs. Ramsey, you say he gave you all his wages?

A. Yes, sir.

Q. What part of that did you give back to him, if any?

A. He only took just enough for what smoking tobacco and chewing tobacco he used.

Q. Can you tell us about how much a month that would be?

30 A. No, I couldn't tell you, because my pocketbook was always there and when he wanted any, he would go and get the money out of the pocketbook.

Q. Then you don't know what part of that money he used?

A. No.

Q. And I suppose he was clothed from that money, too?

A. Yes, sir.

Q. Do you know what part of that money was used to clothe him?

A. Well, I don't know; he got everything that he needed.

Q. He always dressed nicely and made a nice appearance?

A. Yes, sir.

Q. Would you say that a quarter of it he used?

A. Oh, not a month he wouldn't.

Q. Would you say fifteen or twenty dollars a month, including his clothing and tobacco would be the proper amount? 10

A. I should imagine it would.

Q. That would be only \$180.00 a year; would that be all that he required to clothe him and keep him in tobacco and pay his other incidental expenses?

A. I should think it would.

Q. But you haven't any definite idea?

A. No.

20

By Mr. Watkins:

Q. Mrs. Ramsey, did you do the marketing yourself?

A. Yes.

Q. And buy clothing for yourself and the children?

A. Yes.

Q. You expended all the money then except what he spent for tobacco and clothing? 30

A. Yes, sir.

Q. Did you have a saving account?

A. No.

Q. Any bank account?

A. No.

PLAINTIFF RESTS.

Mr. Bradley: I would like to make a motion, your Honor.

The Court: Does the proof in the case show where the fence was with reference to the station and train?

10 Mr. Watkins: No, excepting a fence that is close to the track, that is all; I didn't go into any matters of defense at all; all I could do was to show a moving train and a fence.

The Court: I will hear your motion.

20 Mr. Bradley: If your Honor please, I make a motion for a non-suit because the plaintiff has failed to create a jury question inasmuch as he has failed to show that any of the defendant's officers, agents or employees were guilty of any negligence; he has failed to prove that and failed to raise a jury question inasmuch as he has failed to show that any of the defendant's officers, agents or employees were guilty of any negligence which was the proximate cause of the injury and death of James K. Ramsey. The evidence here presented of the hot journal does not show the same to have been damaged or unsafe, and it doesn't show that it was due to the negligence of any of the officers, agents or employees of the railroad company, and that is an essential element in this case, because the plaintiff must show 30 negligence; the mere existence of a defect is not sufficient, as the statute says that it must be negligence in the defect of the equipment. They have failed to show that. They have failed to show any negligence in the erection and construction of this inter-track fence, which is the other point in the case

upon which they have relied; they have merely shown the distance of the inter-track fence, and it seems to me your Honor cannot say that the mere existence of this hot box without any proof of negligence was sufficient to carry the case to the jury, because I think they have failed to show that in any way that is the proximate cause of this injury. That man by their own witnesses could have been standing in a safe place observing that hot box, he could have been standing on the front steps of that caboose, he could have been standing on the steps and not leaning over at that time, and they have not, it seems to me, any evidence in this case so far of any negligence. Now, if that is not the proximate cause of the injury, then we are entitled to recover. The case of *Atkinson, Topeka and Santa Fe Railroad Company vs. Calhoun*, 29 Supreme Court Reporter, 321: "In order to show that that is the proximate cause—

10

The Court: Is that a New Jersey case?

20

Mr. Bradley: 29 Supreme Court Reporter (United States Supreme Court), 321. In that case it was held that the natural consequence of an act is the consequence which ordinarily follows it, the result which may be reasonably anticipated from it, and if the probable consequence is that which is more likely to follow the supposed cause than not to follow it, the mere existence of that hot box would not be sufficient to even raise a jury question that that was the proximate cause of that injury. The man might have been out there for any purpose; he has not shown for what purpose the man was out there. He has shown there was a hot box on the train, but not that the man was out there watching

30

the hot box; we don't know that, all we know, he was sitting there on the step and he probably came in contact with this fence, of which there has been no negligence proven in its erection as was alleged in the complaint.

The Court: I will hear you, Governor.

Mr. Watkins: I think the testimony suggested by
10 Mr. Bradley does not go far enough. You will remember the testimony of Middleton that it was necessary at times for a man to lean out, that they could not detect a hot box where they smelled smoke, particularly on a dark night, and this, the testimony was, was a dark night; it was ten o'clock at night or thereabout when it must have happened. Now, insofar as necessity goes, it seems to me there may be a question whether there was a necessity or not, but if there is a question, then it is, of course, a
20 question for the jury to determine and not the Court, whether or not it was necessary for him to do it. There was no necessity after the blaze, but there was no blaze discovered in this hot box until after the train had stopped at the New York Shipyard long after the accident; Mr. Iredell and the other persons testified that they saw the smoke finally. Now, as to what he was doing out there, he was out there, he was out there because Iredell and himself had been watching or smelling for this hot box upon
30 the rear of the caboose; Iredell goes in and then in order to continue the search, to smell and find out and all this sort of thing, this man goes to the front of the car. Iredell testifies that at times it is necessary for a man to lean out to determine—the fact is that here is a defective car, and *prima facie* it must be owing to the negligence of the railroad com-

pany; their negligence cannot be held to Ramsey because of a car in that condition on the train, if there is any negligence; if a train is running along that track with a hot box, and one which requires an employee to look after in order to prevent a casualty which might result in a wreck, loss of life, loss of property, stoppage of railroad business and all that sort of thing, why, it is very important that the cars running upon the track should be in good condition; and there isn't even any testimony here that an inspection had been made of this car and it had been found to be in perfect condition. The only fact before the Court is that as far as the case here up to this time goes the car was shown to be defective in that it had a dangerous situation which might have resulted in loss of property and loss of life and it was the duty of this man to watch it. 10

(After further argument a recess was taken until 1.15 P. M.) 20

(Trial of the cause resumed at 1.15 o'clock P. M., pursuant to adjournment, in the presence of counsel for the respective parties.)

The Court: There are a few facts I want to get possession of first before I decide this motion. I will hear you; I want to hear you thoroughly upon all the grounds upon which you think you are entitled to go to the jury in this case, and then I will hear Mr. Bradley. 30

Mr. Watkins: Well, if your Honor please, first as to the question of the negligence of the defendant.

The statute is—you must bear in mind it is not a case which must be founded entirely upon the negligence of the defendant, but they are only partly negligent, in other words, if they and the deceased were jointly guilty of negligence—I say, if there is a fraction of negligence on their part, it is a case entirely for the jury under the statute.

10 The Court: Yes, but you are required to establish facts and circumstances from which the jury would be justified in inferring negligence on their part.

Mr. Watkins: Yes, I understand that. Now, if it is merely a question of contributory negligence, that don't enter into this feature.

20 The Court: No, but I want you to point out to me the facts and circumstances which you say would justify this jury in saying the defendant was guilty of negligence.

Mr. Watkins: Well, you might say first, was the defendant guilty of negligence in connection with the hot box? Start with that. I say that they were or at least partly so, because they knew there was a hot box on the car and still continued running it.

30 The Court: In other words, according to your theory, it was within the line of his duty to watch it?

Mr. Watkins: Yes, that is the testimony; of course, we must take it as it is at this time; the testimony of the conductor is that he had charge of that train and it was the duty of the deceased to watch that hot box.

The Court: The point of the case is this: Was the defendant guilty of negligence? There was a double track railroad here?

Mr. Bradley: Yes.

The Court: The fence was between the two tracks?

Mr. Bradley: Yes. This is merely for your 10 Honor, not as part of this case.

Mr. Watkins: It is part of this case.

The Court: I am attempting to look at this case simply as the testimony is before this motion was made. Didn't the witness say it was between the tracks?

Mr. Watkins: Between the tracks, the way they 20 put it; that is what they meant.

Mr. Bradley: Undoubtedly.

Mr. Watkins: Between the northbound and south-bound track.

The Court: I am not going to say there is no doubt about it—is it your theory that there should have been a light on that fence?

30

Mr. Watkins: That is one element of neglect upon the part of the railroad company; the other is that as far as this case shows, they are neglectful in placing that fence there, up to this time, and the lack of light——

The Court: What does the proof show with regard to the condition of the light?

Mr. Watkins: None at all, except there was no light on this fence. It was a dark night; it happened about ten o'clock at night. Now, that is all the proof. Now, here was the fence; as far as the testimony goes at the present time, the burden is upon the part of the other people——

10 The Court: If there was any light at the station that would be shut off by the train, wouldn't it?

Mr. Watkins: I could not tell you, because there is nothing in the case yet to show any lights at all around the place, simply a question of a fence, a dark night, ten o'clock at night, and no lights.

20 The Court: Mr. Stenographer, will you look, please, and find that portion of the testimony relating to the distance that the fence was from this train?

(Said testimony read by the stenographer.)

Mr. Bradley: I asked your Honor before the Court opened if I might call a witness for one question in reference to the inspection of this journal which I forgot to ask. Shall I ask that at this time?

30 The Court: Well, yes, before the argument closes.

JOSEPH E. IREDELL, recalled for further cross-examination.

By Mr. Bradley:

Q. Mr. Iredell, this train that you were on was inspected before you left Williamstown Junction?

A. Winslow Junction.

Q. On the night of the accident?

A. Yes.

10

Q. And who inspected it?

A. The car inspector.

Q. Where?

A. Winslow Junction.

Q. And what did he do?

A. He has a lamp made for that purpose, goes up one side of the train and down the other and also over the roof.

Q. Does he inspect the journals?

A. Goes along for that purpose to inspect the train.

20

Q. And then does he report his inspection to you?

A. No, sir, only "O. K."

Q. Was this train so inspected that night?

A. Yes, he told me all right and we went ahead.

Q. And you were told it was O. K.?

A. By him, yes.

Q. And you went ahead?

A. Yes.

30

By Mr. Watkins:

Q. Now, what did you see the inspector do?

A. Only going down one side and up the other and over the roof; I went with him while he was taking the car numbers.

Q. He only went down one side and up the other side and over the roof?

A. Yes.

Q. Did he lift the boxes of this journal and look—

A. I couldn't say that.

Q. Did you see whether he did or not?

A. No, sir.

10 Q. Didn't you see whether he examined it to see if it had sufficient oil?

A. No.

Q. Then all you saw him do was to go one side—

A. And down the other, yes.

Q. Do you call that an inspection?

A. That is what they call an inspection.

By Mr. Bradley:

20 Q. On this line there at Lawnside, is that a double track?

A. Yes.

Q. North and southbound track?

A. Yes.

Q. This inter-track fence of which we have spoken, that is between the two tracks?

A. Between the north and southbound tracks.

By the Court:

30 Q. Would a light showing that fence be shut off by the train?

A. No, sir.

Q. What is that?

A. Which light is that?

Q. Would there be any light, I say, showing the existence of that fence on a dark night?

A. The light from the platform would be—the train would be between the light and the fence on one side and on the other side, of course, there would be a clear view from the light.

Q. What light?

A. The station light, that is, the platform light.

Q. Well, do you say there was a light on the station on the other side right opposite the point where this fence was, do you mean?

A. No, I won't say right opposite on the station platform. 10

Q. How near was the station platform to the point, if his head was struck at the beginning of the fence?

A. I couldn't tell just how far the light is, I wouldn't say that.

Q. Would you say the light would be of any use down there at the point where his head was struck?

A. It would on one side, yes, unless there was a train going south at the same time, then it wouldn't be. 20

Q. You don't know how far the light was away?

A. No, I couldn't say that, I don't know how far it is away.

Q. You say there would be a light on one side; what do you mean by that?

A. There is two station platforms, one for the northbound trains and one for the southbound trains and a train going north as the freight did, of course, the freight train would be in between the near platform and the fence, but on the opposite side the lights would be clear unless there was a train going south to shut that view off. 30

Q. How far would that light be away from the point where the fence began, where the blood was, how far away?

A. Oh, probably twenty feet or twenty-five.

Q. What kind of a light was it?

A. Well, it is an oil light, an oil lamp, sets in a frame, a glass frame.

Q. Do you know whether it was lighted this night or not?

A. I couldn't say that, no, sir.

Q. Now, you say there was a light on the other side of the railroad; do you say that that light would
10 have been any benefit to this man in the position where he was?

A. It would if there wasn't any train coming south to obstruct the view.

Q. How would it benefit him?

A. By shining on the fence from the station platform.

Q. Well, would it shine far enough to reach the point where his head is alleged to have been struck?

A. If it was put on the end of the platform, yes,
20 sir.

Q. Well, do you know whether it was put on the end of the platform?

A. I couldn't say whether it was right on the end, no. There is one along there; I couldn't say just exactly where it is; it is not right on the end, I am positive of that.

Q. Well, from your knowledge of the situation there, are you able to say that he was benefitted, would have been benefitted any by a light at the
30 point where his head struck the fence?

A. Well, I don't know whether the light was lighted; I couldn't say that.

Q. Well, if it had been lighted?

A. It would of a dark night, yes, sir.

Q. Have reached far enough to cover the point where his head came in contact with the fence?

A. It would, they are quite large lamps with reflectors on them.

By Mr. Watkins:

Q. You say this was an ordinary oil light?

A. Yes, an oil light.

Q. An oil lamp?

A. Yes.

Q. Was the reflector turned so it shines down the railroad or across the tracks? 10

A. No, it is across the tracks.

Q. And not thrown down?

A. Well, it spreads out, see?

Q. I understand you, it is facing across the track?

A. Facing across the track, yes, sir.

Q. So that as a matter of fact if you are down far enough on the track, coming north, the very reflector itself would hide the light, wouldn't it?

A. Yes, but there is more than one lamp. 20

Q. Just answer the question, won't you?

A. Yes, sure.

Q. How far does this fence run along in front of this station between the tracks, how long is this fence?

A. Oh, probably a hundred feet, I don't know just the length of it.

Q. And how long is the station proper?

A. The station proper?

Q. Yes, the railroad station, what is the length of that, the covered part? 30

A. Well, it is about twelve feet, I suppose.

Q. About twelve feet?

A. Long, yes.

Q. So that this fence extends down a hundred feet, and this covered part of the main station is

about twelve feet, and that is in about the center of the fence?

A. No, it is on the south end.

Q. How far from the southern part of the fence—

A. Is the depot?

Q. Yes.

A. Probably twenty feet.

Q. From the end?

10 A. From the end.

Q. Now, this lamp that is on the platform and throwing across is how far from the end of the covered part of the platform?

A. I really don't know.

Q. Some distance?

A. There is one lamp at the corner of the depot; I don't know where the other one is.

Q. One lamp at the corner of the depot—which corner?

20 A. On the south corner.

Q. That is the one we are speaking about with its reflectors, it is intended to show the passage across the tracks, isn't it?

Mr. Bradley: I object; I don't think this witness knows what this light is intended to do or any conclusion he would have—

30 The Court: I don't know; I think he is familiar with the situation there enough to answer these questions.

Mr. Watkins: I will withdraw that; I think I have already asked you the question and that is simply adding to it; that is all.

Mr. Watkins: Now, your Honor sees the situation with regard to the lights?

The Court: Now, you state me your understanding of the testimony with respect to the lights.

Mr. Watkins: Here is a moving train, moving at the rate of thirty miles an hour, and the only light which is about this place, as far as the evidence goes now, is a common ordinary railroad oil lamp with its reflectors pointing across the tracks, so that for some distance down with an approaching train this way, the light is entirely hid from them. 10

Mr. Bradley: There are several things that have been injected into this matter that are not in the pleadings. It is not in the pleadings that he was not furnished a safe place.

The Court: I will allow the complaint to be amended so as to show the cause of action on the ground that he was placed in a dangerous position, or whatever is necessary to establish a cause of action. 20

Mr. Bradley: We are not prepared to meet that; I don't know just how we will——

The Court: It strikes me that the crucial part of the case is whether there should not have been a light on this fence. Now, there is proof in the case that there was a hot box on one of these cars; there is proof in the case that it was the duty of the decedent to look after it, watch it, for the protection of the company; there is proof in the case from which the jury might reasonably infer that he was engaged in the performance of his duty in that 30

respect; there is proof in the case from which the jury might reasonably infer that his head came in contact with an obstruction, a fence, and that there was no light or sign on that fence. Now, the complaint should be framed so as to meet that situation completely.

10 Mr. Watkins: Well, Section 3 of the complaint reads: "The defendant was operating a freight train along its tracks in the County of Camden in the State of New Jersey and by reason of the negligence of the officers, agents and employees and of the defects and insufficiencies due to defendant's negligence in its cars, engines, appliances and machinery, tracks, roadbed, works or other equipment, one of its freight cars became with a hot journal," and so on.

20 The Court: That does not say that there was no light on this——

30 Mr. Watkins: Well, isn't that a defect and insufficiency of its roadbed and tracks? I should think it would be; I should think that is a defect. Then they go on and say this: "Thereupon it became and was the duty of the said James K. Ramsey to watch the said hot journal and box to guard against accident to said train and to give warning of its condition during the moving of said train until it arrived at Camden, and while performing this duty at the request of said defendant and while leaning out of the car to watch said journal or box and to guard against accidents to said train by reason thereof, the said James K. Ramsey was struck by a fence or post carelessly and negligently erected by the defendant." Now, does your Honor think it is necessary——

The Court: I think it should say, "Without any warning, there being no light or sign or anything to indicate the presence of a fence at that place."

Mr. Watkins: Well, I thought under the United States Law that that was a defect in its equipment; they put the fence there; if they didn't put a light on it and that was necessary, then it was, of course, a defect in its roadbed, its track and its equipment, if it is rested upon the light only.

10

Mr. Bradley: There has been no evidence in this case that it is customary to have such a light on any inter-track fence at all.

The Court: Well, do you object to this amendment?

Mr. Bradley: No, your Honor did not ask me that; I do not object to the amendment.

20

The Court: Then let the complaint be so amended.

Mr. Bradley: I thought your Honor was hearing me on the other thing.

The Court: What is that?

Mr. Bradley: The completion of the motion I made. I say in this case there was no evidence that it was customary to put a light, and we cannot presume negligence, it must be shown; and there is nothing in the case to show that in any way, shape or form that fence was not reasonably constructed, except from the reasoning of counsel and the Court

30

that not having a light on that fence may have been negligence. I say, there is no evidence that the fence and post was carelessly erected; that must appear, they must prove that positively, and there is no question but what it is good railroading to have this fence—that has been brought out in the testimony in the case—and it is for the safety of the public; they are common along this railroad and their existence was known or presumed to have been known to this decedent; it was known and observed by other railroad men. I want to cite your Honor the case of Reese vs. Philadelphia and Reading Railroad Company, 36 Supreme Court Reporter, 134 (reading syllabus).

The Court: He starts off there, though, that the yard is properly lighted.

Mr. Bradley: Yes, that is a yard where there were a great many tracks, and that is an element in the case.

The Court: Suppose the yard had not been properly lighted?

Mr. Bradley: Then, if he had known of that condition, that was one of the things he knew; had it not been lighted and he knew of that risk and continued in the employment, he would have assumed the risk just the same.

The Court: Go ahead and read your case.

Mr. Bradley (finishing reading syllabus): Now, it seems to me, my friend is in a dilemma by saying that there is no presumption this fence hit him, be-

cause he was carefully seated on the step and yet at the same time saying he must have been hit by the fence to be killed.

The Court: No, the only possible theory upon which this plaintiff can have a case was that while in the exercise of a duty, his head came in contact with this fence which was unguarded and without light, without any protection. The theory of the plaintiff's case is this, that there was a hot box, (1) that it was this man's duty to watch that, that he was watching it, and that in doing that, it was necessary for him to put his head out beyond the line of the car, and while he was doing that, his head came in contact with the end of the fence where the blood was found, where his cap and where the lantern were found; that is the only possible theory upon which this plaintiff could have any case. Now, the question is, first, "Was there any light there from which he could see this fence, and if there was not, was it the duty of the railroad company to provide a light?" 20

Mr. Bradley: As to that phase of this case, as to the doctrine of assumption of risk, I would like to touch upon that briefly, if the Court please.

The Court: All right.

Mr. Bradley: There is no evidence in this case (30) that the defendant violated any Federal statute enacted for the safety of its employees and it therefore follows as a matter of law that the doctrine of the assumption of risk applies.

The Court: The plaintiff assumed all the ordinary risks of his employment and all such other risks as he should reasonably have anticipated from the standpoint of reasonable prudence; I think that is the law.

Mr. Bradley: That covers first of all the ordinary risks, but if your Honor has permitted him to bring into this case that he has not been furnished with a
10 safe place of employment, then we come to extraordinary risks which are not natural to his employment and may arise out of the failure of the defendant in exercising due care to provide him a safe place in which to work or suitable tools and material with which to work. Even in those cases he is treated as assuming the risks when he becomes aware of them. Now, he became aware of the risk in putting his head out in watching that; even on
20 their theory of the case, if it were necessary, he must have known as a reasonable man, as any railroad man, if he put his head out the side to watch that in some places on that line there were inter-track fences and he knew they weren't lighted, because it is not the custom to light them, and he knew that and he must accept the conditions such as they are. Or when he becomes aware of the defect and disrepair, and the risk arising therefrom, which he must have in this case, then if he continues in the employment without making objection and gets no
30 promise from his employer that they will be repaired for his benefit, then he even assumes that risk, and that is very clear on the case of Gila Valley Railroad Company vs. Hall, 34 Supreme Court Reporter, 229.

The Court: Is that a New Jersey case?

Mr. Bradley: No, none of these cases are New Jersey cases; they are all United States Supreme Court cases. Now, here he still continued to work when he saw that dangerous thing according to the testimony of the plaintiff. He sat on the step, which he must have known as a reasonable man was a dangerous thing to sit there, if he were going to extend his head out the side, and therefore, the doctrine of the *Seaboard Air Line Company vs. Horton*, 34 Supreme Court Reporter 635, would apply. 10

The Court: What did that hold?

Mr. Bradley: That held that where a man stayed in the employment of the company with the knowledge of the defective appliance, that therefore he assumed that risk. Now, there is another case I would like to call to your Honor's attention and which is similar to this case, or as nearly similar as any case I can find. In the case of *Farley vs. The New York, New Haven and Hartford Railroad Company*,—that is 91 Atlantic, 650—in this case the engineer on a steam train climbed on a tender to ascertain the amount of water in the tank, and in climbing back he came in contact with a live wire overhead, which was used by electric engines on the New York, New Haven and Hartford Railroad, and this wire that he came in contact with was depressed as the train went under a bridge, because it could not occupy its accustomed height. The Court held there that he had full knowledge of these electric wires, they were obvious to a man of his intelligence and experience as a railroad man, and he continued in the employment after he knew of this danger of the wires, and inasmuch as there is no testimony here that the wires had been changed to affect the 20 30

risk from the time he was first employed there—there is nothing in this case either to show that that fence has been changed—the Court held there that he assumed the risk of his employment and he could not recover. Now, it seems to me that is a similar case.

The Court: Was that in the daytime or night?

10 Mr. Bradley: Just a minute; I am not sure of that. There isn't anything in the case that would show that, if the Court please; but I contend that he knew of the conditions; he knew there was no light on this inter-track fence, or knew that this live wire was not lighted up for him to see, that was a known and obvious risk and one that he must have assumed if he remained in the employment; I think the case will bear me out on that contention. Now, the case of Jacobs vs. Southern Railroad Company, 36
20 Supreme Court Reporter 588, was a fireman's case, where he fell over a pile of cinders, no light or anything there, no one calling his attention or warning him about these cinders, because that was an obvious risk, it was one he knew of and he was just as much in the dark as to his actual knowledge at that particular moment when he forgot as this man could have been in this case.

30 The Court: Did the book in the case show that he knew it?

Mr. Bradley: Yes.

The Court: How?

Mr. Bradley: Because he was alive in that case.

The Court: And he probably admitted it.

Mr. Bradley: And he said he had forgotten it, but he had known of it; but your Honor can see the difficulty in trying to show any more in this case than that all the railroad men would know it and he would be presumed to know it. Now, in the case of Glenn vs. Cincinnati, New Orleans, Texas and Pacific Railway Company, 163 Southwestern Reporter, page 461, a boilermaker was working near a pit. 10

The Court: He was thoroughly familiar with the conditions of the pit?

Mr. Bradley: Now, that could only be presumed, because the man was dead, he was found dead in the pit early in the morning; the last seen of him the night before was a few minutes before quitting time when he was near the pit. The pit was not well lighted; that appears in the case, but yet the Court held that even if the pit was not well lighted, he knew of the existence of the pit and of the danger of falling into the pit, and therefore assumed that risk. Now, in the case of Nelson vs. Southern Railroad Company, 38 Supreme Court Reporter 233, which was decided in March, 1918, a civil engineer was on the railroad and his foot slipped by reason of a tie, a railroad tie being decayed or rotted, and he fell down and it was shown there that the ballast was not as high as it ordinarily should have been, and that that allowed his foot to go down further, and the Court held there that he assumed the risk (reading syllabus). The judgment of the State Court was reversed by the Supreme Court, on the ground there was no evidence of negligence; it says: 20 30

“It is clear the defendant did not fail in any duty it owed the plaintiff.” Now, that is almost the last word from the United States Supreme Court on the assumption of risk. There are a couple of cases here in this State, *Capan vs. D. L. & W. Railroad Company*—I think your Honor is familiar with that case, where a man was wheeling a heavy load up an incline, and this incline had become steeper by reason of the fact that the tide had receded. The Court held there that he assumed the risk of his employ-
10 ment, it was an obvious risk. Then *Carth vs. Port Reading Railroad Company*, 105 Atlantic, page 10; that was a case where the Court also held that he assumed the risk of his employment. There the plaintiff was employed by the railroad in shifting cars on certain tracks.

Mr. Watkins: Mr. Bradley, did you say they are New Jersey cases?

20 Mr. Bradley: Those two are New Jersey cases.

The Court: Were they cases where the trial Judge took it away from the jury?

Mr. Bradley: The case of *Capan vs. D. L. & W. Railroad* was such a case.

Mr. Watkins: What year was that?

30 Mr. Bradley: This is in 1917, November 19th. The last case of which I know anything about is *Nelson vs. Southern Railroad*. That particular case is where a man went over and picked up some sand off another track, and a train came along without any warning and hit him. It was held there that

that was an obvious risk and the rule was made absolute. Now, in the case of Vaughn vs. New York, Philadelphia and Norfolk Railroad Company, that was a case where a man was only in the employ two or three days, and they held that the doctrine of the assumption of risk applied. That is 36 Supreme Court Reporter, 592. This doctrine of assumption of risk is a doctrine that permits the defense of the assumption of risk even to the point that it controls the contributory negligence feature of the case. It abrogates Section 3 of the act in reference to the contributory negligence feature where it is a risk in the course of his employment or such an extraordinary risk that he assumes; I say in this case, if the plaintiff should recover, he should first prove not only the existence of a hot box but that the hot box was an act of negligence, and there is a way to prove it, but it has not been done in this case. 10

The Court: Well, suppose you get away from that and come down to the second question in the case. 20

Mr. Bradley: As to the fence, there has been no evidence introduced here to show that not putting a light on there was an act of negligence. Now, suppose we had one light on there, then the plaintiff could have said, "You should have had two," and would the case have gone to the jury? It seems to me that it is incumbent upon the plaintiff to introduce evidence sufficient to make out a prima facie case that it was negligence in not putting a light there or some negligence in the construction of the fence, and there has been no evidence of that kind in this case, not one iota of evidence. It seems to me this case should be taken from the jury on the 30

ground that there has been no evidence of any negligence in not putting a light there on the fence, and there has been no evidence of any negligence in the erection of the fence. These dangers were known to him; he had worked on a train before that that had come along there; that was a regular stop, he must have known of the existence of that fence and I do not see how this Court or any one else could presume that he did not, because we cannot prove
10) it in any other way—the man is not here—and I say this is as strong a presumption as the presumption in the case that the man went out there in the performance of his duty when there isn't any testimony as to why he went out on the front. Now, if that man went out there on the front and fell and caught himself—he had a fall—fell on that step and caught himself and then came in contact with the fence, he cannot recover.

20) The Court: This train, you know, was going at the rate of thirty miles an hour and did not stop at this station.

Mr. Bradley: No, did not stop.

The Court: Was not stopping at the station.

Mr. Bradley: No, right.

30) The Court: It was a through train.

Mr. Bradley: Yes, but on the theory that if he fell, if he lost his balance and fell off the train, there is no evidence that it was improperly run; that is the risk he must have assumed, and the cases have so held, I say, it is just as probable in this case that

the man went out there for his own purposes as that he went out to watch that hot box. There is no evidence as to why he went out. There is evidence there was a hot box there, but there was no evidence way he went out, no adequate evidence; nobody saw him out there. Now, I say, whether or not there was a light on that fence, that could not have been the proximate cause of this man's injury unless you assume that he would have seen that light from that position where he was.

10

The Court (after further argument): There is this fact in this case, that this train was moving at thirty miles an hour and passing this station, of course, at some speed, and whether this man could distinguish the stations that had fences and those that did not might make a difference. All stations didn't have fences according to proof in this case and this witness had his attention attracted to the particular business that he was then engaged in, watching for this hot box. (To the stenographer): Read the testimony of Mr. Iredell, please.

20

(Testimony of Mr. Iredell was then read by the stenographer.)

The Court: Now, what do you understand the situation and fact to be with regard to a light at the beginning of that fence where this man's head was struck?

30

Mr. Watkins: I understand the situation to be that it was practically worthless for any light at all.

The Court: What is that?

Mr. Watkins: My idea would be and the only inference I could get from this testimony would be, taking it at its most favorable point, that the light would be of no advantage at all until the train got within about twenty feet of where the light was; while, as a matter of fact, the fence ran down beyond where the light was some twenty feet, the train was going at thirty miles an hour, and the light with its reflectors shining across the tracks was so constructed that down the tracks it was hiding the light; there was no light at all on the post on the southern end of that fence. I do not think there is any conclusion to come to other than that the only distance a man could have seen, according to the testimony, would be twenty feet. Here was a man on a train running thirty miles an hour and reflectors thrown across the tracks, not down—he might have seen twenty feet from the light; the light would only cast its reflection, don't you see, about twenty feet, but the light was on the platform. In the first place, the posts, according to the testimony, extended down beyond.

The Court: How much beyond?

Mr. Watkins: Twenty feet at least, the fence was some hundred feet long and his testimony is that twenty feet was about the way he put it. Now, you can imagine a train booming along at thirty miles an hour—

Mr. Bradley: There is no negligence in itself in running a train thirty miles an hour, and if he was an experienced railroad man, he would realize that the train was going at a rapid rate of speed. Certainly, if there are any presumptions in this case,

certainly that is one of the presumptions, and he realized he was in a dangerous position, and he had absolute knowledge, as far as we could infer, that this inter-track fence was there, and if we had a light, it wouldn't have made any difference; he was looking at that particular object according to the theory of the plaintiff. It seems to me your Honor should direct a verdict.

The Court: The motion to non-suit is denied; you may renew your motion at the conclusion of the whole case. (1)

THE CASE FOR THE DEFENDANT.

CHARLES P. BELL, SWORN.

By Mr. Bradley:

20

Q. Mr. Bell, you are employed by the Atlantic City Railroad?

A. Yes.

Q. How long have you been employed?

A. Since 1906.

Q. You were employed on the train on which Mr. Ramsey was on the night he was killed?

A. Yes.

Q. Did you know of the existence of this inter-track fence? 30

A. Yes, sir.

Q. How frequent are these inter-track fences on the Atlantic City Railroad line; on this particular line?

A. Why, at all the principal stations.

Q. What is that?

A. At the principal stations, not the flag stations, but the principal stations.

Q. Is there a light on any of these inter-track fences?

A. No, sir.

By the Court:

10 Q. What do you mean by inter-track fences?

A. Fences between the tracks at a station.

Q. But there is no light on them?

A. I have never seen any.

Q. Is there a light on the stations where they are?

A. What?

Q. These inter-track fences.

A. Light at the station on the platform.

Q. Every station is lighted?

A. Supposed to have, yes.

20 Q. Whether there is a fence or not?

A. Yes.

Mr. Watkins: What does his answer mean—supposed to have? Does he know what he is talking about or is it supposition?

The Court: No, I understand him to say every station is lighted.

30 The Witness: As far as I have seen it; I have never seen any without lamps there.

By Mr. Bradley:

Q. Have you ever seen any station on this railroad without lamps at the station?

A. No, sir.

By the Court:

Q. That applies as well to the stations that have no fence as well as to those that have fences?

A. Yes, sir.

By Mr. Bradley:

Q. Was there anything unusual about the operation of your train coming up from Winslow Junction that night? 10

A. Not as far as I could notice.

Q. Is there a crossing before you come to this station at Lawnside?

A. Why, there is one up about—there is a railroad crossing right at the station.

Q. Do you know how many stations have these inter-track fences?

A. Why, the principal stations. You take the Shipyard; that would be the first one; then would be West Collingswood, Oaklyn, Audubon, Orston, Haddon Heights, Barrington, then comes this Lawnside, Magnolia and so on down, all the principal stations until you get down—well, next after Magnolia then comes Somerdale, that has no fence there—then Stratford is next that has a fence; then Laurel Springs has a fence and Garden Lake has no fence; then Clementon. 20

Q. Now, as far down as Winslow Junction?

A. That takes in down as far as Williamstown Junction. 30

Q. Go on from there and tell us about the fences.

A. From Williamstown Junction to Winslow Junction that is as far as I had anything to do with the running of the train.

Q. Did I understand you to say that only about two station there were down there that hadn't any inter-track fence?

A. Well, that would be Somerdale and Garden Lake, flag stations there between those points.

Q. And what about the size of those places?

A. The size of the stations?

Q. No, the size of the places there?

A. Of the towns?

10 Q. Yes.

Mr. Watkins: I object to that; what is it, the matter of population?

Mr. Bradley: We only want to show it was such a very small place.

Mr. Watkins: The question is objected to as immaterial.

20 The Court: The objection is overruled.

(Exception noted for the plaintiff.)

A. I don't thoroughly understand the question; you mean the size of the places that have not the fences or the ones that have?

Q. The ones that have not.

30 A. Well, there is no houses, you might say, close to it, the people live off a little ways and come to these flag stations, no houses built up like there are at Haddon Heights and Laurel Springs, such places as that.

Q. Would you know as a railroad man that it was a dangerous thing to lean out the side of a caboose?

Mr. Watkins: I object to that.

The Court: The objection is sustained.

(Exception noted for the defendant.)

Cross-examination.

By Mr. Watkins:

Q. Mr. Bell, you say you did not notice anything unusual on the train that night?

A. Yes.

10

Q. What was your business, as I understand?

A. Engineer.

Q. Oh, you were the engineer?

A. Yes.

Q. You ran from Mullica Hill?

A. That is where I started from, yes, the starting point.

Q. Now, go back again, beginning with the New York Shipyard; is there a fence there at that station?

20

A. New York Shipyard? Yes, sir.

Q. Now, the next station down is what station?

A. West Collingswood.

Q. A fence there?

A. Yes.

Q. I want you to name all the stations, flag and otherwise; now, where is the next station?

A. From West Collingswood it is Oaklyn, then Audubon.

Q. Has Oaklyn a fence?

30

A. Yes.

Q. Audubon?

A. Audubon, Orston.

Q. Just say "fence."

A. "Fence"—Haddon Heights, fence; Barrington, fence; Lawnside, fence; Magnolia, fence; then

comes Somerdale, no fence; Stratford, fence; Garden Lake, no fence; Clementon, fence; then the next station up would be Pine Valley, no fence; Albion, Penbryn, Williamstown Junction.

Q. How about Albion?

A. No fence at Albion.

Q. What is the next one?

A. Penbryn.

Q. Any fence there?

10 A. No, sir.

Q. What is the next one?

A. Williamstown Junction.

Q. Any fence there?

A. No, sir, no fence at Williamstown Junction.

Q. Now, the first fence after you leave Williamstown Junction coming north, is where?

A. Leaving Williamstown Junction, Clementon.

Q. How far is that from Williamstown Junction?

A. Five miles.

20 Q. How far is it from Clementon to Lawnside?

A. Why, that is about five miles.

Q. Now then, what stations between Clementon and Lawnside have fences?

A. Between Clementon and Lawnside?

Q. Yes.

A. Why, it would be Laurel Springs, Stratford, Magnolia, Lawnside.

Q. And what stations between that have no fences, fences between Lawnside and Clementon that have

30 no fences?

A. Garden Lake, Somerdale.

Q. Are those all iron fences?

A. As far as I know, I don't think there is any wooden ones; I don't remember any wooden ones.

Q. And are they all of the same design?

A. As far as I could see passing them on the engine; I have no occasion—

Q. All you know about them is riding by on the engine?

A. Yes.

Q. Never paid any attention to them?

A. Only as a fence is all I could tell you, sir.

Q. Did you see Ramsey that night?

A. Not after I left Williamstown Junction.

Q. Do you remember what kind of a night it was?

A. That I couldn't say, I don't remember.

Q. Do you know anything about the lights around Lawnside? 10

A. No, sir, only the station lights there on the station platforms.

Q. Oil lamps?

A. Yes, sir.

Q. About how high is the fence there at Lawnside?

A. Well, by the looks of it, I imagine it was four, four and a half, somewhere around that.

20

By the Court:

Q. How far does the fence run down from the light on the other side?

A. Well, your Honor, as near as I could judge, I should say around a hundred or a hundred and twenty-five feet, the length of the fence. You see, passing by quick, I couldn't tell the exact distance.

Q. You think the fence was a hundred or a hundred and twenty-five feet beyond the light? 30

A. Oh, beyond the light, no, sir.

Q. I mean, how far beyond the light?

A. That is what I claim is the length of the whole fence, the fence between the track.

Q. Yes, but how far did the fence extend beyond the light?

A. Just a minute; there is two lights, one on each side of this track.

Q. I know, but there is one that would be shut off by the train; the train was going north, wasn't it?

Mr. Bradley: This light we have been talking about is the one on the other side, the light on the southbound track—how far did the fence extend south of the light on the south side?

10

The Witness: Well, as near as I can come to it, I should imagine about twenty or twenty-five feet, but I couldn't tell you exact, because I don't notice those things, you know; the train crews have a better chance, because they are working around there, unloading freight, shifting cars, where I am not.

Q. That is an ordinary lamp, isn't it?

20

A. Yes, sir.

Q. Not an electric light?

A. No, sir.

By Mr. Bradley:

Q. That is a big oil lamp, isn't it?

A. That is the standard light they use at all stations, as far as I know.

30

By Mr. Watkins:

Q. You say used at all stations?

A. Where they use oil lights.

Q. Now, it has a reflector on it, hasn't it?

A. Why, I couldn't tell you whether that one particular lamp did or not, but I have noticed them at stations with a reflector.

Q. But you can't tell us much about this particular light at Lawnside?

A. No, sir.

Q. Now, how far or how high—you say the fence is about four feet and a half high?

A. About, as near as I can guess at it.

Q. Now, how high above the fence is this oil lamp?

A. Well, I imagine that the post they are setting on—the post is about—well, between five and six feet, where a man could walk up and stop and light it, in a glass covered box. 10

Q. Five or six feet?

A. I imagine that, I wouldn't say sure; that is not accurate.

Q. The light is not fastened on the station, it is fastened on a post on the side?

A. A post at each end of the platform.

Q. How far back from the track would this light set?

A. Well, I imagine about fifteen feet, twelve or fifteen feet; of course, I could not undertake to be accurate, because I am not familiar enough with it. 20

By Mr. Bradley :

Q. You said there was a crossing there at this station?

A. Yes.

Q. Where is the whistle board in connection with this crossing? 30

A. Nine hundred feet south, that is, for coming north, or nine hundred feet north for the opposite direction.

Q. Is that the usual place where you blow the whistle?

A. Blow it at every road crossing.

Q. And did you blow for this particular crossing that night?

A. Yes, sir.

Q. That is the crossing there at Lawnside?

A. Right at the station, at the south end of it.

Q. What did you give?

A. Two long and two short blasts of the whistle.

By Mr. Watkins:

10

Q. What did you blow that for, to warn the train men or warn people?

A. Warn the approaching public.

Q. Warn the public crossing the track?

A. Yes, sir.

Q. That was not intended as any signal to the train people?

A. No, sir, not that one.

20

GEORGE SICKLER, recalled.

By Mr. Bradley:

Q. Mr. Sickler, where are you employed?

A. Atlantic City Railroad Company.

Q. And how long have you been so employed?

A. Four years.

30 Q. Did you know Mr. Ramsey in and about the freight train?

A. Yes, sir.

Q. Have you seen him perform his duties?

A. Yes, sir.

Q. And I understood you to say you considered him an experienced freight man?

A. Yes, sir.

Q. Would you consider in your opinion that it was a safe thing to lean out from a caboose and watch a hot box?

A. No, sir, I wouldn't consider it safe.

Cross-examination.

By Mr. Watkins:

Q. Did you ever do it?

A. Well, I might in my time.

10

Q. Now, just think.

A. I can't just recall the time when I did, but perhaps I have in my time; we all do things, you know, that aren't safe at times.

Q. Now, do you say that you have done it, is that your answer?

A. No, I wouldn't say that I have ever done it.

Q. You would not say you have?

A. Not out of the hack, because I never worked on that end of the train.

20

Q. How about out of the other cars?

A. Well, I have leaned out of the engine, but of course, I am up higher on that.

Q. You speak about Mr. Ramsey being an experienced man, wasn't he also a careful man?

A. Well, I suppose he was.

Q. As careful as the rest of you?

A. I don't know.

By Mr. Bradley:

30

Q. You say now you leaned out of the engine; there wouldn't be any chance of coming in contact with the inter-track fence leaning out of the engine?

A. Oh, no.

Q. That is quite a distance above it?

A. Above the fence.

Q. But in leaning out there on the left side of the engine you would see the inter-track fence?

A. Oh, yes.

JOSEPH E. IREDELL, recalled.

10

By Mr. Bradley:

Q. Mr. Iredell, is there any rule of the company requiring men to sit on the steps of the caboose and watch a hot box?

A. No, sir.

Q. What is the rule of the company in that respect?

20

Mr. Watkins: Just a moment, is such a rule printed or written?

Mr. Bradley: I don't know.

Mr. Watkins: Well, find out.

Q. Is there any printed rule in reference to the observation of a hot box?

30 A. In a conspicuous place look out for a train or hot box or anything that might happen.

Q. Just what do you mean by that?

A. Well, when you are riding in a caboose on a freight train you are always looking out, watching for anything that might happen, see, a hot box or anything that might happen.

Q. Now, where are you supposed to stand to observe this place?

A. There is no particular place, as far as that goes, but as a rule we ride in there and look out of there, the gig top, or out of the side.

Q. And it is not customary to observe the wheels from the steps of the caboose on the left-hand side where there is a track running in the opposite direction adjacent thereto, is it?

A. We always get where we can see the plainest such things.

Q. What regard are you supposed to have for your own safety? 10

A. Yes.

Q. What regard—

A. Safety first they always preached to us.

Q. How long have you been a conductor on a freight train?

A. Since 1899.

Q. In your opinion was this a safe place for this man to work?

A. It was not.

Q. Was there any rule of the company or order which you gave compelling this man to go to that place to work? 20

A. No, sir.

Q. If he had been standing on the steps, the front steps, of his caboose, could he have seen that hot box?

A. Yes, sir, he could.

Cross-examination.

30

By Mr. Watkins:

Q. Now, you say he could have seen it if he was standing on the front steps, Mr. Iredell?

Mr. Bradley: The front platform.

Q. He could after he had determined just where it was, you mean?

A. Yes.

Q. First you must find out where it is?

A. Yes.

Q. Then it is his duty to watch it?

A. Yes.

10 Q. And safety first—now let's go into that a little—as a matter of fact, it is the duty of the train crew to look after the train first, isn't it, the safety of the train first?

A. Yes.

Q. And their own second?

A. I always look out for myself first; that is the natural rule.

Mr. Bradley: I object to that.

20 Q. Oh, yes, it is your rule and mine, but it is the rule of the railroads that the safety of the train is first?

A. The safety of the train, yes, sir.

By Mr. Bradley:

30 Q. It is in the printed rules of the company that you will always look out for your own safety, isn't it?

A. Yes.

Q. Those rules caution you not to take a chance, don't they?

A. You are always taking a chance railroading.

Q. In reference to the rules, the printed rules of the company, is it necessary for every man to have a copy of the rules?

A. Yes, sir.

Q. And you have to take frequent examinations, do you, concerning the rules of the company?

A. Why, one is all I have ever taken.

Q. Isn't it one of the rules of the company, marked "N" under "General Rules"—"Safety is of the first importance in the discharge of duty"?

A. Yes, sir.

Q. That is your book of rules?

A. Yes.

10

Mr. Bradley: I will offer the book.

By the Court:

Q. Mr. Iredell, I want to get a little more light on the location of the lamp which you say was on the south side of the railroad. Now, how far was that light located in feet from the beginning of the iron fence where it is said Mr. Ramsey struck his head?

A. About twenty or twenty-five feet.

20

Q. What kind of a lamp was that?

A. It is a lamp, three sides glass and the back, of course, is made of metal, tin, I suppose, with a reflector in the back.

Q. Well, does that lamp shine out directly in front?

A. No, it has a glass side, it shows the sides and front, but the reflector being in the back, of course, that is oval, it shines out—

Q. How large a wick has it?

30

A. Oh, probably an inch wide, I don't know just the width of it.

Q. You don't know whether it was lighted on this occasion?

A. No, I couldn't say.

Q. Could you tell if it had been lighted whether it would have shown down as far as the beginning point of the fence where Mr. Ramsey is said to have struck his head?

A. There surely must have been light if the light had been lighted.

Q. There would have been light enough for him to distinguish going along in a moving train?

A. I couldn't say that, because I never took particular notice of that particular fence.

10 Q. You are not certain about that?

A. No.

Q. Did you say this was a very dark night? Some witnesses said something about that.

A. It was dark, it had been raining all day, but wasn't raining just at that time.

Q. But was it a dark night?

A. It was dark, yes, sir.

20 Q. And, if I understand you rightly, you didn't say that the light, even if it had been lighted, would have shone down to the point where Mr. Ramsey's head came in contact—

A. It might have shone down just at that point on account of the light being higher than the fence.

By Mr. Bradley:

30 Q. Also under "Movements of Trains," Rule 106, page 23, from the Philadelphia and Reading Railroad Company and affiliated lines, rules of the operating department, they are the rules under which you operate, are they?

A. Yes.

Q. Rule 106, "In all cases of doubt and uncertainty the safe course must be taken and no risks run." Is that one of the rules of the company?

A. Yes.

Q. That refers to personal safety as well as safety to the merchandise, doesn't it?

A. It refers to everything, I suppose.

By Mr. Watkins:

Q. Now, what is your understanding of that?

A. That rule?

Q. Yes, "In all cases of doubt and uncertainty the safe course must be taken and no risks run"?

A. Well, that is often applied to the movement of trains, the movement of merchandise, unloading of merchandise, anything of that kind, and in our own safety, everything. 10

Q. Now, this rule referred to as Rule "N"—"Safety is of first importance in the discharge of duty," what do you understand that?

A. Well, that is another case where you should be careful what you are doing and be careful about your switches and everything, for safety.

Q. And about hot boxes? 20

A. I suppose so.

Q. I think you have said that your understanding of it is that "safety" applies to the movement of the train?

A. Safety is safety always.

Q. Is there anything particular in here about hot boxes?

A. I don't know of anything.

By Mr. Bradley: 30

Q. You did not say that that only referred to safety in the operation of trains, did you?

A. That refers to everything, I think.

Q. That is your interpretation of it?

A. Yes.

Mr. Bradley: I will offer that in evidence for these two rules.

Mr. Watkins: The rules are stenographically taken there, you read them and he took them.

Q. Now, the operation of that train at Camden after the hot box was discovered, that was not especially dangerous, was it?

10 A. We can't tell how dangerous they are until the car inspector sees them.

Q. But is it your custom to continue running them?

A. We have a rule to go by about that.

Q. What is it?

A. Keep going at a slow rate of speed after we discover them until they stop blazing, then when they stop blazing, then we set them out, or do the next best thing, whatever there is to be done.

20 Q. And in your opinion it was a safe course to follow to continue running that train that night until you got to Camden?

A. We did not consider it dangerous, no, because it started to blaze so far up the road and it takes quite a long while to get them hot enough to burn off or cause any damage, according to your speed.

Q. Where was the first place you observed that hot box?

A. The first place was Magnolia that I smelled the smoke.

30 Q. At that time Mr. Ramsey was on the back platform with you?

A. He and I both, yes.

Q. That is the time you located it, wasn't it, when you were on the back platform?

A. That is where we figured on it being on the rear car, yes.

Q. When you were on the back platform?

A. Yes.

Q. That is before you went to the front?

A. Yes.

By Mr. Watkins:

Q. Now, you figured it being on that car, but you weren't positive?

A. You couldn't tell just exactly, no; but you can come within— 10

Q. But you can guess?

A. Yes, sure.

Q. Then it is necessary for somebody to keep watching that hot box to see that nothing did happen between that and Camden?

A. Some one of the brakemen, yes, watches those while I finish up my report.

Q. And as a matter of fact that is the work that Ramsey was doing? 20

A. We always look to the flagman to watch hot boxes.

Q. And he was doing it?

A. He was doing it.

JOSEPH E. MAUGER, SWORN.

By Mr. Bradley:

30

Q. Mr. Mauger, where are you employed?

A. On the Atlantic City Railroad.

Q. In what capacity?

A. Section foreman.

Q. And what section of the road do you have?

A. I have section number three.

- Q. Of what does that consist?
A. That consists of four miles of track.
Q. Where about?
A. Between Somerdale and Haddon Heights.
Q. Does that take in Lawnside?
A. That takes in Lawnside, yes.
Q. How long have you been employed by the company?
A. Thirty-one years.
- 10 Q. How long have you been employed in your present capacity?
A. As a foreman twenty-one years.
Q. And you are called section foreman?
A. Yes.
Q. Now, do you know of the existence of this inter-track fence?
A. Yes, sir.
Q. Is this a standard inter-track fence?
A. Yes.
- 20 Q. Do any of these fences have lights on them?
A. No, sir.
Q. Did you ever know of any fence to have a light on, this kind of fence?
A. No, sir.
Q. Where are these fences located?
A. Between the north and southbound track.
Q. You say between, what do you mean?
A. Between the two tracks.
Q. Well, what distance between?
- 30 A. The distance between the two tracks is seven foot five.
Q. Now, where is the fence located, in the middle or on the side?
A. Right in the center, yes.
Q. How long is this fence?
A. Well, I should judge that fence was some 250 feet in length.

Q. And you observed that fence the day after the accident?

A. Yes, sir.

Q. What will you say about the condition of its repair at that time?

A. Why, it was in first class repair.

Q. Why are those fences put there?

A. They are put there to protect the public.

Q. In what respect?

A. Why, from them getting off on the opposite side of the train, to make them use the platforms in place of getting off—for instance, if the train would go south— 10

By the Court:

Q. Do you know where the lamp is on the south side of the railroad?

A. Yes, sir.

Q. How far is that away from the south end of the fence? 20

A. How far? I should judge in the neighborhood of between twenty-five to thirty feet on the south side to the end of the fence south.

Q. Twenty-five or thirty feet?

A. Yes.

Q. What is your position?

A. Section foreman.

By Mr. Bradley:

30

Q. Do you have charge of the lights?

A. No, sir; the station agent has charge of the lamps there.

Q. Do you have anything to do with the lights?

A. No, sir.

Q. Have you ever been at that station at Lawn-side when that light was lighted?

A. Yes.

Q. Have you even been there on a dark night?

A. Yes.

Q. Would that light throw a reflection down to the edge of that fence, the south end?

A. I should judge it would, that far, yes; it is an open light all around it, it should throw that reflection that far.

10

By the Court:

Q. Well, you say you would judge, do you know—did you ever experiment and see?

A. See what?

Q. Whether the light—

A. Oh, yes; I could see, sure; it would throw a light that far, thirty feet.

20

By Mr. Bradley:

Q. Did you ever examine those lights?

A. No, because I didn't have any charge of them to examine them.

Q. Do you know what size wick they have?

A. No, I couldn't say that, either.

Q. Are they a large light or a small light?

A. Why, they are a pretty large light.

Q. Do you know whether those lights are kept burning all night?

30

A. Yes, sir.

Cross-examination.

By Mr. Watkins:

Q. Do you know whether that light was lighted this particular night or not?

A. That is more than I could say.

Q. Now, Mr. Mauger, you say this fence is about 250 feet long?

A. Yes, it is about 250.

10

Q. Is it over that?

A. Now, I wouldn't say whether it was over or whether it was less, but there is four lights along that fence.

Q. Four lights on the station?

A. Yes, on the station platform.

Q. Now, how far beyond the light at the southern end does the fence extend?

A. I should say thirty feet, between twenty-five and thirty feet, and from the first light.

20

Q. According to your judgment you place the limit of this light south thirty feet?

Mr. Bradley: I object, if the Court please, the witness hasn't made such a statement as that; he is improperly putting these words into his mouth.

Q. Didn't you say, Mr. Mauger, that it would cast a light about thirty feet south?

A. In the neighborhood of thirty feet south, yes, sir.

30

Q. Now, the light is constructed so that it has a reflector to throw the light across the tracks, doesn't it?

A. Well, it throws the light, you might say, three different directions, up and down the track and across the track.

Q. What is it primarily put there for?

A. It is to light up the platforms and also the opposite side of the platform and also the road crossing, you might say.

Q. I am speaking of this particular lamp.

A. Yes.

Q. Now, it is put there to light the platform?

A. Yes.

Q. The opposite platform?

10

A. Yes, right straight across.

Q. How high is it?

A. The lamp—the post you mean?

Q. The lamp itself, the light itself.

A. About eight feet.

Q. How high is this fence?

A. That is four feet six.

Q. That is the correct measurement, is it?

A. Yes, in the track.

Q. An iron fence?

20

A. An iron fence.

Q. Now, you say you examined the fence the day after?

A. Yes, sir.

Q. What did you examine it for?

A. Why, just to see whether there was anything wrong with the fence, and I found nothing wrong at all.

Q. Did you examine this post?

A. Yes, the post I examined.

30

Q. What did you find on the post?

A. Nothing there of any account.

Q. What do you mean by “any account”—what did you find there?

A. Nothing on the post; I haven't found anything on the post.

Q. Did you find anything on the fence?

A. I found along the fence a little scattering blood, yes.

Q. How far was that from the post?

A. You might say eight or ten feet.

Q. You didn't see anything on the post itself?

A. No, nothing at all.

Q. What time did you make the examination?

A. That was the next day.

Q. Yes, what time the next day?

A. I can't say exactly; it was in the morning about, maybe, ten o'clock. 11

Q. Did you see the man's cap and lantern there?

A. No, sir.

Q. How long was the covered station—how long is the station?

A. I should judge about twelve feet.

Q. Twelve feet?

A. Yes.

Q. Is that the total length of the station?

A. Well, now, I couldn't tell you exactly.

Q. Well, get it the best you can. 20

A. I would say twelve feet.

Q. And they have a fence 250 feet there?

A. Yes.

Q. To prevent people crossing from one platform to the other?

A. Yes.

Q. How long is the platform?

A. The platform is as long as the fence on the south side; the north side it is about, you might say, 150 feet, two hundred. 30

Q. Which side now are you speaking of?

A. The south side is the length of the fence.

Q. Now, the north side that is——

Mr. Bradley: The northbound side.

- Q. On the northbound track going north?
A. Yes.
Q. Now, this train was coming north?
A. Yes.
Q. How long is that platform on that side?
A. Why, I should say 150 feet.
Q. Of which only twelve feet is this covered space?
A. That is the station part, yes, sir.
10 Q. The rest all open?
A. Yes, sir; all open.
Q. This lamp on the southern end of this station, how far back from the track does it stand?
A. On the north side?
Q. Yes, on the north side.
A. Over to the south end of this fence?
Q. North side of the station?
A. To the south end of the fence?
Q. No, to the fence.
20 A. Oh, well, that is about fifteen feet right straight across to the fence.

NATHAN K. ERGOOD, SWORN.

By Mr. Bradley:

- Q. Mr. Ergood, where are you employed?
30 A. Atlantic City Railroad.
Q. How long have you been so employed?
A. On the Atlantic City Railroad?
Q. Yes.
A. Thirty-one years.
Q. What is your position?
A. Foreman carpenter.

Q. How long have you held that position?

A. Thirty-one years; I have been with the company forty-one years as a foreman.

Q. Now, do you have charge of the construction of inter-track fences?

A. Yes, sir.

Q. On this particular line?

A. Yes.

Q. Did you construct this inter-track fence at Lawnside?

A. Yes.

Q. Or was it constructed under your direction?

A. Yes.

Q. Will you tell the Court and jury, please, what kind of fence it is; how long, how high?

A. It is the P. & R. standard—

Mr. Watkins: Just give an answer; please answer the question.

A. What was it you asked?

Q. Go right ahead.

A. I said it was a P. & R. standard inter-track fence—iron fence.

Q. And it is the same kind of inter-track fence they have at all of their stations where they have such fences, isn't it?

A. Yes, sir, as a general thing; there are some few stations over on the other side that maybe has a more elaborate fence; that is the only difference.

Q. And have you the dimensions of that fence at Lawnside?

A. Yes.

Q. Will you tell the Court and jury, please, how high that fence is and how long it extends?

A. It is four feet nine inches high from the top of the rail to the top of the fence; I didn't measure

the length, but when we put them fences up we tried to get them as near three hundred feet as we could. It wouldn't quite come out three hundred feet on account of the panels; we had to either make it over three hundred feet or less.

Q. So it is quite near three hundred feet?

A. Yes, sir.

Q. Do you know how far the rails are apart?

A. Seven feet five inches from gauge to gauge.

10 Q. That is from gauge to gauge; now what do you mean by that?

A. That is from the inside rail of the northbound to the inside rail of the southbound.

Q. And those tracks run parallel, do they?

A. Yes, sir.

Q. Is that the standard gauge?

A. Yes, sir.

Q. Did you have charge of putting in those lights?

A. No, sir.

20 Q. Did you ever observe those lights when they are lighted at Lawnside?

A. Yes, I have observed them, they are about like we put them up at all stations.

Q. On the Reading and affiliated lines?

A. Yes.

Q. And was that in your opinion a strong light or a weak light?

30 Mr. Watkins: That is objected to; the proof will show what it is. It is not a matter of opinion.

Q. What kind of a light is it?

A. Well, we call them a box lamp.

Q. How are they constructed?

A. We have got a coal oil lamp with a No. 2 burner.

Q. What size is a number two burner?

A. Well, it is about what is used in an ordinary house.

Q. How large is No. 2, do you know in inches?

A. No, I suppose the base of it is about the size of that there ink-well there, the base of the globe.

Q. About four inches?

A. No, it ain't four inches, about, I should say two and a half, from two and a half to three inches would cover it anyhow.

Q. Now, there wasn't any light on this inter-track fence? 10

A. No, sir.

By the Court:

Q. How far is the end of the fence, the south end of that fence from the—you have got a map there, haven't you?

A. Yes, but it doesn't show what you want, I don't think. This is a cross-section, here is the fence; there is the southbound inside rail, and here is the northbound inside rail. 20

Q. Now, where is the lamp lighted?

A. The lamp should be back here further.

Q. How far would that be away from the south end of that fence?

A. About twenty or twenty-five feet. There is a street crossing there; this here fence starts right on the line of the street crossing here, and the station is about, I would suppose, seventy-five feet north of the end of this fence. 30

The Court: Well, get those facts out, please.

By Mr. Bradley:

Q. How long have you had experience in building inter-track fences for the Atlantic City Railroad Company?

A. About thirty years.

Q. It is not customary to put any lights on those fences, is it?

A. No.

10 Q. Have you ever observed any of the inter-track fences on any other railroads?

A. Yes, on the Pennsylvania and over on the Reading system.

Q. Well, have you seen lights on them?

A. No, never saw lights on them.

Q. There are no lights on any of them that you ever saw?

A. No, never saw any, no.

20 Cross-examination.

By Mr. Watkins:

Q. You have seen those fences, though, where the lights of the surroundings have plainly indicated them some distance down and up the tracks, haven't you, electric lights and so on?

A. Oh, where they have electric lights on the platforms, yes.

30 Q. Now, this platform only has a small ordinary house burner, lamp burner?

A. Yes.

Q. A coal oil lamp at that, is that right?

A. Yes.

Q. This fence is three hundred feet long?

A. Yes, sir; about that.

Q. How long is the platform, the north platform?

A. I didn't measure that.

Q. Now, you can give us a good idea, a man in your business.

Mr. Bradley: I object, I think it is immaterial how long this platform is; I don't see that that has anything to do with the case.

The Court: I think it is proper cross-examination. 10

(Exception noted for the defendant.)

A. It ought to be about 150 feet.

Q. Just about half as long as the iron fence?

A. Yes, the idea is, this here fence, you know—

Q. I don't care anything about the idea. The platform is just about half the length of the iron fence? 20

Mr. Bradley: On which side? I object; he hasn't specified which side.

Mr. Watkins: Yes, I did, in the last question.

The Court: On the north side.

Q. Now, you know where the covered part of the northbound station is, do you, at Lawnside? About how much of the platform does that cover? 30

A. Oh, it covers about five feet to the back edge of it.

Q. About five feet?

A. Yes, something like that; that is the overhang of the roof, you know.

Q. Only about five feet of it?

A. Yes.

Q. And how far from that south end of that cover is this lamp, this coal oil lamp that you are speaking of?

A. Well, I should say it was about seventy-five feet from there to the end of the fence, and the lamp is about twenty-five feet from the end in, so it would be about fifty feet.

10 Q. Be about fifty feet from where, now?

A. From the station, from the end of the station, as the station is about—I think the station is about twenty feet long and about sixteen feet wide.

Q. And the end of this iron fence is about fifty feet, you say, from the end of covered northbound station platform?

A. About seventy-five.

Q. And the lamp, according to your estimate, is about how far from the station, from the covered part?

20 A. Well, about fifty feet.

Q. Fifty—have you ever measured it?

A. Never measured it.

Q. Now, you put it at fifty feet, is that right?

A. Yes, that is the best of my knowledge without measuring it, from my recollection.

Q. There is no question about the fence being three hundred feet long?

A. The fence?

30 The Court: How far does he say the end of the fence was from the lamp?

Q. How far would you say?

A. From the lamp, about twenty-five feet.

Q. You say this fence was three hundred feet long?

A. I say we tried to get it as near three hundred as possible.

Q. You think you got it pretty close to it?

A. It is about 285 to 300 feet long, in between those two figures.

Q. It is not less than 285?

A. No.

Q. Nor more than three hundred?

A. No.

Q. Now, you spoke of it as a box lamp; what do you mean by a box lamp?

A. Well, it is a lamp that is put on a post; it has a bracket on like that with a shelf on here, and this here is a box lamp with a tin back here and glass on three sides; this lamp is put inside here to keep the wind from blowing it out, and in back of it is the reflector.

Q. Does it have a reflector on it?

A. Yes, as a general thing.

Q. Where are the reflectors on it?

20

A. On the back.

Q. Do they extend out beyond the back?

A. They are about that big in diameter; you know, they couldn't extend out beyond the back.

Q. Are they straight reflectors, right straight back, or do they come out on a curve?

A. They are dished, like a dish.

Q. Concave?

A. Yes.

30

By Mr. Bradley:

Q. You said the fence was four feet nine inches?

A. Yes.

fence, at the time of the accident, how high was that?

Q. This post on the extreme south end of the

By Mr. Watkins:

Q. Do you know when the accident occurred?

A. Yes, occurred October 30, 1917.

Q. Sure of that?

A. Yes, that was four feet three inches.

By Mr. Bradley:

10 Q. How do you account for that only being four feet three inches instead of being four feet nine inches?

A. Well, that ornament there had gotten off some-time before that.

Q. The ornament had gotten off?

A. Those were riveted on there or screwed on; somehow that got off.

Q. It is an ornamental ball, isn't it?

A. Yes.

20 Q. And that extends up six inches higher?

A. Yes.

Q. So at the time of this accident it was only four feet three inches high, that post?

A. Yes.

By Mr. Watkins:

Q. You say there was a ball on the southern end of this?

30 A. Yes, on top.

Q. What kind of ball was that?

A. Well, it was a ball about—it was a cast iron ball about $2\frac{1}{2}$ inches in diameter, with kind of a neck to it, a shoulder; that screwed on to this here tee, that formed the post, the top of the tee that formed the post.

Q. When did you miss this ball?

A. Oh, that has been missing—

Q. Of your own knowledge now we are speaking.

A. What say?

Q. When did you miss it—when did you know the ball was off there?

A. I don't just remember. It was off at that time, though.

Q. You can remember exactly the date when this accident took place?

A. I can remember that, because that has been brought up so often. 10

Q. When was the last time it was brought up?

A. The last time?

Q. Yes, so that you fixed the date?

A. A couple of weeks ago.

Q. Now, when was this ball knocked off or fell off the fence?

A. This ball was off before this man was hit.

Q. How do you know it?

A. Because a person told me about that. 20

Q. Oh, that is the way you know that?

A. Yes.

Q. When did you see it after the accident?

A. Oh, I saw it quite frequently.

Q. Yes, when was the first time after the accident?

A. I couldn't tell you just exactly when the first time was.

Mr. Bradley: I object; it doesn't seem to me the question is intelligent; I don't know whether he means when did he see the fence or when did he see the ball. He said the ball was taken off before the time of the accident; I suppose the attorney is referring to the fence. 30

Mr. Watkins: He said some one told him that, and I have asked him when he saw the fence before the accident.

A. I look at this fence every time I go along there, and I go along at this place different times.

Q. That is as definitely as you can put it?

A. Yes.

10 Q. Now, did this ball that was on the post extend over the fence any?

A. No, sir.

Q. How wide is the fence?

A. Two and a half inches.

Q. How wide is the ball?

A. Two and a half inches.

Q. That is, how much higher than the fence, itself?

A. What, the ball?

Q. Yes.

20 A. About six inches.

Q. Are there more than one of these on the fence?

A. There is a post every eight feet and a half and there is a ball on every one of them.

Q. That extends up about six inches above the top of the fence?

A. Yes.

Q. Now, what is the distance between this fence, if you know, and the lower step of the caboose you referred to?

30 A. About twenty inches.

By Mr. Bradley:

Q. What is the distance between the second step and the inter-track fence?

A. Twenty-seven inches.

HENRY S. HEPELMAH, SWORN.

By Mr. Bradley :

Q. Mr. Heppelman, where are you employed?

A. United States Railroad Administration with jurisdiction over the Philadelphia and Reading and affiliated lines.

Q. And is the Atlantic City line one of the affiliated lines.

A. Yes. 10

Q. What position do you hold?

A. General car inspector.

Q. And as general car inspector, do you know anything about hot boxes or hot journals?

A. We come in contact with them every day.

Q. For how long have you been in contact with them?

A. For the past three years, three years and a half.

Q. And what have you to say in reference to the cause of hot boxes? 20

A. There are many causes attributable to hot boxes; some of them are preventable and a great many are not.

Q. What are some of the causes?

A. Some of the preventable causes would be insufficient lubrication, packing and so forth, and the unpreventable causes are packing getting under the bearing—foreign matters getting under the bearing. 30

Q. How would foreign matters get under the bearing?

A. Why, it works this way, up through the packing, the foreign substances, and also foreign substances, which may be in the bearing itself, in the

manufacture of the bearing, which cannot be detected in the manufacture, that is, in the metal itself; also from linings cracking and bearings breaking.

Q. Then from your experience the mere existence of a hot box is not negligence?

A. No, sir.

Q. Do you know whether a journal has been devised that will not become hot?

A. I wish it were.

10 Q. I understand you to say you wish it were, but will you just answer?

A. No, sir.

Q. You don't know of any such thing in railroad-ing, do you, as a journal that will not become hot?

A. No, sir.

Q. What experience did you have in the last year or two in attempting to prevent hot journals?

A. Why, on the Atlantic City road in particular?

Q. Yes.

20 A. We have made wonderful strides toward preventing them, and with all the attention that we had given them, with the best men on the system, not only on the Atlantic City Railroad, but the entire P. & R. lines, I consider the men on the Atlantic City Railroad as competent as any, and with them all we have hot boxes. We have also had, I might add, representatives of the oil experts with us, and they working in conjunction with myself and the men, we have had them nevertheless, with the best possible—

30 Q. According to your experience in some instances they are unpreventable?

A. Yes.

Q. In other words, where ordinary car inspection would not reveal that shortly thereafter, there would be a hot box?

By the Court:

Q. Are there serious consequences flowing sometimes from a hot box?

A. If they are let go too long; they have to be looked after. A hot box will develop at times gradually; at times it will develop very suddenly.

Q. Well, in other words, when the hot box arises, somebody has got to be on the job to look after it?

A. Repairs have got to be made to the car. 10

By Mr. Bradley:

Q. Are there any standard plans for the building of cabooses on your line?

A. Yes, sir.

Q. Have you such plans with you?

A. Yes, sir.

Q. Are the cars in use, caboose cars in use, by the Atlantic City Railroad, built in accordance with those plans? 20

Mr. Watkins: I object; this accident occurred back in October, 1917.

The Court: Were they at that time?

A. To the best of my knowledge.

Q. Have you such plans with you?

A. Yes, sir. 30

Mr. Watkins: I object to this testimony unless it is shown that these plans conform to the cars that were then in use, and the car in question.

Q. How far back does your experience go with these plans?

A. Oh, this plan has been in existence since 1899.

Q. Were you in the car shops where these cars are built?

A. Not directly, I have outside supervision, but previous to this I was in the mechanical department where plans for the cars were made.

Q. Do you know as a matter of fact whether or not the cars, caboose cars, in use on the Atlantic City Railroad in 1917, were built in accordance with that
10 plan?

A. To the best of my knowledge.

Mr. Watkins: Why do you qualify it, to the best of your knowledge?

Mr. Watkins: I ask that the answer be stricken out.

Mr. Bradley: I think it can go in for what it is
20 worth.

The Court: That is the best that anybody can testify, to the best of their knowledge and belief.

Mr. Watkins: No, I want to take an exception to that; he is here as an expert; he has not shown how he gained this knowledge, what kind of cabooses the Atlantic City Railroad Company had in 1917.

30 The Court: You may cross-examine.

Mr. Watkins: He is here as an expert, you know.

The Court: You may cross-examine him if you are not satisfied.

By Mr. Watkins:

Q. Well, what do you mean when you say to the best of your knowledge—do you know anything about it?

A. Yes, but I cannot testify to this actual car when this accident happened; I didn't check the actual car with this plan, but I have checked similar cars many times.

By Mr. Bradley:

10

Q. Well, are the cars the same type, these cabooses cars?

A. Yes, sir, with the exception that this gig top has been revised and made wide, but this lower step arrangement is exactly the same for every caboose on the P. & R. and the Atlantic City Railroad.

Mr. Bradley: I offer that in evidence.

20

Mr. Watkins: I object to this, because this man has not qualified as an expert and is giving testimony about a matter that he hasn't examined at all.

The Court: The objection is overruled.

(Exception noted for the plaintiff.)

Mr. Watkins: If your object is simply to show that this caboose is like all other cabooses I will admit that. 30

Q. Will you give me the distance on these plans from the top of the rail to the second step?

A. 30 5/8 inches.

Q. And what is the distance from the edge of the second step to the inter-track fence if the inter-track fence were located in the center of these two tracks which are seven feet five inches apart?

A. About twenty-five inches.

Q. And how wide is that second step?

A. Seven and a half inches.

The Court: What would be twenty-five inches?

10

Mr. Bradley: From the edge of the second step, the near edge, to the center of the inter-track fence. That is where he was found sitting. Now, the witness has testified that step is seven inches and a half wide, so it would be a distance from the far side of the step, the inside side of that second step, to the inter-track fence, if the inter-track fence were located in the center, of $32\frac{1}{2}$ inches; in other words, if a man was leaning back firmly seated on that
20 step, his body could not have come in contact with the inter-track fence at all unless it was at least $32\frac{1}{2}$ inches.

The Witness: Yes.

Cross-examination.

By Mr. Watkins:

30 Q. You say leaning back; what do you understand leaning back on the step?

A. I didn't say that.

The Court: Suppose he was leaning forward looking as they say he was in this case, for this hot box; now, how far would he have to lean to come in contact with the fence?

A. According to the figures we have, if he was sitting tight up against the back of the second step he would have to lean over from the back of that step 32½ inches until he struck the fence.

By Mr. Watkins:

Q. Now, suppose he wasn't sitting tight back, sitting out on the edge of the second step?

A. It depends on how many inches from the back of the step ——— 10

Q. Well, how many inches is it?

A. The second step? Seventeen and a half inches.

The Court: What is the distance between the first step and the fence?

A. Seventeen and a half inches.

By Mr. Watkins:

20

Q. Now, the first step is seventeen and a half inches from the fence, is that right?

A. Yes.

Q. The second one is how far from the edge of the step?

A. Seven and a half inches more, or twenty-five inches.

Q. Now, what is the consequence of a hot box to a car—what will it do to it? 30

A. If it is left go before necessary repairs are made the extreme consequence would be the burning off of the journal.

Q. Suppose it was on a train running along at thirty miles an hour, what would the consequences

of a hot box, without going on, as you have said, with repairs; what might happen as the consequence of a hot box on a railroad engine?

Mr. Bradley: I object; I don't see that what might happen has anything to do with this case.

The Court: What would be the probable consequence.

10

Mr. Watkins: That is just what I am asking, it is only another way of asking it; it requires the same answer.

A. If the train is continued without repairs, as I have said, there is a probability of the journal becoming so hot that it would burn off.

Q. Well, is that all?

A. That would allow the truck to come down, the probability of a derailment.

20 Q. Well, if the truck came down it would be beyond a probability—it would be almost a certainty, wouldn't it?

A. It has occurred that it hasn't been a derailment.

Q. What say?

A. It has already occurred where it has not been a derailment.

30 Q. I say, outside of your expert knowledge of rare occasions I say, that is the natural result, isn't it?

A. Not in every case.

Q. No, not in every case, but that would be the natural result?

A. I couldn't say that.

Q. Do you mean to say it would be an unnatural one?

A. I couldn't say that.

Q. Do you want the jury to infer that if the axle was burned off and came down to the ground that naturally it would not cause a derailment?

A. No, I wouldn't say that.

Q. Or naturally it would cause a derailment?

A. Probably it would.

Q. So that they require careful watching, careful attention?

A. Yes.

10

By Mr. Bradley:

Q. You don't consider running seventeen miles or thereabout with a journal in this condition was necessarily dangerous, do you?

A. Not from the testimony which I have heard as to the condition of this box.

Mr. Watkins: No, that is not an answer to the question. 20

(Question repeated.)

A. Not in the condition that the testimony has given.

By Mr. Watkins:

Q. You don't consider it dangerous to run along with a hot box flaming up and burning up, eh? 30

A. I do, yes, sir.

(At this point a recess was taken until Tuesday, December 2, 1919, at 10 o'clock A. M.)

Woodbury, New Jersey,
December 2, 1919.

TRIAL OF THE CAUSE RESUMED AT
10.15 A. M.

HENRY S. KEPPELMAN, recalled.

10 By Mr. Bradley:

Q. Mr. Keppelman, at my request did you measure cab No. 10009?

A. Yes, sir.

Q. And what did you find, in reference to the plans of cabs introduced in evidence yesterday and marked Exhibit D1?

20 A. I found—I checked the steps and the widths and the grab-irons and found them to conform to the figures represented in the plan, with very slight variations which would occur in ordinary freight car construction.

Q. You say slight variations?

A. Quarter to half an inch, with the exception of the height of the steps and platform from the rail, which was about one and three-quarter inches lower than the plan.

Q. What do you attribute that to, if anything?

30 A. That is attributed to the car in going down on its springs, etc., which we are allowed a variable of about two inches.

Q. And this comes within the variable?

A. Yes, sir.

Q. What was the distance from the bottom step of that car, the edge of the bottom step of that car, to the inter-track fence?

A. Seventeen and one-half inches.

Q. And what is the height of those steps, the bottom steps, from the track?

A. The height from the top of the first step to the top of the rail?

Q. Yes.

A. Nineteen and seven-eighths on one end and nineteen and five-eighths on the other end. That is explained in this manner: If the cars shifted again, those figures may just be reversed.

10

Q. You attribute it to what?

A. It is on its springs and will take a different position due to the shifting. Any car, passenger or freight, will do that.

Q. How high would that first step be from the ground?

A. I couldn't tell you.

Q. And how high is the second step, the second step from the track?

A. Twenty-nine and one-eighth on one end and twenty-eight and seven-eighths on the other, a difference of a quarter of an inch.

20

Q. And how far is the distance from the edge of the second step to the inter-track fence?

A. Twenty-five inches.

Q. How wide is that step?

A. Seven and one-half inches.

Q. This car was a stock car?

A. This car that I measured was a cabin car.

Q. And it is one of the stock—I didn't mean stock

30

A. Standard.

Q. Standard?

A. Yes, sir.

Cross-examination.

By Mr. Watkins:

Q. When did you make the measurement of this car?

A. Last evening.

Q. What time last evening?

A. Between 11.30 and 12.30.

10 Q. Where was the car?

A. At Bulson Street, Camden.

Q. What was the number of the car?

A. 10009.

Q. 10009?

A. Yes, sir.

Q. Atlantic City Railroad car?

A. Yes, sir.

Q. Now, did you measure the distance from the floor of the second step to the ground?

20 A. We measured the—no, sir.

Q. Don't know how high that was?

A. We measured the height from the —

Q. I am asking you if you measured the distance from the floor of the second step to the ground. You say you didn't?

A. No, sir.

Q. Did you measure the height of the risers?

A. Yes, sir.

30 Q. What was the height of the riser between the first and second step?

A. Nine and one-quarter inches.

Q. In your measurement from the second step to the fence, the car was where? In the yard at Camden, when you saw it?

A. Yes, sir.

Q. Then it, of course, couldn't be Lawnside? The measurements were not taken as the car stopped at Lawnside? No connection with the fence?

A. No, sir. In that connection I took the figures for the fence, of the gauge of the inside tracks, being seven feet five inches.

Q. You didn't go there to make the actual measurements?

A. Not for the fence. I used the figure which was given yesterday.

Q. Just answer the question. Don't volunteer. It isn't an answer at all. That is the great trouble with these people. Now, what was the last question? (Question repeated.) Your answer is what?

A. Not to Lawnside.

Q. Now, in measuring the distance from the second step to the fence, where did you take the measurement from? From what part of the step?

A. Second step?

Q. Yes. Didn't you give the measurement as twenty-five inches?

A. Yes, sir. I used the figures as given in the testimony yesterday, of seven feet five inches.

Q. I say, where did you measure that from, from the car, from the standpoint of the car?

A. From the outside of the first step to the outside of the second step.

Q. From the outside of the first step?

A. To the riser of the second.

Q. I am not asking about the riser. You were given the distance from the second step to the fence, you say?

A. Yes, sir.

Q. What part of the second step did you make this measurement from, the outside or inside?

A. The outside.

Q. Outside?

A. Yes, sir.

Q. That was from the extreme edge of the second step?

A. Yes, sir.

Q. Now, measuring from the inside of the second step, how far would that be from the fence, as you understand it?

A. That would be back at the riser, the inside, thirty-two and a half inches.

10 Q. And you can't tell us from your plan the height of the second step from the ground?

A. No, sir; our plans are all made as heights from the top of the rail.

Q. What was the height of this second step from the top of the rail?

A. Twenty-nine and one-eighth on one end, twenty-eight and seven-eighths on the other.

Q. This is the front end?

20 A. Not necessarily.

Q. Measuring on the front end of the car?

A. The car may have been turned.

Q. Taking the car as you found it in the yard, what was the front?

A. Twenty-eight and seven-eighth to the second step.

Q. And the rear was what?

A. Twenty-nine and one-eighth.

30 Q. Does the use of a car make any difference as to that?

A. Yes, sir.

Q. Does the height from the rail decrease or increase as the continued use of the car goes on?

A. It decreases.

Q. Gets less?

A. Yes, sir.

Q. So then it is safe to infer that a car which had been in use for two years, the height had decreased?

A. Yes, sir.

Q. Now, how far is the top of the rail from the ground?

A. I couldn't tell you that.

Q. Don't you know that?

A. No, sir.

Q. Have you given the width of the step? You have given the height. Now, have you given the width of it? 10

A. Seven and one-half inches.

Re-direct examination.

By Mr. Bradley:

Q. How long are those steps?

A. Do you mean between the body of the car and the outside edge of this step?

Q. You said the step was seven and one-half inches wide. How long is the step? 20

A. Between the body and the in-sill there are twenty-two inches.

Q. What is the distance from the gauge line of the west rail of the northbound track to the outside edge of the first step?

A. I will have to figure that. Twenty-four and three-quarter inches.

Q. Now, the distance from the gauge line of the west rail of the northbound track to the outside edge of the second step? 30

A. Will you repeat that?

Q. (Question repeated.)

A. Seventeen and one-quarter.

Q. Seventeen and one-quarter?

A. Yes, sir.

Re-cross examination.

By Mr. Watkins:

Q. The steps extend out over the rail, do they not?

A. Yes, sir.

Q. How far does the first step extend out beyond the rail?

10 A. Twenty-four and three-quarters inches.

The Court: It extends over the rail?

Mr. Watkins: Yes.

The Court: And how near is that to the fence?

Mr. Watkins: He has testified to that, I believe, seventeen and one-half inches.

20 Q. Now, the second step, how far does that extend beyond the rail?

A. Seventeen and one-quarter.

Q. Seventeen and one-quarter inches?

A. Yes, sir.

The Court: What do you mean, seventeen and one-quarter inches?

30 Q. It extends out beyond the rail. You understand the question?

A. Yes, sir.

The Court: In other words, the width of the car is greater than the width of the rail.

Q. Now, the top or the platform of the car, what is the dimension of that?

A. Sixty-two and one-half inches.

Q. And what is the dimension? Have you measured the dimensions of the ordinary box car, freight car?

A. I am familiar with it.

Q. What is the width of the ordinary box freight car?

A. They vary between nine and nine feet six. 10
Some are narrower.

Q. You have these others in inches. Now, let's get this down in inches. Nine feet would be one hundred and eight inches?

A. One hundred and eight inches.

Q. That is about the minimum?

A. That is about the average.

Q. One hundred and eight inches?

A. Yes, sir.

Q. So that the ordinary box car would extend out farther about forty-six inches more than the top or platform of the caboose? 20

A. It would be divided, sir.

Q. I mean the total, the difference between sixty-two and one hundred and eight?

A. Yes.

Mr. Bradley: That wouldn't be the extension on the side. It would be the total of both.

Q. That makes the total of how much? 30

A. Forty-six inches difference.

Q. That divided would be twenty-three inches on each side?

A. Yes, sir.

Q. So that the box car, the ordinary freight box car, would extend out beyond the top platform—we will call it the platform—you understand what I mean?

A. Yes, sir.

Q. Would extend out twenty-three inches beyond that platform?

A. On an average.

10 Q. You have given us what you think is the minimum of the box car measurement?

A. Minimum; yes, sir.

Q. Do they run from one hundred and eight inches on to greater?

A. To about ten feet.

Q. To about ten feet?

A. Yes, sir.

20 The Court: Does it appear in the case that at the beginning of the fence there is an iron post at both ends?

The Court: Where did one of the witnesses say blood was?

Mr. Watkins: At the southern end.

The Court: The first witness said there was blood on the post at the southern end?

30 Mr. Watkins: Yes, sir. And another witness said he didn't see any blood on the post but a short distance from the post there was blood on the rail, on the railing of the fence.

JOSEPH E. IREDELL, recalled.

By Mr. Bradley:

Q. Now, Mr. Iredell, do you know the number of the caboose in which you were working that night?

A. 10009.

Q. Now, do you know about how tall a man Mr. Ramsey was?

A. Six feet one inch.

Q. Did Mr. Ramsey ever have occasion, that you observed, to notice hot boxes on the train? 10

A. He did.

Q. He had a great many hot boxes?

A. Several, yes, sir.

Q. Well, how many would you say, a hundred?

A. I wouldn't like to state any number, because we have them frequently.

Q. Very frequently?

A. Yes.

Q. And you had seen him watch hot boxes from this caboose before, or a caboose? 20

A. Yes, sir.

Cross-examination.

By Mr. Watkins:

Q. Mr. Iredell, how far is Magnolia from Lawnside?

A. Why, about a mile. 30

Q. And is there a curve between Magnolia and Lawnside?

A. Yes, sir.

Q. Is that what you would call a big curve or a small one?

A. It is not a very heavy curve, no.

Q. How far is that from Magnolia, coming north, this curve?

A. About two-thirds of the way, I imagine, two-thirds of the way.

Q. Two-thirds of the way to Lawnside? And how far does that curve extend?

A. Well, I don't know the length of the curve. It isn't a very long curve.

10 Q. This car 10009 had been in constant use since the night of the accident?

A. I can't answer that. I haven't been on that job since last spring.

The Court: Does he say which way the curve was?

Mr. Watkins: I said coming north.

20 The Court: Did the witness say which way the curve was?

Q. Describe this curve.

A. It swing to the right—to the left, rather.

Q. To the left?

A. To the left.

Q. Which side was this hot box on?

A. On the left.

Re-direct examination.

30 By Mr. Bradley:

Q. You say it is on the left side and that was the next journal to the caboose?

A. Yes, sir.

Q. And if that curve went to the left, consequently you could see ahead farther towards this fence?

A. Yes. The curve doesn't run to Lawnside, though. It just —

Re-cross examination.

By Mr. Watkins:

Q. When you went in the caboose and sat down to make up your report, after you and Ramsey had been watching for this hot box, you say it was a dark night? 10

A. Dark, yes, cloudy.

Q. Dark, cloudy night, and about somewheres around ten o'clock at night?

A. It was before ten.

Q. It couldn't have been—from your former testimony, about how long before ten?

A. The accident happened?

Q. You say you had reached Lawnside?

A. About 9.25. 20

Q. Was there any flame from the box when you went in and sat down?

A. I didn't see any.

Q. Did you see any smoke?

A. You could see the smoke when the light of Magnolia platform—you could see the smoke just a little.

Q. After you got by the light, you just saw the smoke a little, and then after you got by the light on Magnolia platform you couldn't see the smoke, lost sight of it, is that right? 30

A. Couldn't see the smoke, that is right.

Q. And then as far as the rest of the distance and as far as you know, it was a matter of smell?

A. Until the fire broke out.

Q. Do you know where the fire broke out?

A. I didn't see that.

The Court: Was it a matter of smell? Was not Ramsey required to look for the smoke?

The Witness: Watch for the fire. After we saw the smoke, we watched for the fire to break out.

The Court: Did you know where the smoke was coming from?

10 The Witness: Couldn't tell at Magnolia which particular box it was, could see the smoke streaming but we couldn't tell which box it was. It was only a small stream of smoke at that.

Mr. Bradley: If your Honor please, I want to read one or two rules, instead of putting in the book. Rule 902, under "Special Rules," page 83, of Philadelphia and Reading Railroad Company and affiliated lines, "Rules of the Operating Department. Employees of every grade are warned to see for themselves, before using them, that the machinery or tools which they are expected to use, are in proper condition for the service required and, if not, to put them in proper condition or see that they are so put before using them. The company does not wish or expect its employees to incur any risks whatsoever from which, by the exercise of their own judgment and by personal care they can protect themselves, but enjoins them to take time in all cases to do their duty in safety, whether they may at the time be acting under orders of their superiors or otherwise."

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30

Rule 903, page 84. "All employees of the company must devote themselves exclusively to its services and must not connect themselves, directly or indirectly, with any other trade or business without permission from the superintendent."

Under "General Notice," on page 3, "To enter or remain in the service is an assurance of willingness to obey the rules. Obedience to the rules is essential to the safety of passengers and employees and to the protection of property. The service demands the faithful, intelligent and courteous discharge of duty. To obtain promotion, capacity must be shown for greater responsibility. Employees, in accepting employment, assume its risks. Employees of either company, while working on the line of any other, will be considered as employees of such company." 10

WILLIAM A. GREGORY, SWORN.

By Mr. Bradley:

Q. Mr. Gregory, where are you employed?

A. Agent.

20

Q. Agent where?

A. At Lawnside station, Atlantic City Railroad.

Q. And how long have you been the agent there?

A. Ever since September 22, 1909.

Q. On October 30, 1917, were you station agent?

A. I was.

Q. Have you anything to do with the lighting of the lights there at the station?

A. Altogether.

Q. That is under your charge? Do you remember the night that Mr. Ramsey was killed? 30

A. I do.

Q. What kind of night was it?

A. Very fair night.

Q. What have you got to say about the lights that night?

A. About the lights?

Q. Yes.

A. No. 1 condition, all lit.

Q. Who lit them?

A. I did.

Q. And whose duty is it to extinguish these lights?

A. I am.

Q. When do you light the lights?

A. In the evening. In the fall of the year, about
10 five o'clock or a very few minutes thereafter.

Q. When on the next morning after this accident
did you extinguish these lights?

A. I did.

Q. Yourself personally?

A. I did.

Q. What time?

A. The lights were extinguished between six and
6.20.

Q. Witness is shown a light and is asked if this
20 is the regulation light which is used at the station.

A. Full regulation.

Mr. Watkins: Is that the light?

The Witness: It is exactly the same. It is not the
lamp.

Mr. Watkins: I object to the admission of this.
The original light, the exact light, could have been
30 brought here as testimony, instead of an imitation
to be used in evidence in its place. If the other one
couldn't have been produced, it would have been
competent, but it could have been brought here and
shown to the jury.

The Court: Why wasn't the original light
brought here?

Mr. Bradley: What light would you want?

Q. How many lights are there at the station?

A. Four on the platform.

The Court: Where are they located?

The Witness: There are two on the northbound track and two on the southbound.

Q. Are all these lights the same kind of light?

10

A. All the same kind.

Q. Is there a standard light used there on that road?

A. That was the only standard light I know of, the Royal.

Q. Will you examine this light carefully and see if that is the kind of light used at the station at Lawnside?

A. Exactly.

20

The Court: I think that is evidence, if he says it was that kind of light.

Mr. Bradley: I didn't want to bring that light. I didn't know how long the jury might want to use it. I didn't want to take the lights from the station.

The Court: Couldn't you put another light there?

The Witness: I didn't have any extras.

30

Q. That light didn't come from that station, did it?

A. No. It came from the store house.

Mr. Bradley: I will introduce that light in evidence.

Mr. Watkins: My objection is, it is plainly evident the original light could be produced here at no more inconvenience than this one offered here as a sample of lights. The question has arisen in this case and it is quite important as to what kind of light was here at the other end of the station, at the
10 post.

The Court: How far is Lawnside from here?

The Witness: Seven miles out from the Point. It is seven miles from the Point, from Kaighn's Point.

The Court: How long would it take somebody to get there and bring the light here?

20 Mr. Watkins: In addition, here is a light as bright as a new light, bright, silvery reflector, which isn't at all the sample of light burning there that night.

The Court: That would be for the jury to consider.

30 Mr. Watkins: The objection made by me is that isn't a proper sample to go by.

Mr. Bradley: If you will designate what light you want, I will try to get it. I don't want to bring all four lights here.

The Court: I think it is legal evidence to show that the light was of this type, but the light had been in use, had it not, a considerable length of time?

The Witness: It had.

The Court: It was an old light?

The Witness: Yes.

The Court: This is a new light?

10

The Witness: Yes.

The Court: But the old light was of this type?

The Witness: Yes.

Mr. Watkins: If your Honor admits that, I will ask for an exception.

20

(Exception noted for plaintiff.)

Q. Whose duty is it to clean the lights?

A. My own.

Q. Your duty?

A. My duty, yes.

Q. How often do you clean the lights?

A. Every day.

Q. What do you do to them when you clean them?

A. Trim the wicks and clean and see that the outside glass cases are so as to make full illumination.

30

Q. Do you do anything to the reflector?

A. Reflector? No.

The Court: You say you do nothing to the reflector?

The Witness: Possibly about once every month or two months.

The Court: The reflector sometimes gets dull?

The Witness: Not unless the lamp, from my experience, smokes.

The Court: Well, the lamps do sometimes smoke?

10

The Witness: I try to keep it down.

The Court: Does it?

The Witness: It does sometimes.

The Court: And sometimes it dulls the brilliancy of the reflector?

20

The Witness: It does.

The Court: So that the reflector is of no account?

The Witness: It isn't of any account when it is dull.

Q. What do you do, if anything, if you observe that the reflector is smoky or dull?

A. I immediately take care of it.

30

Q. Do you make that inspection every day?

A. Every day. I am right there at the station. It is my duty.

Q. How long has this type of lamp been at the station?

A. It is an answer I couldn't give, because they were there before my time.

Q. And that particular type of lamp has been there, unchanged —

The Court: How long have you been at the station?

The Witness: Ever since September 22, 1909.

Q. And the same type of lamp has been in use ever since?

A. Ever since.

10

The Court: Was the same lamp in use there?

The Witness: Oh, no, your Honor.

Q. And as to this fence, inter-track fence, how long has that been there, to your knowledge?

A. Before my time.

Q. Ever since you have been there?

A. Ever since.

20

Q. And as to the post on the south end of that fence, there is a ball that was missing. Do you know how long that ball has been missing?

A. Possibly four or five years.

Q. Did you find a cap and light at this station, or along the tracks on the morning of October 31st?

A. I did.

Q. And where did you find these articles?

A. I found the cap at the base of the south post of the fence, and I picked the cap up, examined it, and saw where it had been struck and dented above the visor. I then went over across the way. There was one of the lamps with the door open. I shut the door and came back again and was going to go into the station to open, when I happened to see a

30

lamp, as I thought, opposite the toilet on the track, northbound track.

Q. How far is that from the south end of the fence?

A. Really I couldn't say. I have not got the measurements, but I should imagine it would be about one hundred feet, maybe two hundred feet.

Q. Is that toward Camden?

A. Toward Camden, north. Then I picked the lantern up and went into the station, and immediately called the dispatcher up.

Cross-examination.

By Mr. Watkins:

Q. Did you show this cap and lantern to Mr. Keegan, one of the railroad employees the next morning?

A. I believe I did. I won't say positively. I know I have shown it to several.

Q. You know Keegan?

A. Yes.

Q. The cap was found right at the base of the south post?

A. Base of the south post.

Q. Can you fix more definitely than four or five years ago when this ball was taken off the post?

A. I could not.

Q. Could you say whether it was done in the past two years?

A. I couldn't say.

Q. And what are your duties there as station agent? You are the station agent?

A. Sell tickets, handle freight, baggage.

Q. Look after everything around the station?

- A. Everything pertaining to it.
- Q. What time do you go on duty in the morning?
- A. Five-fifty.
- Q. What time do you go off?
- A. Six-ten.
- Q. In the evening?
- A. In the evening.
- Q. So you are not about the station at ten or nine o'clock at night?
- A. No.
- Q. Do you know how long the lamp had been in use at the south end of the platform? 10
- A. Couldn't say.
- Q. Do you know whether it had been in use a year or not before the accident?
- A. Couldn't say.
- Q. You understand the lamp I mean, the south end of the station on the northbound side?
- A. On the northbound track.
- Q. Do you know how long the light had been on the south end of the southbound station? 20
- A. Don't understand you.
- Q. How long that particular light had been there on the end, the south end of the southbound track?
- A. I really couldn't tell you.
- Q. You don't know that?
- A. No, sir.
- Q. Now, how long is that fence between the tracks?
- A. Couldn't say.
- Q. How long is the covered part of your station? 30
- A. What do you mean?
- Q. Say, on the side going by the station on that side.
- A. The overhang, you mean?
- Q. Yes.
- A. About, I imagine, it is about twenty feet.

Q. And the same on the other side, the other side of the track?

A. Oh, no, only one side of the track, where the station is on. There is no cover on the other, no cover on the southbound. It is all on the north.

Q. All on the northbound track?

A. Northbound track.

Q. Now, do you know how far from the end of this cover on the northbound track was the end of this fence between the tracks?

A. Couldn't say.

Q. And where is this light fastened or fixed on the platforms on each side of the tracks?

A. It sets on a stand that is on a post. The post is about two and a half to three foot in the ground. The bottom of the stand rests where the lamp will rest on is about five foot from the ground to the bottom of the stand, then the light goes, sets right on that stand.

20 Q. So that the post is only about five feet high from the ground?

A. To the bottom part of where the stand is, where the lamp sets on.

Q. What kind of stand is that?

A. About a one inch piece of wood with a bracket.

Q. And then comes a lamp similar to this? (Indicating.)

A. A lamp similar to that and then it is fastened on that wire.

30 The Court: How high does he say the lamp stood from the ground?

Mr. Watkins: The post about five feet from the ground, then a stand of a few inches.

The Witness: About one inch the stand is.

Mr. Watkins: Then the lamp would be setting on that?

The Court: Then the lamp was five feet from the ground?

Mr. Watkins: More than five feet. Five feet and an inch to the lamp.

10

Q. Now, how far back from the fence was the lamp placed on the platform?

A. That is something I never interested myself in, in taking measurements.

Q. Can't you give us some idea to the best of your judgment?

A. I should imagine about ten foot, maybe more, that is, from the rail, eastern portion of the north-bound rail.

20

Q. On the outside of the rail?

The Court: How far was the lamp, according to your judgment, from the post at the beginning of the iron fence?

The Witness: I should imagine seventy-five or eighty feet, I should imagine. I wouldn't want to swear to it. I might be hanged for it.

Q. How far back from the, say the outside rail, sets the lamp back on the platform?

30

A. About ten feet, I guess, or twelve.

Q. Then the track is how wide from that rail to the next rail in between the tracks?

A. I couldn't give you the sizes.

Q. Well, you have it about ten feet from the outside rail?

A. That is as near as I can judge.

Q. About how far is the fence from the outside rail?

A. About two and a half feet, about two foot, two inches, three foot, two inches, somewhere around about that.

10 The Court: You have been at that station how long?

The Witness: Since 1909, September 22nd.

The Court: Over ten years?

The Witness: Over ten years.

20 The Court: And you are familiar with the conditions there?

The Witness: Yes, your Honor.

Q. So, on this night of the accident when Ramsey was killed you left the station about six o'clock at night?

A. After six.

Q. Between six and seven?

A. Yes.

30 Q. Did you go back to the station that night?

A. No more until the next morning.

Q. What is the object of the reflector they have back of the lamp?

Mr. Bradley: I object. I don't see that this witness is qualified as to what the object is.

(Question withdrawn.)

Q. When the lamp is placed upon this post, in what way is the front of the lamp? How is it turned?

A. The lamp is facing to the west.

Q. That is, facing across the tracks?

A. Across the tracks.

Q. And is that the same kind of reflector exactly as was on the lamp that night? 10

A. It was.

Q. And the same sized lamp?

A. Same size.

Q. And a coal oil lamp?

A. A coal oil lamp.

Re-direct examination.

By Mr. Bradley:

Q. Now, when you speak of the distance from the light to the edge of the south—the south edge of the inter-track fence, which light do you refer to? 20

A. The south light on the platform, but I wouldn't want to take and have sizes taken, owing to the fact I have never been interested in the measurements.

Q. You spoke about the light on the southbound track, the south end of the southbound track?

A. Yes.

Re-cross examination. 30

By Mr. Watkins:

Q. Now, there are two of them on each side?

The Court: When you gave the distance, was that the best of your judgment?

The Witness: That was the best of my judgment.

Q. You said there were two lights on each side of the railroad, two on each platform?

A. Yes.

10 Q. Where is the other light? There is one on the south end. Where is the other light?

A. North end of the station.

Q. And on the side that the cover is on, does the covered part of the station hide that, looking north?

A. No.

Q. How far from the one on the south end of the station, of the platform, are the other two on each side, one on each side?

A. You mean the other two lights?

20 Q. Yes.

A. They are across, on the southbound track. I couldn't tell the exact sizes but I know it is double the distance of the rail and then the footage on the platform.

Re-direct examination.

By Mr. Bradley:

30 Q. These lights haven't been changed in position since you have been there?

A. No.

Q. And when you spoke about this iron ball, how long did you say it was missing?

A. I couldn't tell whether two years, three years or five years, because I never interested myself in that. It is not part of my duty.

Q. When you went to pick up the cap that morning, was the iron ball there?

A. It was not.

Q. How long before that was it missing?

A. I really couldn't say.

Q. A day or two?

A. The ball might have been off for five years. I knew it was off but how long I couldn't say.

Q. Did you know it was off before the accident?

A. I feel pretty safe to say it was.

Re-cross examination.

By Mr. Watkins:

Q. That is the best you can say?

A. That is the best I can say.

Q. Did you examine the post to see any marks on it?

A. I did.

Q. What did you find?

A. Blood.

Q. Anything else?

A. No.

NATHAN K. ERGOOD, recalled.

By Mr. Bradley:

Q. Mr. Ergood, you stated this entire track at Lawnside was constructed under your direction?

A. Yes, sir.

Q. Has the position or location of that entire track fence been changed since 1904?

A. No, sir.

Q. And it is the same as it was at the time you constructed it?

A. Yes, sir.

Q. I understood you to say it was constructed in 1904?

A. Yes, sir.

Cross-examination.

10 By Mr. Watkins:

Q. When was the last time that you saw this fence prior to October 30th, 1917?

A. I couldn't say that, because that is a frequent occurrence.

Mr. Watkins: I didn't ask what were the causes.

20 The Court: Strike out beginning with "the causes."

Q. When did you examine this fence last, prior to the accident?

A. I couldn't tell you that.

Q. When was this ball removed from the post?

A. Nobody appears to know.

Q. I am asking you do you know?

A. I don't know, no.

30 Re-direct examination.

By Mr. Bradley:

Q. Who has charge of the work, if those fences are changed?

A. If they are what?

Q. If they are changed in construction or location.

A. I have.

Q. You have supervision of them?

A. Yes, sir.

Q. And there has never been any change according to your supervision?

A. No, sir.

Q. How often do you look after those fences?

A. Every time I get in the neighborhood.

10

Q. And are reports made to you of the condition of the fences?

A. Yes, sir, to me. I superintend that; division engineer.

Q. So, at different times you examined it?

A. Yes; there has never been any repairs.

Mr. Bradley: Objection.

Q. Has any report come to you that that fence was out of order since it has been constructed?

20

A. No.

Mr. Bradley: The man testifies to what was not acknowledged. My objection is that that isn't relevant.

The Court: Is he in charge of the fences?

Mr. Bradley: Yes, he is the construction foreman, and he has testified if that fence is out of repair that is reported to him.

30

(Objection overruled.)

(Exception noted for defendant.)

Re-cross examination.

By Mr. Watkins:

Q. When were you in the neighborhood of Lawn-side previous to this last time?

A. Previous to this accident?

Q. Yes.

10 A. That is, before the accident?

Q. Yes.

A. I couldn't tell you that. If I could have told you I could have answered the other question.

Q. Can't you tell us that?

A. No.

JOSEPH E. MAUER, recalled.

20 By Mr. Bradley:

Q. You testified yesterday you were section foreman on the section of the railroad comprising Lawn-side.

A. Yes, sir.

Q. Is that inter-track fence under your supervision?

A. Yes, sir.

30 Q. Has that fence ever been repaired, to your knowledge?

A. No, sir.

Q. Have you ever made any report to Mr. Ergood?

A. No, sir.

Cross-examination.

By Mr. Watkins:

Q. It has never been out of repair before this?

A. No, sir.

Mr. Bradley: That is an improper question. The presumption is it was out of repair at the time of the accident. There is no evidence to that effect. 10

Mr. Watkins: Before the accident.

Mr. Bradley: It seems to me that is a presumption. It was out of repair before the accident. This witness testified it was never out of repair.

(Objection sustained.)

Q. Was there anything wrong at all with this fence or post?

A. Nothing at all, except the ball at the top of the post. 20

Q. The ball was knocked off?

A. The ball was knocked off.

Q. Did you report that?

A. No, sir.

Re-direct examination.

By Mr. Bradley: 30

Q. How long ago did you notice the ball?

A. That is more than I can say.

Q. Has it been a number of years?

A. Quite a while; yes, sir.

Q. Well, how many years?

A. In the neighborhood of two or three years.

Re-cross examination.

By Mr. Watkins:

Q. And all during that two or three years, you never reported it?

A. No, sir.

10 Re-direct examination.

By Mr. Bradley:

Q. It serves no function on the post except ornamentation?

A. Yes, sir; it is safer with it off.

Re-cross examination.

20 By Mr. Watkins:

Q. Why? Why did you say it was safer?

A. The top of the fence is that much shorter.

Q. That is the reason why it is safer?

A. Yes, sir.

Q. So that the higher the fence is, the more danger?

A. Yes, that is what —

Q. What?

30 A. Danger to nothing at all then, nothing interferes with it.

Q. What did you mean by safer?

A. Well, if anything would come in contact with it, if the ball is on it would hit that quicker.

Q. What would come in contact?

A. Something slide off the trains.

Q. How about if it stood on the trains?

A. Something, like a car door might be swinging, on a freight car.

Q. Or like an employe?

A. I couldn't say about that.

CHARLES A. NAGLE, SWORN.

By Mr. Bradley:

10

Q. Mr. Nagle, where are you employed?

A. Camden, West Jersey and Seashore Railroad.

Q. And what is your duty?

A. Draughtsman.

Q. Did you go to Lawnside station and measure the inter-track fence and the location of the station in general?

A. I was just instructed to go there to measure the clearance of the inter-track fence and locate the nearest light. 20

Q. Will you tell us, please, what you found in your examination?

A. Is there any particular thing you want? The northward track from the near rail to the extreme south post, inter-track fence, to the nearest side, is three foot six and a quarter inches, and the height of that post above the top of the rail is four foot three inches above the top of the west rail and the northward track. 30

Q. Now, what is the gauge between the two inside rails?

A. Between the two tracks?

Q. Between the north and southbound tracks?

A. Seven foot five inches.

Q. Do you know the gauge line that the West Jersey and Seashore and Pennsylvania Railroad adopt?

A. I think it should be seven foot five and a half inches, to be standard, to twelve foot two inch track centers. The track at present down there is twelve foot one and a half.

Q. Can you account for that discrepancy?

10 A. Why, yes, to a certain extent, that is, sometimes, where the conditions change the present location, a heavy traffic running over the tracks, the movement of the trains might get it out of line a little bit and account for an eighth or quarter of an inch or half inch.

Q. What is the distance between the inter-track fence and the rail on the northbound track?

A. From the nearest side of that inter-track fence is three foot six and one-quarter inches.

Q. And what is the distance between the two northbound tracks?

20 A. You mean the gauge line?

Q. Gauge line.

A. Four foot eight and a half.

Q. What is the gauge line?

A. Four foot eight and a half.

Q. How did you measure that?

A. The inside. In other words, the west side of the east rail and the east side of the west rail, on the northward track.

Q. Now, that is a standard gauge?

30 A. The standard is four foot eight and a half.

Q. Do you know the distance of the light on the west side of the southbound platform to the edge of the inter-track fence, south edge?

A. You mean to the post?

Q. The distance, yes.

A. The nearest distance is forty-two foot three inches.

Q. Now, the light on the other side is located where?

A. Well, let's see. As near as I could give, that would be, the nearest light would be fifty-four feet, more or less.

Q. So these lights are not directly opposite?

A. No, not directly opposite.

Q. Have you observed inter-track fences on other lines except the Atlantic City line?

A. On the Pennsylvania, where I am employed
—West Jersey and Seashore. (10)

Q. And what would you say with respect to the inter-track fences on the other line, in comparison with this inter-track fence?

A. Well, it is customary to place them right in the center of the two tracks, as nearly as possible; that is, directly in the center.

Q. And is this inter-track fence so located at Lawnside?

A. Well, it isn't right in the center. It is all but
one inch off center. 20

Q. Which way is that one inch?

A. Between the northward track and the fence is three foot six and a quarter and between the southward track and the fence is three foot eight and a quarter.

Q. Now, as to the width of the inter-track fences, did you measure the width of the post here in Woodbury this morning?

A. On the West Jersey, yes.

Q. And how wide is that post? 30

Mr. Watkins: Objection. That is making a special comparison between a special fence here in Woodbury and this one over at Lawnside.

(Question withdrawn.)

Q. About how wide is that post at Woodbury?

A. Four and one-half inches.

Q. And how wide is the post at the south end of this fence at Lawnside?

A. Two and one-half inches.

Q. And have you ever observed, approximately, the width of any other posts on the West Jersey?

A. No, I haven't measured them.

10 Q. How would you say the width of the post at Lawnside compares with the width of other inter-track posts which you have seen?

A. Well, in a metal fence it would be practically the same.

Q. As to a wooden fence, would this one at Lawnside be narrower or wider?

A. A Wooden fence would be wider.

Q. A wooden fence is supposed to be wider? Is the presence of these wooden fences very frequent on the Pennsylvania Railroad and the West Jersey?

20 Mr. Watkins: Objection. That hasn't anything to do with it. It isn't at all relevant what is on the West Jersey Railroad, frequency of fences or kind of fences. There is no proof this man ever rode over the West Jersey Railroad, that is, the deceased. In addition to that, this suit is against the Atlantic City Railroad.

30 The Court: Why did you ask that question, Mr. Bradley? This was a metal fence.

Mr. Bradley: I want to so tie this evidence down to a point that this fence, in comparison with fences on the other railroads, is very much narrower.

Mr. Watkins: That is objectionable, too. If you are going to do that, you must show the situation regarding the tracks, the number of tracks, the width between them, and all that. If you will let me ask this witness one question, I think it will bring out the reason I make the objection.

By Mr. Watkins:

Q. Have you examined the condition of the tracks and around at Lawnside, whether they are double track or triple track? 10

A. Yes, I have examined to that extent.

Q. What are they?

A. Double tracks.

Q. What at Woodbury?

A. Three tracks.

Q. What is the width between the tracks at Lawnside?

A. Twelve foot, one and one-half inches.

Q. Between rails? 20

A. Seven foot, five inches.

Q. What is the width at Woodbury?

A. I haven't measured it.

By Mr. Bradley:

Q. Do you know of any inter-track fences between railroad lines of standard gauge double track roads?

A. Wooden fences? 30

Q. Yes.

A. Yes.

Q. Where?

A. Well, there is one at Lindenwold, on the West Jersey, standard gauge.

Q. Have you observed others at different places?

A. I just wouldn't like to say now. I haven't them in my mind, but I know there are more. I wouldn't like to mention the stations.

Cross-examination.

By Mr. Watkins:

Q. In none of these other cases that you have quoted as wooden fences, have you measured the distance between the outside rails?

A. I have, but I don't just remember at this time.

Q. You can't remember?

A. No.

Q. See that I have this right. You measured the distance from the south end of both stations at Lawnside to the post, did you?

Mr. Bradley: I don't think that is intelligible.

20 (Question withdrawn.)

Q. Did you measure the distance from the lamps on both stations, both north and southbound, on the southern end, to the post, the south post

A. Yes, the nearest line.

Q. Now, the nearest line from the lamp on the southern end of the northbound station was what, to this post?

30 A. That I didn't just measure, but I said fifty-four feet, more or less.

Q. You mean by that less?

A. Or more.

Q. Now, let's have it a little more definite. You are sitting here as a draughtsman to give us correct measurements.

Mr. Bradley: He said he didn't measure it. He has stated he hasn't measured this, but to his best knowledge, it is fifty-four feet, more or less.

(Objection overruled.)

Q. Do you mean it might be fifty-three feet?

A. It might be fifty-four feet, three inches, or it might be fifty-nine feet, six inches.

Q. It might be as high as sixty feet? In other words, you wouldn't want to put it less than fifty-four feet, would you? 10

A. I wouldn't want to say it, you mean?

Q. You wouldn't want, in your judgment, to place it less than fifty-four feet?

A. No.

Q. And it might be sixty?

A. In my judgment, I wouldn't want to make it more than fifty-four.

Q. Would you say fifty-four feet, leaving off more or less? 20

A. Fifty-four feet.

Q. More or less left off?

A. That is right.

Q. With regard to the lamp on the other side, from the southern post, how far is that?

A. On the left side?

Q. Either side.

A. That would be forty-two or three inches.

The Court: Is that on the other side of the railroad? 30

Mr. Watkins: Yes. The lights on the southern end of both platforms.

Q. In a straight line?

A. The shortest line, the radius, rather.

CHARLES B. GRIM, SWORN.

By Mr. Bradley:

Q. Mr. Grim, where are you employed?

A. Camden.

Q. And what is your position?

A. Foreman of the car shop.

Q. What car shop?

10 A. Atlantic City Railroad.

Q. How long have you been so employed?

A. Thirteen years.

Q. Do you do the repairs to the cars in the Atlantic City Railroad?

A. My men do.

Q. Under your supervision?

A. Yes, sir.

Q. What has been done, if anything, to caboose number 10009 since October 30, 1917?

20

Mr. Watkins: Are you going to testify from memoranda or books? I object to the use of the book to refresh the witness' mind unless he made the memoranda there himself, and at the time.

Q. What have you in your hand?

A. I have a memorandum of work that was done on this car.

Q. And where did you get the memorandum from?

30 A. Off these ledgers.

Q. Who keeps the ledgers?

A. My assistant.

Q. Are those ledgers made under your supervision?

A. Yes, sir.

Q. And how are the items entered up there? In what manner are they entered?

A. These items in here is what has been done to the car on this date.

Q. But how is the book kept? I mean from a sense of bookkeeping; how are the items put there?

A. These items are put in by the man who does the work.

Q. In accordance with the rules of the company?

A. No, this is our own way of keeping this record.

Q. And how does the man—did someone turn over to your assistant a slip or something of which is written up in this book? How do they get there in the book? 10

A. The man that does the work on the car puts this in here when he has completed the job.

Q. In his own handwriting?

A. Yes, sir; and then we have a ledger that is taken out of this by my assistant and that is all entered up through there, the date the car was received and the date the car went out of the shop.

20

The Court: Was he the bookkeeper?

Mr. Watkins: No. Made by the men who did the work at the various times.

The Court: Is he familiar with the facts?

Q. Do you ever know of this car being in your shop, aside from the book?

A. I see them all in there, but I don't remember any particular time. 30

Mr. Bradley: Will your Honor rule on whether that record is admissible or not?

The Court: Records may be used even if they are not in the handwriting of the witness, to refresh his

memory; that is to say, if he has any memory of the fact. This witness doesn't appear to have any memory respecting any repairs on this car.

If you will just turn to those records——don't testify, but just look over them.

Mr. Watkins: Objection.

10 The Court: In the first place, ask him whether or not he has any recollection of any repairs being made to this car.

Mr. Bradley: That has been asked and he said he hasn't. Now, his memory may be refreshed by looking at anything, actual memoranda.

The Court: He doesn't have to make the memoranda himself. His memory may be refreshed from other writings.

20

Q. If you will look over your list of what has been done to the car and then state whether that refreshes your own particular memory.

The Court: That is to say, whether or not you can really recall the facts whether you have any present recollection, after examining the writings, of the work or not.

30

Mr. Watkins: That is objected to, because the question of Mr. Bradley says the work done on "this car."

Mr. Bradley: I withdraw the whole thing.

BOTH SIDES REST.

RECESS UNTIL 1.10 P. M.

AFTERNOON SESSION.

MOTION FOR DIRECTION.

Mr. Bradley: I would like, at this time, to renew the motion for non-suit.

The Court: I denied your motion for non-suit. I said you might move for a direction at the conclusion of the case. 10

Mr. Bradley: May I have an exception to your Honor's refusal? You said you would hold it in obedience.

The Court: I said you may move for a direction. You have your objection. If there is no exception on the record with regard to the denial of the motion for non-suit, see that it is entered.

(Exception noted for defendant to Court's refusal to grant non-suit for defendant.) 20

Mr. Bradley: I move for a direction of a verdict on the grounds that were stated in the motion for non-suit, together with the additional testimony put in in this case, which, to my mind, overcomes any presumption with reference to the inter-track fence, of its negligent construction; that the defendant was not guilty of any negligence as charged in the complaint; that the defendant was not guilty of any negligence as charged in the complaint which caused or contributed in any degree to the injury of the said decedent Ramsey; that the death of the said Ramsey was caused absolutely by his negligence; that the death of the said Ramsey did not result in whole 30

or in part from the negligence of any of the officers, agents or employees of the defendant company nor by reason of any defect or insufficiency due to defendant's negligence, or in its cars, engines, appliances, machinery, track, road-bed, works, boats, wharves or other equipment; the death of the said Ramsey was not contributed to by the defendant's violation of any statute enacted for the safety of its employees and the said Ramsey therefore assumed
10 the risk of his employment; the said Ramsey was a brakeman on one of the defendant's freight trains and on or before October 30, 1917, he was fully aware of and thoroughly familiar with the existence and location of the inter-track fence and lights at Lawnside Station and the danger of striking said fence while riding on the moving train was obvious to him and the risk of such an accident was one that he assumed. They are the reasons for the direction.

20 The Court: Where there are disputed questions of fact, the doctrine of obvious risk, of course, is a jury question, involves a jury question. The jury might reasonably infer that decedent was at his post of duty, that he had occasion to look out from the side of the car for a hot box, and while he was thus engaged, his head came in contact with an iron post at the beginning of an iron fence at Lawnside Station; and the jury might infer from the state of
30 proof that there was no light at or near the post, or that the light on the post was obscured by the darkness of the night. A lantern at the post or some other method of lighting might have prevented this accident, and it is for the jury to say whether or not the defendant was guilty of negligence.

(The motion for a direction is denied.)

(Exception noted for defendant.)

CHARGE OF THE COURT.

CARROW, J.

Gentlemen of the jury, this case must be decided by you in the strict light of the proof and law, without regard to whom the parties are, or what they are, without regard to the consequences. The law is no respecter of persons. The law looks solely to the right, to the proof, to the truth, and upon the questions of fact in this case you are bound by the truth, and you must decide the case in the strict light of the truth, regardless of every other consideration. 10

The suit is predicated upon the theory of negligence, upon the part of the defendant, which caused the death of Mr. Ramsey, in whole or in part. The suit is brought by Mrs. Ramsey for the benefit of herself and her two children, a girl fourteen years of age, and a boy eleven years of age. 20

The plaintiff has the burden of proof to make out a case of actionable negligence against the defendant. There is no presumption of negligence on the part of the defendant. Negligence must be proved, and the plaintiff has the burden of showing it by the fair preponderance of the evidence. If she fails in her proof to establish a case of actionable negligence on the part of the defendant, she cannot recover.

The suit is brought under an act of Congress, which I will read: "Every common carrier by railroad, while engaging in commerce between any of the several States or Territories, or between any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed 30

by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, road-bed, works, boats, wharves, or other equipment."

10
20
30
Negligence has been defined to consist in omitting something that a reasonably prudent man would do, or the doing of something that a reasonably prudent man would not do. If, in either case, an injury be done to another, though unintentionally, he may recover compensation therefor. It was the duty of the defendant to provide deceased with a reasonably safe place in which to do his work. It was also the duty of the defendant to exercise reasonable care for the safety of the deceased while he was doing this work. Care, reasonable care, is that degree of care which you would have a right to expect of reasonably prudent persons under the same or similar circumstances. Deceased had a right to assume that the place and his work were reasonably safe, unless he had information or knowledge to the contrary or was chargeable with such knowledge under the doctrine of reasonable care which he, as a reasonably prudent man, was bound to observe for his own safety.

Our Court of Errors and Appeals has said that a servant assumes the ordinary risks incident to his employment and also risks arising in consequence of

special places of danger known to him, or which he could have discovered by reason of the exercise of reasonable care, or which should have been observed by one ordinarily skilled in the employment in which he engages.

Now, the defendant denies liability in this case altogether. You have heard the contention of the defendant and the contention of the plaintiff.

The plaintiff contends that the post, at the beginning of the iron fence, was not lighted so that the deceased could see it and avoid that danger. 10

Defendant contends that it was guilty of no negligence; that the fence was constructed in the way all the fences of that company and similar companies had been constructed; that they had been constructed without lights and there were no reasonable grounds upon which it could be said to anticipate that the deceased would put his body out beyond the line of the cars. Now, that is a question of fact, gentlemen, which you must consider in this case, and you must carefully consider it, and, in the consideration of the matter, you must not be controlled by sentiment, sympathy or prejudice. You must be controlled by the proof and by the law, exclusively. 20

In the first place, you must ascertain from the proof whether or not there was a light at that post. Now, you must examine all the proof in the case; then you must decide whether or not, even if there was not a light, in view of the experience of the deceased on that road, he should not have, as a reasonable man, anticipated the presence of that post at the beginning of that fence. 30

Now, contributory negligence is a defence and the defendant has the burden of showing it and the defendant must show that by the fair preponderance

of the evidence, unless it has already been shown by the plaintiff on her side of the case, and if it has already been shown, defendant is under no obligation to show it over again.

Gentlemen, if the defendant was guilty of actionable negligence, according to the proof, and the deceased was likewise guilty of negligence which contributed approximately to the cause of his death, that would be contributory negligence, and in an
10 ordinary death case, in the courts of New Jersey, contributory negligence being shown on the part of the deceased would prevent his widow from recovering any damages; but that is not so in this case. Be careful to bear that in mind, because the act of Congress, upon which this suit is founded, is different in that respect from the law of New Jersey. I will read the act of Congress respecting contributory negligence. Be careful to pay attention to the provisions of this statute:

20 "In all actions hereafter brought against any such common carrier by railroad under or by virtue of any of the provisions of this act, to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee."

30 Now, gentlemen, you have heard the evidence, pro and con, touching the question of liability, and you have heard the arguments of experienced counsel on both sides, who submitted their respective contentions. You must take the law from the Court. You do not lay down any law for the case; you haven't that power, but the facts should have your

exclusive attention. You must decide from the evidence and the light of the law whether the defendant was guilty of actionable negligence which resulted in whole or in part in the death of the deceased. If you find it was not so guilty, you would be bound to return a verdict of no cause for action; but if you find the defendant was guilty of actionable negligence, you must find whether the deceased was guilty of contributory negligence. If you find the deceased was guilty, you must cut down the amount of damages. In other words, you must do exactly what the statute says. It would be unjust and unlawful to compel the railroad company to bear the whole burden of the damages if the deceased was himself guilty of contributory negligence. If, however, you decide that deceased was not guilty of contributory negligence, after you have decided the question of actionable negligence, under the act of Congress, then, gentlemen, you will assess the damages without reference to the contributory negligence, because if you find the deceased was innocent of contributory negligence you cannot cut down the damages on that account, which is only when the deceased is found guilty of contributory negligence, and then the damages must be cut down.

The damages recoverable in such a case, if the jury find there is liability, are what are known in the law as compensatory damages, and not punitive damages. The damages must be measured by and limited to the pecuniary loss which the widow and her children have sustained by the premature taking off of the head of the family. The statute says the damages must be fair and just, with reference to the pecuniary injury, that is, the money loss, suffered. You are not permitted to consider anything but the financial loss, excepting, as I have said, the

element of contributory negligence, if you find the deceased was guilty of that.

Mr. Justice Fort, in the Court of Errors and Appeals of this State, filed an opinion in a death case, from which I deem it my duty to read:

10 "What the plaintiff is entitled to recover is a 'capital fund' (so to speak), which shall represent the present value of all the pecuniary loss which will fall upon the widow and next of kin by the premature taking off of the intestate. That fund is to be ascertained by taking into account all the possibilities. The intestate might have died by the course of nature shortly after the accident. He might, had he lived, have suffered financial reverses. The wife, had he lived, might have died long before he did. So might his next of kin. Nothing is to be added 'for loss of society or wounded feelings or anything else which cannot be measured by money and satisfied by a pecuniary recompense.' "

20 You will take into consideration that the deceased was getting his own living out of the money he was earning, getting his own keep, his own clothing.

30 Now, the defendant has asked me to read to you, from a book, as one of the requests, it is under the head of "Custom or Practice of Other Railroads Not Conclusive in Determining the Exercise of Ordinary Care. The standard of duty, under the federal act, upon all common carriers, is ordinary care, that is, the care that a person of ordinary prudence would use under the same circumstances." That may be withdrawn. I think that is the law, anyhow. I will continue to read this section. What you requested was 533?

Mr. Bradley: As one of the requests, the same as if I had submitted it in writing.

The Court: I will finish this section. "The custom or practice of other carriers may be admissible as evidence to determine whether ordinary care was exercised in a particular case, but evidence of that character is not conclusive, for the ultimate and controlling test always is not what has been the practice of others in like situation, but did the defendant in the case under investigation exercise such care as a reasonably prudent person would ordinarily have exercised in such a situation. The law does not permit what ought to have been done to be determined in a particular case by the practice of others; for the degree of care exercised by them may not be due, reasonable or proper, and therefore not ordinary care within the meaning of the law."

Now, Section 533, which defendant asks me to charge as one of its requests, is as follows:

"Carrier not required to furnish latest, best and safest appliances for interstate employees. Under the rule adopted by the United States Supreme Court, the carrier's duty toward its interstate employees is to exercise ordinary care to supply machinery and appliances reasonably safe and proper for their use. The employer is not required to furnish the latest, best and safest appliances or to abandon the standard appliances upon the discovery of later improvements, if those in use are reasonably safe and suitable."

I so charge you.

Now, I have some other requests which the defendant has asked me to charge. Do you still ask me to charge these requests?

Mr. Bradley: Yes.

The Court: Request No. 1: "If you shall find from the evidence in this case that any of the officers,

agents or employees of the defendant company was guilty of negligence, that would not entitle the plaintiff to recover in this action unless you further find that the said negligence was the proximate cause of the decedent's death. By 'proximate cause' is meant the natural and probable result of an act of negligence. But an injury that could not have been foreseen or reasonably anticipated as the probable result of an act of negligence is not actionable and such an act is either the remote cause or no cause
10 whatever of the injury. The natural consequence of an act is the consequence which ordinarily follows it, the result that may be reasonably anticipated from it. A probable consequence is one that is more likely to follow its supposed cause than it is not to follow it."

Well, under this statute the defendant is liable if the deceased came by his death in whole or in part through the defendant's negligence. I would like
20 to hear you on that question.

(After argument.)

The Court: Have you any objection to this?

Mr. Watkins: Not at all; no, sir.

The Court: This request is charged by consent. Request No. 2: There is no evidence in this case that
30 the defendant company violated any statute enacted for the safety of its employees and it therefore follows as a matter of law that the doctrine of assumption of risk applies and that the deceased assumed certain risks of his employment which are designated as ordinary risks as follows: First, as to ordinary risks—the deceased assumed the ordinary

risks of his employment which risks are those normally incident to his employment as a flagman on this train, and as to these risks he is presumed to have knowledge and assumes injuries resulting therefrom, whether he was actually aware of such risks or not, for these risks are presumably taken into account in fixing his wages. Secondly, as to extraordinary risks—these are risks not naturally incident to the employment and may arise out of the failure of the carrier to exercise due care with respect to providing a safe place to work and suitable and safe appliances for the work. The employee is treated as assuming these extraordinary risks when he becomes aware of the defect or disrepair and of the risk arising from it when the defect and risk are alike, so obvious that an ordinary prudent person, under the circumstances, would have observed and appreciated them. If you find from the evidence in this case, that the said James K. Ramsey was killed by coming into contact with the inter-track fence at Lawnside while leaning from the steps of the caboose and such risk of his employment was one that he assumed as a matter of law, your verdict must be for the defendant.”

I so charge you. That is a question of fact under these rules of law.

Request No. 3: “The location of the inter-track fence at Lawnside was open and obvious and from the length of time the said fence had been at Lawnside and from the length of time the deceased had been employed on the freight trains of the defendant company and from the experience of the deceased as a capable railroad man, he would have actual knowledge or be charged with knowledge of the existence and location of the said inter-track fence. If you

find that the death of the said James K. Ramsey was caused solely by the fact that he momentarily forgot the existence of this inter-track fence or that he did not realize the train was so near the fence, then your verdict must be for the defendant."

That is, providing he knew the fence was there. If the circumstances are such as to convince you that he was chargeable with that knowledge on that occasion—with that qualification I charge that request.

Request No. 4: "In reaching your verdict, you should take into consideration the deceased's knowledge of the dangers of the situation derived from his experience as a railroad employee, and if you find that he was fully informed of the danger incident to his work and that the danger of coming in contact with the inter-track fence at Lawnside or at other stations of the defendant company in the manner he did, was one of the risks of his employment and with a knowledge of such risks he continued in the defendant's employment, then your verdict must be for the defendant."

I so charge you. That is a question of fact which you gentlemen must consider in this case.

Request No. 5: "If you shall find in this case that death of the said James K. Ramsey was caused solely by his own act, whether he was negligent or not, then the plaintiff cannot recover in this action."

That is true. If it was caused solely by his own act, that is true, because his right of recovery is based upon the statute which I read to you, which gives his widow a right of action if his death was caused in whole or in part through the negligence of the defendant company.

Number 6 is refused.

Request No. 7: "The hot journal on the defendant's train was not the proximate cause nor one of the proximate causes of the death of the said James K. Ramsey, and if you therefore find that the only negligence of the defendant company was the existence of this hot box, your verdict must be for the defendant."

I so charge you.

10

Request No. 8: "Under the common law doctrine of assumption of risk which applies to the accident in question, James K. Ramsey assumed defects due to the negligence of the defendant company when these defects and risks arising therefrom were known to him or were open and obvious or plainly observable."

That is true enough if he knew about them or should have known about them from the standpoint of reasonable prudence.

20

Request No. 9: "If you shall find from the evidence in the case, that the defendant was guilty of negligence which in part caused the death of the said James K. Ramsey, and that the said James K. Ramsey was also guilty of negligence which contributed to his death, then if you further find that the risk of this accident was one that the deceased assumed, your verdict must be for the defendant."

That is true. Of course, if Mr. Ramsey assumed this risk, his widow cannot recover. That is a question of fact that you gentlemen must decide from all the facts and circumstances of the case.

30

Request No. 10: "If the risk of injury in this case was one that the deceased assumed, then the plaintiff herein cannot recover even under Section 3 of the Federal Employers' Liability Act, permitting a recovery to employees who are guilty of contributory negligence."

I so charge you.

10 No. 11 is denied. I suppose by number 11 you mean there is no evidence in the case that the defendant was guilty of any negligence. I suppose you meant to request me to charge that the defendant was not guilty of any negligence under the act of Congress?

Mr. Bradley: I did.

The Court: In other words, the defendant was not guilty of negligence in whole or in part?

20 Mr. Bradley: Yes.

The Court: I refuse to charge that, and leave that to the jury.

Request No. 12 is denied.

30 Mark what I said in the beginning: this action is predicated, under the act of Congress, upon the theory that Mr. Ramsey's death was caused by the negligence of the defendant in whole or in part.

Now, gentlemen, you may retire.

DEFENDANT'S EXCEPTIONS.

Mr. Bradley: I except to that part of your Honor's charge wherein you said if the defendant was guilty of negligence, and if the plaintiff was guilty of contributory negligence, that the plaintiff could recover diminished damages, in so much as you failed to qualify that by the doctrine of assumption of risk. 10

(Exception noted for defendant.)

Mr. Bradley: I except to that part of your Honor's charge, wherein you refuse the first part of request number 3, which I consider as matter of law, and which you stated was a matter of fact for the jury.

(Exception noted for defendant.)

Mr. Bradley: And to your Honor's refusal to charge No. 6, No. 8, No. 11 and No. 12 requests as requested. 20

(Exceptions noted for defendant.)

DEFENDANT'S REQUESTS REFUSED.

10 "3. The location of the inter-track fence at Lawnside was open and obvious and from the length of time the said fence had been at Lawnside and from the length of time the deceased had been employed on the freight trains of the defendant company and from the experience of the deceased as a capable railroad man, he would have actual knowledge or be charged with knowledge of the existence and location of the said inter-track fence."

"6. The existence of a hot journal on the defendant's train is not negligence in itself nor is it a presumption of negligence on the part of any of the officers, agents or employees of the defendant company."

20 "11. There is no evidence in the case that the defendant was guilty of any negligence which was the proximate cause of the injury and death of the said James K. Ramsey."

"12. The injury and death of the said James K. Ramsey in accordance with the evidence presented in this case, was a risk that the deceased assumed in the course of his employment."

30

NEW JERSEY COURT OF ERRORS AND
APPEALS.

FLORENCE K. RAMSEY, ad-
ministratrix of etc.,
JAMES K. RAMSEY, de-
ceased,

Plaintiff-Respondent,

vs.

ATLANTIC CITY RAILROAD
COMPANY,

Defendant-Appellant.

} Appeal from Supreme
Court.

BRIEF OF DEFENDANT-APPELLANT.

This appeal brings up for review a judgment in favor of the plaintiff for \$7000, rendered at the Gloucester Circuit of the New Jersey Supreme Court, before Judge Howard Carrow and a jury. The action was instituted by the plaintiff under the provisions of the Federal Employers' Liability Act of April 22, 1908, for fatal injuries received by her husband on October 30, 1917, while in the employment of the defendant company. It is admitted that the Federal Act governs the rights and liabilities of the parties to this action.

STATEMENT OF FACTS.

The deceased was a capable, experienced brakeman on one of the company's freight trains and had been in its employment about eight years. For six years preceding his death, he had worked on the same run and during the years 1914 and 1915 his train had stopped regularly at Lawnside, the very station, where he is supposed to have received his fatal injuries by coming in contact with the inter-track fence which was located midway between the main north and southbound tracks.

On the night of the said accident, the freight train upon which the deceased was employed was making its regular trip from Winslow Junction to Camden. The train had left Winslow Junction at 8.20 P. M. after the car journals had been regularly inspected at said station and the inspection had been reported "O. K." to the conductor. About thirty minutes thereafter and while the said train was proceeding toward Camden, the conductor and deceased discovered a hot box on the freight car wheel next to the caboose on the left-hand side of the train. After watching this hot box from the left-hand side of the back platform of the caboose, the conductor went inside to finish up his train reports, and shortly thereafter the deceased passed through the caboose and went to the front end. At this time the train was passing through Magnolia which was about one mile from Lawnside. The deceased was not ordered by the conductor to watch this hot box from the front end of the caboose nor do the rules of the company require him to take such a position.

No one saw the accident and neither does any one know how the accident happened nor what he was

doing at that time. When the train had reached Camden the decedent was found lifeless on the front left-hand steps of the caboose, his feet resting on the bottom steps and his body on the next step above, his right arm around the grab iron with his head resting on this arm and his left arm hanging down. His body was described as being found in a position to see the hot box but no part thereof extended beyond the line of the car and the injury was to the left side of his head. The following morning blood stains were found on the southerly end of the intertrack fence at Lawnside, which began with an iron post of a width of two and one-half inches and of a height of four feet three inches. A cap and lantern were also found along this fence similar to the ones used by the deceased. This intertrack fence was similar to the ones erected at all the other stations between Camden and Winslow Junction, although there were some few flag stations without fences. The fence in question was constructed in 1904 and had not been changed nor out of repair since its erection. These intertrack fences were constructed to prevent accident to passengers getting off trains from passing over the tracks in the path of trains coming in the opposite direction.

POINTS OF LAW.

The following legal points are relied upon by the defendant-appellant for a reversal of judgment.

1. The Court erred in refusing to grant the defendant's motion for a non-suit (Motion for Non-suit, pages 64-70; pages 77-91, see page 179, lines 1-22 for

Defendant's Exception to Court's Refusal to Grant Motion for Non-suit; Ground of Appeal No. 1, page 1).

2. The Court erred in refusing to grant the defendant's motion for the direction of a verdict in favor of the defendant (Motion for Direction, pages 179-180; Ground of Appeal No. 2, page 1).

3. The Court erred in charging the jury as follows: "You must decide from the evidence and the light of the law whether the defendant was guilty of actionable negligence which resulted in whole or in part in the death of the deceased. If you find it was not so guilty you would be bound to return a verdict of no cause for action, but if you find the defendant was guilty of actionable negligence, you must find whether the deceased was guilty of contributory negligence. If you find the deceased was guilty, you must cut down the amount of damages" (page 185, lines 1-25; Defendant's Exceptions to Charge, page 193, lines 5-10; Ground of Appeal No. 3, pages 1-2).

4. The Court erred in refusing to charge defendant's sixth request to charge as follows: "6. The existence of a hot journal on the defendant's train is not negligence in itself, nor is it a presumption of negligence on the part of any of the officers, agents or employees of the defendant company" (page 194, lines 15-19; Defendant's Exception to Refusal to Charge, page 193, line 22; Ground of Appeal No. 4, page 2).

5. The Court erred in refusing to charge defendant's third request to charge as follows: "3. The location of the intertrack fence at Lawnside was

open and obvious and from the length of time the said fence had been at Lawnside and from the length of time the deceased had been employed on the freight trains of the defendant company and from the experience of the deceased as a capable railroad man, he would have actual knowledge or be charged with knowledge of the existence and location of the said intertrack fence" (page 194, lines 5-13; Defendant's Exception to Refusal to Charge, page 193, lines 13-16; Ground of Appeal No. 5, page 2) (erroneously designated here as defendant's *seventh* instead of third request to charge).

6. The Court erred in refusing to charge defendant's eleventh request to charge as follows: "11. There is no evidence in this case that the defendant was guilty of any negligence which was the proximate cause of the injury and death of the said James K. Ramsey" (page 194, lines 20-23; Defendant's Exception to Refusal to Charge, page 193, line 22; Ground of Appeal No. 6, page 2).

7. The Court erred in refusing to charge defendant's twelfth request to charge, as follows: "12. The injury and death of the said James K. Ramsey in accordance with the evidence presented in this cause was a risk that the deceased assumed in the course of his employment" (page 194, lines 26-29; Defendant's Exception to Refusal to Charge, page 193, line 22; Ground of Appeal No. 7, page 3).

8. The Court erred in overruling the following question asked by defendant of one of its witnesses: "Would you know as a railroad man that it was a dangerous thing to lean out of the side of a caboose?" (page 94, line 34, to page 95, line 3; Ground of Appeal No. 8, page 3).

9. The trial Court let the jury determine questions which should have been properly determined by the Court (Ground of Appeal No. 9, page 3).

10. The rulings of the trial Court denied to the defendant rights and immunities to which it was entitled under the Federal Employers' Liability Act (Ground of Appeal No. 10, page 3).

ARGUMENT.

I.

THE COURT ERRED IN REFUSING DEFENDANT'S MOTION FOR A NON-SUIT.

By reason of a misunderstanding concerning the disposition the Court made of the appellant's motion, no exception was noted at the close of respondent's case on page 9, but same was allowed by the Court on page 179, lines 1.22.

A. RESPONDENT INTRODUCED NO PROOF OF APPELLANT'S NEGLIGENCE.

The allegations of the appellant's negligence are set forth in paragraphs 3, 4, 5 and 6 of the complaint as follows:

"3. On October 30th, 1917, defendant was operating a freight train along its tracks in the County of Camden and State of New Jersey between Mullica Hill and Camden, and by reason of the negligence of the officers, agents and em-

ployees of said defendant, or some of them and of the defects and insufficiency due to defendant's negligence, in its cars, engines, appliances, machinery, tracks, road-bed, works or other equipment, one of its freight cars in said train and upon which said James K. Ramsey was employed as a brakeman, became damaged and unsafe because of a hot journal or box on one of its wheels.

4. Thereupon, it became and was the duty of the said James K. Ramsey to watch the said hot journal or box, to guard against accidents to said train, and to give warning to said defendant of its condition during the moving of said train until it arrived at Camden, and while performing this duty, at the request of said defendant, and while watching said hot journal or box and guarding against accidents to said train, by reason thereof, the said James K. Ramsey was struck by a fence or post at Lawnside, Camden County, New Jersey, which said fence or post was carelessly and negligently erected by said defendant on its tracks or road-bed, and was unlighted and without any warning signal or device thereon to warn said Ramsey of its dangerous and defective character and proximity to the tracks and road-bed of said defendant, and as a result thereof, said James K. Ramsey was killed.

5. The plaintiff alleges that the injury to said James K. Ramsey and from which he died, was by reason of a defect or insufficiency due to the negligence of the said defendant, in its cars, engines, appliances, machinery, track, works and other equipment.

6. The plaintiff also alleges that the death of the said James K. Ramsey resulted in whole or

in part from the negligence of the said defendant, its officers, agents and employees.”

(Page 5, line 5 to page 6, line 11.)

There was no evidence introduced by the respondent to support the above allegation, that the hot journal was due to any defect or insufficiency due to the appellant's negligence. On the contrary, the respondent's witness who looked at this hot box, could not say what caused it, but did testify as to a number of things that might have caused it, some of which could have been discovered by reasonable inspection and some not.

“Q. Then it was no unusual occurrence?

A. No, it was no unusual occurrence.

Q. What causes a hot box?

A. Well, there are several different things which cause a hot box, quite a number of things.

Q. Well, state some of them.

A. Well, there could be packing taken out of some, they will be dry and run hot, and a crooked bearing will cause it to run hot, sand in the journal box will cause it, quite a number of things will cause it.

Q. Well, if bearings are properly cared for, is there any danger of a hot box?

A. Yes.

Q. Well, what will cause it—now, if the wheels, understand, the bearings, are properly looked after by competent mechanics, careful inspection, now, what will cause a hot box?

A. Boys going along lift the lid up and throw sand in; that oftentimes happens.

Q. Is that the only thing?

A. No, I don't know.

Q. What is that?

A. No, that is not the only thing.

Q. What else?

A. Well, there are various things that cause it.

Q. Well, let us know exactly the things that will cause a hot box. If you say a hot box has been carefully inspected by competent mechanics, I mean to say, if you say the bearings and wheels have been carefully looked after by competent mechanics, carefully inspected as they should be, is it at all probable that you will have a hot box?

A. It is.

Q. From what cause?

A. Why, the journals could be cut in such a way that it could not be seen from the outside.

Q. What do you mean, cut?

A. Been heated before and repacked.

Q. Well, if the journals had been looked after with proper mechanical skill, they would not have been passed, would they?

A. Probably they can't see that where they have been cut, unless they put in new wheels under the car."

(Page 27, line 13 to page 28, line 21.)

Also:

"Q. Now, did you look at this hot box after you got to Camden, yourself?

A. Yes, sir.

Q. Did you see whether it was properly oiled in the journal?

A. You couldn't see that when it was blazing.

Q. It was blazing?

A. Yes.

Q. What makes the blaze; what is it that burns that makes the blaze?

A. Well, it is what little oil and little waste is in there, in the box.

Q. But if as a general thing, if the waste which is in there is properly oiled and the journal is properly greased, there is not much danger from a hot box, is there?

A. As I say, sometimes they do.

Q. Yes, sometimes occasionally, some mechanical defect, but generally it is a question of failure to oil and grease, isn't it?

A. No, there are other things that cause it.

Q. I understand that, but most of the cases?

A. Yes."

(Page 30, lines 7-28.)

The respondent's witness further testified that, there had been a regular inspection of this journal at Winslow Junction just before the train had started for Camden and that same were reported "O. K." to him.

"Q. Mr. Iredell, this train that you were on was inspected before you left Williamstown Junction?

A. Winslow Junction.

Q. On the night of the accident?

A. Yes.

Q. And who inspected it?

A. The car inspector.

Q. Where?

A. Winslow Junction.

Q. And what did he do?

A. He has a lamp made for that purpose, goes up one side of the train and down the other and also over the roof.

Q. Does he inspect the journals?

A. Goes along for that purpose to inspect the train.

Q. And then does he report his inspection to you?

A. No, sir, only 'O. K.'

Q. Was this train so inspected that night?

A. Yes, he told me all right and we went ahead.

Q. And you were told it was O. K.?

A. By him, yes.

Q. And you went ahead?

A. Yes.

By Mr. Watkins:

Q. Now, what did you see the inspector do?

A. Only going down one side and up the other and over the roof; I went with him while he was taking the car numbers.

Q. He only went down one side and up the other side and over the roof?

A. Yes.

Q. Did he lift the boxes of this journal and look —

A. I couldn't say that.

Q. Did you see whether he did or not?

A. No, sir.

Q. Didn't you see whether he examined it to see if it had sufficient oil?

A. No.

Q. Then all you saw him do was to go one side —

A. And down the other, yes.

Q. Do you call that an inspection?

A. That is what they call an inspection."

(Page 71, line 4 to page 72, line 15.)

Mere proof of the existence of the hot box is not evidence that the overheated condition was due to the appellant's negligence. In this aspect of the

case, the respondent has failed to establish by affirmative proof, any negligence of the appellant to entitle her case to go to the jury.

New Orleans & N. E. R. Co. vs. Harris, 38
Sup. Ct. 535;
Smith vs. P. R. R., 239 Fed. 103.

Neither did the respondent offer any proof that the post mentioned in said paragraph four of the complaint was negligently or carelessly erected or that it was of a dangerous or defective character. The respondent's evidence showed it to be an iron fence of about four or four and one-half feet in height, and that all the main stations from Winslow Junction to Lawnside have these intertrack fences and only the flag stations are without them.

“Q. Is there a fence at Lawnside Station?

A. Yes.

Q. What kind of a fence?

A. An iron fence.

Q. And iron fence?

A. Yes.

Q. Is that fence lighted at night times?

A. No, sir.

Q. About how high is the fence?

A. About four feet, I imagine.

Q. About how high?

A. About four feet.

Q. Is there a fence at every one of the stations?

A. No, sir.

Q. Along the road?

A. No, sir.

Q. How many stations between Lawnside and Winslow Junction have fences between the tracks?

A. All the main stations.

Q. Well, name them.

A. Shipyard —

Q. No, between Lawnside and Winslow?

A. Magnolia, Stratford, Laurel Springs, Clementon, Cedar Brook—I guess that is all.

Q. All iron fences?

A. I think there are.

Q. And then there are stations which have no fences between them?

A. Yes, sir.

Q. Did you state about the height of the fence?

A. About four feet.

Q. And about how long is this fence?

A. About, probably 100 feet.

By the Court:

Q. Where does it run?

A. Runs in between the track, from the road crossing at Lawnside north toward Camden.

Q. What is the object of the fence?

A. To keep the passengers getting off the train from crossing back of the train in front of another train passing or coming.

Q. Is it a customary fence on railroads?

A. I don't know that.

Mr. Watkins: We have shown, your Honor—I think I have answered that question by showing some places had them and some did not.

The Court: He said the main stations had iron fences.

Mr. Watkins: Yes, and he named the stations which had them.

Q. You mean flag stations, I suppose?

A. Flag stations that doesn't have them.

Q. All regular stations have them?

A. Have them, yes, sir."

(Page 21, line 1 to page 22, line 23.)

It was admitted that this fence was between the main north and southbound tracks and equidistant therefrom.

“Q. On this line there at Lawnside, is that a double track?

A. Yes.

Q. North and southbound tracks?

A. Yes.

Q. This intertrack fence of which we have spoken, that is between the two tracks?

A. Between the north and southbound tracks.”

(Page 72, lines 19-26.)

“Q. About how close is this fence to the railroad track? It sets in between the tracks, doesn't it?

A. Yes.

Mr. Bradley: I object to about how far. If he knows how far it is, I think he ought to testify, not about how far.

Mr. Watkins: Take out the word ‘about.’

Q. Now, how far from the track on each side is this fence?

A. Two foot.

Q. Two feet?

A. Yes.”

(Page 38, line 28 to page 39, line 5.)

“Q. Where does it run?

A. Runs in between the track, from the road crossing at Lawnside north toward Camden.”

(Page 21, line 37 to page 22, line 2.)

These intertrack fences were erected for the safety of passengers and could serve their useful purpose

only by being placed between the main tracks. That it is good railroading to construct same is self evident.

“Q. What is the object of the fence?

A. To keep the passengers getting off the train from crossing back of the train in front of another train passing or coming.”

(Page 22 lines 3-6.)

While the respondent's proof showed that there were no lights placed on this intertrack fence at night, yet she failed to introduce any evidence to establish a custom for the appellant to put lights on this or any of its other intertrack fences or even that it was considered good railroading to make such use of lights or that any other railroad followed such a custom. On the contrary, the respondent's witness said he didn't know of any custom to put lights on these fences:

“Q. Now, you have been asked whether he knew there was a light on this fence; it is not customary to light these intertrack fences, is it?

Mr. Watkins: I object; it is not a matter of custom.

The Court: The objection is overruled.

(Objection noted for the plaintiff.)

A. No, I don't know of any.”

(Page 29, lines 18-29.)

It is difficult to see just what useful purpose could be served by putting lights on these intertrack fences or how many lights the respondent would have had the appellant use on them. In the first place the railroad could not presume that any experienced employee would come in contact with these fences for even taking any view of the duties of deceased it was

unnecessary for him to sit on the steps to watch this hot box.

“Q. And that could have been seen by Mr. Ramsey if he stood on the front platform, couldn't it?

A. Yes.

Q. He didn't have to get down on the steps to see it?

A. Not necessarily.

Q. And he could also have seen it if he had sat in the caboose and looked out of the window, couldn't he?

A. The blaze, yes.

Q. And he could have then leaned out and not hit the fence, couldn't he?

A. Yes, sir.

Q. In other words, if he were up in the caboose looking out of the window he could lean very far out and still have been way above the inter-track fence?

A. Been above the fence.

Q. Did you advise him to go sit there on the step and look at it?

A. No, sir.

Q. Was there any rule of the company requiring him to go sit there on the step and watch that hot box?

A. No, sir.

Q. It is not a customary place to sit, is it, when you are on a double track?

A. No, sir.”

(Page 23, line 20 to page 24, line 10.)

“Mr. Watkins: Well, we have gone into that.

Q. Now, then, before you went in the car and sat down and let Ramsey, or Ramsey went out

the front, you understand, of his car, had you determined what car it was on?

A. We had.

Q. And what caused you to determine the particular car and the particular box that it was on?

A. From the smoke pouring from the box.

Q. Then it began smoking?

A. Yes, sir."

(Page 32, lines ³⁻¹²~~16-26~~.)

"Q. In order to have looked at that hot box, that could have been seen from the platform of the caboose, couldn't it?

A. Yes.

Q. It wasn't necessary to get down there on the step to see it?

A. No, sir."

(Page 57, lines 16-22.)

Then what color light could be used, so that it would not confuse an engineer when he was observing signal lights at a distance? If the lights were placed high above the fence to obviate this last danger, they would not have been observable by the decedent any more than the station lights were in this case. There was evidence of the respondent's witness that there were large oil lamps on the station platforms on each side of the tracks, and the light therefrom would have reached far enough on a dark night to cover this very point where the decedent's head is alleged to have come in contact with the post of this intertrack fence. The witness could not say whether these station lamps were lighted on that night, but there was no proof that these lamps were not properly lighted.

“Q. Well, from your knowledge of the situation there, are you able to say that he was benefitted, would have been benefitted any by a light at the point where his head struck the fence?”

A. Well, I don't know whether the light was lighted; I couldn't say that.

Q. Well, if it had been lighted?

A. It would of a dark night, yes, sir.

Q. Have reached far enough to cover the point where his head came in contact with the fence?

A. It would, they are quite large lamps with reflectors on them.”

(Page 74, line 27 to page 75, line 2.)

The respondent contended most strenuously that the appellant was negligent in not furnishing the decedent a safe place to work, and by reason thereof this employee met his death. There was no evidence in the respondent's case that the place furnished by the appellant for the deceased to work was unsafe. Such reasoning is fallacious inasmuch as it assumes that the reckless and careless manner in which an employee can perform his work in a safe place makes the place itself unsafe. To ascribe to such a proposition would make every place of employment unsafe and render the company insurers of the safety of its employees. But there was no rule of the company requiring the deceased to sit on the steps of the caboose and watch this hot box. Neither was it a customary place to sit when travelling along double tracks nor did the conductor tell him to go there.

“Q. Did you advise him to go sit there on the step and look at it?”

A. No, sir.

Q. Was there any rule of the company requiring him to go sit there on the step and watch that hot box?

A. No, sir.

Q. It is not a customary place to sit, is it, when you are on a double track?

A. No, sir."

(Page 24, lines 1-10.)

Furthermore, the respondent's witnesses admitted, that there was no necessity for the deceased to have come in contact with this intertrack fence, even if he was attempting to watch this hot box, for

(a) He could have watched the hot box from the safe position in which he was found on the steps of the caboose.

"Q. Where did you find him or see him then?

A. Sitting on the next to the bottom step of the caboose, on the front.

Q. What was his position and what was his condition when you saw him?

A. His feet was on the bottom step, sitting on next to the bottom step with his arm around the grab-iron, with his head lying on his right arm and his left arm hanging down.

By the Court:

Q. What did he appear to be doing?

A. Just lying quiet.

Q. Well, at this time was he in a position to see the hot box?

A. He was.

By Mr. Watkins:

Q. His arm was around the grab-iron?

A. The right arm.

Q. Will you explain to the jury what you mean by the grab-iron?

A. It is an iron put on all cars to catch hold of, to get on.

Q. His right arm was around that?

A. Yes, sir.

Q. And his head down on his arm, you say?

A. Lying down on his arm.

Q. Was his body extended out beyond the car?

A. No, sir.

Q. Or his head?

A. No, sir."

(Page 17, line 35 to page 18, line 31.)

(b) He could have remained in the caboose and watched for the blaze.

"Q. And that could have been seen by Mr. Ramsey if he stood on the front platform, couldn't it?

A. Yes.

Q. He didn't have to get down on the steps to see it?

A. Not necessarily.

Q. And he could also have seen it if he had sat in the caboose and looked out of the window, couldn't he?

A. The blaze, yes.

Q. And he could have then leaned out and not hit the fence, couldn't he?

A. Yes, sir.

Q. In other words, if he were up in the caboose looking out of the window he could lean very far out and still have been way above the intertrack fence?

A. Been above the fence."

(Page 23, lines 19-36.)

(c) He could have seen the blaze from the back platform of the caboose, where conductor saw blaze.

“Q. You were on the back platform and saw the blaze?”

A. Yes.”

(Page 31, lines 15-17.)

(d) He could have watched the hot box from the front platform of the caboose without getting down on the steps and without coming in contact with the intertrack fence.

1. “Q. Could that be seen from the platform?”

A. Yes, sir.

Q. Of the caboose?”

A. Yes.

Q. Well, could Ramsey have stood on the platform of the caboose and seen this smoke or blaze?”

A. Yes, sir.

Q. Without getting down on the steps?”

A. Yes, sir.

Q. Or without coming in contact with the fence?”

A. Yes, sir.”

(Page 32, lines 16-26.)

2. “Q. Could you see, for instance, this hot box on this curve without leaning out?”

A. As the train swings the curve you can.

Q. As it swings around?”

A. Yes.

Q. But when it wasn't swinging around the curve, could you have seen it?”

A. Being the rear one, you could.

Q. From where?”

A. From the caboose, from the platform of the caboose.

Q. From the front or back?

A. From the front."

(Page 35, line 33 to page 36, line 8.)

3. "Q. And that could have been seen by Mr. Ramsey if he stood on the front platform, couldn't it?

A. Yes.

Q. He didn't have to get down on the steps to see it?

A. Not necessarily."

(Page 23, lines 20-24.)

4. "Q. In order to have looked at that hot box, that could have been seen from the platform of the caboose, couldn't it?

A. Yes.

Q. It wasn't necessary to get down there on the step to see it?

A. No, sir."

(Page 57, lines 16-22.)

5. "Q. How close was he to this hot box when he stood there?

A. On the front?

Q. Yes.

A. I don't know, I am no judge of distance; I imagine maybe five feet, if you are standing up.

Q. Five feet if you are standing up?

A. Yes, I am judging that, I ain't got no idea of measurement.

Q. So you say if he knew where it was, then he wouldn't have to stoop down to watch it.

A. No, he wouldn't have had to get down if he had seen the place and knew where it was.

Q. If he had known where it was without see-

ing the place, he wouldn't have had to get down there, would he?

A. Not if he knowed where it was, no, sir."

(Page 51, lines 4-20.)

It was urged by the respondent that the deceased did not know where the hot box was located and therefore had to stoop down to find out—but this cannot be the fact, for

(a) The respondent's own witness testified otherwise (page 32, lines 3-12).

(b) Then from the uncontradicted testimony in this case it has been proved that he had his lantern with him (page 17, lines 20-21).

That the Court refused to grant the appellant's motion for a non-suit, upon the erroneous theory *that the presence of a light upon the intertrack fence might have prevented the accident*, is shown by the following statements:

"The Court: It strikes me that the crucial part of the case is whether there should not have been a light on this fence."

(Page 77, lines 28-30.)

"The Court: I think it should say, 'Without any warning, there being no light or sign or anything to indicate the presence of a fence at that place.' "

(Page 79, lines 1-3.)

"Now the question is, first, 'Was there any light there from which he could see this fence, and if there was not, was it the duty of the railroad company to provide a light?' "

(Page 81, lines 18-21.)

The mere possibility that such a light might have prevented the accident was insufficient, in point of law to have the appellant's alleged negligence submitted to a jury.

Smith vs. P. R. R., 239 Fed. 103;

Hull vs. Virginia R. Co., 88 S. E. 1060.

Since the respondent's testimony wholly failed to show any negligence on the part of the appellant, it is respectfully submitted that the trial Court erred in refusing the motion for a non-suit.

Chicago & N. W. R. Co. vs. Bower, 36 Sup. Ct. 624;

Southern R. Co. vs. Gray, 36 Sup. Ct. 558;

Great Northern R. Co. vs. Wiles, 36 Sup. Ct. 406.

B. RESPONDENT'S PROOF SHOWED THAT THE RISK IN QUESTION WAS ONE THAT DECEASED ASSUMED AS A MATTER OF LAW.

It is difficult to determine just what erroneous conception the trial Court had of the doctrine of "assumption of risk" as applied to the respondent's evidence, but the discussion in the motion for non-suit (pages 64-91) shows that the Court did not seriously consider same.

There was no evidence in the respondent's case that the appellant violated any statute enacted for the safety of its employees and it therefore follows as a matter of law that the deceased assumed the risks of his employment.

Seaboard Air Line Co. vs. Horton, 34 Sup. Ct. 635;

Jacobs vs. Southern R. Co., 36 Sup. Ct. 588.

From the respondent's uncontradicted testimony, it was established that (1) the deceased was a capable experienced railroad man; (2) he had been in the company's employment over eight years (page 62, line 3); (3) at the time of the death he was forty year of age (page 61, line 5); (4) the deceased had worked on this road since 1909; (5) the iron inter-track fence at Lawnside was about four or four and one-half feet high and about one hundred feet long; (6) all the main stations between Williamstown Junction and Lawnside had these intertrack fences midway between the main north and southbound tracks; (7) the fence at Lawnside was open and obvious; (8) he knew of the existence of this fence for he was on a run for two winters of 1914 and 1915 and when his train stopped there nearly every day, he would go back and flag the rear end; (9) he had quite frequently been employed on the train when there was a hot box (page 27, lines 1-9); (10) the bottom step of the caboose was between one and two feet from this fence (page 41, lines 31-33) and the second step was eighteen or twenty inches further from the fence (page 39, lines 15-19); (11) the deceased was found on the second step of the caboose with the left side of his head crushed, his head resting on his right arm which was grasping the grab-iron and his left arm hanging down, but his body was wholly within the lines of steps and in a position in which he could have safely seen this hot box; (12) the place where deceased was found was not a customary place to sit, when on double tracks; (13) no lights were placed on this fence at night and there was no custom to light any of these fences.

From the above, it is evident that the deceased knew perfectly well of the existence of this inter-track fence and that the same was unlighted at

night. As an experienced railroad man, he cannot be supposed to have been ignorant that such a fence made it dangerous for anyone leaning far out from the left-hand side of the train while on the steps of the caboose. Therefore with such knowledge, he assumed the risk that would obviously attend taking chances of leaning from the left-hand side of the train.

There was some evidence introduced by the respondent to show that it was the duty of the deceased to watch this hot box after same was discovered. It was also testified by respondents witnesses that leaning from the side of the train to observe these hot boxes happened thousands of times every year.

“Q. But when the blaze is not plain and you smell smoke which indicates that there is a hot box, then you have to put your head out and look carefully to find out where it is?

A. Yes, naturally you do; it is done a thousand times a year, maybe more.

By Mr. Watkins:

Q. What?

A. It is done a thousand times a year, look for hot boxes out the side like that. You can smell it, but you can't see it.”

(Page 49, lines 25-37.)

Even if we do accept the above view of the testimony the respondent cannot recover in this action for the risk in question was an ordinary one normally incident to the deceased's employment. An employe is conclusively presumed to have actual knowledge of such risks and assumes injuries resulting therefrom.

Chicago & N. W. R. Co. vs. Bower, 36 Sup. Ct. 624;

Chesapeake & O. R. Co. vs. De Atley, 36
Sup. Ct. 564;
Seaboard Air Line vs. Horton, 36 Sup. Ct.
180.

The Court's attention is called to the case of *Butler vs. Frazee*, (29 Sup. Ct. 136), where Justice Moody referring to the doctrine of assumption of risk, said in part:

“But where the conditions are constant and of long standing and the danger is one that is suggested by the common knowledge which all possess, and both the conditions and the dangers are obvious to the common understanding, and the employee is of full age, intelligence and adequate experience, and all these elements of the problem appear without contradiction from the plaintiff's own evidence, the question becomes one of law for the decision of the Court. Upon such a state of the evidence, a verdict for the plaintiff cannot be sustained, and it is the duty of the Judge presiding at the trial to instruct the jury accordingly.”

In the case of *Reese vs. Philadelphia and Reading Railroad Co.*, 36 Sup. Ct. 134, the deceased, a capable experienced fireman tried to get a drink of water from the side of the tender while the engine was in motion and in leaning outside the line of the engine and tender came into contact with a freight car. This freight car was on adjacent tracks but which were located much closer than the standard adopted by the company. This accident happened at midnight but the yard was well lighted and the conditions were obvious and had existed for some time. The plaintiff was non-suited and the Supreme Court sustained the ruling of the trial Court.

A similar case is that of *Pennsylvania Railroad Co. vs. Nelson*, 259 Federal, 156. Decedent was killed while loading freight cars on a car float at a pier in New Jersey. A platform level with the floors of the cars was placed in between the tracks on the float which sloped to the floor of the float on both ends and the roof of platform was supported by upright stanchions. It was the duty of deceased to see that the car doors were not placed opposite these stanchions. On the night of the accident deceased was riding, as was customary, on the first step of the car and upon entering the float was crushed between the stanchions and the car where there was a clearance of eleven inches, or tripped over a coil of rope negligently left on the sloping approach to car level. As deceased had been working for three months under same conditions, and as there was no proof that he tripped over this coil of rope, he was held to have assumed the risk.

Another case of interest is that of *Farley vs. N. Y. N. H. & H. R. Co.*, 91 Atl. 650, where an experienced engineer of a steam train climbed on a tender of an engine to ascertain how much water was in the tank. In climbing back he came in contact with an overhead live electric wire, which was used by electric engines on the same tracks, and which was depressed at that point under a bridge. The Court held that he had full knowledge of these wires which had remained unchanged for some time as they were obvious to a man of his intelligence and experience, and since he continued to work on the railroad with such knowledge he assumed the risks of injuries resulting therefrom.

While not exactly in point the case of *Nagle vs. Hines, Director-General of Railroads*, 112 Atl. 195, decided recently by the Court, may be helpful on the

doctrine of assumption of risk as applied to non-suits.

It was pointed out by the trial Court, that the cases cited by the appellant were not in point, as in the case *sub judice* the deceased might not have had a chance to see this intertrack fence because it was not lighted. We do not think the Courts recognize any such distinction for in the case of *Glenn vs. Cincinnati, N. O. T. & P. R. Co.*, 163 S. W. 461, a boiler maker was working near a pit about nine feet long by sixteen feet deep and extending between car tracks in repair shop, when last seen a few minutes before quitting time in the evening. On the following morning his body was discovered lifeless at the bottom of this pit. It was admitted that the pit was not well lighted but the Court held, that he knew of the existence of this pit and of the danger of falling therein and therefore he assumed that risk.

Since the respondent's evidence clearly showed, that as a matter of law, the deceased assumed the risk in question, the Court erred in refusing the appellant's motion for a non-suit.

II.

THE COURT ERRED IN REFUSING DEFENDANT'S MOTION FOR A DIRECTED VERDICT.

The preceding arguments herein set forth as grounds for a non-suit are equally applicable for the direction of a verdict for the appellant. Only the testimony of the appellant will be specifically set forth under this sub-division.

A. APPELLANT'S TESTIMONY FAILED TO DISCLOSE ANY NEGLIGENCE OF ITS SERVANTS, AGENTS OR EMPLOYEES.

The appellant's testimony regarding the existence of hot boxes was dealt with by an expert, who stated, among other things, that some were preventable, while some were not; that the mere existence of a hot box did not denote negligence and that a journal had never been devised which would not overheat.

“Q. And what have you to say in reference to the cause of hot boxes?”

A. There are many causes attributable to hot boxes; some of them are preventable and a great many are not.

Q. What are some of the causes?

A. Some of the preventable causes would be insufficient lubrication, packing and so forth, and the unpreventable causes are packing getting under the bearing—foreign matters getting under the bearing.

Q. How would foreign matters get under the bearing?

A. Why, it works this way, up through the packing, the foreign substances, and also foreign substances, which may be in the bearing itself, in the manufacture of the bearing, which cannot be detected in the manufacture, that is, in the metal itself, also from linings cracking and bearings breaking.

Q. Then from your experience the mere existence of a hot box is not negligence?

A. No, sir.

Q. Do you know whether a journal has been devised that will not become hot?

A. I wish it were.

Q. I understand you to say you wish it were, but will you just answer?

A. No, sir.

Q. You don't know of any such thing in rail-roading, do you, as a journal that will not become hot?

A. No, sir."

(Page 127, line 20 to page 128, line 15.)

The caboose on which the deceased was riding while injured was of standard design. All cabooses on this railroad are built of the same design and similar to plans Exhibit D1 (State of Case). The very caboose in question No. 10009 was measured and found to conform to this plan with very slight allowable variations.

"Q. Mr. Keppelman, at my request did you measure cab No. 10009?

A. Yes, sir.

Q. And what did you find, in reference to the plans of cabs introduced in evidence yesterday and marked Exhibit D1?

A. I found—I checked the steps and the widths and the grab-irons and found them to conform to the figures represented in the plan, with very slight variations which would occur in ordinary freight car construction.

Q. You say slight variations?

A. Quarter to half an inch, with the exception of the height of the steps and platform from the rail, which was about one and three quarter inches lower than the plan.

Q. What do you attribute that to, if anything?

A. That is attributed to the car in going down on its springs, etc., which we are allowed a variable of about two inches.

Q. And this comes within the variable?

A. Yes, sir."

(Page 136, lines 12-34.)

By actual measurement of a car inspector the distance from the edge of the bottom step of this standard caboose to the intertrack fence was $17\frac{1}{2}$ inches (page 136, line 33 to page 137, line 1), and the distance from the front edge of the second step to the intertrack fence was 25 inches (page 137, lines 23-25); the distance from the inside edge of the second step to the fence was $32\frac{1}{2}$ inches (page 140, lines 6-10); and the height of the riser between these steps was $9\frac{1}{4}$ inches (page 138, lines 29-31). To determine this the car itself was measured at Camden and the witness in calculating the distances from the fence took the uncontradicted testimony of the section foreman (page 110, lines 30-31), and the foreman carpenter (page 118, lines 8-17), that these tracks were 7 feet 5 inches apart which is the standard gauge. This fact was further corroborated by an outside witness, an engineer, who measured same for the purposes of trial (page 169, lines 32-36).

The evidence is uncontradicted that this intertrack fence was a P. & R. standard intertrack fence used at all the stations of the appellant company, where intertrack fences are erected (page 110, lines 15-19; page 117, lines 12-30). It might be here noted that the appellant is one of the affiliated lines of the Philadelphia & Reading Railway Company (page 127, lines 5-9). This is an iron fence, 4 feet 9 inches in height (page 117, line 35 to page 118, line 7) and $2\frac{1}{2}$ inches in width (page 126, lines 12-13) and nearly 300 feet long (page 118, line 6); it was constructed in 1904 and its position and location remained unchanged up until the time of trial (page 163, line 32

to page 164, line 6). There was originally an iron ball of the width of the fence on the post with which deceased is supposed to have come in contact, which extended 6 inches above the top of the fence (page 126, lines 9-26). This ornamental ball had probably been missing from the post before the accident in question (page 163, lines 1-11; page 155, lines 21-24; page 167, line 32 to page 168, line 8) and if so the post was only 4 feet 3 inches high (page 124, lines 20-24). There was a post with a ball thereon every 8½ feet along the fence (page 126, lines 22-23). The fence was in good repair on the day after the accident (page 111, lines 1-6), and in fact it had never been in disrepair since its construction (page 164, line 34 to page 165, line 36; page 166, line 22 to page 167, line 21). It was also shown that the post of the wooden intertrack fence of the West Jersey & Seashore Railroad Company at Woodbury, New Jersey was 4½ inches wide (page 172, lines 1-2).

According to the evidence of the appellant's foreman carpenter, who had had thirty years experience in building intertrack fences, it is not only not customary to put any lights on intertrack fences but he had never seen lights on any intertrack fences on the Pennsylvania or Reading system (page 120, lines 1-18). This testimony was corroborated by the section foreman (page 110, lines 18-24).

The station agent testified that four standard Royal large oil lamps were placed on the station platforms at Lawnside, two on the north end and two on the south end (page 151, lines 1-16), which type of lamps had been in use at that station before September 22, 1909, to this witness' own knowledge (page 154, line 33 to page 155, line 16), and had not been changed in position since that time (page 162, lines 30-32). The lamps were lighted on the night of the

accident by the station agent at 5 P. M. or shortly thereafter and extinguished by him between 6 and 6.20 A. M. the following morning (page 149, line 35 to page 150, line 18). These lamps rested upon stands fastened to posts about five feet high (page 158, line 12 to page 159, line 10) and were about twelve or fifteen feet back of the nearest track on the edge of the platforms (page 99, lines 19-23; page 116, lines 12-21). There were concave reflectors on these lamps behind the globes (page 123, lines 18-21), and it was undisputed that the rays of light from the two southerly lamps would fall on the post in question at the southerly edge of this fence (page 112, lines 1-19). This must be true, for there is a roadway at the southerly post of the fence (page 119, lines 26-30) and this light is doubtless placed to throw light on this roadway.

Although not so required, the appellant nevertheless introduced uncontradicted proof that the actual operation of the train was free from negligence (page 93, lines 9-12). This would dispose of any idle presumption that the deceased was jarred or jolted from the train.

As has already been pointed out the mere existence of this hot box was not negligence *per se* nor was it dangerous to run from Magnolia to Camden, a distance of about eight miles, with such a hot journal, for it was not necessary to slacken the speed of the train until there was an actual blaze (page 108, lines 16-25). As a matter of fact no blaze was discovered until the train had reached Camden near New York Shipyard (page 31, lines 1-12), and it would have been safe to have run the train from a distance of seventeen miles (page 135, lines 14-20), or twice the distance from Camden to Magnolia (Camden to Lawnside is seven miles, page 152, lines

14-16; and Magnolia where hot box was first discovered smoking was about one mile south of Lawnside, page 145, lines 29-31).

Since there was no evidence of any negligence of the appellant in any of the testimony offered in this case, it cannot be easily understood, why the appellant was not entitled to the direction of a verdict.

B. THE APPELLANT'S TESTIMONY PROVED CONCLUSIVELY, THAT AS A MATTER OF LAW, THE RISK WAS ONE THAT DECEASED ASSUMED.

Since there was no evidence introduced in this case that the appellant violated any statute enacted for the safety of its employees, the doctrine of assumption of risk applies.

In addition to the testimony already mentioned in the respondent's case which touches upon the doctrine of assumption of risk, we have appellant's further proof that,

(a) Deceased knew or is presumed to have known of this intertrack fence.

During the winters of 1914 and 1915 he worked on a run which stopped at this very station nearly every day and each time he had to go back of the train to protect the rear end.

He had also worked on this line for about eight years, and this fence was erected there many years before he entered the appellant's employment.

All the regular station from Camden to Winslow Junction had similar intertrack fences.

"Q. Now, go back again, beginning with the New York Shipyard; is there a fence there at that station?

A. New York Shipyard? Yes, sir.

Q. Now, the next station down is what station?

A. West Collingswood.

Q. A fence there?

A. Yes.

Q. I want you to name all the stations, flag and otherwise; now, where is the next station?

A. From West Collingswood it is Oaklyn, then Audubon.

Q. Has Oaklyn a fence?

A. Yes.

Q. Audubon?

A. Audubon, Orston.

Q. Just say 'fence.'

A. 'Fence'—Haddon Heights, fence; Barrington, fence; Lawnside, fence; Magnolia, fence; then comes Somerdale, no fence; Stratford, fence; Garden Lake, no fence; Clementon, fence; then the next station up would be Pine Valley, no fence; Albion, Penbryn, Williamstown Junction.

Q. How about Albion?

A. No fence at Albion.

Q. What is the next one?

A. Penbryn.

Q. Any fence there?

A. No, sir.

Q. What is the next one?

A. Williamstown Junction.

Q. Any fence there?

A. No, sir, no fence at Williamstown Junction.'

(Page 95, line 18 to page 96, line 14.)

How can it be said that the deceased did not know of the existence of this intertrack fence at Lawn-

side. It is submitted, that if as a matter of law this employee is not presumed to have known of the existence of this intertrack fence, then it is difficult to understand how any experienced railroad man could be presumed to have knowledge of anything connected with his duties.

The deceased had very frequently watched hot boxes on the train before from the caboose.

“Q. Did Mr. Ramsey ever have occasion, that you observed, to notice hot boxes on the train?

A. He did.

Q. He had a great many hot boxes?

A. Several, yes, sir.

Q. Well, how many would you say, a hundred?

A. I wouldn't like to state any number, because we have them frequently.

Q. Very frequently?

A. Yes.

Q. And you had seen him watch hot boxes from this caboose before, or a caboose?

A. Yes, sir.”

(Page 145, lines 11-23.)

That he could have watched this hot box in safety without getting on the steps of the caboose is apparent from Exhibit D1, showing open construction of the end of a caboose. Surely this experienced railroad man knew in accepting the position of brakeman, he assumed certain risks and in fact the matter was carefully brought to his attention as appears by last part general notice of the company's rule book “*Employees, in accepting employment, assume its risks*” (page 149).

As other experienced railroad men knew it was dangerous to lean out the side of a caboose to watch a hot box (page 101, lines 1-4), we submit that the

deceased knew of the obvious danger resulting from such a reckless act or as a matter of law is presumed to have had such knowledge.

The risk in question being obvious and one happening in the ordinary course of the deceased's employment, it follows as a matter of law, that the deceased assumed this risk and there can be no recovery.

Southern Pacific Co. vs. Berkshire, 41 Sup. Ct. 162, is the most recent decision of the United States Supreme Court involving the doctrine of assumption of risk and the facts are quite similar to the case *sub judice*. This case has already been considered by this Court in the suit of *Wilson vs. Director-General of Railroads*, 112 Atl. 732.

In the Berkshire case, an experienced railroad engineer of a freight train crept out on the running board to examine the main driving pin on the engine, which was getting hot. It may be supposed that at the time of the accident he was leaning out the side window in the course of his duty to look at it again, when his head came in contact with the end of the arm of a mail crane located about fourteen inches from the side of the train. It further appeared that this crane stood at the same distance as all others along the road with the end not nearer than fourteen inches but near enough to hit a person leaning out the window. The Court held, that the deceased was presumed to have known of the existence of this mail crane near the track and in leaning out the engine window a sufficient distance to come in contact with this crane, he assumed injuries resulting therefrom even though he may not have known the precise distance to which the end of the crane would extend. In the opinion Mr. Justice Holmes pointed out, that it was impractical to re-

quire railroads to have no structures so near their tracks as to endanger people who lean from the windows of the cars and that it would be impossible to use the contrivance with absolute certainty that no accident would happen if a man put his head out at the wrong time. In disposing of the question of the proximity of the arm of the mail crane, the opinion states, that the railroad is required and presumed to know its duty and the Court ought to be equally well informed and it cannot be that the theory of the law requires it to be left to the uncertain judgment of a jury in every case—it is going very far to leave it open to a jury to find liability in tort to a system by which the ends of the arms of a mail crane come to fourteen inches from the car. In conclusion Mr. Justice Holmes, says, “Confining ourselves to the case of postal cranes we are of opinion that to allow the jury to find a verdict for the plaintiff was to allow them to substitute sympathy for evidence and to impose a standard of conduct that had no warrant in the common law. *Butler vs. Frazee*, 211 U. S. 459, 465-467, 29 Sup. Ct. 136, 53 L. Ed. 281; *Kenney vs. Meddaugh*, 118 Fed. 209, 55 C. C. A. 115.”

That the opinion in the Berkshire case is in accord with the previous decisions of the United States Supreme Court involving assumption of risk may easily be determined by an examination of some of the leading cases:

Jacobs vs. Southern R. R. Co., 36 Sup. Ct. 588, where an experienced employee admittedly knowing the material conditions and presence of a pile of cinders, attempted to board a moving engine with a pitcher of water in his hands, and tripped over the pile of cinder negligently placed near the tracks, it was held that the employee must be considered as appreciating the danger and assuming the risk

even though he had forgotten the existence of the cinders.

Nelson vs. Southern Ry. Co., 38 Sup. Ct. 233, where a civil engineer slipped while stepping on a decayed spot in a railroad tie and caught his foot in the space between the ties where the ballasting was low, it was held, that he assumed the risk of injury for he knew there were always some ties in a decayed condition and that ballasting was occasionally below the required height.

The doctrine of assumption of risks also applies to cases of extraordinary risks arising out of the employers failure to use due care in providing the employee with a safe place to work and suitable and safe appliances. Even in such cases the employee is treated as assuming these risks when he becomes aware of the defect or disrepair and of the risk arising therefrom or when the defect and risk alike are so obvious that any ordinary man under the circumstances would have observed the defect and appreciated the risk arising therefrom.

Seaboard Air Line Co. vs. Horton, 34 Sup. Ct. 635;

Gila Valley Ry. Co. vs. Hall, 34 Sup. Ct. 229;

Chesapeake & Ohio Ry. Co. vs. De Atley, 36 Sup. Ct. 564;

McDougall vs. Atkinson T. & S. F. Ry. Co., 186 Pac. 1028;

Boldt vs. Pennsylvania R. Co., 38 Sup. Ct. 139.

Could this Court by any possibility decide, that the risk in question was extraordinary, yet it being so obvious and the employee never having complained about the same to his employer, then as a

matter of law, the risk of injury would be assumed by the decedent.

Seaboard Air Line vs. Horton, 34 Sup. Ct. 635.

For the above reasons we submit, that the Court erred in not granting the defendant's motion for a directed verdict.

III.

AS A MATTER OF LAW, THE CHARGE OF THE TRIAL COURT WAS ERRONEOUS.

The Court charged the jury as follows: "You must decide from the evidence and the light of the law whether the defendant was guilty of actionable negligence which resulted in whole or in part in the death of the deceased. If you find it was not so guilty you would be bound to return a verdict of no cause for action, but if you find the defendant was guilty of actionable negligence, you must find whether the deceased was guilty of contributory negligence. If you find the deceased was guilty you must cut down the amount of damages (page 85, lines 1-11).

The alleged error in this charge is the failure of the Court to qualify the above charge with the doctrine of assumption of risk (page 193, lines 5-10).

It is here contended that under this charge, the jury could have found the appellant guilty of actionable negligence and the deceased guilty of contributory negligence and yet returned a verdict for the respondent even though the risk in question was one that the deceased assumed as a matter of law.

The charge should have been stated somewhat in the language of Mr. Justice Bergen in the case of *Wilson vs. Director-General of Railroads* (112 Atl. 732). "If, on the other hand, the injury was due to defendant's negligence, *the risk of which was not assumed by the plaintiff* but to which he contributed by his acts, the defendant would not be entitled to a direction but to have plaintiff's contributory negligence considered by the jury on mitigation of damages."

IV.

THE TRIAL COURT SHOULD HAVE
CHARGED APPELLANT'S SIXTH, THIRD,
ELEVENTH AND TWELFTH REQUESTS
TO CHARGE.

Sixth Request to Charge:

6. "The existence of a hot journal on the defendant's train is not negligence in itself nor is it a presumption of negligence on the part of any of the officers, agents or employees of the defendant company" (page 194, lines 15-19).

The respondent's uncontradicted testimony showed, that in some instances hot boxes were preventable but in other cases the use of due care would not preclude their occurrence. The respondent's witness did not examine the hot box to ascertain the cause thereof nor was any proof offered in the case touching upon the cause of this hot box. The appellant's expert testified that it was impossible to make a journal that would not overheat. In view

of this uncontradicted testimony, the Court erred in refusing this request to charge and permitting the jury to speculate upon the cause of this hot box.

In instructing a jury upon the question of assumption of risk, a concrete instruction applicable to the phase of the evidence should be given.

Norfolk & Western R. Co. vs. Earnest, 33
Sup. Ct. 654;
Seaboard Air Line vs. Horton, 34 Sup. Ct.
635.

Third Request to Charge:

3. "The location of the intertrack fence at Lawnside was open and obvious and from the length of time the said fence had been at Lawnside and from the length of time the deceased had been employed on the freight trains of the defendant company and from the experience of the deceased as a capable railroad man, he would have actual knowledge or be charged with knowledge of the existence and location of the said intertrack fence" (page 194, lines 5-13).

The refusal of the Court to charge this request without qualification, permitted the jury to decide the assumption of risk involved therein, which had become a matter of law for the Court.

Eleventh Request to Charge:

11. "There is no evidence in this case that the defendant was guilty of any negligence which was the proximate cause of the injury and death of the said James K. Ramsey" (page 194, lines 20-23).

Twelfth Request to Charge:

12. "The injury and death of the said James K. Ramsey in accordance with the evidence presented in this cause was a risk that the deceased assumed in the course of his employment" (page 194, lines 26-29).

The Court's refusal to charge the appellant's eleventh and twelfth requests to charge was error for these two requests should have been charged as matters of law.

V.

THE COURT ERRED IN OVERRULING APPELLANT'S QUESTION TO WITNESS.

"Would you know as a railroad man that it was a dangerous thing to lean out the side of a caboose."

(Page 94, line 34 to page 95, line 3.)

This particular witness had been in the employment of the appellant company as an engineer since 1906 (page 91, line 25), and the question was directed to the general knowledge of railroad men concerning the dangers in question.

VI.

THE TRIAL COURT LET THE JURY DETERMINE QUESTIONS THAT SHOULD HAVE BEEN DETERMINED BY THE COURT.

As has been previously pointed out herein, the Court should have determined that, (a) the appellant was not guilty of any negligence causing in whole or in part the fatal injury to James K. Ramsey and (b) as a matter of law the risk in question was one that the deceased assumed in the course of his employment, (c) it was error for the Court to have submitted these issues to jury instead of deciding them himself and directing a verdict for the appellant.

VII.

THE RULINGS OF THE TRIAL COURT DENIED TO THE DEFENDANT RIGHTS AND IMMUNITIES TO WHICH IT WAS ENTITLED UNDER THE FEDERAL EMPLOYERS' LIABILITY ACT.

The appellant herein was deprived of asserted Federal rights, for

(a) The trial Court erroneously submitted the question of appellant's negligence to the jury.

The record clearly shows that the fatal injuries suffered by this employee were not caused by the negligence of the appellant, but were due solely to his own negligence.

(b) The trial Court erroneously submitted the question of assumption of risk of the deceased employee to the jury.

The uncontradicted evidence in this case shows, that James K. Ramsey's death was due to risks and dangers assumed by him in the course of his employment and that these risks were known because they were obvious and he had had an opportunity of observing them. There was no issue of fact on this phase of the case to be submitted to the jury.

Since the record in this case fails to disclose any negligence of the appellant's officers, agents or employees and since the risk in question was one that the deceased assumed as a matter of law, we respectfully submit, that the judgment of the Supreme Court should be reversed.

FLOYD H. BRADLEY,
Of Counsel.

FLORENCE RAMSEY, Administratrix of, &c., JAMES K.
RAMSEY, deceased,
Plaintiff-Respondent,
vs.
ATLANTIC CITY RAILROAD COMPANY,
Defendant-Appellant.

- New Orleans & N. E. R. Co. vs. Harris*, 38 Sup. Ct. 535; 247 U. S. 367;
Chicago and N. W. R. Co. vs. Bower, 36 Sup. Ct. 624; 241 U. S. 470;
Southern R. Co. vs. Gray, 36 Sup. Ct. 558; 241 U. S. 333;
Great Northern R. Co. vs. Wiles, 36 Sup. Ct. 406; 240 U. S. 444;
Seaboard Air Line Co. vs. Horton, 34 Sup. Ct. 635; 233 U. S. 492;
Jacobs vs. Southern R. Co., 36 Sup. Ct. 588; 241 U. S. 229;
Chesapeake & O. R. Co. vs. De Atley, 36 Sup. Ct. 564; 241 U. S. 310;
Seaboard Air Line Co. vs. Horton, 36 Sup. Ct. 180; 239 U. S. 595;
Butler vs. Frazee, 29 Sup. Ct. 136; 211 U. S. 459;
Reese vs. Philadelphia & Reading Railroad Co., 36 Sup. Ct. 134; 239 U. S. 463;
Southern Pacific Co. vs. Berkshire, 41 Sup. Ct. 162; 254 U. S. 415;
Nelson vs. Southern Ry. Co., 33 Sup. Ct. 233; 246 U. S. 253;
Gila Valley Ry. Co. vs. Hall, 34 Sup. Ct. 229; 232 U. S. 94;
Boldt vs. Pennsylvania R. Co., 38 Sup. Ct. 139; 245 U. S. 441;
Norfolk & Western R. Co. vs. Earnest, 33 Sup. Ct. 654; 229 U. S. 114.

