

## New Jersey Court of Errors and Appeals

GEORGE CLARK,

*Appellant,*

*vs.*

HUDSON & MANHATTAN RAILROAD  
COMPANY and PENNSYLVANIA  
RAILROAD COMPANY,

*Respondents.*

*On Appeal  
from Su-  
preme Court.*

### Brief in Favor of Respondents.

The appeal in this case was taken by the plaintiff for the purpose of reviewing a judgment entered in favor of the respondents on a directed verdict. Plaintiff brought suit to recover damages for personal injuries alleged to have been sustained by him on December 20, 1911, while he was a passenger on the line of the defendant railroad company, between the stations known as Manhattan Transfer and Jersey City. The claim of the plaintiff was that while a passenger on the train he received an electric shock. He was on his way from Jersey City to Trenton, via the Pennsylvania Railroad. In order to reach Jersey City it was necessary for him to change at Manhattan Transfer to one of the electric trains running from that point to Jersey City and New York. As the train was passing through the cut, near what is now the Summit Avenue Station of the Hudson & Manhattan Railroad Company, he said that he had hold of one of the upright posts in the car, and was talking with a Mr. Bogie about the new station at Summit Avenue, and received a "shock"

and was rendered unconscious—it was “pretty much the same as an electric battery, but it came so quick it felt much sharper” (p. 10, ll. 10 to 40).

The case has been tried twice: At the first trial a motion to direct a verdict for the defendants was denied and the jury were permitted to decide whether the injuries to the plaintiff were caused by an electric shock; and, if so, whether it is due to some act of negligence on the part of the defendant.

At that trial the jury rendered a verdict in favor of the plaintiff and against both defendants; thereupon each defendant obtained a rule to show cause. These rules were argued before the Supreme Court at the November Term, 1912. On March 4, 1913, the Supreme Court filed an opinion setting aside the verdict as to both defendants.

The case came on for a second trial on October 28, 1914. The evidence was the same as at the first trial. Under the opinion of the Supreme Court the trial judge directed a verdict for the defendants (p. 119). Judgment was entered accordingly, and it is from this judgment that the present appeal has been taken to this Court. The ground of appeal is that the Court directed a judgment of non-suit whereas the Court should have submitted the issues to the jury (page 1). This ground is inaccurate because the trial court did not order a non-suit, but directed a verdict. However, we shall discuss the appeal on the assumption that the real question for consideration is whether the action of the trial judge in directing a verdict in favor of the defendants was correct.

## I.

**The evidence does not justify the conclusion that the plaintiff was injured by an electric shock but on the contrary shows that such a shock as was claimed was a physical impossibility.**

The plaintiff said that after getting on the electric train at Manhattan Transfer he sat down with one hand on the window sill and the other on an upright white enamel post; "Bogie and myself were discussing about the new station, and as we came through there, after we were discussing about the station, why that is all I remember until I received that shock" (p. 9, l. 40 to p. 10, l. 20). He said he was rendered unconscious and that it was pretty much the same kind of a feeling as when you take hold of an electric battery, but it came so quick it felt much sharper (p. 10, ll. 20-35). The next thing he remembers was when he was at home in bed during the night of the same day (p. 10, l. 40 to p. 11, l. 7). The accident happened in the middle of the afternoon (p. 14, l. 16). He was in bed for two days and in the house for five days (p. 12, ll. 10-23). His friend Bogie was sitting next to him in the same seat, and they were both in the middle of that part of the car which was east of the centre door and on the south side (p. 15, l. 24 to p. 16, l. 4). There were other people in the car on the same side as he was and the car was ordinarily well filled (p. 17, ll. 1-4).

The plaintiff was asked on what he based his notion that he received an electric shock and he said that he had been in the habit of throwing wires over a live wire and getting a shock, and that he had also often received a shock in the electric street cars on a wet day; but the last time he amused himself in fooling with a live

wire was about twenty years ago (p. 18, l. 20 to p. 15, l. 10). He further said that he passed into unconsciousness practically right from the blow (p. 19, l. 40 to p. 20, l. 2), but nevertheless there was a period that it felt like a shock that he received twenty years ago. The only other feeling that he experienced was that his **arm jumped up** (p. 20, ll. 1-10).

Plaintiff's friend Bogie was sitting alongside of him with his hands in front of him (p. 25, ll. 30-40); they were talking about the station; "just as we were about going past where that station would be, why, he sort of gave a jump like up in his seat and his neck began to swell and his eyes rolled, and he looked horrible; I thought he was dying" (p. 25, l. 40 to p. 26, l. 10); one of his hands was on the bar that goes up and the other was on the window sill (p. 26, l. 13); another passenger who was sitting opposite, walked to the end of the car, and the guard stayed at the other end, and when the train reached Grove Street in Jersey City, the plaintiff was carried out and taken home (p. 26, ll. 19-40). The witness said on cross examination that the plaintiff had been sitting in the same position all the way from Manhattan Transfer up to the time he became unconscious (p. 29, ll. 20-40); he did not show any symptoms of a shock until the train got somewhere near the Summit Avenue Station (p. 29, l. 35 to p. 30, l. 22). When the witness saw the condition of the plaintiff he grabbed hold of him and called for help. He knocked his hand off the sill; the other hand "sort of jerked away from this red" (p. 32, l. 38 to p. 33, l. 18).

The plaintiff was then recalled and said that as soon as he got on the train at the Manhattan Transfer, he took his usual position with one hand on the upright and the other hand on the sill (p.

38, l. 37 to p. 39, l. 15); the running time from Manhattan Transfer to Grove Street, Jersey City, was about nine minutes (p. 39, l. 21); and the time to the Summit Avenue Station, which was then being constructed, would be about five or six minutes (p. 40, l. 29).

These were the only witnesses called for the plaintiff with respect to the circumstances of the alleged accident.

The following testimony was offered for the defendants: Varley, guard on fourth car of train starting from Manhattan Transfer 2:44 P. M., seven passengers got on the car at the Transfer (p. 57, ll. 20-40). The running time to Grove Street is ten minutes and it took eight minutes to run to Summit Avenue Station (p. 58, ll. 10-16); the first thing he noticed of anything wrong was after leaving Summit Avenue, he saw a man lean back on the seat and his eyes were closed and he was jerking his hands and gritting his teeth; he was sitting near the centre door (p. 58, ll. 18-27); helped to carry the man out of the car and he was taken in charge by the train clerk at the Henderson Street end of the station; I went on with the train to Cortlandt Street, New York; there were seven people in that car (p. 58, l. 32 to p. 59, l. 19); the lights in the car were turned on near Summit Avenue and were all right; no fuse blew out; there is also an electric circuit for the heating of the car which was in use that day; there was no trouble with that (p. 59, l. 32 to p. 60, l. 10); made a trip with the same car three or four times that day and found nothing wrong (p. 60, l. 24 to p. 61, l. 3); no one on the train complained about shocks (p. 61, l. 33).

Jones, a passenger on the train, boarded it at Grove street; saw a man stretched out on a seat near the middle of the car and saw him taken

off the train; got on train and sat down in the same seat as this man (p. 64, l. 12 to p. 65, l. 16); was standing up a few minutes and held on to the white bar, didn't receive any shock; nothing happened (p. 65, ll. 21-33).

Hazelton, electrical and mechanical engineer, with twenty-two years' experience in Chicago and New York; twelve years' experience in designing and construction of electric cars for Metropolitan Street Railway Company in Chicago, Manhattan Elevated in New York, Hudson and Manhattan in New York (p. 66, l. 18 to p. 67, l. 12); there were two kinds of cars in use, one purchased by the Hudson and Manhattan, the other by the Pennsylvania Railroad, but there was no difference in the design or electrical apparatus (p. 67, ll. 18-38); the cars were operated by electrical motors taking the current from the third rail; the motors are placed on the trucks under the cars and there is a piece of metal, called the shoe, and the current passes from the third rail to the shoe; all the wiring from the shoe to the motors being underneath the car; the lights are taken from the same current, which is 600 volts, and the wires run through iron pipes up to the top of the car (p. 68, l. 18 to p. 69, l. 5); there is also a heating system on each car operated by electricity; this consists of coils of wire wound on a suitably insulated frame and placed under the seats; the current is taken by insulated wires to the heaters; these wires are also placed in pipes (p. 69, ll. 6-15); before a passenger can come in contact with the wires, there is first the side of the car made of steel, then the steel conduit pipe and then the insulation of the wire (p. 69, l. 20); this insulation consists of rubber or some other compound and prevents the current of electricity from escaping from the wire; the light and heat circuits are con-

trolled from the end of the car by means of a switch and the propulsion system is controlled by means of a "master controller" at the end of the car; the wires of this system are all under the car floor; between those wires and the passengers feet are, first, the insulation of the wire, then the steel conduit pipe, then a corrugated steel floor and on top of that, a layer of cement about an inch and a quarter thick (p. 69, l. 20 to p. 70, l. 18). All the circuits have fuses, the purpose of which is to act as a safety valve, so that if there is too much current in any wire the fuse will melt before the wires will burn out. The cars in question are of metal construction and there is nothing in the world better for this purpose (p. 70, l. 39 to p. 71, l. 1). The method adopted to prevent a possible shock is, first the insulation of the wires, and in addition the entire car, being made of steel, is grounded—that is, the track rails are grounded, the wheels rest upon the rails and the trucks of the cars rest upon the wheels, so that they form one continuous section of steel and have the same potential as the earth (p. 71, ll. 2-17). If the current in any way got loose the first thing to happen would be a short circuit at the point where the wire touched the steel work; this would cause a flash of light, "an arc" and would burn out the fuse; the current would be cut off by the fuse; it would not be possible for anybody to get a shock under these circumstances (p. 71, l. 20 to p. 72, l. 4). If there happened to be a puncture in the insulation of the wire so that the wire which is charged got up against the conduit pipe, this would cause a short circuit and the fuse would burn out; there would be no possibility of getting a shock. If a man was sitting on a seat with his arm on the window sill and the other holding on to the upright, he could not possibly get a shock, because the entire structure is grounded (p. 72,

l. 23; p. 73, l. 2). The current would not pass through the seat of the car because it is all connected to the track and the rails and to the earth and it cannot get loose. The only way it would be possible to get a shock would be to touch the wire, for example, by touching the wire controlling the electric lights; these are four or five feet above the seat. The upright posts in the car are made of steel, coated with enamel; they are intended as a support for the passengers and there are no wires in them (p. 73, ll. 20-40).

On cross examination he was asked about the wires by which the heating system was controlled and said that if one of those wires touched the steel portion of the car there would be a short circuit, which would cause a flash under the seat (p. 74, ll. 22-31); but when that happens, the electricity goes back to the power house through the steel car; it would not go through a man's body, but would pass through the frame of the car (p. 75, ll. 9-30). An attempt was then made to get him to say that it would be possible to get a shock in such a car if there happened to be some defective insulations or connections, but he answered that it was impossible to get such a shock unless a live wire was touched and that that could not happen because the car has to be on the rails and thereby makes a perfect ground. All of the car is a conductor. If there was a piece of the car that was not grounded that might act as an avenue for the electricity, but, in order to do that, it would have to be entirely separate; so long as there is contact of any sections of the car it is grounded, and the only way to keep it from being grounded is to lift it up on the wooden rail (pp. 78 and 79).

An attempt by plaintiff's counsel was then made to get the witness to say that a shock might be

received, if a "puncture" occurred in the insulation, but the answer was that the resistance of the person's body had nothing to do with receiving a shock or not receiving it (p. 80, l. 7). The witness further explained that the theory of grounding the car was the same as the method of putting electric wires in a house, and that when a wire in such a case becomes defective the steel pipe does not catch fire or set fire to the woodwork for the very reason that the steel pipe is grounded (p. 81, l. 20 to p. 82, l. 4). If the car was not grounded, then it would get no current. It could not come through, and if there was no current, a man could not get a shock, and the car would not go; "if there was an imperfect ground of the car, no current would go through the car" (p. 82, l. 30 to p. 83, l. 10).

On December 22nd, two days after the accident, the car in which the plaintiff was riding, was given a thorough examination by one Lewis, inspection foreman; he tested all of the switches and wires and found no leakage of current; he also made a test with an instrument called a "volt meter" and found that every part of the car was properly grounded; after a three hours' test, he could find nothing whatever that would cause a shock (pp. 88 to 90). This examination included a test of the fuses; none of them was found burned out (p. 90, l. 15). If a man did get a shock by touching the third rail, it would leave a burn where the current enters the hand (p. 96, l. 13). Dr. Ryan also testified that in the case of a shock due to a current of 500 volts, there would be a burn at the point of contact (p. 98, l. 12).

An expert witness by the name of Adams was called on behalf of the plaintiff, but his testimony, so far from discrediting that of the defendants', confirmed and strengthened it. He explained that,

in one sense, all electric circuits were grounded because they had to return through the ground in order to return to the generators in the power station from which they came; that is, to complete the circuit (p. 100, l. 40 to p. 101, l. 19). He said that electricity takes the most direct route back to the ground or the generator; that is, the course of least resistance (p. 102, ll. 20-40); that this was the invariable rule—the law of nature—and that, as between a steel car and a human body, the car is the one of least resistance, “hardly any,” as compared with the human body, so that, *if a current on its way back to the ground had the choice of passing through a human body and passing through a steel car, it would always pass through the steel.* The witness said he had never known of a man getting a shock from a steel car unless there was a battery on the car; he did not recall of ever hearing of any such case (p. 103, ll. 16-26). He further said that if a man was riding on a steel car and put his hands on two different parts of the car, he did not think that man could get a shock if the cars were grounded so that the current was being carried without any break; in order to get a shock, there would have to be a separate piece of steel, and this, in turn, would have to be against something through which the current was flowing. Further, that when the wheels of the car are on the rails, they are grounded and everything that touches those wheels in the metal line is grounded; and that, if the various parts of the car touch each other at all, they would all be grounded. “Q And in that event, there could not be any shock; couldn’t be possible? A I don’t see how it could” (pp. 105 and 106).

The disastrous result of these admissions were so evident that counsel for plaintiff attempted to cure them on the theory that there might have

been something to interfere with the perfect grounding of the car, but all the witness was willing to say was that a man could get a shock under such circumstances, provided he touched the part that was "isolated," and on the further condition that the disconnected part was connected with the power (p. 106. ll, 14-34; p. 107, l. 35 to p. 108, l. 5). He then explained that by an isolated part of the car he meant "isolated from the ground"; that is, it would have to be hanging up in the air, so that it was not making contact with anything that was connected with the car (p. 108, ll. 5-25).

The evidence which will be stated hereinafter under Point II shows that the electrical apparatus on the car in question was in perfect condition and, hence, it follows, according to the testimony of the plaintiff's own expert, it was impossible for a passenger in that car to get an electric shock so long as the wheels of the car were on the rails. The reason is very simple, namely, that in the event of some stray current breaking loose, it would not pass through the human body at all, but would take the line of less resistance—in this case, some part of the car—and would go back again to the ground or to the generator.

On this point the Supreme Court, in its opinion setting aside the verdict for the plaintiff, said:

"Mechanical experts on behalf of plaintiff and defendants made it clear that as between the human body and the steel car upon which it was riding, a loose electric current would seek the point of least resistance, the steel body to find its way back to the generator, so as to describe a perfect current. That upon a steel car such as the one in question, which was grounded upon the steel rails, and thus put in contact with a current of electricity, a shock was impossible to a human body in the

absence of a loose battery upon the car, isolated from contact with the car itself. The expert testimony made it manifest that in such a construction as the car in question, a loose current of electricity, dangerous to a passenger, was a practical impossibility."

The fact that the plaintiff did not receive any electric shock at all in this car is further demonstrated as a matter of physical law, because it appeared that the effect of such a shock would be to make a burn at the point where the current entered the body, and this could be seen afterwards (p. 96, l. 7; p. 98, l. 12). If the shock were severe enough to knock him unconscious, Dr. Ryan said that there would be a burn at the point of contact (p. 98, l. 32). It is significant in this case that the plaintiff offered no proof as to any burns on his hands or elsewhere. He did not even call the doctor that attended him in the evening after he was taken home (p. 22, ll. 12-32); the only doctor called by him being Dr. Arlitz, who did not see him until June 5, 1912, about six months after the accident. His friend Bogie described in considerable detail just what the appearance and symptoms of the plaintiff were, but not a word was mentioned about a burn (p. 33, l. 32 to p. 35, l. 24).

The Supreme Court said on this point:

"A physician was called who testified that in the case of such a shock, equal to a contact with 500 volts of electric energy, a burn would show upon the person at the point of contact. There was no testimony of such a burn."

If it be said that the testimony of the plaintiff and his friend Bogie indicated that the plaintiff was taken ill on the car and that his symptoms might have been the result of an electric shock,

the answer is that the evidence demonstrates that the plaintiff had an epileptic fit, as a result of a fractured skull which he had suffered about six years before in June, 1906, while working for a railroad company as a fireman. Plaintiff admitted that, as a result of that accident, he was sick and off duty for about ten and a half months, although saying that he did not have any trouble with his head after his return to duty (p. 11, ll. 10-30). On cross examination he was asked whether he felt any ill effects at all from the fracture of the skull and he replied "None whatever," but immediately after he admitted that he was unconscious for seventeen days (p. 19, ll. 30-40). He was treated for this injury in a hospital at Trenton, and his skull was trephined (p. 20, ll. 30-40). Several doctors attended him for this injury, but not one was called by him at the trial (p. 24, ll. 10-30). Plaintiff did not even call the physician who attended him after he received the alleged shock upon which he basis his present action, although the latter was called in to treat him on the same afternoon (p. 22, ll. 5-15).

Dr. Arlitz was called as a witness for the plaintiff and he testified that the plaintiff was suffering with "Jacksonian epilepsy" (p. 41, l. 22); and that the electric shock was the exciting factor in producing same (p. 43, l. 30). He admitted, however, that this kind of epilepsy is a common result from a fractured skull and that such condition might happen six years after the fracture, although he did not recall any particular case of that kind (p. 45, ll. 20-40). He also admitted that he had not examined the plaintiff for the purpose of determining whether the bone had grown over the point of the fracture (p. 46, ll. 10-20); and that he found no objective symptoms when he examined the plaintiff except "sluggishness of the psychic processes" (p. 46, ll. 20-30). He also admitted

that the convulsions or paroxysms that followed electric shock depended upon the amount of electricity and the individuality of the patient and the resistance to the current—that in the present case he had no information whatever as to the amount of the electric shock but nevertheless he undertook to answer the hypothetical question upon which he had based his opinion that such a shock was the exciting factor which produced the epilepsy (p. 48, l. 30).

He further admitted he had not discovered whether the plaintiff had any pressure on the brain, but that if there was such pressure from a bit of bone or some process, that that would affect his mentality; that he had not made any examination to determine whether there was any pressure and could not determine the state of the inner table of the skull (p. 49, ll. 10-30).

Finally he admitted that the plaintiff's condition alleged to have resulted from electric shock might have come from pressure but claimed that the shock would be the exciting factor (p. 54, ll. 1-30).

Dr. McGill, called for the defendants, said that there was a round hole in the man's skull  $1\frac{1}{2}$  inches in diameter, but it healed over by a fibrous envelopment; that the most common cause of Jacksonian epilepsy was a depressed bone in the skull, some condition that affected the external portion of the brain. He then described in detail the symptoms of epilepsy such as a nervous feeling, a spasm, unconsciousness, change of color, shaky, and frequently foaming at the mouth. These symptoms corresponded in many respects to those detailed by the plaintiff's witness Bogie, and by two witnesses for the defendant, Messrs. Jones and Munday, who said they observed that the plaintiff seemed to have a foam or froth in his mouth, as if he had a fit.

The doctor further said that he had had a great deal of experience with electric shock, and had never seen it produce Jacksonian epilepsy; that such a condition might be found many years after an accident (pp. 109-113).

The Supreme Court, in discussing this point, said:

“It was shown that the plaintiff in June, 1906, had suffered from a fractured skull, occasioned by an injury, and had been unconscious for 17 days, and had been trephined. The medical testimony showed that epilepsy was a common result of such a fracture, and the plain inference is that the plaintiff was subject to such a condition under certain circumstances.”

We therefore submit that there was no question of fact for the jury to consider as to whether the symptoms of the plaintiff, as testified by himself and Bogie, were the result of an electric shock, but that on the contrary the evidence demonstrates that his symptoms were the result of his former injury and that the alleged shock was a physical impossibility.

## II.

**Even if plaintiff did receive an electric shock a finding that the same was due to negligence on the part of the defendants would not be justified, because the evidence shows without substantial contradiction (a) That the electrical apparatus was in good order, (b) That it had been properly inspected prior to the accident.**

No one pretended to say that there was any defect in the car in which the plaintiff was riding; on the other hand, the defendant showed conclusively that the car was in proper order and had been re-

cently inspected. On this point attention should be called to the following evidence: The guard Varley had been running on the same car three or four times on the day of the accident between Newark and Cortlandt street, New York (p. 60, l. 30). He did not notice anything peculiar about the electrical apparatus, the lights were working properly when he turned them on near Summit avenue, no fuses blew out; the heating circuit was also all right and no fuse blew out; there was no trouble at all as far as he know with the car (p. 58, l. 40 to p. 60, l. 27). The trip on which the plaintiff had his fit was the last trip of the guard on that day; he left the car at Cortlandt street, New York, and it then came back to the storage yard at Jersey City and thence on another trip (p. 61, ll. 6-26). He knew nothing about any shock to the plaintiff until he read about it in a newspaper and no one at the time said anything about a shock (p. 63, l. 20 to p. 64, l. 1).

Jones, a passenger, got on the train at Grove street on his way to New York City, and for a portion of the trip sat in the same seat as the plaintiff; he did not receive any shock; the car was crowded and when a lady came he gave her his seat (pp. 64, 65). There is no evidence on the part of anybody that any one of the crowd on that car outside of the plaintiff received any shock—not even Bogie, his friend, who was sitting right alongside of him and who grabbed him when saw him have his fit.

Lewis, inspection foreman of the Hudson and Manhattan Railroad at Henderson Street Yard, Jersey City, said that the car in question was put into service on November 17th, 1911; before it was put in service a thorough inspection was made; this included a test of the electric circuits, trucks, brake rigging, etc. (p. 84, l. 34 to p. 85, l. 4); after the car went into service on November 17th, 1911, it came in on December 8th for the periodical in-

spection—the practice being to inspect every car after it had made a mileage of about twelve hundred miles (p. 85, ll. 11-20). In addition to these periodical inspections the guards or conductors or motormen are required to report on a “shop slip” provided for that purpose any defects in a car, and these are looked up by two inspectors; by reference to the car record of this identical car it was shown that there was only one report of a defect between December 8th and December 22nd, and that was with the glass in the markers, which had been broken (p. 86, ll. 20-40). On December 20th the witness saw an article in a newspaper that a man had received a shock while riding in a car and on December 22nd a report came from the Claim Department that a man said he had received a shock in that car. Up to that time no report of defects had been received other than the one about broken glass (p. 86, l. 38 to p. 87, l. 30). Between December 20th, the date of the accident, and December 22nd no repairs were made on this car; on the latter date the witness made a thorough examination of the car to see if there was anything out of order; he examined the wires, the heating and wiring circuits, the switches and the fuses, sat in the seat where the passenger had been and tried to see if there was any live part anywheres. He finally went over the car with a volt meter and tried each separate piece of steel in the car body to see if every piece was properly grounded; then one side of the meter was tapped to the return current rail and he went around and touched each metal part in the car to see if there was any stray current; there was no deflection of the needle, which indicated that there was no current leaking anywhere; he could find nothing that could cause a passenger a shock; the entire examination took about three hours; the car was in use from December 20th up to the time of this inspection and no report came in

of anything out of order; he also examined all the fuses and found none of them burned out (p. 87, l. 31 to p. 90, l. 20). He further said that the voltmeter was in good working order and was tested regularly once a week (p. 93, l. 27).

Testimony as to the condition of the electrical apparatus was also given by Melcher, controller inspector at the Henderson street shops. He said the car came in for the regular inspection on December 22, and he went over it to see if the heater switches had the proper amount of current, if the heaters were all right, the light currents and the snap switches. He found nothing the matter with it. No fuses blew out while he was making the test. He also made an inspection prior to December 22d, but could not recollect the date, except as it appeared on the card. There was nothing the matter with the car at that time (p. 113, l. 36 to p. 115, l. 7). His inspection was to see whether the heaters and the lights and the switches were working, and if there was anything wrong; it would have been discovered by such inspection (p. 116).

The evidence of the defendant as to the condition and inspection of the car was not contradicted by plaintiff unless it can be said that the mere happening of the accident was a contradiction.

In order to entitle the plaintiff to recover he must do more than show the possible responsibility of the defendant for the injury.

*Suburban Electric Co. v. Nugent*, 58 N. J. L., 658.

*Paynter v. Bridgeton Traction Co.*, 67 N. J. L., 619.

The circumstances must be such as to justify the inference that there was negligence on the part of the defendant.

*Rhobovsky v. N. J. Worsted Co.*, 76 N. J. L., 542.

*Kennedy v. Netherlands Co.*, 76 N. J. L., 618.

Where the plaintiff's evidence is equally consistent with the absence as with the existence of negligence, there can be no recovery.

*McGilvery v. Newark Electric Co.*, 63 N. J. L. 591, 5.

*Mummer v. Lehigh Valley R. R. Co.*, 75 N. J. L. 703.

*Stumpf v. D. L. & W. R. R. Co.*, 76 N. J. L. 153.

*Cass v. Singer*, 77 N. J. L. 412.

*Chester v. Cape May Co.*, 78 N. J. L. 131.

When there is no evidence to show the cause of the accident the plaintiff's case must fail.

*Cornette v. Baltimore & Ohio R. R. Co.*, 195 Fed. 59.

It may be that the occurrence of an electric shock to a passenger riding on a car operated by electricity would be *prima facie* proof of negligence, in the absence of any evidence by the defendant showing the exercise of care on its part. Illustrations of such cases are:

*Davis v. Paducah Light Co.*, 113 Ky. 267, 68 S. W. 140.

*McRae v. Metropolitan Street R. R.*, 125 Mo. App. 562, 102 S. W., 1032.

*S. Covington Ry. v. Smith*, 27 Ky. L. Rep. 811, 86 S. W. 97.

*Denver Tramway Co. v. Reid*, 4 Col. App. 53, 35 Pac. 269.

*Dallas Ry. Co. v. Broadhurst*, 28 Tex. Civ. App. 630, 68 S. W. 315.

*Hughes v. Atlantic City R. Co.*, 89 Atl. 769, 85 N. J. L. 212.

But such cases do not apply to the case at bar, because if there was any such presumption of negligence it was fully overcome by the evidence of the defendant showing: First, that the symptoms of the plaintiff were not due to an electric shock;

second, even if the plaintiff did receive a shock, nevertheless the electric apparatus was the best of its kind in the world and was in good order; third, that every reasonable precaution had been taken to properly inspect same prior to the accident and that the car was in daily use both before and after the accident, and no one else at any time received any shock; and finally that even if there was any defect in any part of the electric apparatus so that a stray current of electricity broke loose it would not pass through the human body at all but would take the point of least resistance, namely, through the car to the ground and back again to the generator.

The evidence, we submit, shows without dispute that the defendants exercised a high degree of care to see that this car was properly constructed and inspected. The evidence on this point was not disputed and there was therefore no question of fact for the jury to consider.

In discussing this feature of the case, the Supreme Court said:

“Tests of the car and its appliances were made shortly after the occurrence, and nothing was found to indicate defective insulation. Thorough examinations and inspections of the car by the defendants’ employees were testified to, showing perfect or at least no exhibition of imperfect conditions.

\* \* \* \*

“We have examined the testimony to ascertain whether there is any fact or congeries of fact upon which negligence under these circumstances, can be predicted, with the result as we have concluded that the case seems to be absolutely barren of it.

“The rule of *res ipsa loquitur*, if it be applied, called for an explanation from the de-

defendants in view of the plaintiff's allegation of negligence, and his testimony concerning the shock; and that has been furnished to a convincing degree from which the inference is unavoidable, that the defendants neither did not fail to do anything within the line of their duty, and the obligations imposed upon them by law, from which negligence of any character could at all reasonably be inferred."

### III.

#### Comments on Plaintiff's Brief.

The brief of counsel for plaintiff is based upon two premises, first, that there was evidence from which the jury had a right to conclude that the plaintiff received an electric shock; and second, if so, the jury also had a right to conclude that the escape of the electricity was caused by defendants' negligence under the maxim of *res ipsa loquitur*. Of course, we do not dispute the principle that if there is a reasonable dispute of fact the trial judge should not direct a verdict, but in the present case we deny both of the premises upon which the plaintiff's argument is based. We urge that there was no evidence from which the jury could reasonably conclude that the plaintiff did in fact receive an electric shock; but even if that were a question of fact that still there was no evidence from which the jury could reasonably conclude that the shock was caused by negligence on the part of the defendants. The defendants' evidence as to the condition of the electric apparatus of the car and the due and proper inspection thereof was uncontradicted. Hence, there was no evidence upon which the jury could find—as claimed by the plaintiff—that the electricity escaped because the apparatus was out of order. Plaintiff's argument that if the electricity

did escape the defendants were negligent by reason of that fact is unsound. Even if we grant, for the purpose of argument, that the electricity may have escaped, or that the jury would have been justified in so finding, and that thereby the plaintiff received a shock (notwithstanding the undisputed testimony of the witnesses on *both* sides that in the event of the escape of such a current of electricity it would not pass through the human body but would take the line of least resistance, through the car to the generator when it started) it by no means follows that the defendants were negligent. Possibly the proof of the fact of the escape of electricity would place the burden upon the defendants of showing that it had exercised the degree of care which the law required of them, but in the present case such burden was fully discharged. Such proof—as said by the Supreme Court—

“has been furnished to a convincing degree from which the inference is unavoidable that the defendants neither did not fail to do anything within the line of their duty, and the obligations imposed upon them by law, from which negligence of any character could at all reasonably be inferred.

“The defendants are liable to plaintiff only upon the theory of negligence and unless there be some act of omission or commission upon which such an inference can be based, the defendants were entitled to a direction of a verdict in their favor.”

IV.

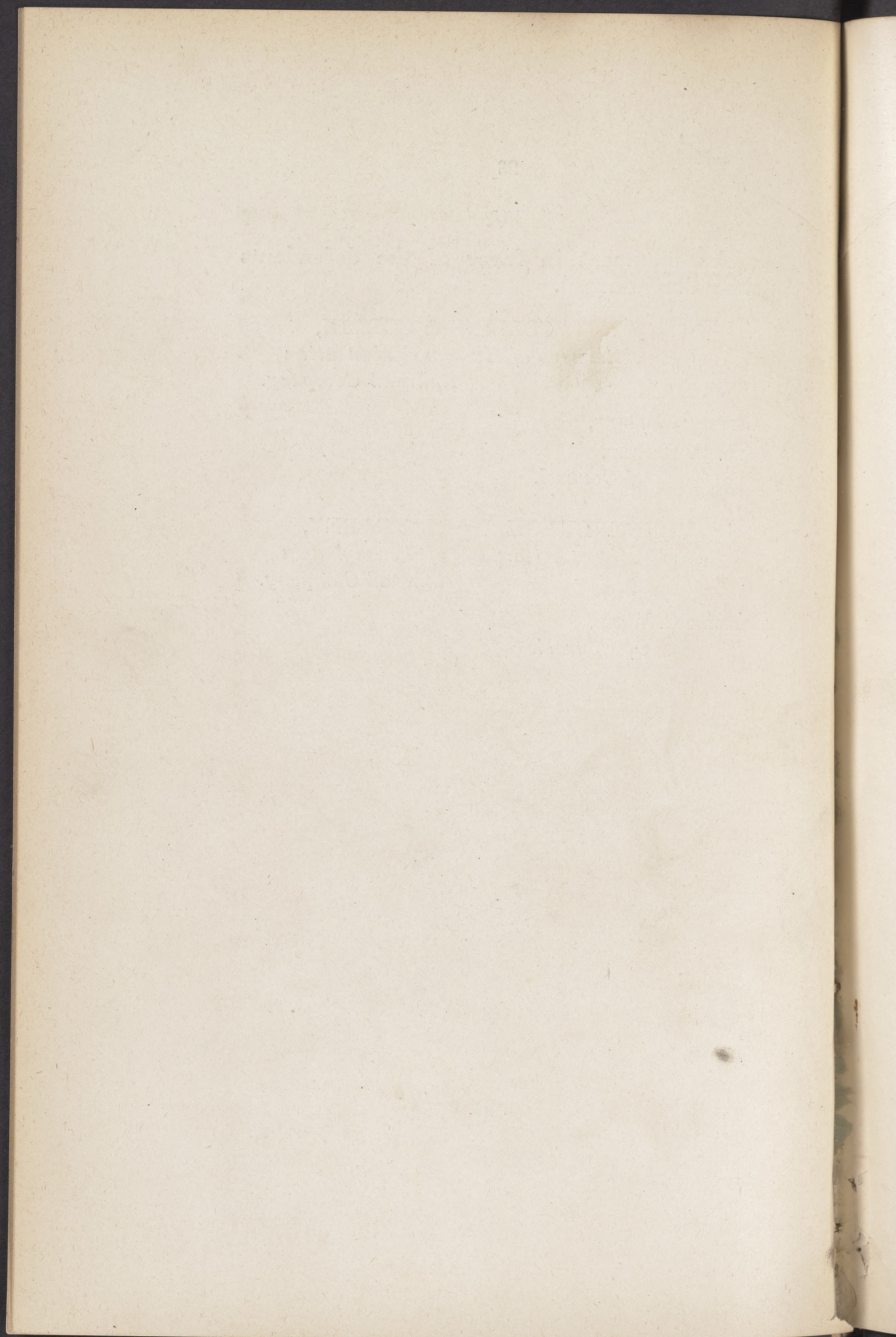
**The judgment in favor of the defendants  
should be affirmed.**

COLLINS & CORBIN,  
*Attorneys of Hudson & Manhattan  
Railroad Company.*

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

VREDENBURGH, WALL & CAREY,  
*Attorneys of Pennsylvania  
Railroad Company.*

ALBERT C. WALL,  
*Of Counsel.*



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NOTICE OF APPEAL

NEW JERSEY SUPREME COURT.

George Clark, )  
)  
Plaintiff-Appellant, )  
)  
vs. )  
) Notice of Appeal  
Hudson & Manhattan R. R. Co.) Action at Law 10  
)  
and Pennsylvania Railroad.)  
)  
Company, )  
)  
Defendants-Appellees. )

To Messrs. COLLINS & CORBIN, and  
VREDENBURGH, WALL & CAREY,  
Attorneys of Defendants: 20

TAKE NOTICE, that the plaintiff appeals to the COURT OF ERRORS AND APPEALS from the whole of the judgment entered in this cause, on the following ground:

That the Court at the trial of the cause directed a judgment of non-suit to be entered against the plaintiff and in favor of the defendants, whereas the Court should have submitted the issues in the said cause to the jury for decision. 30

ALEX. SIMPSON,

Attorney of Plaintiff-Appellant.

## NEW JERSEY SUPREME COURT

Hudson County

|    |                            |                   |
|----|----------------------------|-------------------|
|    |                            | ) Judgment Record |
|    | George Clark,              | ) Judgment for    |
|    |                            | ) Defendant.      |
|    | Plaintiff,                 | )                 |
| 10 |                            | ) COLLINS &       |
|    |                            | ) CORBIN, At-     |
|    | vs.                        | ) torneys for De- |
|    |                            | ) fendant, Hud-   |
|    |                            | ) son & Manhat-   |
|    | Pennsylvania Railroad Co., | ) tan R. R. Co.   |
|    |                            | ) VREDEN-         |
|    | and Hudson & Manhattan.)   | ) BURGH, WALL     |
|    |                            | ) & CAREY, At-    |
|    | Railroad Co.,              | ) torneys for De- |
| 20 |                            | ) fendant, The    |
|    | Defendants.                | ) Pennsylvania    |
|    |                            | ) R. R. Co.       |

Pennsylvania Railroad Co. and Hudson & Manhattan Railroad Co., the defendants in this cause, were summoned to answer unto George Clark, the plaintiff therein, in an action at law upon the following complaint:

30 The defendants in this suit, the Pennsylvania Railroad Company, and the Hudson & Manhattan Railroad Company, foreign corporations, having been duly summoned to answer unto George Clark, in an action of tort, to his damage, Twenty nine hundred dollars.

And thereupon the said plaintiff, by Alex. Simpson, his attorney, complains:

40 For that the plaintiff was a passenger of the defendant companies, who were on the twentieth day of December, nineteen hundred and eleven,

at Jersey City, in the County of Hudson and State of New Jersey, common carriers of passengers for hire, and on the said day, and at the said place, while the plaintiff was a passenger, by reason of the improper construction and maintenance of the car, and appurtenances used by the defendants, in which the plaintiff was a passenger, which condition was caused by the negligence of the defendants, electricity entered into the body of the plaintiff, and shocked and injured him, and thereupon the servants of the said defendants who saw that the plaintiff was so shocked and injured, fled away from the plaintiff, and did not use reasonable care to afford him any assistance but, on the contrary, thereafter left him lying unattended and uncared for, suffering from the injuries so received, and by reason of the said shock of electricity so received and the said failure of the servants of the defendants to use a reasonable degree of care in the comfort and attendance of the plaintiff, he received permanent injuries and was rendered sick, and thereby lost wages he otherwise would have made, to wit, the sum of Two Hundred Dollars, and was forced to expend money in medical expenses, to wit, the sum of Two Hundred Dollars, all of which is to his damage, and the plaintiff was otherwise injured to his damage.

Wherefore, the plaintiff saith that he is injured to his damage Twenty-nine Hundred Dollars, and therefore he brings his suit.

And the said defendant, the Pennsylvania Railroad Company, by Vredenburgh, Wall & Carey, its attorneys, comes and defends the wrong and injury, when, etc., and says that it is not guilty of said supposed grievances above laid to its charge or any or either of them in

manner and form as the plaintiff has above thereof complained against it, the said defendant. And of this, it puts itself upon the country, etc.

And the said defendant Hudson & Manhattan Railroad Company, impleaded with Pennsylvania Railroad Company, by Collins & Corbin, its attorneys, comes and defends the wrong and injury, when, etc., and says that it is not  
10 guilty of the said supposed grievances above laid to its charge, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against it. And of this the said defendant puts itself upon the country, etc.

This action was tried before Honorable William H. Speer, Judge of the Hudson County Circuit Court, to whom the same was referred  
20 by the Honorable Francis J. Swayze, Justice of the Supreme Court presiding in the Hudson Circuit, with a jury, in the presence of counsel of the respective parties, at said Circuit on October 28, 1914.

The cause having been heard and submitted to the jury, the said jury at the direction of the court returned their verdict in favor of both defendants and against the said plaintiff.

Whereupon, it is adjudged that the declara-  
30 tion of the plaintiff be dismissed and that the defendants recover of the plaintiff their costs respectively, which are taxed at \$  
in favor of the defendant Pennsylvania Railroad Company, and at Two Hundred and Twenty Dollars and Sixty-seven Cents, in favor of the Defendant, Hudson & Manhattan Railroad Company.

Judgment entered November 11, 1914.

CERTIFICATE AND COMPLAINT 5

I, WILLIAM C. GEBHARDT, Clerk of the supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this twenty-second day of October, A. D. nineteen hundred and fifteen. 10

WM. C. GEBHARDT,  
Clerk.

(Seal.)

HUDSON COUNTY, ss.:

The defendants in this suit, the Pennsylvania Railroad Company and the Hudson & Manhattan Railroad Company, foreign corporations, 20 having been duly summoned to answer unto George Clark in an action of tort, to his damage, Twenty-nine Hundred Dollars.

And thereupon the said plaintiff, by Alex. Simpson, his attorney, complains:

For that the plaintiff was a passenger of the defendant companies, who were on the twentieth day of December, nineteen hundred and eleven, at Jersey City, in the County of Hudson and State of New Jersey, common carriers 30 of passengers for hire, and on the said day and at the said place, while the plaintiff was a passenger, by reason of the improper construction and maintenance of the car, and appurtenances, used by the defendants, in which the plaintiff was a passenger, which condition was caused by the negligence of the defendants, electricity entered into the body of the plaintiff, and shocked and injured him, and thereupon 40

- the servants of the said defendants, who saw that the plaintiff was so shocked and injured, fled away from the plaintiff and did not use reasonable care to afford him any assistance, but on the contrary thereafter left him lying unattended and uncared for, suffering from the injuries so received, and by reason of the said shock of electricity so received and the said failure of the servants of the defendants to use  
10 a reasonable degree of care in the comfort and attendance of the plaintiff, he received permanent injuries and was rendered sick, and thereby lost wages he otherwise would have made, to wit, the sum of Two Hundred Dollars, and was forced to expend money in medical expenses, to wit, the sum of Two Hundred Dollars, all of which is to his damage, and the plaintiff was otherwise injured to his damage.
- 20 Wherefore, the plaintiff saith that he is injured to his damage Twenty-nine Hundred Dollars, and therefore he brings his suit.

## PLEA.

(Penn. R. R.)

- And the said defendant, The Pennsylvania Railroad Company, by Vredenburgh, Wall & Carey, its attorneys, comes and defends the  
30 wrong and injury, when, etc., and says that it is not guilty of said supposed grievances above laid to its charge or any or either of them in manner and form as the plaintiff has above thereof complained against it, the said defendant. And of this, it puts itself upon the country, etc.

VREDENBURGH, WALL & CAREY,  
Attorneys of Defendant.

PLEA

7

PLEA.

(H. & M. R. R. Co.)

And the said defendant Hudson and Manhattan Railroad Company impleaded with Pennsylvania Railroad Company by Collins & Corbin, its Attorneys, comes and defends the wrong and injury when, etc., and says that it is not guilty of the said supposed grievances above laid to its charge, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against it. And of this the said defendant puts itself upon the country, etc. 10

COLLINS & CORBIN,  
Attorneys of Defendant.

20

(Affidavit Attached.)

30

40

## TESTIMONY.

GEORGE CLARK, the plaintiff, called and sworn on his own behalf, testified as follows:

DIRECT EXAMINATION by Mr. Simpson:

- Q. How old are you, Mr. Clark? A. Thirty-three years.
- 10 Q. Where do you live? A. 52 Washburn Street, Jersey City.
- Q. What is your occupation? A. That of constable at the present time.
- Q. Employed by the Sheriff of this County? A. Yes.
- Q. On the 20th day of December did you go to Trenton on the Pennsylvania Railroad? A. I did.
- 2) Q. Did you leave Trenton on that day for the purpose of returning to Jersey City? A. I did.
- Q. What road did you come on? A. Came in on the Pennsylvania Railroad.
- Q. Take a train at Trenton? A. From Trenton.
- Q. Is this the kind of book you used to pay your fare? (Mileage book shown witness.) A. Yes, sir.
- 30

Mr. Simpson: I want to offer that mileage book in evidence. Any objection? (Hands book to Mr. Hobart.)

- Q. Before you got to the Manhattan Transfer did the conductor give you any ticket and tell you to change at Manhattan Transfer? A. They do.
- 40 Q. He did? A. He did.

Q. Who was with you, Mr. Bogie? A. Mr. Bogie.

Q. What kind of a ticket did they give you at the Manhattan Transfer? A. It is the ticket that is supposed to be good for a trip to Jersey City or New York and they take it up on the next train.

Q. Did you get off at the Manhattan Transfer? A. We did.

Q. What train did you get on at the Manhattan Transfer? A. Electric train there. 10

Q. The Hudson & Manhattan train? A. I suppose it was the Hudson.

Q. Is it the train that runs under the river? A. Yes, sir.

Q. Comes down to Grove Street? A. I don't know who it belongs to.

Q. It had Hudson & Manhattan on the side of the car, didn't it? 20

Objected to as leading. Question withdrawn.

Q. You got on this car that Mr. Hobart don't want to know the name of, and where did it go. A. Why, came to Jersey City.

Q. Where were you going on the car, into Jersey City? A. Electric train at that time, to Jersey City. 30

Q. Where did you sit in the car? Did you sit or stand, or what? A. I was sitting down.

Q. Did anything happen to you while you were sitting down? A. It did.

Q. Well now, how were you sitting when this thing happened to you? A. Why, I was sitting—

Q. Just describe your position to the jury. A. In the manner like this (indicating), with 40

my hand around like that, and I had hold on the upright.

Q. Where was this hand? A. This out of the window.

Q. On the metal window sill? A. Yes.

Q. The window sill was metal? A. Yes.

Q. Where was the other hand? A. On the post.

10 Q. What post? A. An upright post, a white enamel post.

Q. Of metal? How far had you got from Manhattan Transfer before anything happened?

A. Well, I remember coming through the cut there, now called Summit Avenue station, and Bogie and myself were discussing about the new station, and as we came through there, after we were discussing about the station why, that is all I remember until I received  
20 that shock.

Q. Just describe the shock that you received.  
A. Well, I was coming around there and Bogie and I was talking, as I said, and I felt that, and I was rendered unconscious.

Q. Had you ever had an electric battery in your hands, going to a fair or anything of that kind? A. Yes, sir.

Q. Was it the same kind of a feeling as you get when you take hold of an electric battery?  
30 A. Pretty much the same, but it came so quick it felt much sharper.

Q. Was it weaker or stronger? A. It felt much stronger.

Q. But the same kind of a feeling? A. Same kind of feeling.

Mr. Hobart: I object to it as leading

40 Q. What is the next thing you remember

about? A. Well, night time when I came to my wife was talking to me.

Q. Didn't remember anything after that until you found yourself where? A. I was home in the house.

Q. In bed? A. Yes, sir, in bed.

Q. Before this day you had had an accident on a train you were working on as fireman?

A. I did.

Q. When was that? A. Twenty-first day of June, 1906. 10

Q. In that your skull was fractured? A. It was.

Q. How long were you sick before you came out after that fractured skull? A. I was sick about ten months and thirteen days I was off from duty, and then I resumed duty again.

Q. Were you sick until you resumed duty or were you cured before you resumed duty? A. 20 I was sick, counting being weak and unable to work. I was sick from that time.

Q. From the time you resumed duty it was ten months and thirteen days about? Until the time you had this electric shock did you ever have any trouble with your head? A. No, sir.

Q. Since this electric shock have you noticed any difference in your head? A. I have.

Q. What difference? A. At different times I have pains across the head and eye. It is similar to a headache, too. one way it is—it is a pain something like that. and then altogether different. I would be sitting or standing and something will go about me like if I was going to go off or something else, and I will get myself together and move about and get myself in condition; I won't give into it. 30

Q. How often has that been since this electric shock? A. Oh, I couldn't state how often. 40

Q. Once a week or once a month or once every two months? How often? A. Yes, it has been more than that?

Q. More than that don't mean anything. A. Sometimes two or three times a week.

Q. Would you say it averaged two or three times a week? A. Yes, I would say averaged.

10) Q. What time of the day or night do you have this feeling? A. All the time.

Q. his headache and eyes that you describe? A. Any different time through the day.

Q. Anything else that you noticed different in your head since the time you got the shock besides what you have described? A. No, there is nothing that I could state outside of that.

Q. How long were you laid up after this 20th day of December? A. Five days.

2) Q. Were you in bed that time? A. I was in bed two days out of five and continued in the house for the five days.

Q. Then you did come out again? A. I came out.

Q. Did you lose anything in wages? Were you paid your wages as the result of this five days that you lost? A. I received my wages

Q. Did receive your wages? A. Yes, the wages I did.

3) Q. Did you pay any doctor's bills as the result of this shock? A. I did not.

Q. Did not get it yet? A. No.

Q. Who was the doctor that attended you during this sickness? A. Dr. Putnam.

Q. He is a general medical practitioner? A. He is.

4) Mr. Simpson: I want to offer this book in evidence. It has been shown to counsel.

Mr. Wall: We object. The book has no evidential value. It was purchased since the accident.

Mr. Simpson: He said a book the same as this.

The Court: Is there any question that he was a passenger on the car?

10

Mr. Wall: I don't suppose there is, but we don't want a lot of stuff brought into the case that has nothing to do with it.

The Court: If they don't question that—

Mr. Simpson: There is absolutely no need of using the book. 20

The Court: The witness said he had a book which carried him to his destination. I suppose that is all it is necessary for you to prove. If they want to show he was a trespasser—

Mr. Simpson: If they admit he was a passenger, that is all I care about. 30

CROSS EXAMINATION by Mr. Wall.

Q. Mr. Clark, what time did you leave Jersey City to go to Trenton that day? A. Eleven o'clock train.

Q. You were with Mr. Bogie then? A. I was.

Q. What was your business on that trip? 40

A. Taking prisoners to Trenton.

Q. How many prisoners did you have? A. Four.

Q. You took them to Trenton direct? A. Yes.

Q. From the station to the State's Prison?

A. We did.

Q. You arrived at the State's Prison when?

10 A. Arrived at the station at Trenton?

Q. No; at the State's Prison. A. We got off the train, 12:30 the train is due at Trenton; it only takes a few minutes to get down there in a rig or an automobile, or whatever we may hire.

Q. What time did you leave Trenton on your back trip? A. 1:10 train.

Q. Now then under the questions that your counsel asked you you said that you had hold  
20 of the upright that people take hold of in the car with one hand; is that right? A. Yes.

Q. You said you had hold of the metal upright. You don't mean to say that was a metal upright, do you? A. Why. the rods ran up, yes; that was this metal upright.

Q. He said enameled. Which do you say?

30 Mr. Simpson: This is a misquotation. The witness used the word enamel. I did not.

Q. Well, between you two this error crept in.

Mr. Simpson: I object to his statement. as entirely outside the evidence, a bald opinion which has no purpose in the case.

40 Mr. Wall: Will counsel state what his attitude is, whether it is a porcelain rod

or an enamel rod?

Mr. Simpson: I have no attitude.

Q. Mr. Clark, do you say that this rod that struck up there for the purpose of taking hold of it was enamel or whether it was a porcelain covering of the metal rod? A. Well, I said it was enamel. It may be porcelain.

Q. Yes. Well, it is white? A. It is white. 10

Q. As it is called to your attention aren't you prepared to say you know it is porcelain?

A. No.

Q. You never have examined those rods?

A. No.

Q. You don't know what it is? A. No.

Q. When you say enamel you say enamel in the sense of enamel paint that always goes with white paint; is that right? A. I use white 20 enamel, yes.

Q. In the sense of white paint or white?

A. Yes, sir.

Q. Which side of the car were you sitting on? A. On the south side.

Q. Were you east or west of the center of the car? A. Why, I was east of the center.

Q. East of the center? A. East of the center.

Q. You were sitting then in the southeast 30 corner of the car; is that right? A. Wasn't in the corner of the car. I said we were in the middle seat.

Q. Then you were sitting in the middle of the portion that is east of the center door; is that correct? A. That is correct.

Q. On the south side? A. That is right.

Q. Where was Bogie sitting? A. Next to me.

Q. On which side, right or left? A. Bogie was on the west side of me.

Q. Was he in the same seat with you? A. Yes.

Q. Was he to the left or right of you? A. He was to the left of me.

Q. Then he was nearer the center door, wasn't he? A. No; I were nearer to the center door. I was sitting—

10 Q. Now see; suppose we take this chair and put this chair with its back toward the south (illustrating), and as I sit in it my left hand is on the west end, isn't it, toward Newark? A. Yes, sir.

Q. And my right on the end towards Jersey City? A. Yes, sir.

Q. That is the way the seat was in the car? A. Yes.

20 Q. And that seat where you were sitting was midway between the east end of the car and the middle door? A. Yes.

Q. And Bogie was on your right or left, which? A. Bogie was on my left.

Q. This was between the middle door and you? A. Yes.

Q. Anybody else on that seat? A. I don't remember.

30 Q. Well, won't you try and remember that? A. No, I couldn't refresh my memory to that now.

Q. Don't remember. Anybody opposite you? A. There was.

Q. Well, were you the only people in the car? A. Oh, no.

The Court: He said somebody was opposite.

Q. And other people along the same side of the car as you were? A. Yes, sir.

Q. The car was ordinarily well filled? A. Yes.

Q. Do you remember anything about whether there were plenty of seats or whether it seemed to be fairly full, or how? A. Well no, I don't remember that.

Q. When did you begin to talk about this new station? You say Bogie and you were talking about the station? A. As we got near the station. 10

Q. Just describe what you mean by near the station? A. Why, as we were swinging around there—there is a branch comes in, and going around there I was saying, "Do you think they will run down straight?"

Q. Never mind what you said: I just want to know where it was. A. And then we came in through there and we got opposite the station they were erecting this small station, and I passed the remark, "That is rather small if they intend to have their passengers come here like that," and the train speeded on just for a short distance, I don't know how far, and that is all I remember. 20

Q. East of the station? That is, you felt the shock after you had passed the station? A. I had passed that small station. 30

Q. That is the only station there is there, that Summit Avenue station? A. Well, I don't know whether that remains there or was torn down—it was little—they were starting to build it.

Q. It is the Summit Avenue station? A. Yes.

Q. Were you quite correct when you said that you noticed this shock and then afterwards 40

you become unconscious; is that right? A. I remember receiving that shock, like that, and I can feel myself going off, just like that.

Q. You don't say, of course, that that was an electric shock which you received, do you?

A. Yes.

Mr. Simpson, I object.

10

The Court: I think that is a fair question on the cross examination.

Q. You say it was an electric shock? A. Yes.

Q. How do you know it was an electric shock? A. Well, the way it felt, just like—

Q. Are you able to say that? How do you know it was an electric shock?

20

Mr. Simpson: I submit it is answered. He said the way it felt.

Mr. Wall: I ask that counsel efface himself.

A. Outside of the different times that I have felt electricity, and feeling that and going off I said it was an electric shock.

30

Q. Well, when did you ever feel electricity?

A. Oh lots of times. Lots of times. Been in the habit of throwing electric wire over an electric wire and holding on to the wire, the string of us, and getting shocks.

Q. You have been in the habit of doing that?

A. Yes, and I have often in the electric cars, stepping on, on a wet day, received a shock.

Q. When did you ever amuse yourself by  
40 throwing wires over— A. Oh, right around

the neighborhood here.

Q. Getting a shock from a live wire? A. Oh, yes.

Q. How long ago did you do that the last time? A. Oh, it is a good many years ago.

Q. Can't you be a little more definite than that? A. Well, twenty years ago.

Q. Twenty years ago? Where did you amuse yourself that way? A. Oh, different places around here. 10

Q. A habit of yours? A. No; just that when a wire would be broke down in a storm or something like that we would—the kids would throw a wire to it and attach a string to the wire.

Q. This shock you got was like the shock you got then; is that what you say? A. Well, it felt about the same, it gave a jerk like that—you get the jerk. 20

Q. How about this fracture of the skull that you had? Now have you had any trouble with your eyes from that? A. From the fractured skull?

Q. Yes. A. I did.

Q. Well, you never had any trouble after this accident, or until after this accident, did you? A. With the eyes?

Q. Yes. A. No.

Q. You didn't even wear glasses or anything like that? A. Never. 30

Q. Did you ever have any trouble with your eyes after the accident? A. I did not.

Q. Did you feel any ill effects at all from the fracture of the skull? A. None whatever.

Q. How did you feel when you got that? A. Why, I was unconscious for seventeen days, and I couldn't tell you.

Q. You didn't notice that? You passed 40

right from the blow into unconsciousness? A. Practically, yes.

Q. But when you got this shock you had a period when you noticed how you felt, and it was the way you felt twenty years ago when you were taking these shocks off live wires for amusement; that is correct? A. Yes.

10 Q. You did not experience any other feeling than just your arm jumped up? A. That is all.

Q. No other nerves of your body, as far as you know, were affected, except just your arm hit up? A. That is all I remember, just that and going off.

Q. Had you ever been unconscious between the time when you had the fracture to your skull and the time when you were traveling this day on this train? A. No.

Q. Never been unconscious? A. No.

20 Q. Never received any injury of any kind? A. None.

Q. No injury of any kind? A. No.

Q. When was it you broke your knee cap? A. I believe it was the 14th day of October, 1903.

Q. That was before the fractured skull, eh? A. It was.

30 Q. Where were you treated for the fractured skull? A. Saint—no, Mercer Hospital, in Trenton.

Q. Was your skull trephined or trepanned? A. I believe it was.

Q. You suffered from no headaches afterwards? A. None whatever.

Q. Never noticed it in any way? A. Not at all.

40 Q. How long were you in the hospital with a fractured skull? A. I don't remember the length of time in the hospital I was seventeen

days unconscious, and I was there quite a while after.

Q. You said how long you were off your job? A. Ten months and thirteen days.

Q. What sickness did you have between that time and the time that you travelled with Bogie on the train? A. None.

Q. No sickness whatever? A. No, sir.

Q. Didn't lose a day from that time through sickness? A. No, sir; I didn't. 10

Q. How often did the doctor visit you after this time that you were in the train when you say you received a shock? A. Why, I believe only once.

Q. Well, you know, of course? A. I don't remember seeing the doctor at all.

Q. Well, how long were you unconscious after this journey? A. Well, I don't know how long I was unconscious, but I don't remember anything until about eight o'clock in the evening. 20

Q. How did you get away from the station? A. Why, Mr. Bogie in some way got me home.

Q. Do you know whether you walked away from the station or whether you drove away or were carried or how? A. I believe he brought me home in a car.

Q. Then you walked from the station to the car? A. I couldn't tell you. 30

Q. You don't know? A. I do not.

Q. When you came to and resumed full consciousness what was the sensation you had then? A. Why, I felt kind of funny and my wife asked me different questions and I says to her, "Why—"

Q. What was your sensation, not what you said to your wife. Tell us how you felt. A. Just felt a little dizzy in the head, that is all, 40

and coming to, and for a period why, I wondered to myself what made such a thing, and the wife said, "How are ou?" And I said, "All right I am all right"—like that. She says—

Q. Were you all right from then on? A. Why, I continued getting better.

Q. When was it you had the doctor? A. Why, some time in the afternoon; I couldn't say.

10 Q. That same afternoon? A. Five or six o'clock.

Q. That same afternoon? A. Yes.

Q. You never had the doctor again? A. No.

Q. Then you never saw the doctor yourself? A. No.

Q. You never talked with him, I mean, as far as you can remember? A. No, I didn't.

Q. You don't know whether he came there or not of your own knowledge? A. Not of my own knowledge, I do not.

Q. Did you have any sensation from this thing on the next day? A. I don't remember.

Q. Don't remember? A. Don't remember of any, no.

Q. When did you first have any sensation after eight o'clock in the evening? A. Why, a short while after then.

30 Q. Tell us when? A. Well, say a few minutes after eight o'clock.

Q. Then when was the next time you had any sensation from it? A. Why, I don't know as I can really state what time, whether it was again that night or the next day; I couldn't tell you.

Q. Give us the best you can? A. I couldn't tell you the time.

Q. You can't say that you had any sensation after that? A. A day or two. I wouldn't have

laid in bed for a period of two days.

Q. Can you tell us what your sensation was in the two days? A. Yes; I felt weak and wanted to sleep and couldn't sleep.

Q. But you didn't have any sensation in your head? A. Yes, I did, like something similar to a headache.

Q. Did it seem to be a localized pain or was it kind of all over the top of your head? A. It seemed to be over here, up this way. 10

Q. That is, from your eyes up? A. From my eyes up.

Q. That lasted how long? A. I couldn't tell you.

Q. You don't remember? A. No, I do not.

Q. After that did you have any further sensation from it? A. I have.

Q. Did you have? A. Yes, sir.

Q. What? A. Why, I continued having that sensation in my head at different times now. 20

Q. Well, the sensation of what? Can't you describe it a little more accurately than you did? A. No; not outside of saying that it is a sort of pain comes there and it feels like the head was swelling and then—

Q. That is what Mr. Simpson had? A. And then something comes before me that something is going to happen, and I sort of get myself together—sort of a dizziness. 30

Q. This you have only about twice a week? A. About twice a week.

Q. Is it getting a great deal better or a great deal worse? A. It don't seem to be getting any worse.

Q. It is getting a good deal better? A. I imagine it is getting better.

Q. You know it is getting better. You are a strong man, aren't you? A. Yes. 40

Q. Good health? A. Yes.

Q. Good habits? A. Yes

Q. Is Dr. Putnam in the room? A. I don't see him.

Q. Was he subpoenaed? A. Not that I know of.

Q. Do you remember what doctor treated you for your fractured skull in Trenton? A. Dr. Oliphant.

10 Q. Oliphant? A. Yes; lives right opposite the station—or the State House.

Q. Any other doctor? A. Why, Dr Putnam, Dr.—

Q. No; I mean for the fractured skull? A. Yes; there was Dr. Putnam—there was three doctors supposed to be there from Jersey City and three from Trenton—Dr. Oliphant, Dr. West, and the doctor that is there now—Dr. 20 Parker, he is there in the State Home for Girls. That is the three from Trenton. Dr. Putnam, Dr. Spencer, I believe, from Jersey City, and Dr. Dickinson was to go, but had a confinement case and could not come. There was two from Jersey City, though.

Q. This same Dr. Putnam that you spoke of a moment ago as not being in the court room? A. Yes, sir.

30 Q. Do you know who actually performed the operation of trephining your skull? A. Dr. Oliphant.

By MR. SIMPSON:

Q. You don't know what subpoenas were issued in your case, do you? A. No.

Q. You don't know what subpoenas I issued? A. No.

JAMES BOGIE, called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION by Mr. Simpson.

Q. Where do you live, Mr. Bogie? A. 77 Cottage Street.

Q. What is your occupation? A. I am a court officer attached to the Sheriff's office.

Q. Were you with Mr. Clark, the plaintiff in this action, on the electric train coming from the Manhattan Transfer to Grove Street? A. Yes. 10

Q. Where had you come from to go to Manhattan Transfer? A. Well, we had come from Trenton and we got off the train at the transfer at Harrison and got on the electric train.

Q. What train was this you got on? Do you know what it had on the side? A. Hudson-Manhattan. 20

Q. It was run by electricity? A. Yes.

Q. Where were you sitting in the train? A. Well, we were sitting in the forward end of the car like, two compartments on them like, and then there is a rod runs up between the two in the forward end of the car. We were in the forward end of the second one of these compartments, the one nearest the door.

Q. Where were you sitting, to the right side or left of the center of it? A. One is a little larger than the other. 30

Q. Where were your hands? A. My hands were right in front of me.

Q. Did you have hold of anything? A. No, sir; never had hold of anything in an electric train.

Q. Just sat on the right hand seat? A. Yes.

Q. Did you see anything happen to Mr. 40

Clark? A. After we—about past Marion station, I guess it was, I was talking to him and saying what a dandy thing it would be when the Boulevard opened there so we could get off there, and we would save about a half hour's time by it, and just as we were about going past where that station would be, why he sort of gave a jump like up in his seat and his neck began to swell and his eyes rolled, and he  
10 looked horrible; I thought he was dying.

Q. Did you notice how his hands were just before he got that shock? A. One hand was on that bar that goes up and the other was on the window sill.

Q. Then what did you do with him when you thought he was dying? A. I yelled at—straightened him out on the rattan seat, and I yelled to the guard on the car to stop the train  
20 or help me, and he paid no attention to me. There was one passenger sat opposite, a very large man, and he took his valise and walked down to the other end of the car, and the guard stayed down at the other end of the car, and at last the train got into Grove Street and stopped there and the door opened and a guard was at the door and I yelled to him to help me take the passenger off that was hurt, and he didn't  
30 pay any attention, and the train was there quite a while. All of a sudden they were yelling out it was going, and I started to yell at them to help me off, and at last one fellow ran in—there was four or five looked in the door—and one ran in, a tall fellow, and after a while he took hold of—a fraction of a minute or so he stood looking at him, and he grabbed hold of Clark's feet and I took hold of his shoulders and we carried him out.

40 Q. Where was Clark all the time, lying on

the seat? A. Lying on the seat.

Q. Was he conscious or unconscious? A. Oh, he was unconscious, sweating terribly.

Q. Doing what? A. Sweating like.

Q. Did you take him then—what did you do with him after that? A. Well, one of them came up there and asked me who he was and what his name was, and I said, “What difference does it make what his name is; get a doctor or telephone up to his brother, his brother is under sheriff,” so we stood there quite a while, and they would come and look and stand a distance, but nobody would come near him. At last I said, “Have you got any water or anything like that?” so one of them brought a pail that looked as though they had been white-washing with, a dirty pail and tin can, and I said, “What is that?” He said, “Some water.” I said, “I wouldn’t give that to a dog.” He went away again to telephone, and he said, “Who shall we telephone to?” And I said, “Telephone to his brother, if you don’t want to telephone for a doctor.” So I guess we must have been there pretty near an hour—it seemed more than an hour. At last I said there was no use of staying here, and two or three fellows came up that I knew, and I said, “If you will help me I will try to get him out of here and get him up in the air,” so we put him on—like resting him on our shoulders, underneath of his, and walked him up and put him on a trolley car, and we got to Oakland Avenue, why, there is always a lot of people there I knew and I called a couple and they came over and helped me and I took him home.

Q. When they got him home what did they do with him? A. Put him in bed.

## CROSS EXAMINATION by Mr. Wall.

Q. Was he conscious when you put him to bed? A. No; he didn't know what he was doing.

Q. Did you talk? A. I don't know whether you call it conscious or not. He was rambling, didn't know what he was saying.

Q. Would he answer questions? A. No.

10 Q. Did you question him? A. Yes; I was talking to him all the time I was with him.

Q. He didn't answer at all? A. Didn't answer—well, sort of answered in a rumbling sort of way, but I don't think he knew what I was saying.

Q. What called your attention to the fact of how he was sitting and what part he was holding on? A. I think I warned him about  
20 sitting that way.

Q. You think you warned him about sitting that way? A. I think I had warned him not to sit so foolishly in the car.

Q. Tell us just the warning you gave him? A. I travelled on those trains an awful lot and I knew an awful lot of guards and employees on the Hudson Tubes, and they told me there was lots of—

30

Mr. Wall: I object.

A. I am telling the reason.

Q. I asked you for the warning you gave.

The Court: Just answer the question.

Q. What warning did you give to Clark on that day with reference to how he was to sit in that train?

40

Objected to on the ground that there is no testimony he warned him on that day. After discussion the objection was withdrawn.

Question repeated.

A. Well, I can't very well answer that question unless I tell you the whole thing.

Q. Did you give him any warning? A. Yes. 10

Q. That day? A. Yes.

Q. What did you say to him? A. I said I thought he was foolish to sit that way in the car.

Q. When did you say that to him? A. Somewheres along Marion there.

Q. What reply did he make? A. Didn't pay any attention to me.

Q. You did not pursue the question further? 20  
A. No, I never bothered my head over it.

Q. Notwithstanding that warning he sat right in that position? A. Yes; he sat that way.

Q. How long was he in that position? A. Sat that way all the way coming in until when he was hit—that is, only a few minutes from Manhattan Transfer at Marion.

Q. Then he took that position at Manhattan Transfer? A. Yes.

Q. He maintained that position until the time he exhibited these symptoms that you spoke of? A. Well, generally he does sit that way in the train. 30

Q. No; I am asking this time? A. Yes; that is the way he sat.

Q. So then you began to speak to him about it just as soon as you left— A. Somewheres coming along in the train at the Hackensack Bridge—I won't be sure when I told him. 40

These trains go pretty fast.

Q. Although he sat that way all the time he did not show any of what you thought was shock until say how long, ten minutes after he began to sit that way? A. Oh, I don't think we were on the train that long.

Q. How long is it on the train? A. Oh, a few minutes.

10 Q. Fix it as well as you can? A. Less than ten.

Q. Say five, two or what? A. I never carry a watch, so I ain't got any idea how long.

Q. You don't know how long it takes to go from the Manhattan Transfer to Grove Street?

A. No, sir, I do not; I never carry a watch.

20 Q. Anyway, for all that distance—leave out the time—for all the distance between Manhattan Transfer and this point on the east—did you say it was on the east of the Summit Avenue station? A. Somewheres along there; I ain't exactly positive.

Q. This point on the east of the Summit Avenue station where his face was distorted—? A. Oh, it might have been at Marion station; I ain't positive to the foot where it was, or a hundred feet or a thousand feet for that matter.

30 Q. But you say he maintained that position all the time and he did not feel any of this shock or show any of these symptoms until the place where you say somewheres near Marion or somewhere near east of the Summit Avenue station; that is correct? A. Somewheres along there.

Q. Is it correct? A. Yes; somewheres along there. I ain't positive about the place. I know it was on the Manhattan train and I know it was in Jersey City, that is, about Jersey City.

40 Q. You do know he maintained that posi-

tion? A. I ain't positive when he put his hand on there. He might have sat in the train a minute or so before he put his hand up there. My attention was not called to it until—

Q. When was your attention called to it?

A. After we were riding in the train a little while.

Q. I understand you to say that he began at the Manhattan Transfer? A. I said he generally always does it. 10

Q. No; I am asking now what he did this day. Start again and tell us exactly what he did about holding his hands in that position when you first saw it and how long he continued holding them there? A. When I first took notice he had his arms there I warned him about it.

Q. Where was that? A. That I ain't positive. 20

Q. You don't know then when he began to do it? A. No; I ain't positive. I wouldn't pay attention to a thing like that.

Q. Was this after leaving the transfer or just before he felt this shock, as you said? A. Well, the whole thing happened so quick that I don't know.

Q. Do you know anything about that feature of it? A. I don't know what you are trying to get. You can go from Manhattan Transfer to the Boulevard in a few minutes. 30

Q. Don't think about what I am trying to find out but tell us about what happened? A. I told you what happened.

Q. Now then, start again. When did you first notice that he had one hand on the upright and one hand on the sill? A. I told you I didn't know.

Q. You don't know anything about when 40

you first noticed it? A. Eh?

Q. Do you? A. I don't know that time, no. I didn't have my watch out. There is no way for me to tell you the time.

Q. Do you know? Watch or no watch, do you know? A. I told you no once.

Q. You don't know. Now then, when did you warn him? A. That I don't know. I don't know the exact spot.

10 Q. Was it before— A. It was before he was hurt.

Q. Was it some time before he was hurt or just before he was hurt? A. A few moments just before he was hurt.

Q. Five minutes? A. That I don't know.

Q. Can't you give any notion? A. No, I can't give that time. It was not worth while to bother. I didn't think it was worth bothering.

20 Q. Then as a matter of fact you were not paying any attention to how his hands were at all? A. Not to every little detail. Just to his hands being there, yes. I couldn't help but to see it.

Q. Then you were paying attention to it? A. Yes, because I tell anybody that puts their hands there is foolish in these cars.

30 Q. You do, eh? A. Yes; from what I have heard from their own employees.

Q. Now you said the large fat man moved away from you? A. He moved down in the other end of the car.

Q. When did he move into the other end of the car? A. Just as soon as—well, I was just about calling for somebody when he moved.

40 Q. They were about at Grove Street and that is when he moved down? A. I couldn't tell you. As soon as I seen this happen, why, I grabbed hold of him and I called for help and

then he was moving down the other end of the car.

Q. When you grabbed hold of him how were his hands? A. Oh, doubled up like.

Q. He didn't have any difficulty then in letting go of the sill and the upright? A. The sill hand, I knocked that off.

Q. Then when you grabbed him he had one hand on the sill and one hand on the upright? A. The hand sort of jerked away from this rod 10

Q. Will the stenographer repeat the question?

Question repeated.

A. He jerked away from the rod. His other hand was laying on the sill.

Q. You say he had hold of the rod and his hand on the sill at the time you grabbed him 20 or not? A. I wouldn't be positive of that.

Q. What? A. I wouldn't be altogether positive of that. I know his hand was on the sill and I knocked his hand off the sill.

Q. You don't know where his other hand was? A. I ain't positive whether that was on the rod or not. I know he shut up like.

Q. You don't know where it was? That is the right, is it? A. I ain't positive about it. I ain't going to testify about things I ain't positive about. 30

Q. You don't know anything about that feature? A. It might have dropped on that—

Q. You don't know? A. That rod that comes up.

Q. Do you know or don't you know? A. I ain't positive about that part of it.

Q. How long did you lay hands on him after the time that his hand was thrown up, as you 40

say? A. Grabbed hold of him as soon as I noticed him—knocked his hand off and then I grabbed him.

Q. Almost instantaneous? A. Yes; as quick as I could.

Q. You said his face was black? A. His face got kind of black—not black, but darkened up a bit, and his neck swelled up and his eyes began to roll, his mouth sort of choked up.

10 Q. How long did that continue? A. Oh, I don't know. It was about that way—oh, a good while—I don't know—pretty near—we just began to do down a bit when I started to go over to him—down in the Manhattan tube—down in Grove Street.

Q. Then it continued quite a time, eh? A. Oh, yes, a good while; seemed a terrible while.

Q. Did it stop suddenly? A. No; seemed  
20 to gradually go down.

Q. Sort of waver off? A. Yes.

Q. Was it then that the stout man moved away up the car? A. What do you mean? You ain't talking about what happened in Grove Street now. That is an hour after. The train went on to New York, I suppose, or its destination, wherever it was going.

Q. How long after he felt this shock, as you  
30 say, did his face exhibit anything that was not normal? A. Oh, he didn't look the same, he didn't look right even when I went around to see him that night at nine or ten o'clock.

The Court: You misunderstand the question.

Question repeated.

40 A. The only answer I can give, it didn't

look right when I went around to see him that night.

Q. Then it looked the same when you went around that night? A. No, not the same.

Q. Tell us about it. A. It looked as if it was not quite as bad.

Q. Tell us exactly how it looked at the time of this shock? A. His neck swelled up.

Q. Yes. A. And his mouth swelled up like, his lips curled right over like and they were bluish—bluish black—and his eyes rolled terribly. 10

Q. And those symptoms continued for how long a time? A. While I was with him down in the station.

Q. For an hour, then? A. Yes, sir.

Q. Over an hour, eh? A. Well, of course they gradually went down. It was a great deal more than an hour, I guess. He didn't look right when I went around to see him that night. 20

Q. Those symptoms continued how long? Until you saw him at night; is that right? A. Yes.

Q. And those symptoms were not as intense at night as they were at the Grove Street station? A. No; he looked more like himself.

Q. They continued in their first intensity for how long; all the time you were at Grove Street? A. Yes. Well, not all the time, but pretty near all the time. 30

Q. That is, they certainly continued in their full intensity for say three-quarters of an hour after the shock? A. Yes, sir.

Q. That is right? A. About that, but I couldn't say positively; there was no way for me to time it, but it seemed an awful long time.

Q. Now, Mr. Bogie, this was the train leaving Manhattan Transfer about 2:33 and arriv- 40

ing at Summit Avenue about 2:42 and Grove Street about 2:45; is that right? A. I don't know.

Q. What's that?

The Court: There was no Summit Avenue at that time.

10 Mr. Hobart: No, there was no Summit Avenue station, but it arrived there—the running time.

Q. What time do you say? A. I don't know. I don't know what time we left the transfer. I never bothered about my time of leaving the transfer. I get down to the prison and get back to the station and take the first train, so I don't know what train it was.

20

Mr. Hobart: I would like to ask a question or two for the other defendant.

CROSS EXAMINATION by Mr. Hobart.

30 Q. Can you fix a little more definitely just where it was that you noticed these symptoms of Mr. Clark? A. Somewheres along from Marion to Summit Avenue, I should judge; it was in between that space.

Q. You, of course, know where the Summit Avenue station is now? A. Yes.

Q. That was just opened a short time ago? A. Yes.

40 Q. Hadn't opened at that time? A. Oh, I ain't talking about the station. There was no station there. I am saying it was somewheres along from say West Side Avenue to Summit Avenue; that is about where it took place, in

between that space.

Q. In between West Side Avenue and Summit Avenue? A. Yes.

Q. The station at Summit Avenue was being built at that time, wasn't it? A. I guess they were blasting, I ain't sure. I guess they were blasting at that time.

Q. You, of course, know where it is? A. They were blasting for it.

Q. You know the location of it, where they were working at that time? A. Yes. 10

Q. What I would like to get at is whether you noticed these symptoms on the part of Mr. Clark before the train had got to the point where they were working on Summit Avenue station? A. No; I wasn't positive, because I was more interested in taking care of him than to look where it happened.

Q. You know where Marion station is, of course? A. Yes. 20

Q. That is west of the Summit Avenue station? A. Yes; Marion is west of it.

Q. It is west of it, towards Newark? A. Yes.

Q. How far west? A. It practically begins at West Side Avenue and runs to Tonnele Avenue.

Q. You noticed those symptoms, you think, somewhere between West Side Avenue and Summit Avenue? A. I was more interested in taking care of him than I was looking where it happened. 30

Q. Do you remember his talking about the station? A. Yes; I was talking with him. I told him what a nice thing it would be.

Q. Where was it you were talking with him? Was that near Marion station or where was it?

A. It was where we get on the train. Things 40

happen very quick there. You can't tell.

Q. It was right after you got the train at Manhattan Transfer that you were talking with him? A. Somewheres along there.

Q. What is your best recollection as to whether this difficulty that he had was before you got to Summit Avenue or after you got to Summit Avenue? A. I couldn't fix the place  
10 definitely, because I was not interested in the place.

GEORGE CLARK, recalled.

DIRECT EXAMINATION by Mr. Simpson.

Q. Before you received this electric shock did this Bogie give you any warning that you were sitting in a dangerous position? A. No.

20 Q. How often had you ridden on these cars in this position before the day you got this shock? A. Why, about twice a week.

Q. For two months? A. Well, for every time we had to do it we had to come in on them trains.

Q. About how long was that? I want to get the time. How often, in other words, have you been on a train in this same position before you received this shock? A. Well, I can  
30 say fifteen to twenty times anyway.

Q. Bogie had never warned you about this position? A. Never.

CROSS EXAMINATION by Mr. Wall.

Q. When did you take that position of holding on to the upright and your hand on the sill, on that day? A. Why, as soon as I got on  
40 the train. As a rule, if I can get a corner seat

I always do.

Q., Your best recollection then would be that when you got on at Manhattan Transfer you took your position in accordance with your usual habit? A. Yes.

Q. Do you recollect Bogie saying anything to you about a warning about sitting that way?

A. He did not.

Q. He never said anything of the kind, did he? A. He did not. Had he done it I would have ceased. 10

Q. The running time, Mr. Clark, from Manhattan Transfer to Grove Street was about nine minutes, was it not? A. Why, around that time, yes. I am familiar with the time—of course I time every train pretty near that we ride on the railroad.

Q. I see. Then that would be your judgment, that it was practically nine minutes? A. 20 Yes, about nine minutes.

Q. Well, that is nine minutes to Summit Avenue or nine minutes to Grove Street? A. No, to Grove Street.

Q. I guess I got that wrong in framing my question. As a matter of fact, isn't it about nine minutes to Summit Avenue now and twelve minutes to Grove Street; isn't that about right? A. Well, I don't know about the running time now. 30

Q. Your idea is that if there was no stop there it would be very likely that it was about nine minutes then? A. That is right.

CROSS EXAMINATION by Mr. Hobart.

Q. Then the time at Summit Avenue would be about seven minutes, wouldn't it? A. Well, I couldn't tell you that to Summit Avenue, 40

but I am talking about the distance. I can tell you any train on the Pennsylvania Railroad that I ride on; I time it to see what time we make in from Trenton.

Q. It is much farther from Manhattan Transfer to Summit Avenue than it is from Summit Avenue to Grove Street. A. Yes.

10 Q. So the nine minutes between Manhattan Transfer and Grove Street, most of that time is taken up with the run to Summit Avenue; is that right? A. Oh, I don't know whether it would be the same time or not, because if the run was longer I would not necessarily say it would take longer to make that trip, because they might come in slower here.

20 Q. What is your best recollection as to how long it took you to go from Manhattan Transfer to Summit Avenue? You have given us the time to Grove Street. I want to get the time to Summit Avenue. A. Well, I don't know the time out to Summit Avenue.

Q. If it is nine minutes to Grove Street would it be about seven minutes to Summit Avenue? A. I wouldn't say it was.

Q. How much would it be? A. Might be five or it might be six.

Q. At least five? A. Oh, yes; at least five.

30 By MR. SIMPSON:

Q. You only approximate these different times? A. On an electric train, that is all.

Q. Just your own judgment about it? A. Yes.

Q. You have no definite information? A. Not on that electric train, no.

40 WILLIAM J. ARLITZ, called and sworn on

behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION by Mr. Simpson.

Q. Doctor, you are a practising physician and surgeon in this county? A. I am.

Q. Have been such how long? A. About twenty-two and a half years.

Q. You have often testified in this court and other courts in this county as an expert on diseases and injuries? A. I have. 10

Q. Did you examine this plaintiff George Clark prior to to-day? A. I did. He first consulted me on the 5th day of June and again on the 11th day of June and on the 17th day of June.

Q. You made a very thorough examination of him, did you? A. I did, yes.

Q. In your opinion, is he suffering with any disease or trouble now? A. He is. 20

Q. What is it? A. Suffering with Jacksonian epilepsy.

Q. Suppose, Doctor, that he had a fractured skull arising out of a railroad accident on the 21st of June, 1906, that he was off work for ten months and thirteen days, that then he resumed work and never since that time suffered with headaches or troubles with the head; that on the 20th of December, 1911, he received an electric shock sufficiently strong to render him unconscious, that he was taken home and was in bed two days, and that after the date of the electric shock he began to feel pains in the head from the eyes upward: what would you say was the cause of the Jacksonian epilepsy? 30

Mr. Hobart: We object to that ques- 40

tion, for both defendants, on the ground that it is obviously impossible for any witness, however expert, to give an answer to it without some information. The expression that he uses is simply an electric shock. We have all kinds of electric shocks. The mere expression "electric shock" means nothing.

10 Q. Modify the electric shock by receiving a shock from a current of electricity sufficient to cause his arm to jerk and to render him unconscious. Modify the question to that extent, and then I will submit that it is for the Doctor to say if he has enough information, and not for the lawyer. If the Doctor cannot answer it he can say so.

20 Mr. Hobart: I think it is for the Court.

The Court: I think the question is competent. If the Doctor says he cannot answer that question I think he may say so? Do you want it read?

The Witness: No; I understand it.

30 Mr. Hobart: We object to the question, even with the modification, on the ground that it is too indefinite and ambiguous and obviously not sufficient information to give any opinion that is worth anything, and not predicated on the facts proven in the case.

40 The Court: It seems to me that the question did recite the facts that have

been testified to in the case.

Mr. Simpson: I thought so. If they point out what facts it did not contain I will change my question—or what facts it assumed which are not in evidence, I will change by question, because my design was to recite to him only facts in evidence.

10

The Court: I thought I followed the question pretty closely, and it seems to me it covered matters which have been testified to in the case.

Mr. Simpson: If they want to rest on their objection that is all right.

Mr. Hobart: I stand on the objection, and ask an exception as to both defendants.

20

Whereupon the defendants by their counsel pray a bill of exceptions, which is hereby allowed and sealed accordingly.

A. I can state with reasonable certainty that the electric shock was the exciting factor in the production of the Jacksonian epilepsy. I am basing this answer upon the interval from June, 1906, to December 20, 1911, in which the patient was free from all symptoms. and on the character of the paroxysm as described by the patient and described by the former witness.

30

Q. Now, Doctor, when you say the paroxysm described by the former witness do you

40

mean the fact that this man jerked his arm, that his neck became swollen, that his eyes rolled and he became unconscious; is that what you mean? A. That is what I mean.

Q. It has already been testified to. Now what is this Jacksonian epilepsy that you named? What is it? A. Jacksonian epilepsy is a paroxysm of a lesser degree than epilepsy of the major type, and in this particular case  
10 it is without motor manifestaton; by that I mean to say that the muscles of the arms and the lower extremities are not involved in his paroxysms as they were in the first instance.

Q. Well, in your opinion, will that get worse or get better? A. As a rule these cases remain stationary unless they are dependent upon a pressure, and if the pressure is removed, why, they improve in many instances.

20 Q. What is the pressure? A. There is not any pressure in this case.

Q. Oh! Now Doctor, has electricity sufficient force to influence any part of the brain, a current of electricity? A. Surely. Produces a paralysis of the brain, so to speak, and causes death in a great many instances.

Q. Do you know how many volts they use to kill people for crime? A. I do not. I know  
30 that ordinary commercial current, such as light currents, will produce almost instant death. I know that so-called surface current will not produce death. That has been my experience.

Mr. Hobart: What kind?

A. The ordinary trolley car—I think the  
40 voltage is about 600—it is not a question of voltage at all; it is a question of amperage, I believe.

Q. What effect does this Jacksonian epilepsy have on the general health of a man? How does it prevent him from exercising the functions of an ordinary, normal, healthy, human being? A. He is always in danger of having one of these attacks, when he may be rendered unconscious or semi-conscious. In this case he is not rendered unconscious; he has a faint feeling—

10

Mr. Hobart: What?

A. A faint feeling, if I may so describe it. He is stupid during the attack, which may last for a few seconds only.

CROSS EXAMINATION by Mr. Hobart.

Q. This Jacksonian epilepsy that you speak of, Doctor, is quite a common result from a fractured skull, isn't it? A. Quite often. 20

Q. And it sometimes appears many years after the injury, does it not? A. No, it does not.

Q. Well, you have known of cases where it has appeared some years after the injury? A. I don't recall any, not occurring after a period of six years. While such a thing may happen, I don't recall a case of that kind. 30

Q. You mean you have not had any in your own professional experience; is that what you mean? A. Not—I have not seen a case of Jacksonian epilepsy occurring after an interval of six years in case of a fracture of the skull.

Q. What I am asking you is, you have not had any such case in your own professional experience? A. Not in my own experience.

Q. You have read of such? A. No; I don't 40

recall reading of a case of that kind.

Q. Where was this man's skull fractured?

A. On the left side—on the left occipital, parietal area.

Q. Can you see it to-day? A. Yes.

Mr. Hobart (to plaintiff): Come up here, Mr. Clark.

10 Q. Point it out to us, won't you? I ask the witness to point out where this fracture was. (Witness indicates upon plaintiff's head.)

Q. Has the bone grown over that point where you are indicating with your fingers?

A. I couldn't say without cutting down on it.

Q. Did not examine it to see whether it had or not when you examined him on these three days lately? A. I couldn't tell you that without cutting down on it. It may be probably fibrous matter in there, if he was trephined. It is not bony matter.

Q. What objective symptoms did you find when you examined Mr. Clark? A. What objective symptoms?

Q. Yes. A. None, only the sluggishness of the psychic processes.

Q. What does that mean in plain English? A. In other words, his mentality is below the average type.

30 Q. You did not know him before this case, did you? A. I had no idea of his mentality prior to this examination.

Q. How did you make the discovery about his psychic processes? How could you discover that objectively? A. Basing it upon my experience with average people.

Q. Well, how did you find out about it, by 40 talking with him? A. Yes.

Q. Listening to his replies? A. Yes.

Q. That was all under his own control, wasn't it? A. Yes. I have noticed it here on the stand too.

Q. How would you call that an objective symptom? A. How would I?

Q. Yes. A. Why, for the simple reason I make a standard in my own mind. That standard is developed by my contact with people of various degrees of intelligence. 10

Q. But after all it depends on the man himself. He is in mental control of how quickly he will answer a question, how rapidly he will talk? A. It is not only the rapidity, but it is the style of the reply.

Q. What was there about Mr. Clark on the stand this morning that in any way indicated in the slightest degree any sluggishness in his mental or psychic processes? A. All of his 20 responses.

Q. Didn't he answer up quickly when he was asked questions both on direct and cross examination, and didn't he answer intelligently? A. Some.

Q. What didn't he answer intelligently? A. I didn't say intelligently.

Q. Well, quickly. What questions didn't he answer quickly this morning? A. I couldn't state each question without— 30

Mr. Simpson: I object.

A. Because I couldn't give you the questions and answers.

Q. Can't name them at all, can you? You know nothing about this man's mental processes or his psychic processes prior to this accident? A. Absolutely nothing: 40

Q. Don't know whether he is quicker or slower than he was before he got hurt? A. Don't know that.

Q. Now Doctor, how many cases have you ever had of electric shock? A. Very hard to say—a great many.

Q. Can you give us some idea? A. Perhaps one hundred and fifty.

10 Q. That was the entire course of your professional life? A. May be a great deal more, may be less; I wouldn't like to state.

Q. You are somewhat familiar, then, with the symptoms, of course? A. Yes.

Q. How long do the symptoms continue after the shock is received; by that I mean the violent symptoms or paroxysms, I think you described them? A. Why, they may last—the tonic convulsions, that is to say, the rigidity  
20 which takes place primarily may last only for a few moments and that may be followed by a period of unconsciousness which may last for a few moments or a few hours or a few days; it all depends upon the amount of electricity, upon the individuality of the patient, the resistance to the current.

Q. In this case you have no information whatever as to the degree of the so-called electric shock? A. None.

30 Q. Nevertheless you undertook to answer that hypothetical question without knowing what the amount of shock was; is that right? A. Yes.

#### CROSS EXAMINATION by Mr. Wall.

Q. Doctor, how did you discover whether this man had any pressure on his brain or not?

40 A. I have not discovered that. I have the

history of his case, that he was trephined, and I assume that the trephining was done for the purpose of relieving pressure that may have existed at the time of his accident of six years ago.

Q. Yes. Well now, suppose the trephining had not been perfectly done and there was some little pressure on the brain somewhere from a bit of bone or some process, would that affect his mentality in any way or his psychic processes? A. It might if there was an exciting cause to induce an attack. 10

Q. What examination did you make to discover whether at the time you made the examination there was or was not any pressure on the brain? A. I told you before I could not answer that.

Q. You did not make any? A. I examined the man. 20

Q. You did not make any? A. Oh, yes, I made an examination, but I am not able to determine the state of the inner table of his skull at this time.

Q. In other words you cannot tell? A. I cannot tell that, no; I said that.

Q. At the time you made your examination you could not tell whether there was some pressure on the brain or not? A. I couldn't tell that. 30

Q. When he answers a question on the stand and you make up your mind as to what his style of answers shows and the rapidity with which he brings forward his reply, that is a subjective symptom and not an objective symptom, isn't it? A. On the contrary, it is objective.

Q. It is? A. As I address you, as I hold conversation with you and note your degree 40

of intelligence, that is not subjective. That is something objective to me.

Q., It is, eh? And if I make a speech that shows you that I think I am George Washington and you say that I am suffering under an illusion and there is something the matter with my brain— A. Not illusion.

10 Q. —delusion. On such small things your opinions are received. Then you would say that that delusion was an objective symptom, would you, and not a subjective symptom? A. Why, it would be—

Q. You can tell me that without running around the block. A. It would be objective to me, certainly.

Q. It would, eh? A. Yes.

Q. But would it be an objective symptom of something that had to do with me? A. Why, 20 it surely would be.

Q. Would be, eh? A. Surely would be.

Q. Then all the objective symptoms— A. If it were not—I want to explain that. If it was not objective to the examiner we would never—

30 Q. I didn't ask you whether it was objective to the examiner. I asked you whether it was an objective symptom or subjective symptom in the ordinary way in which those terms are used and which you understand? A. It is objective to the diagnostician.

Q. I didn't ask you that. A, I don't know what you mean.

Q. Will you define objective symptoms? A. Objective is one that you see or hear, something that the patient does not tell you. Now in this sense the patient does not make a statement. He tells you—it is objective because an 40 out put of his mentality., It is not of the nor-

mal type.

Q. If he says he is George Washington, why then that is not a subjective symptom? A. To me it would be objective.

Q. It would? All right. That's all.

RE-DIRECT EXAMINATION by Mr. Simpson.

Q. Now, Doctor, if you find that after this man's skull was trephined, for a period of almost five years he had not had any headaches or any disturbance of any kind, would you say that the trephining had been properly done? A. I would assume it had been. 10

Q. Would an electric shock be such an exciting cause as you have described in your answer to Mr. Wall. A. It would be

Q. And when you say an objective symptom you mean something that you can judge by your senses, can't you, something outside of you that do not depend on what the man says for? A. In this particular instance, or in reply to Mr. Wall's question I had in mind my interpretation of the condition that I found. 20

Q. Yes; what you saw the man do? A. Yes.

Q. Now when Mr. Wall asked you for his delusions as to his own importance, that would be simply what he believed, what you could not see? That would be, of course, something that you could not tell, how important he might or might not think himself, about his delusions? A. I think Mr. Wall is a very clever man. 30

Q. I mean he is asking you about his own mental processes? When he asked you about his own importance and his delusions or illusions about his own importance, you can't say 40

that at all—that is something inside of him, isn't it? A. Well, no.

Q. It is a subjective symptom? A. No; Mr. Wall was facetious. I know he hasn't any delusions; I know he is a man above the normal type of mentality.

10 Q. I didn't ask you for any certificate of character about Mr. Wall. I just want you to answer the question. When Mr. Wall asked you about his own importance and his delu-  
sions or illusions concerning his own impor-  
tance, that would be something interior, that  
would be a subjective symptom, because it would  
be something that you could not test, wouldn't  
it—you could not test whether his opinion of  
himself was correct or not, could you? A.  
That I could not, no, but I could formulate an  
opinion of my own from my intercourse with  
20 Mr. Wall.

Q. But you could not tell whether his opin-  
ion was correct or not? He might be correct  
and you might be wrong? A. His ego might  
be harassed; I couldn't tell you that.

#### RE-CROSS EXAMINATION by Mr. Wall.

30 Q. Doctor, it is impossible for any conscien-  
tious medical man to give a list of the causes  
which might have produced a condition in  
which this plaintiff is in; isn't that true, A.  
You can only speak with a reasonable degree  
of certainty, that is all.

Q. You or any other medical man would not  
pretend to have the imagination to be able to  
go along the line and say all the things that  
may have produced the condition he is in? A.  
A dozen things could have produced it.

40 Q. Or a thousand dozen things could have

produced it, couldn't they? A. I suppose you could say a thousand dozen.

The Court: It is not the possibilities, it is the reasonable probabilities.

Q. Well, but take the reasonable probabilities—why, there are a great many reasonable probabilities when a man has a history of a trephined skull done in 1906 which would lead you to find the conditions that you find in that man, are there not? A. No; that is not so. 10

Q. There are not many reasonable probabilities, A. There are not many explanations for a condition of that kind. Assuming that a man had an accident six years ago and assuming that during that interval of six years he was entirely free of all symptoms, and then assuming that this man had a shock, no matter whether it was electric, traumatic or some other kind of a shock— 20

Q. Traumatic means just as if he had his head knocked? A. Yes—it is reasonable to assume that this condition was brought about by the shock that occurred at that specific time.

Q. In other words, any kind of a blow on that man's head, if he received one, might have produced this condition? A. Why, surely. I say that. 30

Q. So, what you mean to say and all you mean to say in your testimony in, that if he did have this fractured skull and if he did not have a blessed thing from that fractured skull for years and then if he did have an electric shock and he did not have anything else, why, then, probably the condition in which you now find him came from electric shock; is that it? A. That is my opinion. 40

Q. That is all. A. I said that as plainly as I could.

Q. And the condition might come from pressure which under the circumstances of the case you or any other doctor could not determine? A. It might come from pressure in this way. Assuming that the man had a fractured skull on the date you mention, six years ago; assuming that some pressure did remain, and again  
10 assuming that he was entirely free from symptoms during the six years intervening, the electricity must have been the exciting factor in the production of the paroxysms that we have now before us.

Q. Because there is nothing else, that is the idea? A. I couldn't see anything else.

Q. Now how long is the period of onset of this Jacksonian epilepsy after the trauma or  
20 the blow that occasions it? A. Well, as a rule within one year's time. Sometimes the paroxysms develop immediately with the onset of the pressure; sometimes they develop two or three weeks or two or three months after.

Q. What is your knowledge from your practice as to the possible time which may elapse between the time of the blow and the time of the appearance of the Jacksonian epilepsy? A. This answer is based upon my own experience.  
30 One year.

Q. One year? A. I should say, yes.  
Plaintiff Rests.

#### Motion to Non-Suit.

Mr. Hobart: If your Honor please, I  
ask for a non-suit on behalf of the Hud-  
son and Manhattan Railroad Company,  
one of the defendants. I fail to see any  
40 thing in the evidence whatever that con-

nects this company with this transaction. No proof whatever that we had anything to do with it.

Mr. Simpson: You admit that he was a passenger of the company?

Mr. Hobart: No; I have not admitted anything of the kind.

10

The Court: The plaintiff did not know, but the other witness said he got in the car of the Hudson and Manhattan Company.

Mr. Simpson: Bogie testified to that.

Mr. Hobart: Did he use the words "Hudson and Manhattan Company?" If he did I am mistaken in my recollection.

20

The Court: Yes; he said that.

Mr. Hobart: Even that does not show that this defendant was operating this car or had anything to do with the inspection or control of it. And then, on the second ground, that there is absolutely no evidence here to show any negligence on the part of the Hudson and Manhattan Company, assuming that there is enough to show that that company was operating the train. The mere fact that something happens to a passenger does not make out a case. The doctrine of *res ipsa loquitur* cannot possibly apply to a case of this kind. It is like where a window falls and the pas-

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40

56 MOTION TO NON-SUIT—EXCEPTIONS

10 senger gets hurt. There is nothing to go to the jury unless there is testimony that there is something defective about the window and something that the company knew or should have known by reason of having been defective a long time. There is not an iota of proof to show that this accident was caused by anything out of order, assuming it was our car, which we do not admit.

Mr. Simpson: There is a long line of cases the other way.

The Court: I refuse to non-suit.

20 Whereupon the defendant, the Hudson and Manhattan Railway Company, prays a bill of exceptions, which is hereby allowed and sealed accordingly.

(Seal.)

30 Mr. Wall: I make a motion on behalf of the Pennsylvania Railroad Company to non-suit on the ground that there is no negligence shown on the part of that company, and also on the clear ground that just came up in this little talk between court and counsel, that the testimony shows that this was a Hudson and Manhattan car. How, under the circumstances, is the Pennsylvania road connected with it?

40 The Court: I will keep you in for the present. You may renew your motion later if you desire.

Whereupon the defendant, the Pennsylvania Railroad Company, prays a bill of exceptions, which is hereby allowed and sealed accordingly.

(Seal.)

### Defendant's Testimony.

JOHN VARLEY. called and sworn on behalf 10  
of the defendants, testified as follows:

DIRECT EXAMINATION by Mr. Hobart.

Q. Mr. Varley, you live where? A. I lived  
at that time 149 West 98th Street, New York.

Q. What is your business? A. Conductor  
now at present.

Q. Speak up loud, please. A. I am con-  
ductor at present. I was guard at that time,  
at the time this occurred. 20

Q. What time did that train leave the Man-  
hattan Transfer that day? A. 2:44 P. M.

Q. What car were you on? A. On the fourth  
car, second last car.

Q. How many cars on the train? A. Four  
car train.

Q. How many guards were on the car, do  
you remember? A. There was a flagman,  
fourth car man, a conductor and collector. 30

Q. Did you have charge of this fourth car?  
A. Yes.

Q. Did passengers get on the car at the  
Manhattan Transfer? A. Yes, sir; seven pas-  
sengers in all.

Q. Is that where the train started? A.  
Yes; that is where it started from.

Q. At that time Summit Avenue was not  
opened, I believe? A. No, sir.

Q. You stopped at Manhattan Transfer to 40

take on passengers from what points? A. Our connection was the Philadelphia and New York Express; of course there was other connections, I believe, before that.

Q. On the Pennsylvania Railroad Company?  
A. Yes.

Q. Did the passengers get off from the Pennsylvania trains and get on your trains? A. Yes.

10 Q. What was your running time at that time between Manhattan Transfer and your next stop? A. Grove Street, ten minutes.

Q. About how long did it take you to run to what is called Summit Avenue? A. Eight minutes.

Q. Were you on time? A. Yes.

20 Q. What was the first thing that you noticed of anything wrong in that car? A. Well, after leaving Summit Avenue I noticed a man lean back on the seat and another man ahold of him to keep him up, and his eyes were closed and he was jerking his hands and gritting his teeth.

Q. Where was the man sitting? A. He was sitting right near the center door; on the east side of the center car.

30 Q. That would be on the right hand side coming into Jersey City? A. right hand side coming in, yes.

Q. Near the center door? A. Yes.

Q. Did you do anything in the way of helping the man? A. Well, when I came to Grove Street I just opened the door and I went back and his friend says, "Help me carry this man out, he is sick," so I went back and I assisted him in carrying him out and we put him on the seat on the platform.

40 Q. When you went back to this man he was

still sitting in the same seat? A. Yes.

Q. Where were his hands? A. His hands were gripping the car.

Q. How did the man get off the car? A. Well, I assisted his friend to carry him out of the car out the center door.

Q. Did you lift him up or walk, or what? A. No, we lifted him up and carried him.

Q. You got him off at the Henderson Street end? A. Yes. 10

Q. Who took charge of him then? A. The train clerk in Henderson Street.

Q. You went on, of course, with the train? A. I went on with the train.

Q. You were going to Cortlandt Street? A. Yes.

Q. Were there many people in the car? A. There were seven people altogether in the car.

Q. Did you notice anything peculiar that day about the electric apparatus of the car? 20

A. No, sir.

Q. You have lights in the car, of course? A. Yes.

Q. They are controlled by a switch at one end of the car, are they not? A. Yes, sir.

Q. Were they working that day? A. Yes, worked properly. I put on the light—

Q. What's that? A. Because I turned on the lights. 30

Q. At what point did you turn them on? A. Just this side of Summit Avenue.

Q. That is just before you go down into the tube? A. Yes.

Q. Were the lights all right? A. Yes.

Q. Had any fuse blown out or anything of the kind? A. No, sir.

Q. How about the heat; is there a circuit for the heating? A. Yes; there is another fuse 40

for the heat.

Q. You used that that day? A. It was all right.

Q. Did any fuses blow out that you know anything about? A. No, sir.

Q. Was there any trouble at all with the electrical apparatus? A. No, sir, not that I know.

10 Q. Where did you take charge of the car?  
A. At Manhattan Transfer.

Q. Coming from the yard which is below the Transfer? A. Yes, sir.

Q. Do you remember if you had been running that same car that day? A. Yes; we had it several times that day, that car.

Q. Several times that same day? A. Yes.

Q. Do you remember the number? A. Yes; 1930.

20 Q. Do you remember whether it had "Hudson and Manhattan" on it or whether it had "Pennsylvania"? A. "Pennsylvania."

Q. On the side? A. Yes.

Q. How many times had you been running that same car that day before this occurrence?  
A. I should say about three or four times that day.

30 Q. Running it back and forth between the Transfer and Cortlandt Street? A. No, sir; between Newark and Cortlandt Street. That was the only trip we came from, the Transfer.

Q. The Newark Station was open at that time? A. Yes.

Q. The train where this occurrence happened, did it start at Newark? A. No, sir, started from the Transfer.

Q. Connecting with the Pennsylvania trains?  
A. Yes.

40 Q. During the three or four trips that you

made with that car that day, was there anything wrong with the electrical apparatus? A. No, sir.

Q. Any fuses blow out or anything whatever happen? A. No, sir.

Q. How many trips did you make with that same car after this occurrence? A. That was the last trip. That was my last trip that day.

Q. Did you go to Cortlandt Street and leave the car, or what happened to it next? A. Yes; I went to Cortlandt Street. 10

Q. Your day's work was finished? A. My day's work was finished.

Q. On that trip? A. Yes.

Q. There is no storage yard at Cortlandt Street, is there? A. No, sir; they don't—

Q. The cars come back to Jersey City? A. The cars come back to Jersey City. That car went to Newark again, I suppose. 20

Q. The next trip for that car would be to go to Newark? A. Yes.

Q. Of course you didn't go on that trip? A. No; I went out on another track to go to Newark.

Q. When did you next have that car, if you know? A. Well, that I couldn't say, sir.

Q. There was a gentleman with this man that was in this condition that you described—another man? A. Yes, sir. 30

Q. Did he or anybody else on the train say anything about any shocks, any complaints? A. Nobody said anything about any shock.

Q. Were there some people sitting in the same seat with this man? A. Yes—not—well, on the same side, right near him.

Q. Others on the other side? A. Yes; there was three more on the other side. 40

## CROSS EXAMINATION by Mr. Simpson.

Q. Where did you first notice this man who seemed to be sick? A. After we left Summit Avenue.

Q. How long after you left? A. About a minute after we left Summit Avenue.

10 Q. Was it before you turned on the lights or afterwards? A. This was before we turned on the lights.

Q. Did his friend call on you to come in and help him? A. No, sir; I didn't hear him calling.

Q. You did not go near him until you got to Grove Street? A. I know the only thing for me to do was to get him off at Grove Street, because it wasn't any good for—

20 Q. Don't make a speech. Just answer the question. You did not go near him until you got to Grove Street when you had opened your doors? A. Yes, sir.

Q. You left him in the car until you had opened the doors at Grove Street? A. Yes, sir.

Q. How many pieces of electrical apparatus are there in the car? A. How many? Well, there is the light switch, there is two heater switches, pump switch, seven-point switch.

30 Q. The car is made up of switches then. What is under the floor? How many pieces of electrical apparatus under the floor of the car? A. I couldn't very well say.

Q. You don't know anything about that, do you? A. Well, I know a little about it.

Q. I understood you to tell Mr. Hobart on your oath there was nothing the matter with your electrical apparatus, didn't you? A. Not as I know of.

40 Q. Haven't you told him that? A. Yes.

JOHN VARLEY—RE-DIRECT 63

Q. You don't know anything about that, do under the floor of the car? A. I know a little about it.

Q. You have sworn that nothing was the matter with something that you didn't know anything about. What you meant to say was that you didn't know of anything wrong with the car; that is what you meant to say? A. Yes.

RE-DIRECT EXAMINATION by Mr. Wall.

10

Q. Where did you first notice the man? A. This side of Summit Avenue.

Q. This side of Summit Avenue? A. Yes.

Q. You mean the east or west side? A. East side.

Q. Your next stop was at Grove Street after the Manhattan Transfer? A. Yes.

Q. Did these people ask you to do anything or ask you for any help? A. No, sir, I didn't hear them. 20

Q. When did you first hear of the fact that somebody claimed there had been a shock there? A. Well, I didn't hear anything about it, being shocked, until the next time I read the Jersey Journal. That is the only thing I knew about it.

Q. Not a word said by anybody about any shock? A. No, sir. 30

By Mr. Simpson:

Q. When did you hear he had been shocked?

A. I didn't hear anything about it until I saw it in the Jersey Journal.

Q. Oh, you saw it in the Journal? A. Yes.

By Mr. Hobart:

Q. Mr. Bogie didn't say anything about a 40

shock? A. No sir.

THOMAS JONES, called and sworn on behalf of the defendants, testified as follows:

DIRECT EXAMINATION by Mr. Hobart.

Q. Where do you live? A. I live in New York, sir.

10 Q. What address? A. 335 West 50th Street,

Q. What is your business? A. I have a vulcanizing plant at 675 Montgomery Street, Jersey City.

Q. In connection with the automobile business? A. Yes, sir; I do all kinds of automobile repairs and supplies and accessories.

Q. On the 20th of December last were you a passenger on a train going to New York through the tubes? A. Yes.

20 Q. Where did you get on? A. I got on at Grove Street, sir.

Q. When you started to get on the train did you see anybody in the car that there was anything unusual about? A. Yes; I was looking in the car, coming head towards me, you know, and I saw a man stretched out there.

Q. On what? A. On the seat, with his head on the window sill.

30 Q. Which seat was he on? A. He was on, I think, it is what you call the west side seat going east.

Q. Was it near the middle of the car or where? A. In the center of the car next the aisle.

Q. Did you see a man taken off the train? A. Yes; I saw the guard help someone off.

40 Q. What did you do after you had seen this man taken off the train? A. Well, the door was immediately opened at Grove Street, you

know, and I stepped on the train, and I had two tires which I had to deliver to New York in a hurry, and I stood up in the aisle for a little way and I sat down there, and when I got to Jersey City I moved to the head of the car where the guard was.

Q. By Jersey City you mean the station at Exchange Place? A. Yes, Exchange Place. I moved to the head of the car and the guard asked me for my— 10

Q. No; never mind what was said. Did you sit down? A. I sat in the same—

Q. What seat did you sit in, A. The same seat as the man which had the fit or whatever he had, I don't know.

Q. Did you get an electric shock? A. Well, I stood up in the aisle right where the stanchion runs up from the bottom of the car to the top. 20

Q. Hold on to that? A. I held on to that white—

Q. Bar? A. Yes, sir.

Q. Did you get any shock? A. No, sir.

Q. When you sat down did you get a shock? A. The car was crowded and a lady moved up here and I got up and gave the lady my seat.

Q. How long did you sit in that seat before you got up? A. Pretty nearly all the way to Exchange Place. Just before we got to Exchange Place. 30

Q. Anything happen to you, A. No, sir.

Q. Didn't get any shock then? A. No, sir.

Q. When you sat down in the seat can you describe how you sat, that is, did you sit forward or lean back? A. Well, I sat back like this here, with my arm over where that cradle comes, and I put my arm over the top of that, holding my tires in my hand in the aisle. 40

Q. Near the window sill? A. Yes, sir.

CROSS EXAMINATION by Mr. Simpson.

Q. You mean you had your hand out of the window over the window sill holding these tires in the tunnel? A. No, sir.

Q. You mean you sat down in the seat—  
 A. There is a stanchion.

10 Q. You sat down in the seat with your arm— A. Around the stanchion.

Q. And your hands on your rubber tires?  
 A. Yes, sir.

Q. Rubber is a non-conductor of electricity, isn't it? A. Yes, sir.

HUGH HAZELTON, a witness sworn on behalf of the defendant, testified as follows:

20 DIRECT EXAMINATION by Mr. Hobart.

Q. Mr. Hazelton, what is your business? A. Electrical engineer.

Q. Graduate of any institutions? A. University of Illinois.

Q. Any degrees? A. Mechanical engineer.

Q. How long have you been practising your profession? A. Twenty-two years.

30 Q. What places? A. Chicago and New York.

Q. Have you had anything to do with the designing or construction of electric cars? A. I have.

Q. What experience have you had in that connection. A. About 12 years' experience.

Q. In what capacities? What have you had to do with it? A. Designing the cars and laying out the electrical equipment.

40 Q. For what companies? A. Metropolitan

Street Railway in Chicago, Manhattan Elevated in New York and the Hudson and Manhattan in New York.

Q. By Hudson and Manhattan you mean what we commonly call the McAdoo tubes?

A. I do.

Q. What did you have to do in connection with the designing of the cars for that company? A. We had to do with the designing of the steel cars and also the location and arrangement of the electrical equipment. 10

Q. Now will you state how those cars are run?

Mr. Simpson: I object unless it appears that it is the same kind of car as the car in question. It certainly has no relevancy unless it is identical in construction with these cars. 20

The Court: Haven't you got to show that?

Q. Do you know what kind of cars were used by the Hudson and Manhattan Railroad Company in connection with the Pennsylvania Railroad last December? A. I do, yes.

Q. How do you know about it? A. There were two kinds of cars; one were the cars that were purchased by the Hudson and Manhattan, the other cars were purchased by the Pennsylvania Railroad, both of the same design. 30

Q. Electrically, what was the difference in them? A. There was no difference in design or equipment.

Q. I don't know whether you know the numbers of those cars or not, do you, what they call the 1900 series? A. The 1900 series, as it 40

is known, are the ones that belong to the Pennsylvania Railroad.

Q. Are you familiar with the equipment and construction of those cars? A. I am.

Q. How did you become familiar? A. Because at the time the cars were purchased the engineers of both the Hudson and Manhattan and of the Pennsylvania conferred together as to the equipment.

10 Q. Consulted you in regard to it? A. Yes.

Q. How are those cars of the 1900 series operated? What makes them go? A. They are operated by electric motors.

Q. Where do they get their current from? A. The current is taken from the third rail.

Q. That is conveyed from the power house through the third rail, I suppose? A. Yes.

20 Q. Will you describe generally just how that works so that these gentlemen may understand it? A. The motors are placed on the trucks under the cars and the current is taken from the third rail by means of the piece of metal that is called a shoe, and is conveyed from this shoe to the motors, all of that wiring from the shoe to the motors being underneath the car.

30 Q. Do you know how the lights are controlled or operated? A. The lights are taken from the same current, which is 600 volts, and they are through wires that run in conduit pipes up in the top of the car.

Q. Do any of the wires that are used for the lighting circuits come down the sides of the cars? A. They have to come down the sides at one or two places.

40 Q. Where do they come down? A. They come down in conduit pipes; the exact location I cannot give you.

Q. Well, could you state whether it was near the middle or near the end? A. I can't state that now.

Q. All right. You spoke of conduits; what are they made of? A. Iron pipes.

Q. Now there is also a heating system on each car, isn't there? A. Yes.

Q. Also operated by electricity? A. Yes.

Q. How is that constructed? A. The heater consists of coils of wire wound up on a suitably insulated frame and placed under the seat. the electric current is taken by insulated wires to those heaters, and these heater wires are also contained in steel conduit pipes under the seats. 10

Q. What is there between the electric wires and the floor of the car—or what is there to prevent passengers from touching the wires or coming in contact with the wires? A. If we assume first that your question applies to lighting wires there would first be the side of the car, which is made of steel, then the steel pipe, steel conduit pipe, and then the insulation of the wire. The same would apply to the heater wires, which would first be the steel plate in front of the heater and then the steel conduit pipe and then the insulation on the wire. 20

Q. What do you mean by insulation? What is it? What is its purpose? A. Insulation is some material which prevents the current of electricity from escaping from the wire. 30

Q. What does it usually consist of? A. It usually consists of rubber or some insulating compound.

Q. Were these cars of the 1900 system equipped with such insulator? A. They were.

Q. The lighting circuit is controlled from what point? A. From the end of the car by 40

means of a switch.

Q. Was that also true of the heating circuits? A. It is.

Q. How about the propulsion system ;that is controlled by what, motor or meter or what?

A. That is controlled by means of a master controller at the end of the car operated by the motorman.

10 Q. Where are those wires of that system?  
A. Those wires are all underneath the car floor.

Q. What is there between the naked wire and the passenger's foot while he sits in the car? A. There is first the insulation of the wire and then the steel conduit pipe, then the corrugated steel floor.

Q. How thick is that? A. That is about, less than one-sixteenth of an inch thick.

20 Q. Made of corrugated steel? A. Made of corrugated steel, and on top of that corrugated steel is laid a layer of cement about an inch and a quarter thick.

Q. Does that include all of the circuits or systems that are used in the car? A. Yes.

Q. Are there any fuses in use? A. There are fuses on all of the circuits.

30 Q. What is the purpose of the fuse? A. The purpose of the fuse is to act as a safety valve, as you might say, so that in case there is too much current in any wire the fuse will melt before the wire will burn out.

Q. Were those cars equipped with fuses? A. They were.

Q. What have you to say as to these cars on this 1900 series, as to whether or not they are of modern construction and design? A. They are of modern construction obviously.

40 Q. Is there anything better than that in your experience anywhere in the world? A. For

this particular purpose, no.

Q. Now is there any method adopted in that design to prevent anybody getting any possible shock, and if so what method? A. In the first place, the wires are insulated, but in addition to that the entire steel car acts as a protection to the passengers, all of the entire surface of the car being grounded.

Q. Won't you explain what you meant by that? A. In the first place, the track rails are grounded, that is, they are the same potential as the earth. Now the wheels rest upon the rails and the truck and the cars rest upon the wheels, so that the entire structure of the car and truck is of necessity grounded, that is, it is the same potential as the earth. 10

Q. Is it one continuous section of steel everywhere? A. Yes, it is all connected together.

Q. Now suppose some current got loose from the wires or suppose the wires by any possibility got past the insulating material on the steel floor and all these other things, what would become of the current? A. The first thing would happen would be there would be a short circuit at the point where the wire touched the steel work. 20

Q. What would be the effect of that? A. There would be a flash of light.

Q. And flames? A. There would be a flash, an arc. 30

Q. Would that have any effect upon the fuses? A. That would burn out the fuse on that particular circuit.

Q. What would happen to the current? A. The current would be cut off by the fuse—by the burning or opening of the fuse.

Q. Would there be any possibility of anybody getting a shock under such circumstances? 40

A. There would not.

Q. Have you ever known of such a case in your twenty-two years' experience? A. I have not.

Q. During that time you have been connected with the Manhattan Elevated, I think you said, and what other, the subway? A. Not the subway, but the Metropolitan Elevated in Chicago and the Manhattan Elevated and the  
10 Hudson and Manhattan.

Q. That is, the electrical part of it? A. Yes.

Q. Well, if any of these wires got loose in any way would that become obvious at once to a person in the car? A. It would not, because the wires are in iron conduit pipes.

Q. Now suppose the current got loose, could you then tell whether it was loose or what was becoming of it? Would it have this effect?

20 A. Your question is rather difficult.

Q. Maybe I have not made it clear. I want to get out if by any possibility the current went where it was not expected to go? A. If there was a puncture in the insulation so that the wire which is charged got up against the conduit pipe there would be a short circuit.

Q. Could that be determined by anybody?

A. That would be immediately determined by the fact that the fuse would burn out.

30 Q. Would there be any possibility of any person getting a shock under such conditions?

A. There would not.

Q. Supposing a man was sitting on a seat on either side of those cars with his arm on the window sill and the other hand holding on to the upright, porcelain upright, is there any possible way that he could get a shock in that position? A. No, sir.

40 Q. Why not? A. Because the entire struc-

ture of the car that he is sitting beside is ground, it is all the same potential.

Q. Supposing there was any current passing through the side of the car? Suppose by any possibility there was a current passing through the side of the car or passing through the window sill, what would the effect of it be? A. The current would not pass through the side of the car, because it is grounded.

Q. What do you mean? A. It is all connected to the track, the rails and to the earth. 10

Q. In other words, it cannot get loose? A. It cannot get loose in the car because it is all the same potential as the ground.

Q. Just explain what you mean by the same potential? A. I think if you will allow me to illustrate, assuming this table here is of steel and that this standard is also of steel with an electric wire in it, as there is. Now by no possibility could I get a shock from this steel to that steel, because it is all connected together. I could get a shock if I could touch the wire, the insulated wire that is contained in that standard, and that is the only way that I could get a shock. 20

Q. And to apply that to one of these cars, you could get a shock by crawling up on the roof and touching the electric light, I suppose? A. If it would be possible to touch a wire inside the conduit pipe. 30

Q. How high above the seats is that part of the roof of the car where the electric light wires pass? A. About four—about five feet.

Q. Reference has been made to these uprights in the car. Some witnesses have described them as porcelain. Are they porcelain in fact? A. They are made of steel coated with porcelain enamel. 40

Q. What are they for? A. Merely a support for the passengers.

Q. Are there any wires on those uprights or standards? A. There are not.

CROSS EXAMINATION by Mr. Simpson.

Q. The heaters, where are they placed in these cars? A. Underneath the seats.

10 Q. What are they made of? A. They are made of coils of wire on insulating frames.

Q. How do the wires convey their heat to the surface which is heated? Are they bare or insulated before they get there? A. They are bare.

Q. What is the heating surface? What is the heating surface? A. The amount of heating surface?

20 Q. No; is it steel or what is it? A. It is a composition.

Q. If one of the wires connected with the heating surface became detached and touched a steel portion of the car, would the electricity still go in the heater or go in the steel car? A. There would be a short circuit immediately.

Q. Why would there be a short circuit? A. Because the steel car is grounded and the wire has a less potential in it.

30 Q. Would be a short circuit of that one wire, wouldn't there? A. Yes.

Q. How would that be determined to a man sitting in the car? How could he tell there was short circuit of the one wire? A. There would be a flash.

Q. A flash under the seat? A. A flash under the seat.

Q. One flash? A. Yes.

40 Q. If he was not watching for that flash and

didn't see it he wouldn't know anything about the short circuit? A. Except possibly from the sound.

Q. If he did not hear the sound, if the guard was standing in the doorway and neither saw the flash of the fuse or heard the sound, he would have no other means of knowing that there had been a short circuit? A. No, sir.

Q. Wouldn't be any bell rung or whistle blown or gramophone played or anything of that kind? A. No, sir. 10

Q. The short circuit, I take it, is the leaking away of the electricity? A. No, sir, it is the arc that occurs at the contact between the wire and the metal.

Q. That is what I asked you, the electricity passing through this arc? A. At the time, yes.

Q. How long does it last? A. About as long as that. (Snaps fingers.) 20

Q. Where does the electricity go? A. It goes back to the power house.

Q. Through the steel car? A. Through the steel car.

Q. If a man was sitting over that heater with his hand on the stanchion and his hand on the metal window sill, you say he could not get a shock because the whole steel structure of the car would be perfectly grounded; is that right? A. Yes, sir. 30

Q. That instead of going through his body it would go through the steel frame? A. It would.

Q. If in the construction of the steel car there was any wood or anything to prevent the perfect grounding, would there be any likelihood of the current going through his body? A. The steel is all connected together.

Q. No; you are now evading the question. 40

If there was any interference with the perfect ground caused by the one piece of steel, which is represented by the car, would then the current go through his body instead of through the ground, the grounded car? A. I cannot answer your question for this reason. If your question has reference to the entire car.

Q. That is a perfect ground? A. Yes.

10 Q. If anything interferes with the perfect grounding of the car, if there is wood? A. Under the rails, for instance.

Q. What then would happen to this man holding on to the ground? This car is not grounded rather—I will withdraw that. Suppose here is the mantelpiece and that is the stanchion? (Indicating.) A. Yes.

20 Q. You say if you have hold of the mantelpiece and you hold the rod you could not get a shock because the car is perfectly grounded? A. Yes, connected together.

Q. Supposing the car was not perfectly connected together, so it is not perfectly grounded, what then would be the effect? A. Let me suggest. Suppose the metal is separated from the rest of the car, then if a man had hold of that piece of metal and at the same time some other piece, I think he could get a shock.

30 Q. How is this car joined together? A. With rivets.

Q. Do you know how many pieces there are in this car? A. Oh, several hundred.

Q. The unity of the car depends on the proper joining of the car? A. Yes.

40 Q. To what extent must the car be properly joined to be a unit; that is, how can you interfere with the joining without interfering with the grounding? A. As long as the pieces of metal are together at all they are in metallic

contact and they would all be grounded.

Q. These several hundred pieces must then all be in contact? A. Yes, sir.

Q. The insulation on the wires, what is that for? A. To keep the current in the copper wire.

Q. And the steel pipe is a conductor, isn't it? A. Yes.

Q. That is, if the insulator is defective or bad the electricity would leak through that steel conduit and go into the ground, if there was a perfect ground? A. Yes. 10

Q. Did you bring the blue print of this car with you? Mr. Hobart didn't use it.

(Mr. Hobart produces a blue print and hands it to Mr. Simpson.)

Mr. Simpson: What is this, a section?

Mr. Hobart: Yes, a section. 20

Q. Now is this a section of the car? A. It is.

Q. I notice under the seat it says "Conduit pipes." What do they conduct? A. Those contain the heating wires.

Q. (Pointing to the pipes under the seat.) Where are the wires which convey the current which is used for propelling the car? Do they show in this? A. Underneath the car floor. 30

Q. And over them is a surface of concrete? A. Yes.

Q. Concrete is not a non-conductor unless there is a certain proportion of abestos mixed with it? A. No, it is not a non-conductor of any account.

Q. It is not a non-conductor? A. No, sir.

Q. Now you have had how many years' experience? A. Twenty-two. 40

Q. You don't say it is an impossibility for a man to get a shock in a car such as this of electricity as long as you admit the presence of electricity, do you—that it is humanly impossible? A. If he touches a live wire he can get a shock.

10 Q. Outside of that it is the same? Is it humanly impossible in a car constructed as this was, taking into consideration the human fallibility, defective insulation, defective connections, loose connections, taking into consideration the fact that steel conduit is a conductor and that concrete is in a sense a conductor, do you say it is impossible for a man to get a shock of electricity? A. It is impossible unless he touches a live wire.

20 Q. Suppose this car was not a perfect ground you have already said he would then get a shock? A. The car has got to be on the rails and thereby it is a perfect ground.

Q. Suppose the pieces of metal are not in conjunction and suppose they become separated in some way, it is not a perfect ground? A. The piece of metal that is not connected with the other pieces of metal would not be grounded under those conditions.

Q. Yet you say the rest of the car would be grounded? A. It is bound to be.

30 Q. Then the piece that is not grounded might be a conductor? A. All of the car is a conductor.

Q. If there is a piece that is not grounded that might act as an avenue for the electricity, might it not? A. Yes.

RE-DIRECT EXAMINATION by Mr. Hobart.

40 Q. To get a piece of the car that is not

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grounded how would you go about it? A. Have to cut it out; have to separate it entirely by wood or other means.

Q. So as long as there is contact of any other sections of the car it is grounded? A. Yes.

Q. If you wanted to keep the car from being grounded how would you do it? A. Lift it up by running it up on a wooden rail.

Q. This blue print to which Mr. Simpson 10 referred correctly shows the arrangement of the wires, does it? A. It does.

Q. Heating and lighting and propulsion system? A. Yes, sir.

Blue print offered in evidence and marked Exhibit D-1.

RE-CROSS EXAMINATION by Mr. Simpson. 20

Q. If a puncture occurred in the insulation and touched metal of the car and the ground wire and that piece of metal had become loose, any person completing the circuit with his body would receive a shock and not cause the fuse to blow because of the high resistance of the person's body; is that true or not? A. That is rather a long question.

30

(Question repeated by stenographer.)

A. In the first place, that speaks of a ground wire. I don't know what is meant by that in connection with these cars.

Q. In your eyes the grounding is by the car itself? A. Yes.

Q. In your description? A. Yes.

Q. Then the question would have to be modi- 40

fied so that if a puncture occurred in the insulation and touched the metal of the car and the ground of the car was not perfect, any person completing the circuit with his body would receive a shock and not cause the fuse to blow, because of the high resistance of the person's body? A. No, I don't—the high resistance of the person's body has nothing to do with his receiving the shock or not receiving it.

10 Q. Has nothing to do with the blowing or not blowing the fuse? A. No, sir.

Q. What portion of the car is wood, such as you have described? A. The window sash is made of wood, all of the window sash.

Q. Are the doors of wood? A. No, sir, they are of steel.

Q. Only the window sash is of wood? A. That is the only thing I can think of now.

20 Q. Then the nosing of the sliding doors is rubber, isn't it? A. Yes.

Q. That has nothing to do with the interfering with the grounding of the car? A. No, sir, not at all.

Q. Although rubber is a non-conductor, of course? A. Yes.

Q. How much current does it take to run these cars? A. Takes 500 amperes starting.

Q. Less than that as they continue? A. Yes.

30 Q. That is delivered to the car through the motors, is it, in the front of the car? A. It is delivered to the motors underneath the car.

Q. Through the shoe, as you described? A. Yes.

Q. How are those wires insulated? A. They are insulated with rubber.

Q. Do you know what type? A. What manufacture of rubber?

40 Q. Yes. A. The Hudson and Manhattan

cars were insulated with rubber obtained from the Okonite Company.

Q. How old was this car, do you know, that they are referring to, on the day of this accident? How long had it been in use? A. I can't give you that accurately.

Q. What did you call it? What was the type of the car? You gave it a name. A. We called it N. P. 38, that being a designation of these cars for the Pennsylvania. 10

Q. N. P. 38 applied also to the Hudson and Manhattan? A. No, sir, we called the Hudson and Manhattan class D.

Q. But was it the identical kind of car? A. Yes, sir.

Q. What would interfere with a ground, a perfect ground? A. A piece of wood. If you had the rails covered with wood, for instance, then the car would not be grounded. 20

Q. Any other way of interfering with it excepting as you have already testified? That is, you have testified from the separation of one piece of metal of the car from the surrounding pieces would relieve it from the ground. Is there any other way? A. The piece has either got to be separated or insulated in some way.

FURTHER RE-DIRECT EXAMINATION by Mr. Wall. 30

Q. Isn't it a fact that the usual method of putting electrical wires in a house for lighting is to run the wires inside a steel pipe? A. Yes.

Q. Well, is the fact that that steel pipe does not catch fire or does not set fire to the surrounding woodwork when the wire becomes defective in insulation due to this very fact that the steel pipe is grounded? A. Yes. 40

Q. So that is a basic idea in all electrical work? A. It is.

Q. Not peculiar to these cars? A. Not at all.

FURTHER RE-CROSS EXAMINATION by  
Mr. Simpson.

10 Q. Then you say that if a man got some shock in one of the cars there must be some interference with the ground. Assuming that he did, there must have been some interference with the ground? A. I should say he must have touched a live wire.

Q. If he did not touch a live wire and got a shock—if he did not touch a live wire and still it was true he got an electrical shock, there must have been some interference with the ground? A. I should say it was impossible.

20 Q. But assuming, if you will, that it is possible?

Mr. Hobart: I object.

Mr. Simpson: I have a right to ask this witness to testify on any state of facts.

30 Q. Assuming a man received an electric shock in the car without touching a live wire, would that be an evidence there was not a perfect ground?

The Court: I think he can answer that.

A. As I say, I cannot assume an impossibility.

Q. Well, you can assume an imperfect ground of a car? A. I can assume that the car is insulated from the rails, if you wish.

40 Q. Just assume it is not grounded? A. Then

the car would get nothing.

Q. Assume that the car is not perfectly grounded? A. Then he could get no current through the car at all.

Q. Could not if it came through? A. It could not come through.

Q. That is what I want to know.

FURTHER RE-DIRECT EXAMINATION by Mr. Hobart. 10

Q. Of course if there was no current he wouldn't get any shock? The car would not go, would it? A. It would not.

Q. In case there was an imperfect ground, something would happen to those fuses? A. If there was an imperfect ground of the car no current would go through the car.

Q. You spoke about insulating the car. 20  
Would you have to get all the wheels away from the rail? A. Yes.

Q. Could not put a piece of wood under one of them? A. No.

Q. You spoke of the window sills? A. The window sash.

Q. Are they painted? A. Yes.

Q. Do you know what kind of material, whether it is a non-conductor or not? A. Oh, 30  
it is paint; it is not particularly a non-conductor.

KENNETH R. LEWIS, called and sworn on behalf of the defendants, testified as follows:

DIRECT EXAMINATION by Mr. Hobart.

Q. Mr. Lewis, what is your business? A. I am employed as inspection foreman of the Hud- 40

son and Manhattan Railroad. I don't know whether they would be classed as an electrician or car inspector.

10 Q. What experience have you had as an electrician? A. I attended the school in Washington for four years, took an electrical course, and I was employed by the New York Central for two years and various small trolley roads around the country, and then for the past four years by the Hudson and Manhattan.

Q. Where is your office located? A. At Henderson Street yard. It is the corner of Railroad Avenue and Warren Street, in Jersey City.

Q. Is that where most of the cars are taken for inspection and storage? A. All the cars are taken there for inspection.

20 Q. That is the inspection point? A. That is the inspection point.

Q. Do you know a car described as Pennsylvania 1930? A. Yes.

Q. Do you know when that car was put into service? A. Yes, put into service November 17, 1911.

Q. Before it was put into service was any inspection or examination made of it? A. Yes, thorough inspection was made of it.

30 Q. By whom? A. By the force on the inspection pit, under myself.

Q. Under you? A. Under me, yes.

40 Q. What does that inspection consist of? A. Well, all the air brake apparatus is taken apart and cleaned, all the electric circuits are tried out, tested from beginning to end, to see there are no short circuits or crosses, no grounds, and the trucks and brake rigging are examined, all bolts tightened up, any repairs made that are known and necessary on that car.

Q. Is that all done under your direction?

A. Yes.

Q. Was that done in the case of this particular car? A. That is done with every car that goes into service from the outside.

Q. When was that car again inspected after it went into service on the 17th of November, 1911? A. After going into service it came in on December 8th for the usual periodical inspection. 10

Q. You say periodical inspection, what do you mean by that? A. Well, a car goes out into service and a card is kept of each run it makes, and when it has attained a total mileage of about twelve hundred miles, it is ordered in for inspection.

Q. It is then inspected at this same yard? A. Then inspected and looked over in the same inspection barn. 20

Q. Was that done with this car 1930? A. Yes.

Q. Have you a record showing that fact? A. We have.

Q. Is this the record that is kept under your direction? (Showing witness a card.) A. Yes, it is.

Q. What is the date of the inspection as shown by that record? A. December 8th was the first inspection after going into service. 30

Q. Suppose anything gets out of order on the cars between these times of periodical inspection, while it is travelling this twelve hundred miles or so, what system do you have to find out about that? A. Any guard or conductor or motorman can, and the man on the car is supposed to report on a shop slip provided for that purpose any defects that he notices on the car. All those defects are looked up by two 40

road inspectors, who are out on the road for that purpose, to keep track of the cars and see that nothing happens to them and fix up or repair their defects until they come in.

Q. Was a record kept of that? A. Yes.

Q. Also under your direction? A. Yes.

10 Q. I call your attention again to this same card and ask you whether there were any defects down in car 1930 between the 8th of December and the 22nd of December 1911? A. There was one report, I notice.

Q. For what? A. Bad order, markers.

Q. What are they? A. They are the cylinder enclosing a lamp or two in each end of the car that can be changed as to color and show the distinction of the car.

20 Q. Have anything to do with the electrical apparatus? A. The lamp inside the marker has that is all. The marker cylinder, as that report is, is a steel cylinder that goes out side and holds the colored glass.

Q. That had got broken in some way? A. Yes, the glass was broken.

Q. Anything to show about repairing that?

Objected to unless the witness made the report.

30 Q. You have a clerk that keeps all these records for you? A. Yes.

Q. Kept right there in your office? A. Yes.

Q. Under your own eye? A. Yes.

Q. And do they put down right at the time—  
Objection withdrawn.

Q. You examine them yourself from time to time and see if the records are put down as they should be? A. Yes.

40 Q. Was there anything else according to your records or according to your recollection aside from your records between the 8th of December

and the 22nd of December except a broken glass and marker on this car? A. On the 22nd of December—on the 21st, rather, I saw a slip in the paper—I don't know as this answers your question.

Q. I want to know if there was anything wrong except on the 21st of December you saw something? A. I saw a piece in the paper that a man had received a shock while riding in the car. 10

Q. You mean in one of the newspapers? A. Yes, the Jersey Journal.

Q. As far as your own records were concerned was there any record of report of anything out of order on that car except for this broken glass? A. On December 22nd there was a report came from the claim department, giving car 1930 and the circumstances of an accident in which a man had claimed he had received a shock. 20

Q. Up to that time had there been any report made to you of anything out of order on that car? A. No report other than the one on the markers.

Q. That was this broken glass? A. Broken glass on the marker.

Q. You got some report on the 22nd of December, you said? A. On the 22nd a report came from the claim department. 30

Q. Some newspaper yarn had gone out in the Journal? A. On the 21st we saw it and didn't pay any attention to it.

Q. What did you do? A. We received on the 22nd a report that some man had claimed he had gotten a shock, and it is my duty to go and investigate all these cases and to give them a thorough examination and put it down in writing just what I found. 40

Q. Was there anything done to that car between the 20th of December and the 22nd of December? A. No repairs made on that car.

Q. If any repairs or changes had been made during that interval, would that have been under your direction? A. Yes.

Q. On the 22nd of December what did you do in the way of examining that car? A. Well,  
10 I went in the car first and threw in the heat switches, and pulled them out to see the arc there that showed that the current was going into the heaters; same on the light switches, and then put on the heat switch and went along and felt each heater after a few minutes, when they had time to warm up, to see that each one was giving out the proper amount of current. I looked along to see if there were any wires  
20 broken and then went down to the end of the heater circuit of the last heater, disconnected the ground wire, which is the negative end of the circuit, and then I went back threw in the switch for the heater circuit, to see if there was any leakage of current other than through this ground wire. I found none, so I did the same with the light circuit; I disconnected the wire and threw in the switch; then I found the position that the passenger had been sitting in and  
30 sat down in the same seat, felt all around and looked to see if there was anything I could reach, any live parts, but I couldn't find anything, both heaters and the lights being out of my reach, with either my arms or feet.

Q. You are quite a tall man? A. Yes.

Q. A little taller than Mr. Clark? A. I think so.

Q. You tried to get a shock, in other words, if you could? A. I tried to get a shock.

40 Q. Did you get any? A. No, I couldn't get

any.

Q. Did you make any test by means of a volt meter? A. I went over the car with a volt meter, that is, I tapped the volt meter on to the third rail and then with the negative end tried each separate piece of steel in the car body to see if there was a full drop, that is, a drop of 625 or 600 voltage, to see if every piece of steel was properly grounded.

Q. What was the result of that examination? 10  
A. The result was that every piece of steel was properly grounded, and when I scratched the paint off—of course I had to scratch the paint off to make the contact with the steel.

Q. Why is that; paint a non conductor? A. It is to a certain extent. Of course paint cracks and you cannot trust it.

Q. Go on. A. Then after this they tapped one side of the meter to the running rail or return current rail and went around and touched each metal part in the car to see there was no stray current. This volt meter registered in voltage from one one hundred of a volt up to as high as 750 volts. There was no deflection of the needle at all, which indicated there was no current there. 20

Q. Find any current leaking anywhere? A. No, sir.

Q. Find anything there whatever that would cause a passenger a shock while sitting in the seat of that car? A. No, sir, I could not. 30

Q. How long did it take you to make this examination? A. About three hours.

Q. Do you know if that car was in use between December 20th in the afternoon about three o'clock, and up to the time that you had your inspection on the 22nd of December? A. I do. 40

Q. Was it in use? A. Yes.

Q. Did reports come in of anything out of order? A. No, sir.

Q. Did you examine any of the fuses while making this examination? A. Examined all fuses.

Q. Find anything out of order there? A. No, sir.

10 Q. If a fuse had been burned out could you have determined it? A. Yes, there is a telltale on there.

Q. What? A. There is a telltale that burns out, but I didn't want to depend on that to tell whether the fuse was blown out, and I tried all the circuits. Of course in a circuit if the fuse was blown no current would be going through that circuit.

20 Q. Did you find anything out of order with the electrical apparatus? A. No, sir.

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RECESS.

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CROSS EXAMINATION by Mr. Simpson:

30 Q. How long have you been employed by the Hudson and Manhattan Railroad Company? A. Since April, 1908.

Q. What did you say your occupation is? A. Inspection foreman.

Q. Inspection of what? A. Inspection foreman.

Q. Oh, you have charge of inspecting the rolling stock and the appurtenances? A. Yes.

40 Q. You say you used an instrument called a

volt meter? A. Volt meter.

Q. What does that look like? A. It is an instrument I should say about six inches square and has a dial on it indicating from zero to 750 volts.

Q. When did you use it on this particular car? A. On December 22nd.

Q. What time of the day? A. About 7:30 A M.

Q. Where was the car when you saw it on that day? A. The car was in the storage yard at Henderson street. 10

Q. Where did the car get its current from, the third rail? A. From the third rail.

Q. You said you hunted for stray currents with this volt meter; is that true? A. Yes.

Q. You didn't find any? A. No.

Q. Is that one of the purposes of this volt meter? A. It is one of the purposes, yes. 20

Q. You looked for leaky currents with a volt meter? A. Yes.

Q. And didn't find any? A. No.

Q. Then there must be such things as stray currents and leaky currents sometimes in your business? A. Oh, yes.

Q. Is that so? A. Yes.

Q. Where do they come from in these cars? A. Why, they come from the light circuits, heat circuits. 30

Q. Where would you find them with a volt meter? A. Find them almost any place if you jack the car up off the rails and connect it on one side the rail and the other side the car.

Q. The other side of the volt meter to the car, and that still is in contact with the rail?

A. No, you have to get it away from the rail to get any current.

Q. You said connected with one? A. I said 40

connected one side the meter to the rail.

Q. Yes; and the other side with the rail, is that right? A. The other side to the car.

Q. Let's see if we understand each other. You take the car and you fix it so that one end of it is separated from the rail? A. No, both ends.

10 Q. Both ends are on the rail? A. Both ends are separated from the rail.

Q. No electricity could get into it at all? A. Yes.

Q. How? A. Get in it from the third rail.

Q. You leave that connected with the third rail and take the wheels off the other rails; is that it? A. Yes.

Q. Then test it for stray currents? A. Yes.

Q. And for the leaky currents? A. Yes.

20 Q. If you left the wheels on the rails you could not find the leaky currents or the stray currents? A. No.

Q. Although they might be there? A. Yes, I could.

Q. What would these leaky currents or stray currents come from? A. Why, there is current passing through the car all the time.

Q. What? A. There is current passing through the car all the time, through the metal work.

30 Q. It doesn't leak or it doesn't stray all the time? A. I don't know what you call it. It takes any path it pleases. There is no particular path for it.

Q. Why did you test for it? Isn't it an abnormal condition, a stray current or a leaky current? A. Yes.

40 Q. What did you want to do to stop it? A. No, I wanted to find out—I want to test it so I can say there is no current there.

Q. I don't mean in this case. I mean in other cases. A. I don't know of any other cases.

Q. But you do know of stray currents and leaky currents, don't you? A. Yes.

Q. You know that they occur from what? A. From short circuits.

Q. That is, the current does not take the path it ought to take, is that it? A. Yes.

Q. Now did you bring the volt meter with you today? A. No, I did not. 10

Q. Where did you get the volt meter? A. It is owned by the company; they have two or three of them.

Q. Did you ever have it tested to see whether it was in good working order? A. Tested regularly once a week.

Q. Who does the testing? A. Weston Electric Instrument Company. 20

Q. You don't test it? A. No.

Q. All that you would know about its condition would be the report of the Weston Electric Company? A. No, sir, we have the third rail there that we can tack it on at any time.

Q. How is it you say it is tested by the Weston? A. It is tested, yes, sir.

Q. That is what you rely on? A. Partially.

Q. What else? A. We rely on our eyes in using the instrument. 30

Q. If the instrument was not in good order it would act erratically? A. No, it might be one one hundredth part of a volt out, unless it is tested.

Q. Wouldn't that become so arranged that it would not read correctly? A. No, it is impossible.

Q. Would it read correctly if it was a volt out of the way? A. No. 40

Q. Then you have already said that it might be a volt out of the way and you have already said that it would read correctly; what do you mean by that? A. I mean it would read correctly for all uses.

Q. You mean it would indicate stray current, that is what you mean, but not the amount? A. Not the exact amount.

10 Q. Very often test the cars for stray currents before this day? A. No, sir.

Q. When did you use this volt meter? A. For taking voltages in any case off the storage batteries.

Q. For stray currents or leaky currents? A. No, sir, never had leaky currents.

20 Q. You say you did not inspect this car yourself, did you, before the 20th of December? A. No, sir, I had not particularly looked over the car. I couldn't call it an inspection. I made a check on each man's work to see if it was working all right.

Q. This card that you read from is simply the report of the other men, isn't it, in your department? A. Yes.

Q. You testified what they reported on that car? A. Yes, sir.

30 Q. Your personal experience with this car is nil? A. I looked over their reports and asked them at the time—

Q. But your personal experience what you actually saw—A. What I actually saw.

Q.—is nothing. This card that you have testified from its supposed to have been made from when? What does that mean, November 9, 1911? A. Yes, that is the—

Q. What is the number of it, 1930? A. 1930 is the car number.

40 Q. Whose handwriting is this in? A. That

is the handwriting of the clerk.

Q. Know his name? A. Yes.

Q. What is his name? A. Tussey.

Q. Is this information supplied to Tussey by the men who do the actual work? A. Yes.

RE-DIRECT EXAMINATION by Mr. Hobart:

Q. When you made this test of this car did you have the wheels above the rails? A. No, 10  
sir.

Q. Well, why couldn't you make a test for stray currents? You said something about having the wheels above the rail. I don't understand what you meant by that? A. I said any current was a stray current in that it travelled through the iron work of the car in all directions, and in order to measure this you would have to jack the car up off the rails.

Q. Well, with the car on the rails can you 20  
tell whether there is any stray current? A. You can't tell by feeling, no.

Q. Can you by this volt meter? A. Not unless you cut a piece of iron off and put current into that iron from an outside wire.

Q. What I want to know is this? On the 22nd of December you said you made some test of this car? A. Yes.

Q. Tell us again what the test was and how you could tell from your test what the condition 30  
of the electrical apparatus was? A. Why, the test was simply to ascertain that all parts of the car were grounded or connected with the rail and wheels.

Q. You can do that with the wheels on the rails? A. Yes.

Q. As they were at that time? A. Yes.

Q. Did you find everything grounded? A. I found everything grounded, every metal part. 40

Q. I forgot to ask you one question. Do you know what amount of electricity would come from contact with a stray current? A. The most you could get would be by touching the third rail or a wire directly connected, which is 625 volts.

Q. Have you known of cases of men getting shocks? A. Yes.

10 Q. Contacts? A. Yes, lots of them.

Q. What effect does it have upon the man himself? I don't mean from the medical standpoint, but as to the point of contact, what does it do? A. Why, it makes you jump away and it will leave a little burn on your hand right where the current enters your body, or other part of the body, if you don't get it on the hand.

Q. Makes a burn? A. Yes.

20 Q. Something that would be seen afterwards?  
A. Yes. ,

RE-CROSS EXAMINATION by Mr. Simpson:

Q. Why, the burn depends on the strength of the current, doesn't it? A. Well, as I say, you can't get anything more than 625.

30 Q. If you have hold of an electric battery you get an electric shock without being burned? A. There were no batteries on the car.

Q. You can get an electric shock without being physically burned? A. Well, might off of electric batteries, as you say.

Q. You never have seen men shocked in that place without being burned? A. Not off the cars.

Q. On the cars? A. On the cars.

40 Q. A burn depends on the strength of the current, doesn't it? A. Well, the degree of the

burn depends on the strength of the current.

Q. Might it be a very slight burn? A. Well, I don't know what you call slight, it will bleed anyway.

Q. A burn bleed? A. Yes.

Q. Every burn bleeds? A. Yes.

Q. You are not a doctor at all, are you? A. No, not at all.

By MR. HOBART:

10

Q. Seen a good many burns from electricity?

A. I have. I have had them on my hands and face.

Q. Is that while the men are working in the car or outside the car? A. Well, in the car or on the live parts outside.

Q. When they get hold of the live wires? A. Yes.

20

By MR. SIMPSON:

Q. Ever seen them get a shock without getting hold of a live wire while working on the cars? A. Yes.

Q. How? A. Putting their hand on the contact shoe, the third rail.

Q. How else? A. For trolleys that they use in the pit where there is no third rail, or in putting in a light switch in the car, seen them get shocks.

30

Q. Putting in the light switch? A. Yes.

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DR. LAUREN M. RYAN, called and sworn on behalf of the defendant, testified as follows:

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DIRECT EXAMINATION by Mr. Hobart:

Q. Doctor, you have had considerable experience with electrical shocks and burns, have you? A. Yes, sir.

Q. For how long a time? A. Over a period of six years.

10 Q. In the case of an electrical shock due to a current of 600 volts, what effect does that have upon the point of contact with the human body or any part of the body? A. Causes a burn.

CROSS EXAMINATION by Mr. Simpson.

Q. What is the least amount that could enter a man's body without leaving a burn? A. About 25 or 30 volts.

20 Q. Would that be perceptible to him? Would a shock of that degree be perceptible to the man? A. Yes.

Q. He could get that shock without being burned? A. Yes.

RE-DIRECT EXAMINATION by Mr. Hobart:

Q. Would that make him unconscious, 25 or 30 volts? A. No, sir.

30 Q. If a man were knocked unconscious by a shock would you expect to see a burn at the point of contact? A. You would.

RE-CROSS EXAMINATION by Mr. Simpson:

Q. Why wouldn't it make a man unconscious? A. Well, it simply wouldn't that is all.

Q. Wouldn't it depend on the man? A. No.

40 Q. Don't a very slight cause sometimes make people unconscious—a mental shock make a man

unconscious? A. I never knew it.

Q. Well, fear make a man unconscious? A. Never knew it.

Q. Don't know of a women becoming frightened and fainting, never heard of that? A. Beg pardon.

Q. Don't know of a woman becoming frightened and fainting? A. I have heard of women fainting, yes.

Q. Aren't they unconscious when they faint? A. Yes.

Q. Well, then wouldn't they become unconscious by such a slight shock as would be induced by a mental condition? A. Indirectly, not directly.

Q. Well, anyway—I am not fencing with you—anyway, directly or indirectly? A. Indirectly.

Q. Would not unconsciousness be produced by simply a mental condition? A. A fainting might be. That is hardly what you would call unconsciousness.

Q. You have said it was. You said when a women faints she would become unconscious? A. Partially unconscious.

Q. What do you mean by unconscious? A. A condition of coma.

Q. How deep would that coma have to be to be in your opinion unconsciousness? A. So they would not respond to any stimulants in the shape of pin points, or so that the reflexes would not act.

By MR. HOBART:

Q. Ever know of a man, strong, good healthy man, accustomed to taking prisoners down to the State's prison, to faint?

Objected to. Question withdrawn.

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It is consented that the plaintiff may call a witness in rebuttal at this point, out of turn.

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EDWIN W. ADAMS, called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION by Mr. Simpson:

Q. Have you had any experience with electric cars propelled by electricity? A. I have.

Q. What experience have you had and for  
20 how many years? A. Since some time in 1909 I have worked for three different railroad companies.

Q. Which railroad companies did you  
work for? A. Worcester Consolidated Street  
Railway, in Worcester, Massachusetts; a trolley  
company known as the Elizabeth, Plainfield  
and Central Jersey that was operated in Elizabeth  
by an independent company at that time  
and is now part of the Public Service; and since  
30 that, for the Public Service Corporation.

Q. Did you have to do with repairing and  
tearing down these cars and inspecting them?  
A. I did.

Q. If a human body, produced a short circuit  
of a current of electricity so that the current  
went through the human body, would that necessarily  
blow out a fuse? A. Not necessarily, no  
sir.

40 Q. Does every short circuit necessarily mean

the blowing out of a fuse? A. Not every one, no, sir.

Q. When you say an object is grounded, what do you mean by that? A. Well, electricity usually has when in use a special course through which to flow, and if it is deflected from that course in any manner to the ground before it has performed its work, it is what we call being short circuited or grounded. All electric circuits are grounded in one sense of the word, because they have to return through the ground or some conductor laid as a ground would be, as we term a ground, to return it to the generators in the power station from which it come. 10

Q. That is, it must get back to the ground some way, A. It has to complete the circuit.

Q. Assuming a car composed completely of steel, a steel unit, designed for the purpose of grounding a car, so that any escaping currents would find their way to the ground as soon as that car is perfectly grounded would the current go into the ground? A. It would. 20

Q. If there was any interference with that ground could the current go through a human body or any other path to get to the ground? A. If the leak was a leak through a piece of metal not grounded with the rail or with the trucks as in the trolley car or any other car, and any substance which would conduct electricity was placed so as to form a connecting link between that isolated piece of metal and the ground, the current would flow through there. 30

#### CROSS EXAMINATION by Mr. Hobart:

Q. Have you seen these cars used on the tubes between Jersey City and New York? A. I have ridden in them, yes.

Q. Ridden in them frequently, haven't you? 40

A. Yes.

Q. Observed these porcelain uprights haven't you? A. I never observed what they were composed of. I know there is an upright there.

Q. It looks like porcelain? A. It is white, yes.

Q. It is a non conductor? A. Porcelain is a non conductor, yes.

10 Q. You know nothing about the construction of these tunnel cars, do you? A. I know the principle on which they are built, on which they have to be built to run them by electricity, but I don't know the shape their construction takes.

Q. You are not familiar with the details of it. A. No.

Q. You know, however, they are steel cars with the exception of the windoy sash? A. From what I have heard here to-day, yes.

20 Q. And the cars of the Public Service Company are wooden cars, aren't they? A. Yes.

Q. Make any difference about stray currents or leaky currents? A. Well, electricity no matter whether it is in wood or steel or what it is in, if it flows into an isolated point will attempt at the first possible chance to get back to its mother again, to the generator that formed it, and as soon as a connecting link is formed there, whether it is wood that separated it originally or dirt or merely atmosphere, it will go back as soon as something places the circuit in working shape again.

30 Q. In other words it takes the most direct route back to the ground or the generator? A. Yes, sir.

Q. And by the most direct route I mean, and I will see if you mean it also, the route that offers the least resistance? A. Takes the course of  
40 least resistance always.

Q. That is the invariable rule? A. Yes.

Q. That is a law of nature? A. Yes.

Q. And as between a steel car and a human body which is the one of least resistance? A. Why, the steel car, of course.

Q. Hardly any resistance at all in the steel car, is there? A. Not a great deal, not as compared with the human body.

Q. What is the resistance of the human body? A. That I wouldn't state positively in figures, as I don't know. 10

Q. Can you state it approximately? A. No, sir.

Q. Then if a current on its way back to the ground had the choice between passing through a human body and passing through a piece of steel, a piece of steel car, it would of course pass through the steel? A. Yes, it would.

Q. Invariably? A. Always. 20

Q. Never have known of a man getting a shock from a steel car without a battery on the car? A. I have never known?

Q. Yes. A. No, not personally.

Q. Never in all your experience? Never heard of such a thing as that except in this case? A. I may have heard, but I don't recall of ever hearing.

Q. Never have known of such a case in your own experience? A. I have heard of a good many people getting shocks, but I didn't know whether they were steel cars or not. 30

Q. As far as that part is concerned the steel car is far superior to a wooden car? A. In my opinion it makes no difference what the car is constructed of, as long as it is constructed of a material that will conduct electricity and there is no break in that conductor, why the current will flow naturally back to the ground without 40

doing any damage.

Q. Is there any difference in the degree of conductivity as between steel and wood? A. Oh, yes; steel is a much greater conductor of electricity, in fact wood will hardly conduct electricity at all.

Q. So if electricity is making a choice between steel and wood it will pick out the steel?

A. Yes.

10 Q. Now you said something about the fuse would not necessarily be blown out? A. Yes; I made that statement.

Q. In the case of a short circuit. A. Well, if there is a great resistance in the line, the line through which the current is flowing, if there is sufficient resistance there, that is, any resistance out of the ordinary, the same as an electric light in fact an electric light the principle is the same,  
20 the current starts and flows through a wire to the light and through the light to the ground; if the light were not there it would blow the fuse on that line, but the light being there creates a resistance through the light and therefore the fuse will not blow. The fuse will only blow where there is an excessive flow of current.

Q. And in any such case? A. On any circuit on which there was a heavy resistance the fuse would not necessarily blow from the passing of  
30 the current through the resistance.

Q. The fuse would blow? A. No, sir. That is the principle on which trolley cars are run.

Q. What makes these fuses blow out in front of the motorman? A. Why, the feeding of the current too fast from the cars and putting a heavy demand on a line suddenly causes the fuse to blow.

Q. Sudden increase of current? A. Sudden  
40 increase of current.

Q. A man would burn if he got a shock of 600 volts? A. No, sir, not from the 600 volts, no, sir.

Q. How would he get a burn? A. Depend on the amperage on the line. If I might suggest, voltage will not burn the man to any extent, because in the automobile business we use what is known as a coil box, that is an induction coil, which creates a voltage oftentimes very near twenty thousand volts; a great many chauffeurs can tell you they get that and it leaves no burn, because the amperage is practically negative there is no amperage to speak of. 10

Q. What is the difference between the two, voltage and amperage? A. Well, the voltage is, the nearest way I can explain it—comparing it with water, the flow of electricity. The voltage is the volume and the amperage is the amount of pressure. 20

Q. Do you think a man can get a shock riding on a steel car if he puts his hands on two different parts of the car? A. Well, I think I have covered that. I don't think a man can get a shock, if, as has been stated, the steel cars were absolutely, thoroughly grounded, so that the current was being carried direct without any break—I don't see how he could, no, sir.

Q. Would have to be a separate piece of steel separated from all the rest of the car? A. Yes. 30

Q. That would have to be against a live wire, wouldn't it? A. That would have to be against something through which the current was flowing.

Q. When you speak of an absolutely perfect ground, isn't it a fact that when the wheels of a car are on the rail that makes a perfect ground? A. The wheels are grounded then and everything that touches those wheels in the metal 40

line is grounded.

Q. In other words, we start with the wheels and the axle touching the wheel, and then we will say the springs or whatever comes next to touching the axle, and then we will say the steel part of the body of the car touching the springs, and then the steel sides of the car touching the other parts, and so on, it has all to be grounded making one continuous piece of steel, as it were?

10 A. Yes, if they were all in perfect contact with one another.

Q. If they touch at all? A. Yes, if they touch.

Q. They would be grounded? A. Yes.

Q. And in that event there could not be any shock, couldn't be possible? A. I don't see how it could.

RE-DIRECT EXAMINATION by Mr. Simpson:

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Q. The converse is equally true, if there was something interfering with the perfect grounding of the car, dirt or any foreign substance, so that the electricity did not have free course through the wheel, a man could get a shock by getting his hand on the one of the parts and the other part? A. Providing he touched the part that is isolated and touched the other part.

30 Q. In other words if there was one part disconnected from the ground and the other part connected, and if he touched the two parts, he would get a shock? A. Yes, if the disconnected part was connected with power in any way.

Q. You spoke about blowing out the fuse and resistance. The human body is a resistant of electricity in a certain degree? A. Yes.

Q. Therefore it uses up some of the current? A. Yes.

40 Q. Therefore it would not blow out the fuse,

would it, in all cases? A. Not in all cases. It it were a case where the body stayed in contact and was not thrown away, forced away by the sudden shock, it would blow the fuse, but it takes a few moments for it to do that, a second part of a minute perhaps.

Q. These stray currents that they have talked about, leaky currents, what do they mean by that? A. Any current that does not go through the course it was originally intended to go through—it gets out of its normal course in any way. 10

Q. That is a stray current then. You were asked if porcelain was a non conductor. It is? A. Yes.

Q. But if the porcelain is cracked or broken its nonconductivity is ended, isn't it? A. Well, if there is—that is a big question to answer.

Q. Well, we had it. The porcelain being rubbed off or broken ends its usefulness as a non-conductor? A. When it is not there it is not a conductor. 20

Q. If a porcelain spark plug is cracked it doesn't spark any more? A. No, sir.

RE-CROSS EXAMINATION by Mr. Hobart:

Q. Mr. Adams, one other question. You spoke of the possibility of getting a shock in case one piece of the steel car was isolated from the rest of the car. A. Yes. 30

Q. Even in that case you would have to have a live wire attached to one of the pieces of steel? A. I added that. I believe I added that in my statement, if the isolated part was touching some surface through which the current was flowing.

Q. What we call a live wire? A. A live wire, 40

yes, sir.

RE-RE-DIRECT EXAMINATION by Mr. Simpson:

Q. What you mean by a live wire is a wire that is not insulated? A. Anything that will carry electricity is live.

10 Q. So if these wires through the pipes were defective and that electricity leaked out through the steel, would it be a live wire? A. Yes.

By MR. HOBART:

Q. What do you mean by an isolated part of the car? A. Isolated from the ground.

Q. That is, no possible method of connecting that piece of steel and the ground itself? A. 20 Yes; either sitting on an insulator or being broken so it was hanging and not connected.

Q. Hanging up in the air, in other words? A. Yes; so it was not making contact with anything that was connected with the ground.

By MR. SIMPSON:

Q. You mean insulated, connected in some way with insulated matter? A. Sitting on non- 30 conductor.

Q. Isolated means isolated from that portion of the car that was not grounded? A. Yes.

Q. In other words, it was a portion of the car that was not grounded? A. Yes.

DR. JOHN D. MCGILL, called and sworn on behalf of the defendant, testified as follows:

40 Mr. Hobart: I suppose you will admit

the qualification?

Mr. Simpson: Certainly; qualifications and ability admitted.

DIRECT EXAMINATION by Mr. Hobart.

Q. Doctor, you examined Mr. Clark, the plaintiff in this case? A. I did.

Q. When did you make the examination? A. On Monday, Mr. Simpson's office, with Dr. Arlitz.

Q. Did you find anything the matter with him? A. I did. I found the objective conditions that had existed previously.

Q. What was that? A. I did not find any pathological conditions that exist at present. The conditions that existed previously had been a compound fracture of the skull and a fracture of the left patella. The compound fracture of the skull was the serious condition that had existed previously.

Q. What condition did you find, if any, at the present time? A. Well, of course it had healed. The operation, of trephining apparently, had been performed and the broken bones had been taken away and it had healed over by a fibrous envelopment, but the hole which was in the skull was apparent.

Q. How big a hole? A. About an inch and a half in diameter, a round hole, in the left portion of the occipital bone.

Q. Doctor, are you familiar with that disease known as Jacksonian epilepsy? A. I am, yes, sir.

Q. Had many such cases? A. I have had cases—I have operated upon cases for the relief of Jacksonian epilepsy, from depressed bone in

the head, in the skull.

Q. Is that a common cause of such epilepsy?

A. That is looked upon as the most common cause—some condition that will affect the external portion of the brain, the periphery of the brain, involving the membranes and the external or superficial portion of the brain, the cerebrum particularly.

10 Q. Assuming that Mr. Clark sustained this fractured skull on the 21st of June, 1906, can you state with reasonable certainty whether or not he is now suffering from epilepsy or has suffered recently from that if this skull has been— A. Well, I couldn't state positively as to the existence of epilepsy, unless I saw a man in the seizure, in the attack; I could only found my diagnosis upon a history of the case.

20 Q. Well, what would be some of the symptoms of such a condition? A. Well, if a man should be seized with epilepsy the seizure depends—of course it would be what they would call the great attack of the small attack—there are two forms of epilepsy, the grand mal and the petit mal. If it were the petit mal, the most common form, he would have a sudden aura, as they express it, a sort of nervous feeling permeating the whole body; that would end in a tonic spasm, that is, the man would become perfectly stiff; that tonic spasm would relax, then there would be a clonic spasm, where there would be the vibration of the body. There would always accompany an attack of epilepsy unconsciousness, it might be just for a second or it might be for an hour. If it was a second it would be a petit mal; if it was an hour it would be a grand mal; and then there would be a stage of recovery, in which the man would come back to himself.

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Q. In the more serious form of epilepsy is there any swelling or any gripping of the hands or—A. Oh, yes; I have stated that the first, after the aura that goes through the body in the grand mal, that is, the severe attack, there would be a tonic contraction and a change of color, then would come the clonic relaxation and the shaking.

Q. Would there be any frothing or foaming at the mouth? A. Yes, not always—frequently foaming at the mouth and possibly biting of the lips. 10

CROSS EXAMINATION by Mr. Simpson:

Q. How long have you been physician for the Pennsylvania Railroad, Doctor? A. I don't know exactly how long.

Q. Many years? A. I have been for a good many years. 20

Q. Testified frequently for them? A. A good many years, yes.

Q. Now would it be possible—suppose this man had his skull fractured in 1906 and then after ten months of disability went to work again, had no headaches or other symptoms, and went along until the 10th of December when he received an electric shock and became unconscious and subsequently developed pains in the head and vagueness of coordination, would you say the electric shock had anything to do with that condition? A. Well, I would have to see the man and see the degree of the electric shock and see the immediate symptoms that attended that electric shock—to say that an electric shock had produced a condition of that kind, I wouldn't like to say that until I had more intimate acquaintance with the case. 30 40

Q. Would you say it had anything to do with the condition? A. Would it have anything to do with the case?

Q. Yes; would it be in any way potential in the case, the electric shock? A. In my experience I have seen a great deal of electric shock, and I have never seen it produce Jacksonian epilepsy.

Q. Couldn't it, combined with this fractured skull, produce Jacksonian epilepsy? A. I don't  
10 think so, not in my experience.

RE-DIRECT EXAMINATION by Mr. Hobart:

Q. How long after an accident resulting in fractured skull might Jacksonian epilepsy develop? A. I can give you a case in point. I had a boy admitted to St. Francis Hospital several years ago when he was five years of age; had  
20 been kicked by a horse in the posterior portion of the skull around the occipital region, which had produced a depression. That boy apparently recovered. The point of depression still existed, and ran along until fifteen to sixteen years of age, after the age of puberty, when he commenced to have symptoms of Jacksonian epilepsy, commencing with one hand and going over the body, a well marked type of epilepsy. He was  
30 admitted to the hospital and I operated upon him, removing the depressed section of the bone, and he recovered.

Q. And have you known of other cases where epilepsy developed years after? A. That is the most recent in my memory, but I have seen other cases.

Q. Anything unusual about it developing about six years after the accident? A. This is the case I have given you. This developed ten  
40 or eleven years after.

DR. JOHN D. MCGILL—RE-CROSS 113  
LOUIS M. MECHLER, JR.—DIRECT

Q. Do you know of any other such cases? A. Yes; I have heard of such other cases.

RE-CROSS EXAMINATION by Mr. Simpson:

Q. Did you ever hear of a man twenty-seven years old, not a boy five years old, but a man twenty-seven, having been injured and then not developing it for six years afterwards? A. I don't say that I know exactly of twenty-seven years. I couldn't be so particular as that. 10

Q. No; but what you have told us about is a boy of five, who naturally was growing, and after five years his skull was growing and everything else, wasn't it, after he was five years old? A. To an extent, yes.

Q. Do you put him in the same class with a man of twenty-seven who had obtained his growth? A. I would if he was in the morbid condition. 20

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LOUIS M. MECHLER, JR., called and sworn on behalf of the defendants, testified as follows:

DIRECT EXAMINATION by Mr. Hobart:

Q. What is your business? A. Electrician of the Public Service Corporation.

Q. Were you formerly employed by the Hudson and Manhattan? A. I was. 30

Q. Work for them last December? A. Yes, sir.

Q. What position did you have with that company? A. Controller inspector.

Q. Where was your office? A. I had no office I was on the cars, in the Henderson Street shop.

Q. What did you have to do, if anything, in the way of inspecting the cars? A. Well, at that 40

time I was inspecting lights, heaters, panel boards, relays.

Q. I call your attention especially to this Pennsylvania car 1930 and ask you if you inspected that at any time prior to the 20th of December, 1911? A. The car was on the regular inspection list, and any time it came in with the rest of the cars—I paid no attention to that car, but I inspected it with the regular cars.

10 Q. Now was your attention called to that car within a day or two after this trouble? A. It was not.

Q. Did you inspect it shortly after the 20th of December? A. On the 22d it was in as a regular inspection. At that time I went over it with my usual work.

Q. Will you just tell us what you do? A. Why, I put in the heater switches and pull them  
20 out to see if I have got the proper arc—I could tell whether they had about the proper amount of current going through them—look along at the heaters to see whether they were not overheated, and tried the light circuits, tried the snap switches on the car and cleaned off the panel board and fixed up the relay.

Q. Find anything the matter with the electric apparatus? A. None at all.

30 Q. Any stray currents? A. I didn't look for any.

Q. Any fuses blow out while you were testing the circuits? A. No, sir. In that case I would have made repairs.

Q. Did you have charge of the inspection of that car on its last inspection prior to the 22nd of December? A. I did.

Q. You don't recall the particular date of that? A. No, sir, except what is on the card.

40 Q. When you made your inspection prior to

LOUIS M. MECHLER, JR—Direct & Cross 115

the 22nd of December, what did you do? A. Same as I always do, the same thing, except when a car does 6000 miles I clean the relays, but other than that it is always the same.

Q. Did you find anything the matter with the car when you made your inspection prior to December 22nd? A. No, sir.

CROSS EXAMINATION by Mr. Simpson:

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Q. You did not inspect the insulation of the wires, did you? A. No, sir.

Q. What you call inspection was merely to see if the heaters worked and if the lights worked, and what else? A. The relays.

Q. What is that? A. Has to do with the running of the car, so it does not speed up too fast or blow the breakers.

Q. Anything else? A. Snap switches or 20 marker lights, and turn them on, and the gauge lights.

Q. Anything else? A. No.

Q. Your inspection then was not to see whether there was any stray current or how the insulation was or whether the car was properly grounded, was it? A. No, sir; but if the heaters were not grounded properly that would show up; some of them would not heat up and others would. 30

Q. If the heaters were not grounded; but you did not run this car to test the motors, did you? A. No, sir; we only throw the control circuits out.

Q. In other words, your inspection was not to see whether there were any leaky currents, but it was to see whether the heaters and the lights and the switches were working, wasn't it? A. It was. 40

116 Louis M. Mechler, Jr—Re-Direct & Re-Cross

Q. And you O. K.'d the car? A. Yes.

RE-DIRECT EXAMINATION by Mr. Hobart:

Q. If there is anything wrong with the heating circuit would that become known to you by the inspection which you made? A. certainly would.

10 Q. How? A. In the first place, if I did not get an arc I would look at my fuse to see if it was blown.

Q. What do you mean by arc? A. The flash that you get when you pull a switch open with the current on it.

Q. If there had been anything wrong with the lighting circuit— A. The lights would be out or some of them would be over brilliancy, and in that case there would be a couple out  
20 then.

Q. Any fuses blow out? A. No, sir.

Q. Would they or did they? A. They did not.

Q. Well, if there was anything wrong, would they? A. Yes, sir; or else I wouldn't get an arc—in case there was one blown I wouldn't get an arc. In that case I would put a new one in and try it, and if that blew I would know there was a short circuit.  
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Q. In other words, you would not get this flame or flash when you turned on your switch? A. No, sir.

RE-CROSS EXAMINATION by Mr. Simpson:

Q. You haven't any recollection as to this specific car No. 1930? A. No, sir.

Q. Simply know that among other cars you  
40 inspected it? A. Yes, sir.

THOMAS JONES—Re-called—Direct 117  
JOHN J. MUNDY—DIRECT

Q. All the cars you inspected were all right, so you assume this was? A. Yes.

Q. You told Mr. Hobart you did not find any stray currents because you didn't look for any? A. No, sir; because that is not done except under exceptional cases.

Q. You did not look for any in this car? A. No sir.

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THOMAS C. JONES, recalled.

DIRECT EXAMINATION by Mr. Hobart:

Q. When you saw this gentleman seated in the car as you have already told us, did you notice anything about his appearance? A. Yes; I saw twitching of his eyes, he seemed to be nervous, his arms were working like.

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JOHN J. MUNDY, called and sworn on behalf of the defendants, testified as follows:

DIRECT EXAMINATION by Mr. Hobart:

Q. You are employed by the Hudson and Manhattan Company? A. Yes, sir.

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Q. Worked for them on the 20th of December? A. Yes, sir.

Q. At what point? A. Henderson Street.

Q. Do you recall your attention that day being directed to some man on the car? A. Yes.

Q. What did you see? A. When I got there I saw the man stretched on the bench with another man kind of fanning him with his hand.

Q. What was the appearance of the man on

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the bench? A. Why, he was twitching and there seemed to be some froth coming from his mouth.

Q. What was done with him? A. Why, I went to the train clerk's office right away and asked what happened to him. He said he was taken off the car—

10 Q. You must not tell what was said, unless it was something said by this man himself, the man that you saw lying on the seat? A. There wasn't anything said by the man.

Q. All right; then don't tell it. What was done with the man or what did he do? A. Why he was taken by his friend afterwards to the Grove Street end of the station.

Q. How did he get there? A. He was assisted by his friend.

20 Q. Was he unconscious? A. He didn't seem to be while walking up the platform.

Q. In order to get up to the Grove Street entrance from the train platform did he have to climb stairs? A. Yes.

Q. How many? A. Well, I should judge there is about forty-three.

Q. This man go up the stairs? A. Yes.

30 Q. With his friend helping him? A. His friend had him by the arm.

Q. Was he lifted up the stairs or how did he get up there? Take your hand away, please. A. The iron railing in the center of the stairs, he had hold of that with his left hand, moving it up; the friend had hold of him by the right arm assisting him up.

VERDICT DIRECTED 119

BOTH SIDES REST.

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Upon motion of defendants, a verdict was directed in favor of defendants by the court, and said verdict so directed was rendered by the jury.

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NEW JERSEY SUPREME COURT

November Term, 1912.

GEORGE CLARK,

vs.

PENNSYLVANIA R. R. CO.,  
AND HUDSON & MAN-  
HATTAN R. R. CO.

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Argued November Term 1912. Decided February Term, 1913.

ALEXANDER SIMPSON, for the Plaintiff.

VREDENBURGH, WALL & CAREY, for Pennsylvania R. R. Co.

COLLINS & CORBIN, for Hudson and Manhattan R. R. Co.

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Without some proof from which negligence may be fairly inferred, there is no jury question.

ARGUED BEFORE TRENCHARD AND MINTURN, J. J., PER CURIAM.

The plaintiff while in one of the electric cars of the defendant company, as a passenger from Manhattan Transfer to Grove Street, Jersey City, claimed to have been injured by receiving an electric shock, and brought this suit to recover damages for his injury. The verdict was for \$2,000, and this rule to show cause is brought to test the legality of the verdict, under the evidence.

The only testimony in the case as to the manner in which the accident happened, was that fur-

nished by the plaintiff himself. He testified that he sat down with one hand on the window sill, and the other on an upright enamel post, conversing with a companion; and while thus conversing received the shock, and was rendered unconscious, and remained in bed for two days and at home for five days as a result thereof. He and his friend sat at about the middle of the car, which was well filled with passengers, some of whom sat near him on the same side of the car. His friend, Bogie, who sat close to him was not at all affected by the shock. These were the plaintiff's only witnesses.

The defendant's witnesses testified that an examination of the car, and of its lighting, heating and motive power showed that the car and its appliances were not out of order at the time of the accident; that no one else on the train complained of feeling any shock; that the car was operated three or four times that day, and that nothing was out of order upon it, which could result in causing a shock. A passenger on the train who occupied the same seat from which plaintiff had been just taken, and who held on to the same white enameled bar, perceived no shock or sensation of any kind.

Mechanical experts on behalf of plaintiff and defendants made it clear that as between the human body and the steel car upon which it was riding a loose electric current would seek the point of least resistance, the steel body to find its way back to the generator, so as to describe a perfect current. That upon a steel car such as the one in question, which was grounded upon the steel rails, and thus put in contact with a current of electricity, a shock was impossible to a human body in the absence of a loose battery upon the car, isolated from contact with the car itself. The expert testimony made it manifest that in such a

construction as the car in question, a loose current of electricity, dangerous to a passenger, was a practical impossibility.

Tests of the car and its appliances were made shortly after the occurrence, and nothing was found to indicate defective insulation. Thorough examinations and inspections of the car by the defendants' employees were testified to, showing perfect or at least no exhibition of imperfect conditions.

A physician was called who testified that in the case of such a shock, equal to a contact with 500 volts of electric energy, a burn would show upon the person at the point of contact. There was no testimony of such a burn. It was shown that the plaintiff in June, 1906, had suffered from a fractured skull, occasioned by an injury, and had been unconscious for 17 days, and had been trephined. The medical testimony showed that epilepsy was a common result of such a fracture, and the plain inference is that the plaintiff was subject to such a condition under certain circumstances.

We have examined the testimony to ascertain whether there is any fact or congeries of fact upon which negligence under these circumstances, can be predicated, with the result as we have concluded that the cases seems to be absolutely barren of it.

The rule of *res ipsa loquitur*. if it be applied, called for an explanation from the defendants in view of the plaintiff's allegation of negligence, and his testimony concerning the shock; and that has been furnished to a convincing degree from which the inference is unavoidable, that the defendants neither did nor failed to do anything within the line of their duty, and the obligations imposed upon them by law, from which negligence of any character could at all reasonably be

inferred.

The defendants are liable to plaintiff only upon the theory of negligence, and unless there be some act of omission or of commission upon which such an inference can be based, the defendants were entitled to a direction of a verdict in their favor.

BARD vs. LOMBARD AYRES CO., 24 Vr., 233.

KINGSLEY vs. D. L. & W. R. R., 52 Vr. 536.

KENNEDY vs. NETHERLAND AM. CO., 47 Vr. 618.

Under these circumstances the rule to show cause must be made absolute.

