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NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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GEORGE H. SCHULER,

Plaintiff,

Defendant in Error,

vs.

NORTH JERSEY STREET

RAILWAY COMPANY,

Defendant,

Plaintiff in Error.

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In Tort.

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BRIEF FOR DEFENDANT IN ERROR.

By Black & Drayton.

STATEMENT.

The Assignments of Error in this case may be grouped under two points; first, whether there was negligence on behalf of the defendant shown at the trial, and second, whether there was contributory negligence shown on the part of the plaintiff. These two points in varied forms are shown by all the Assignments of Error. 30

The defendant in error insists that the Record shows that both of these questions were questions of fact properly submitted to the jury to determine as such. And there is no error in the Record. The facts stated, as shown by the Declaration and the 40

Testimony in the Record are these: The defendant company, the North Jersey Street Railway Company, was operating a double track street railroad (known as the Belt Line) on Bergen avenue, in the City of Jersey City; at a point on Bergen avenue opposite the Old Dutch Church grave yard, a street called Highland avenue, puts off from Bergen avenue running west. It does not cross Bergen avenue, the cemetery preventing. On the track nearest the cemetery opposite Highland avenue the cars run north toward the Court House, and the plaintiff on the eighth day of August, 1906, was riding on a car running on this track, on the track nearest Highland avenue or the lower track, the cars run in the opposite direction from the Court House going south. Record pages 8 and 9. At Highland avenue there are crosswalks across Bergen avenue on the north and south side. Record page 10, line 30. The car on which the defendant in error was riding stopped as it approached Highland avenue at the south side or first crosswalk. Record, page 9, line 21. George Schuler, the defendant in error, says of the occurrence:

Q. You say the car stopped, what did you do? A. I got off the car, I passed round behind the car to go down Highland avenue; as I came from behind the car I looked and just as I looked the car coming without ringing the bell at a good rate of speed, struck me, the car coming from the north.

Q. Did you see the car? A. No.

Q. Why not? A. I looked to see, it was coming too fast, I couldn't see it; didn't have time to see.

Q. Do you know about how many miles the ordinary car travels? A. Some very fast, some very slow; I should judge the way it hit me, I should judge it was going very fast.

Q. Fast, as compared with the average travel? A. It came upon me so quick I could not have time to say how fast, didn't have time to get out of the way,

*The facts of this case are distinguished from the case of Eagen v City & Ry Co 67 All 24*

or anything; it was coming very fast. (Record, pages 9 and 10, line 40 et seq).

Again on cross-examination (page 15, line 10):

Q. As you stepped from behind the car you were struck? A. Yes.

Q. You didn't see the car coming south? A. I saw it just as it struck me; I had no time to get out of the way. **10**

Q. How soon before it struck you did you see it? A. Just on the minute.

Q. You didn't see it before that? A. No.

Q. Didn't see it coming from Vroom street? A. No, sir; as I came from behind the car I looked and saw it, and it struck me at the same time.

Q. You didn't know whether it was going fast or not. A. It must have been, the way it hit me (line 31.)

Q. Did you look for the car? A. I looked for it, **20** as I came from behind I looked for the car.

Q. Was the front of the car on the south crosswalk of Highland avenue? A. The rear of the car was on the crosswalk.

Q. It was right at the crosswalk when you got off? A. Yes.

Henry Ertel, a witness for the plaintiff, (Record, page 22), who was riding on the car which struck the plaintiff, and who is a brakeman on the Central Railroad of New Jersey, Record, page 25, line 15: **30**

Q. Where were you standing in the car? A. Standing in the front part of the car where the doors are, my friend was sitting down; I was looking out of the door; looking straight ahead; I was facing right out of the front door; the door was closed.

Q. The first thing you saw was when this man stepped from behind the car? A. When he stepped round the corner of the car; our car hit him just that minute. **40**

Q. When was the first you saw the other car? A. I saw the other car coming up the street, and it had stopped.

Q. Was that car standing still or moving? A. It was standing still, and our car was going.

At page 23, line 15:

Q. Where was he when the car struck him? A.  
**10** He was just starting to come round the other car; he just come around enough in the front of the car for the car to hit him.

Q. About how fast was the car running when it struck Schuler? A. I should judge about fifteen miles an hour; it was going pretty rapidly.

Q. How fast was the car running in your judgment? A. About fifteen miles an hour.

Q. Were you in a position where you could see the motorman? A. Yes.

**20** Q. Did he or did he not sound the bell or ring the gong? A. I didn't hear no bell or gong.

Q. About how far did the car run after it struck Schuler? A. Half a block.

Q. That would be about how many feet? A. I should judge seventy-five to one hundred feet; 75 to 100 feet.

At page 24, line 10: "It struck him at Highland avenue and it run down about half-way of the  
**30** block."

Again he says at page 27, line 28: "That after striking Schuler, it ran about half-way of the block."

Henry Fick, a witness, who was riding on the car which struck the defendant in error, says, Record, page 29, line 14:

Q. Can you tell us how fast the car was running?  
 A. It was going a pretty good speed, I should judge.  
**40** Q. How far did the car run after striking the de-

fendant in error; about how far from where he was struck? A. About one hundred feet, I should judge, or something like that; it ran to "about the middle of the block." (Record, page 29, line 33).

Dorothy Hamill, says, at page 33, line 28:

Q. Can you tell us whether or not the car that struck him was going fast or slow? A. It was going so fast it made me shiver. 10

Q. Was there any gong or bell or other warning given? A. I didn't hear anything, only the swish of the car.

Ella Higgins, says, at page 37, line 15:

Q. Did you see the car before it had gotten in front of the church? A. No, it was going so quick it didn't give anybody any time to see it. 20

At line 26 she said: "When it stopped, it stopped directly in front of the church."

Q. How far is that from the corner? A. I could not tell you about the distance; there is a lot alongside of the church; I should judge that lot is about fifty feet wide.

Q. The church has how many pillars? A. Four large pillars.

Q. The car was directly in front of the church? A. Yes. 30

Mrs. Alberta Strang, says, at page 40, line 24:

Q. Did you see the car stop? A. Yes.

She says the car was running fast.

At page 41, line 3, she says: "It was going so fast." 40

Line 12:

Q. How far did the car run before it stopped? A. I should judge it run along to about the middle of the church; I really could not say; I was so excited at the time.

At page 42, line 33:

**10** Q. You didn't hear any bell? A. No.

Page 46:

"The car on which Schuler was getting off stopped"

**20** Bessie Strang, says, Record, page 43: She saw the car stop, saw Schuler get off. She says: "The car that struck him was running pretty fast and afterwards it ran almost to the other end of the church before it stopped."

Richard Connell, the conductor, was called; at Record, page 52, he says: "The car was going about seven or eight miles an hour; they were passing each other twenty-five feet south of Highland avenue; Record, page 53, line 21, and "the car didn't go more than ten or twelve feet and stopped."

**30** He also says on cross-examination, at page 54, line 30:

Q. At full speed they can be stopped at ten feet?  
A. I wouldn't say that.

Q. At half speed they can be stopped in five or six feet? A. Yes.

At page 55, line 30, he says:

**40** "The car ran ten or twelve feet after it struck Schuler."

Maurice Halloran, the motorman, (Record, page 56); his statement is substantially the same as that of the conductor; both cars were passing each other, but he adds this significant fact, Record, page 57, line 40:

Q. Had he just turned behind the other car? A. Just came from right behind the other car.

Q. He didn't get in front of you on the track? A. NO, JUST THE CORNER OF THE FENDER **10**  
HIT HIM AND HE FELL ONE SIDE.

Q. How far did your car go? A. I stopped my car right there.

Q. How far? A. I should judge about six or seven feet.

Q. Was that a long car you had? A. No, a double truck car; it is the kind they use on the elevator; kind of a short car.

At line 33, page 58:

**20**

Q. Had you any experience as motorman prior to that? A. No, sir.

He had been a deck-hand and was in the employ of the company altogether four months.

At page 61, he says he sounded the gong at Highland avenue.

Percy Deming, a witness called for the plaintiff in error, Record, pages 62, 63, line 22, contradicts both the conductor and the motorman, and says the car on which Schuler had been riding, stopped at Highland avenue. **30**

The defendant in error, at the trial, insisted that the car on which Schuler was riding stopped at the south crosswalk of Highland avenue; that while so stopped and while the passengers were getting off the southbound car came at a high rate of speed, **40**

fifteen miles an hour, Record, p. 23, line 22, without giving any warning and struck the defendant in error. The defendant in error was in the exercise of due care looking for the car when he was struck by the CORNER OF THE FENDER OF THE SOUTHBOUND CAR.

The plaintiff in error at the trial insisted that neither car stopped, that the defendant in error  
 10 jumped from the car, ran around the rear and was struck by the other car while moving at a slow rate of speed. This theory is absurd, but whichever theory is true, it was for the jury to decide.

The legal questions arising under this state of facts were passed upon by this Court in the case of the Consolidated Traction Company v. Scott, 29 Vroom, page 692. In that case, unlike this, it was at the intersection of streets that crossed each other,  
 20 and the person who was injured was a young boy, a pedestrian in the street and not a passenger on a car that had stopped. That case holds that a street railroad company propelling its cars by electricity along the public streets of a city owes a duty to the public which requires it to so regulate the movements of its cars at the intersection of such streets when receiving or discharging passengers from a standing car as not to unnecessarily expose pedestrians to the danger of collision with a passing car on the opposite track. At page 686 it was there said: "The  
 30 counsel for the plaintiff in error in his argument admitted that the company might owe such a duty to a passenger who alighted from the northbound car and had passed behind in making his exit, by reason of its contractual relations with the passenger."

The rule requiring one to look and listen before crossing a steam railroad is there discussed. The questions in this case are both disputed questions of  
 40 fact, therefore, under the Scott case reported in 29

Vroom, page 692, it was the duty of the trial judge to submit these questions to the jury on the evidence, they could not have fairly found otherwise than they did. That case was cited with approval by this Court on the point involved in this case in:

Consolidated Traction Company v. Haight,  
30 Vr., 581.

Cited also in:

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Fitzhenry v. Consolidated Traction Co., 35  
Vr., 677.

Dobert v. Troy City Ry. Co., 36 N. Y.  
Supp. 105.

Cited with approval in the Scott case is on all fours with the case at bar.

In the Scott case the boy was in the center of the street, in this case the defendant in error was struck **20** by the CORNER OF THE FENDER AS HE WAS LOOKING FOR THE APPROACH of the car from behind the car which had stopped to let him off.

It is settled law in this Court that the rights of pedestrians and the trolley cars are equal on the streets. They stand on the same footing; they both must exercise care. The defendant in error in this case had left the car when it had stopped for that **30** purpose, at the place designated, to allow the defendant in error to cross the street on the crosswalk at that identical place, and he was looking forth for the approach of a car on the south track coming in the opposite direction to that of the car he had just left, when, as the motorman says, "THE CORNER OF THE FENDER HIT HIM." If the approaching car had been in the exercise of due care, such as sounding a bell or ringing a gong or approaching the standing car at a moderate or reason-**40**

ably safe rate of speed, the defendant in error not only would not, but could not, have been hurt; he could have heard and would have seen the approaching car in time to save himself; he had a right to presume that the approaching car when approaching would exercise due care, seeing the standing car letting off passengers with the expressed purpose of crossing the street at that point, that due care was to approach at a moderate rate of speed, at least ring  
**10** a bell or sound a gong, and give a warning of its approach.

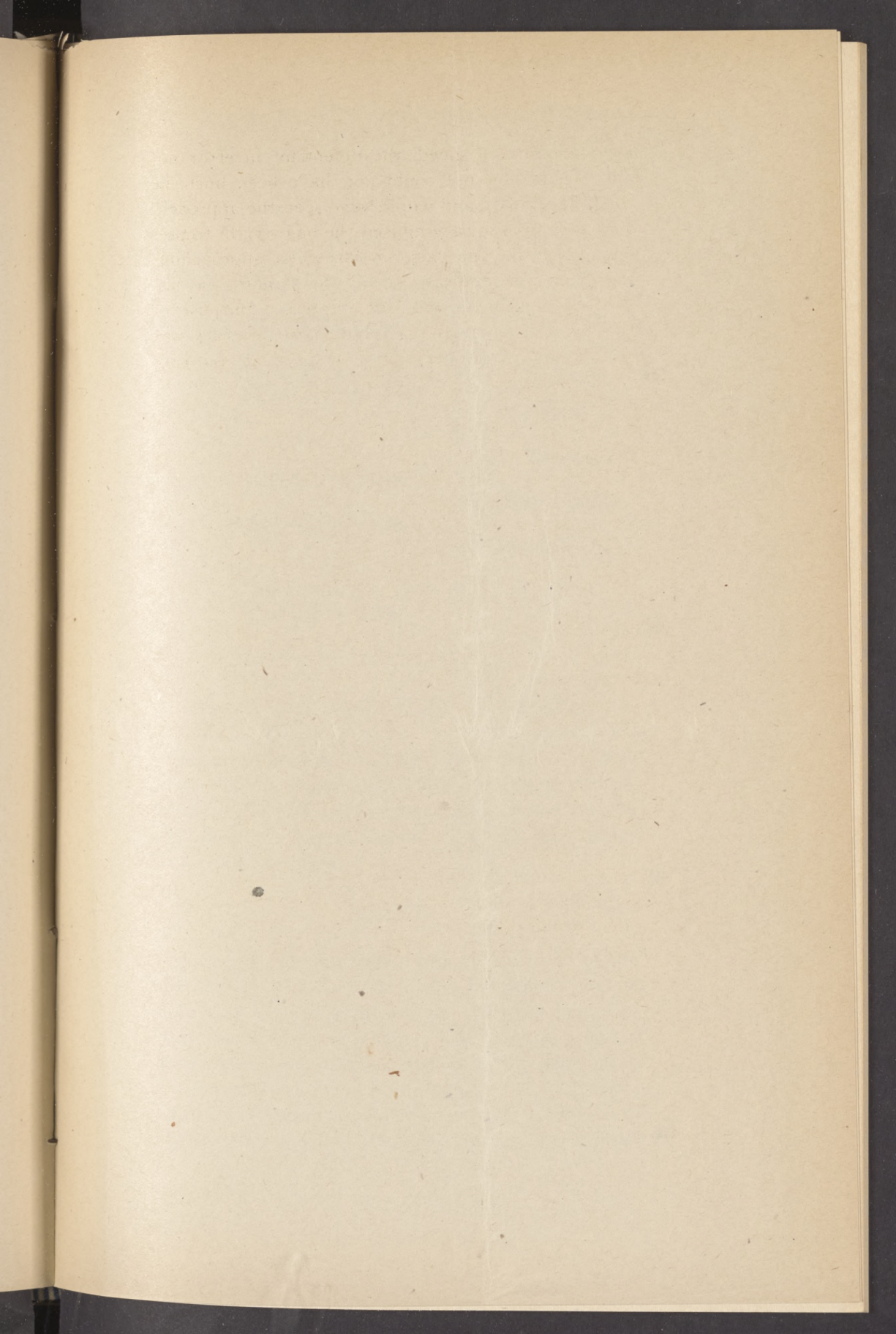
The rights being equal, that is, standing in equal footing to the crosswalk on Bergen avenue at Highland avenue, can it be said as a matter of law, that the defendant in error was bound to wait until the car on the north track had departed before the defendant in error attempted to cross the street? In analogy to the rule and rights of the parties at a  
**20** steam railroad crossing, we submitted that both on principle and authority, he was not. The reason is, because their rights at that crossing on the street were equal, i. e., on an equal footing, not so at a steam railroad crossing, the entire list of judicial utterances are in harmony on this point, not only in this Court, but in the courts of the sister States.

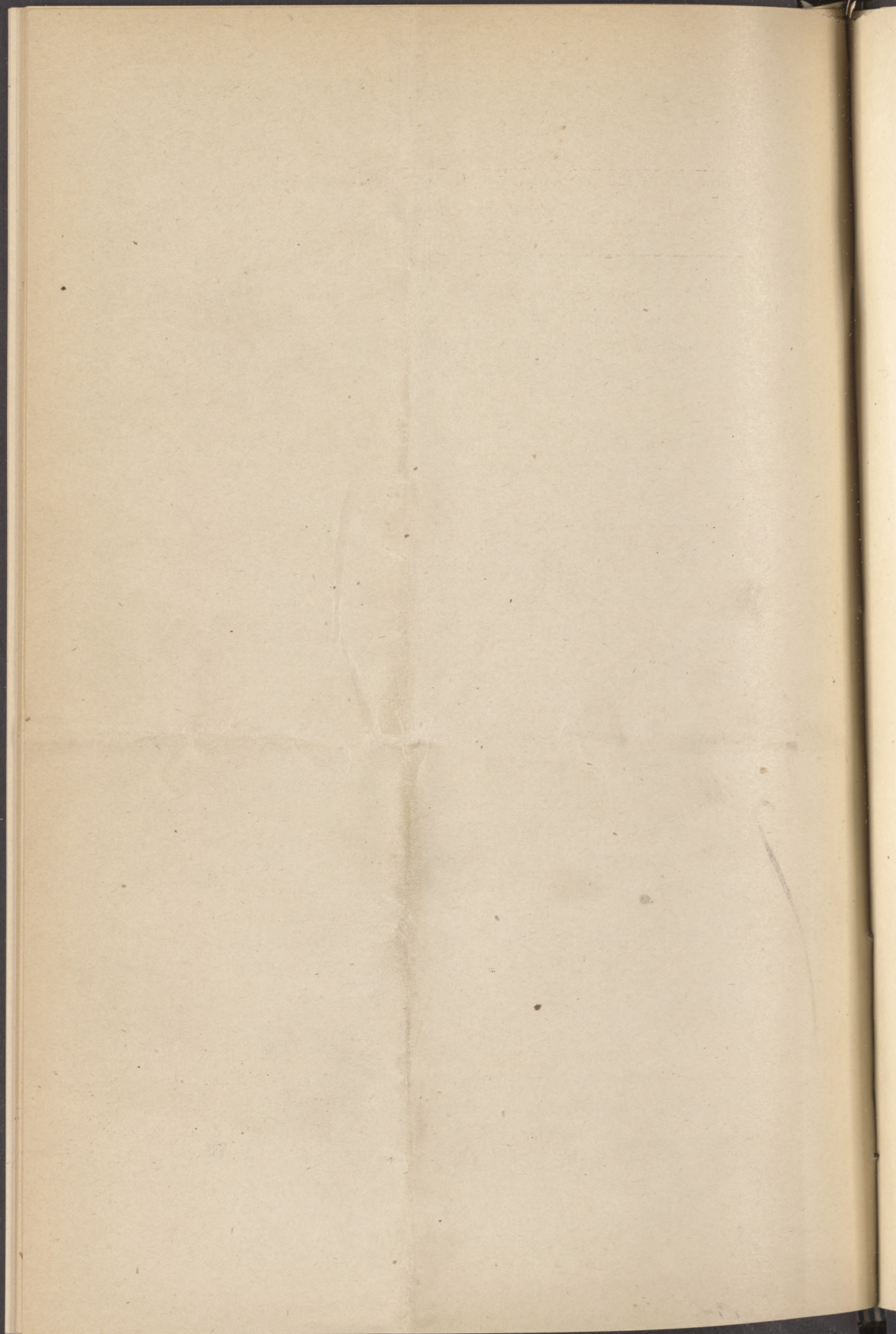
The defendant in error was bound to exercise due care; he was in the exercise of due care; the plaintiff  
**30** in error was not. Under the facts of this case they were questions of fact for the jury, and the jury have found properly in favor of the defendant in error under the instructions of the trial court.

We respectfully submit that the judgment of the Hudson Circuit Court should be affirmed.

BLACK & DRAYTON,

Counsel for the Defendant in Error.







behind the car from which he had alighted, and was struck by a car going south as he stepped from behind the other car.

The testimony of the plaintiff and his witnesses will be found on pages 8&c., of the printed book. The plaintiff testifies (page 8) that he boarded a car proceeding north on Bergen avenue at Montgomery street and Bergen avenue. His destination was  
**10** Highland avenue, two blocks north of Montgomery street, where he lived. He alleged the northbound car stopped at the southerly side of Highland avenue, that he alighted, passed behind the same to go west on Highland avenue, and "as I came from behind the car I looked and just as I looked, the car coming without ringing the bell at a good rate of speed, struck me, the car coming from the north." (page 10).

**20** On cross examination he states (page 15) that he did not see the southbound car until it struck him, and only judges the speed from the fact that he was hit as soon as he stepped from behind the car, from which he had alighted; he states: "Q. Did you look for the car? A. I looked for it, as I came from behind I looked for the car. Q. You could not see the car because your car was in your vision, obstructed your view? A. Yes."

**30** Henry Ertle, the next witness, testifies that he was a passenger on the southbound car and was standing in the doorway; that he did not see the plaintiff until he was struck, and that he was struck just as he stepped from behind the other car. That the northbound car was standing, and that in his judgment, the southbound car was going at the rate of fifteen miles an hour, and that he did not hear any gong; that the accident happened south of  
**40** Highland avenue.

The next witness was Henry Frick who states (page 28) that he did not see the accident; that he does not know whether the gong was ringing or not, that he cannot tell how fast the car was going; that he does not know where the accident happened; that the plaintiff was 75 feet south of Highland avenue where he was picked up (page 31).

The next witness was Dorothy Hamill, who states (page 32) on direct examination that she resided **10** one hundred and eighty-five feet (185) west of Bergen avenue on Highland avenue, and was in the house at the time of the accident; that she did not see the southbound car at all, and yet endeavors to state that it was going very fast because she heard what she terms a "swish." On cross examination she states that her house is 285 feet west of Bergen avenue, and that she did not see the southbound car until it was standing still. **20**

The next witness was Ella Higgins, who states, (page 36) that she resides on the north side of Highland avenue, the third house west of Bergen. That she did not see the accident, nor either car until after the accident; that she saw the crowd standing there after the accident (page 39).

The next witness was Alberta Strang, who states (page 39) that she was walking northerly on the easterly side of Bergen avenue, with her daughter **30** Bessie Strang. That she did not see the plaintiff get off the northbound car; she contradicts herself many times throughout her testimony, and gives no positive direct evidence. She states, however, that both cars were in motion when they passed each other (pages 42-43-49).

The next witness was Bessie Strang who testifies, (page 43) that she was walking with her mother; that she saw the plaintiff get off of the northbound **40**

car, walk behind it, and was immediately struck by the southbound car; that she did not see the southbound car until it struck plaintiff.

The only witness of the plaintiff who gives any idea as to the speed of the southbound car, is the witness Ertle who claims that it was going fifteen miles an hour as he judged.

- 10 None of the other witnesses can tell anything about the speed of the car.

Upon the plaintiff's evidence the Court should have non-suited upon the motion of the defendant.

- 20 Taking the plaintiff's story as true, it will be seen that he admits that he alighted from the northbound car, walked around behind it without looking, and was struck as he stepped from behind the northbound car. He emphatically states that he did not look for the southbound car until he stepped from behind the other car, that the looking and striking were simultaneous. Under such circumstances, he was guilty of contributory negligence.

The great weight of authority is to the effect that it is negligence per se to endeavor to cross street railway tracks without looking or listening for the approach of cars.

- 30 "But in regard to street railroads, and especially those whose cars are propelled at a considerable rate of speed by underground cables or overhead electric wires, the general disposition of the Courts now is to apply the rule which is applied in respect to steam railways, and to hold that the failure of the traveller, unless excused by special circumstances, to use his faculties by looking and listening for the approach of cars, before he attempts to cross a street railway, is negligence per se, such as will, if the evi-
- 40 dence be undisputed, authorize the Court to direct

a non-suit or to give a peremptory instruction to the jury to find for the defendant."

Thompson on Negligence, (2d Edition)  
Vol. 2, par. 1438.

Vol. 1 St. Ry. Reports, p. 670, note (b) and cases cited.

This is the rule in U. S. Courts, Michigan, Colorado, Missouri, Pennsylvania, California, Massachusetts, New York, Louisiana, Ohio, Minnesota, Wisconsin and other states. **10**

The weight of authority is also to the effect that it is contributory negligence as a matter of law to attempt to cross a street railway track behind a car which has just passed without looking to see whether a car is approaching on the further track.

Thompson on Negligence, 2d Ed. Vol. 2  
par. 1461. **20**

Blaney v. El. Traction Co., 184 Pa., State  
524.  
39 Atl. Rep., 294.

Thorsell v. Chicago City R. Co., 82 Ill.,  
App., 375.

McCarthy v. Detroit, &c., Co., St. Ry. Co.,  
(Mich.) 79 Northwestern Rep., 631. **30**

"It is contributory negligence as a matter of law  
.....to pass hurriedly around the rear end  
of an electric car, from which the person has just  
alighted, without looking or listening to find out  
whether a car is approaching on the other track."

Thompson on Negligence, 2d Ed. Vol. 2,  
par. 1461.

Smith v. City &c., R. Co., 29 Ore. 539. **40**

Baltimore Trac. Co., v. Helms, 84 Md. 515  
36 Atl. Rep. 119.

Stowers v. Citizens St. Ry. Co., 21 Ind.  
App. 434.

Kan. City R. Co., v. Gallagher, 75 Pac.  
469.

10 Metropolitan St. Ry. Co., v. Ryan, 77 Pac.  
267.

Indianapolis St. Ry. Co., v. Tenner, 67 N.  
E. 1044.

Doty v. Citizens' St. Ry. Co., 88 N. W.  
1050.

Landigram v. Brooklyn Heights R. Co.,  
48 N. Y. Supp. 454.

20 Girandina v. St. L. & M. Ry. Co., 185 Mo.,  
330.

The Courts of this State have held that it is a per-  
son's duty when about to cross a street to use his  
power of observation (and hearing) to discover ap-  
proaching vehicles and a reasonable judgment when  
and how to cross.

30 Newark Pass. Ry. Co., v. Block 26 Vr. 605.

Sheets v. Connolly R. R. Co., 25 Vr. 518.

North Rudson R. Co., v. Flannagan, 28 Vr.  
696.

Brady vs. Con. Trac. Co., 35 Vr. 375, and  
many other cases.

In this instance, the evidence plainly discloses that  
had the plaintiff performed this duty in the least de-  
gree, he would have known the car was coming, and  
40 have avoided the accident.

The only reason given by the plaintiff for not observing the approaching car was that "the other car obstructed his view." (page 15.) The plaintiff was aware that cars might pass at that point. He knew that there were double tracks in the street, and that after stepping from behind the standing car, he would be upon the other track, and in the path of a car approaching on that track. Having this knowledge he neglected to take ordinary precautions and look for the approaching car, because "the other car obstructed his view." Was it not his duty to delay going upon the track until he had taken precautions to discover if another car was approaching and if his view was temporarily obstructed, to wait until that obstruction was removed, or to look around the obstruction and ascertain if anything was approaching? 10

The Court of Errors in Newark Passenger Ry Co., v. Block above, states:

"In crossing the roadway a foot passenger must use his power of observation to discover approaching vehicles, and a like judgment when and how to cross without collision. In the latter case, doubtless the degree of care required exceeds that required in the former case, not because the right of the foot passenger and the right of a driver of a vehicle differ, but because of the circumstances. The vehicle usually travels at a greater speed; it cannot be so quickly stopped or diverted from its course; a street car cannot deviate from its track, while a passenger on foot may quickly stop, turn aside or even retrace his steps." 20 30

"SO IT MAY BE ALSO GENERALLY SAID THAT IF OBSTACLES TEMPORARILY INTERVENE TO PREVENT OBSERVATION REASONABLE PRUDENCE WOULD DICTATE DELAY 40

UNTIL SUCH OBSERVATION AS IS  
REQUISITE HAS BEEN MADE."

Newark Pass. Ry. Co. v. Block, 26 Vr. 612.

This rule has been applied to both steam railroads  
and street railroads in this state.

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"If the vision or hearing of such a person is limited by permanent obstructions or disturbances he should for that reason be cautious; if his vision or hearing is limited by transient obstructions or disturbances, under circumstances which oblige him to rely on the sense thus limited, he should wait until it has again become efficient to warn him of peril. One sense if well used, may give warning enough. To go on a railroad crossing in the way of a train which can neither be seen nor heard, but which would be either visible or audible except for some temporary hindrance to sight or hearing, is to be negligent."

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"The governing rule was thus declared by this Court (Errors and Appeals) in Newark Passenger Ry. Co. v. Block, 26 Vr., 605, 612, in language immediately referring to impediments to sight, but equally applicable to impediments to hearing; it may be generally said that if obstacles temporarily intervene to prevent observation, reasonable prudence would dictate delay until such observation as is requisite has been made."

Central R. R. Co. v. Smalley, 32 Vr. 280.

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"He was driving an ice wagon, with scales, ice tongs and other utensils, along a macadamized roadway, with his horses on a jog trot, causing considerable noise, which might

interfere with his hearing the usual signals. His wagon was a covered one with curtains down and a slanting hood over the front, with a glass in the curtain on either side. Under such circumstances the duty of the traveller on the highway does not stop with looking and listening, but he must exercise care to select a position from which an effective observation can be made, and he must also exercise care to make the act looking and listening reasonably effective." 10

Conkling v. Erie R. R. Co., 34 Vr., 338-342. Citing Newark Pass. Ry. Co., v. Block above.

"So too it is entirely settled that if his ability to see or to hear an approaching train is temporarily diminished or destroyed by obstructions or disturbances which are transient in their nature, reasonable prudence requires him to wait until such obstructions or disturbances have disappeared and his senses have again become efficient to warn him of danger before attempting the crossing." 20

Swanson, Admr. v. Central R. R., 34 Vr. 605-607.

Keyley v. Central R. R. 35 Vr., 357. 30

Burke v. Central R. R. Co., 35 Vr., 578.

Citing the Block Case.

McGrath v. North Jersey St. Ry. Co., 37 Vr., 312.

Hageman v. North Jersey St. Ry. Co., 65 At. Rep. 834 (1907). 40

As to other States see:

Busby v. Philadelphia Trac. Co., 17 Atl. Rep. 895.

McCarthy v. Detroit Citizens Str. Ry. Co., 79 Northwestern 631.

Chrisman v. East Harrisburg City Pass. Ry. Co., 24 Atlantic Rep. 596.

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Doherty v. Detroit Citizens St. Ry. Co., 76 Northwestern 377.

Garrect v. Peoples Ry. Co., (1906) 64 Atl. (302) 256.

While it may be true that, under some circumstances, a traveller is not bound by the same strict rules to "STOP, look and listen," while crossing a street railway track, as he is while crossing a steam railroad, it is also true that the traveller is bound to use all his faculties (sight and hearing included) as to how and when to cross; AND IF HIS OBSERVATION IS TEMPORARILY OBSTRUCTED HE MUST WAIT UNTIL SUCH OBSTRUCTION IS REMOVED. (See Block and other cases cited above).

30 Obstructions as applied in the rule embraces obstructions to hearing as well as obstructions to sight.

Applying, therefore, the rule, it is plainly evident that the plaintiff was guilty of contributory negligence in this case. Had he looked he must have seen. There was nothing to prevent him seeing the approaching car when he alighted and before passing to the rear of the standing car. The approaching car was in sight (see testimony of Mrs. Strang, page 39 etc). The plaintiff's statement therefore that he did not see is evidence that he did not look.

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Again, under the rules he should have waited until the car which obstructed his view proceeded and left unobstructed view of the tracks. (See Block and other cases above cited).

Further, although the plaintiff says he heard no signal, the presumption must be that he paid no attention to his surroundings, but hurried across in an inattentive manner. He was bound to use his faculty of hearing. (See *C. R. R. v. Smalley* above). **10**  
That he did not do so is apparent.

If the noise of the car upon which he had been riding, and had just alighted from, obstructed his hearing he was bound in law to wait until such obstruction was removed, or to delay crossing until such time as he could hear.

*Merkel v. Erie R. R. Co.*, 20 Vr. 473.

*West Jersey Railroad Co. v. Ewan*, 26 Vr. **20**  
574.

*Newark Pass. Ry. Co. v. Block*, 26 Vr. 612.

*Central R. R. Co. v. Smalley*, 32 Vr. 279.

Citing *Newark Pass. Ry. Co., v. Block* .  
above.

*Conkling v. Erie R. R. Co.*, 34 Vr. 338-342. **30**

Citing *Newark Pass. Ry. Co. v. Block*  
above.

*Swanson Adm. v C. R. R. Co.*, 34 Vr. 605-  
607.

*Keyley v. Central R. R. Co.*, 35 Vr. 357.

The plaintiff states that he did not see the car until he was struck. He admits that he did not look for the car before going behind the car from which **40**

he alighted. The southbound car was in plain sight—Mrs. Strang saw it coming—it could be plainly heard—Mrs. Hamill says she heard it at a distance of two hundred and eighty-five feet. The plaintiff alleges that he did not know the car was coming. If he had looked or listened he must have known.

10 It is a well established rule that if the car was within sight and could have been seen by the plaintiff had he looked, or could have been heard by him, had he listened, the law will presume that he neither looked nor listened, or else, that having perceived it coming, he thrust himself in front of it and took his chance of getting across ahead of it.

20 “This brings us to the question whether the law will tolerate the absurdity or fraud of allowing the traveller to prove that he looked but did not see the train; where the view was unobstructed, and where, if he had looked, he must have seen it. The law will tolerate no such nonsense. If the position of the traveller, with respect to the approaching train, was such that he must have seen it if he had looked, or heard it, if he had listened, the law will conclusively presume that he neither looked nor listened, or else, that, having perceived it coming, he thrust himself in front of it and took his chances of getting across ahead of it.”

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Thompson on Negligence (2d Ed.) Vol. 2, par. 1655 and cases cited.

This rule has been applied in New Jersey in the case of *Righter v. P. R. R.* 13 Vr. 180 at 187.

40 *Brady v. Consolidated Trac. Co.*, 35 N. J. L. 375.

The Court allowed the case to go to the jury in view of the Scott case. The case is that of Scott vs. Consolidated Traction Company, 29 Vr. 682. This was a case where a boy of about seven and a half years of age was walking across the street and endeavored to cross behind a standing car of defendant, and as he stepped from behind the standing car he was struck by a car coming in an opposite direction at a rapid speed. The testimony was that no bell or gong was sounded by the approaching car, and that no one heard the same, and that the car approached without noise or sound of any kind, and that no one heard it approach or was aware of its coming, that the car was beyond control of the motorman and that the boy was carried thirty or forty feet before the car stopped. The Court was requested to charge "if the plaintiff's intestate entered upon the southbound tract without first looking for an approaching car, the plaintiff cannot recover." The Court refused to so charge, and error, was assigned upon such refusal. The Court of Errors in considering the case said (By Justice Hendrickson):

"I think in view of the authorities named and CONSIDERING THE EXTREME YOUTH OF THE PLAINTIFF'S INTESTATE, that the trial judge could not have properly charged this request, and thus hold THAT UNDER THE CIRCUMSTANCES OF THIS CASE the failure of plaintiff's intestate to look for an approaching car before entering upon the southbound track would be negligence per se that should bar a recovery."

The Court thus send the case to the jury in view "of the circumstances of this case (the absence of noise, the car being beyond control &c) and of the

extreme youth of the plaintiff's intestate"—seven and a half years. Had the plaintiff been an adult, we think the Court would have held differently.

---

II.

10 The testimony of the defendant differed from that of the plaintiff in the essential points of speed, and absence of warning, and that the northbound car was moving instead of standing still. The motorman of the car, (who was not in the employ of the defendant at the time of the trial) testifies that his car was not moving at a higher speed than six or seven miles an hour (page 67). That the northbound car was in motion when he commenced to pass it, that his car stopped within six or seven feet after the plaintiff was struck, and that he had sounded his gong; that 20 the accident happened south of Highland avenue, and not at the cross walk.

The conductor (who was not in the employ of the defendant at the time of the trial) testified (page 52 &c.) that his car was going about seven or eight miles an hour that both cars were in motion at the time they passed each other; that the accident happened about twenty-five feet south of Highland avenue, and that his car went about twelve feet after the plaintiff was struck. 30

The witness Deming testifies (page 62) that he was a passenger on the southbound car, and that his car went about half a length after plaintiff was struck; that his car was not going over three or four miles an hour; that he heard the motorman's gong when the man appeared from behind the other car, and that when he looked the northbound car was at the north crosswalk of Highland avenue (the accident happened south of the south cross walk of 40 Highland avenue).

If therefore, the plaintiff had alighted from the northbound car while it was in motion, and the southbound car commenced to pass it while both were in motion, and the plaintiff stepped suddenly from behind the moving northbound car, immediately in front of the moving southbound car, the motorman could not be held to have been negligent. He certainly could not be expected to presume that the man would step suddenly in his pathway from behind a moving obstacle. 10

The weight of the evidence as to speed is certainly with the defendant. The motorman and conductor who were constantly riding on these cars in performance of their daily labor, are certainly the best judges as to the speed of the car. The witness Deming, a passenger, placed the speed of the southbound car at three or four miles an hour.

The defendant's case not having cured any defects or omission in, nor supplied any facts necessary to the plaintiff's case, the Court should upon motion have directed a verdict for the defendant upon the grounds stated. 20

---

### III.

The Court erred in refusing to charge the second request to charge of the defendant, as follows:

30  
 "If the approaching car could have been seen by the plaintiff before going on the track in front of the same, and he did not see it (although he states he looked) the law would presume he did not look, or that having perceived it coming, he thrust himself in front of it, and took his chance of getting across ahead of it."

The request stated the law on the subject, and should have been charged by the Court. 40

10 “This brings us to the question whether the law will tolerate the absurdity or fraud of allowing the traveller to prove that he looked but did not see the train; where the view was unobstructed and where if he had looked he must have seen it. The law will tolerate no such nonsense. If the position of the traveller, with respect to the approaching train was such that he must have seen it if he had looked, or heard it, if he had listened, the law will conclusively presume that he neither looked nor listened, or else, that having perceived it coming, he thrust himself in front of it and took his chances of getting across ahead of it.”

Thompson on Negligence (2d Ed.) Vol. 2  
Par. 1655 and cases cited.

20 This rule has been applied in New Jersey in the cases of:

*Righter v. P. R. R. Co.*, 13 Vr. 180 at page 187.

*Brady v. Con. Trac. Co.*, 35 N. J. Law 375.

The Court erred in refusing to charge the third request to charge of the defendant as follows:

30 “The plaintiff having resided in the immediate vicinity of the accident for sometime, he must be presumed to have known that cars were liable to pass at any time.”

The above request states the law on the subject, and should have been charged.

“In the present case, the testimony is that the plaintiff lived only a block or two away from Newark avenue, where the accident occurred, AND WE  
40 MUST ASSUME THAT SHE WAS FAMILIAR

WITH THE RUNNING OF THE TROLLEY  
CARS THERE AND THE DANGER OF COL-  
LISION THEREWITH IN CROSSING THEIR  
TRACKS UNLESS CARE IS EXERCISED."

See opinion of Hendrickson, Judge, (Court of Errors and Appeals) in *Fitzhenry v. Consolidated Traction Co.*, 64, N. J. Law, 674, at bottom of page 678.

The Court erred in refusing or failing to charge the fourth and fifth requests to charge of the defendant as follows: **10**

"(4). If the plaintiff knew that a car was liable to pass on the adjacent track, and his view was obstructed, by the standing car, he should have waited until the car had proceeded or until he could have assured himself there was no danger before going on the track." **20**

"(5). If the plaintiff knew cars were liable to pass on the southbound track, and if a standing car temporarily intervened to prevent observation, reasonable prudence would dictate delay until such observation as was requisite had been made before going upon the track."

The above requests undoubtedly correctly stated the law on the subject; this is beyond dispute. **30**

"So it may be also generally said that if obstacles temporarily intervene to prevent observation, reasonably prudence would dictate delay until such observation as is requisite has been made."

*Newark Pass. Ry. Co. v. Block* 26 Vr. 612.

*Central R. R. Co. v. Smalley*, 32 Vr. 280 **40**

(Citing the Block case).

Conkling v. Errie R. R. Co., 34 Vr. 338-342.

(Citing the Block case).

Swanson admr. v. Central R. R. Co., 34 Vr. 605-607.

10

Keyley v. Central R. R. Co., 35 Vr. 357.

Burke v. Central R. R. Co., 35 Vr. 578.

(Citing the Block case).

McGrath v. North Jersey St. Ry Co., 37 Vr. 312.

20

“If obstacles intervene to prevent observation, reasonable prudence requires delay until such observation as is requisite has been made.”

Hegeman v. North Jersey St. Ry. Co., 65 Atl. Rep. page 834.

(Decided 1907).

30 The Court erred in refusing to charge the eighth request to charge handed up by the defendant as follows:—

“If the plaintiff entered upon the south-bound tracks without first looking for an approaching car, he was guilty of such contributory negligence as would bar a recovery.”

In the case of Harbison v. Camden and Surburban Ry. Co., 65 Atl. Rep. page 868, (decided 1907) Justice Gummere states as follows:

40

"In the second place, the failure of the plaintiff to look behind him before attempting to cross over, and so ascertain whether or not he would be in jeopardy by doing so from the approaching car, was itself an act of negligence which was largely, if not wholly, responsible for the accident. That such failure on the part of the plaintiff will bar a recovery for injuries received by him has been frequently declared by our Courts. North Hudson Ry. Co. v. Flanagan, 57 N. J. Law, 696, Jewett v. Paterson Ry Co., 62 N. J. Law 425; Fitzhenry v. Consolidated Traction Co., 54 N. J. Law 674; Hannon v. North Jersey Street Railway Co., 65 N. J. Law 547; Solatinow v. Jersey City & Ry. Co., 70 N. J. Law 154."

The requests of the defendant above set forth correctly stating the law on the subject, the Court not only should have charged the same, but in law it was bound so to do, and his refusal or failure to so charge was error.

"When parties differ upon the construction of the law which is to govern their case, and one of them states to the Court the points of difference and requests its opinion for guidance of the jury, IT IS BOUND TO GIVE IT. The great business of the Court in jury trials is to guard the jury from error in matters of law, where difficulties arise, fairly resulting from the case. It must not decline or evade its duty in this respect. Here the Court did evade its duty. Reading the statute and telling the jury that they could examine it was no instruction of the law."

Pullen v. Bonney, 1 South 125.

Broadwell v. Nixon, 1 South 362.

The law on this subject is fully set forth in the case of *Roe v. State*, 16 Vr. 49, where the Court held:

10

“It is not sufficient for a Court in response to several distinct requests by defendant’s counsel to charge upon several propositions of law to say that the jury must take the law as the counsel for defendant had read it, in his address, but the Court should charge on each request, either in its own language, or by reading the extract relating thereto, which counsel had quoted, and instructing the jury that such is or is not the law. There should be an answer to each request that states a proposition of law, fairly arising out the case.”

20

It is respectfully submitted that the verdict should be set aside.

W. D. EDWARDS,  
EDWIN F. SMITH,  
Of Counsel with Defendant.

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Since the above was printed, this whole question was settled by this Court in the case of Egan v. Jersey City, Hoboken and Paterson Street Railway Company, decided June Term, 1907, where the Court held:

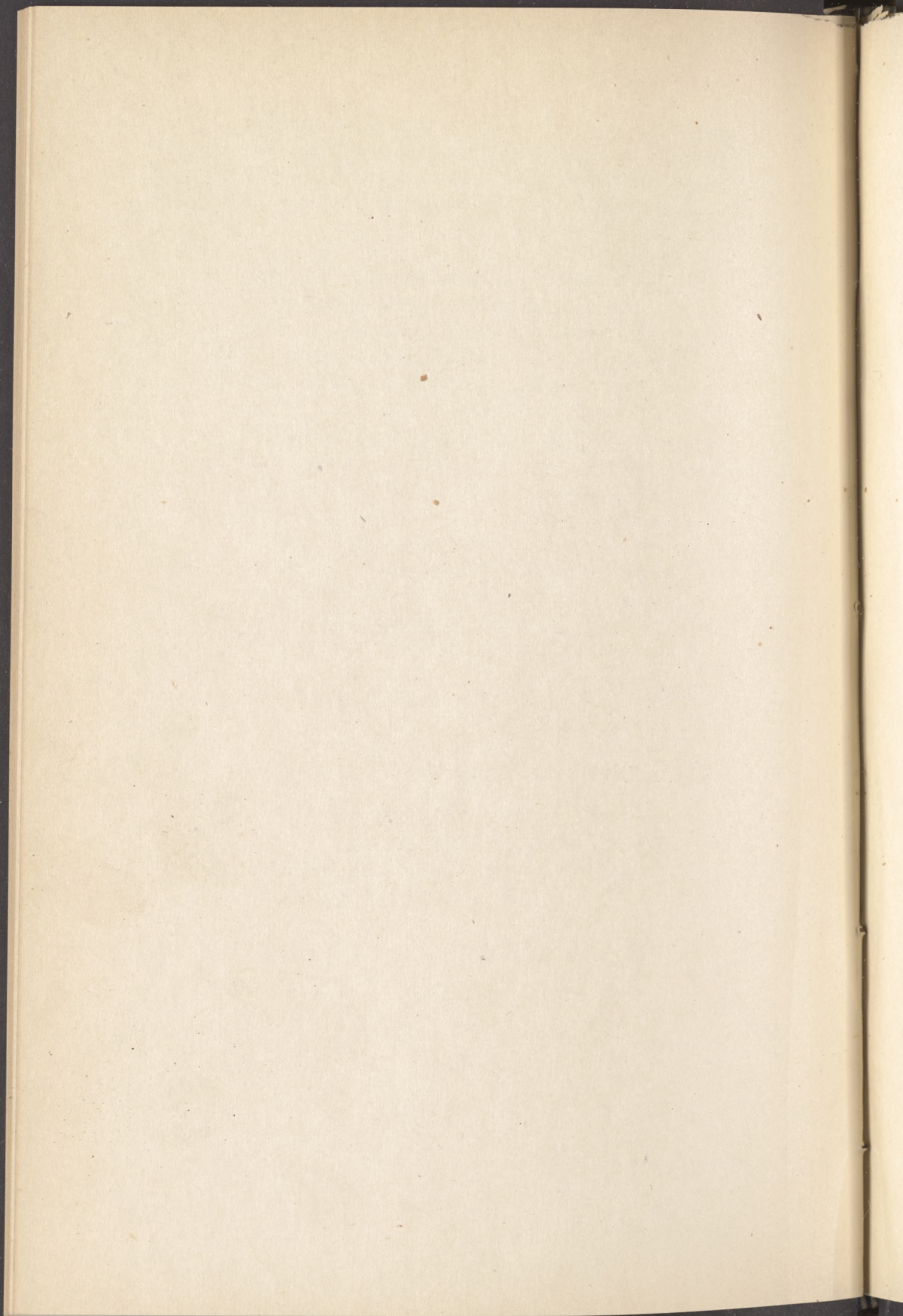
“When one who has alighted from a trolley car in which he had been a passenger, passes behind the car and proceeds to cross the track on which cars run in the other direction, making no observation for his own safety except to “look up” when the car from which he had alighted prevented his view of the other track, and without waiting until that car had passed sufficiently far to permit observation, enters on that track and is struck by a car there on before he had seen it, which is not shown to have been running at excessive speed, his negligence contributory to the injury he received is so disclosed as to leave no question to be submitted to the jury.”

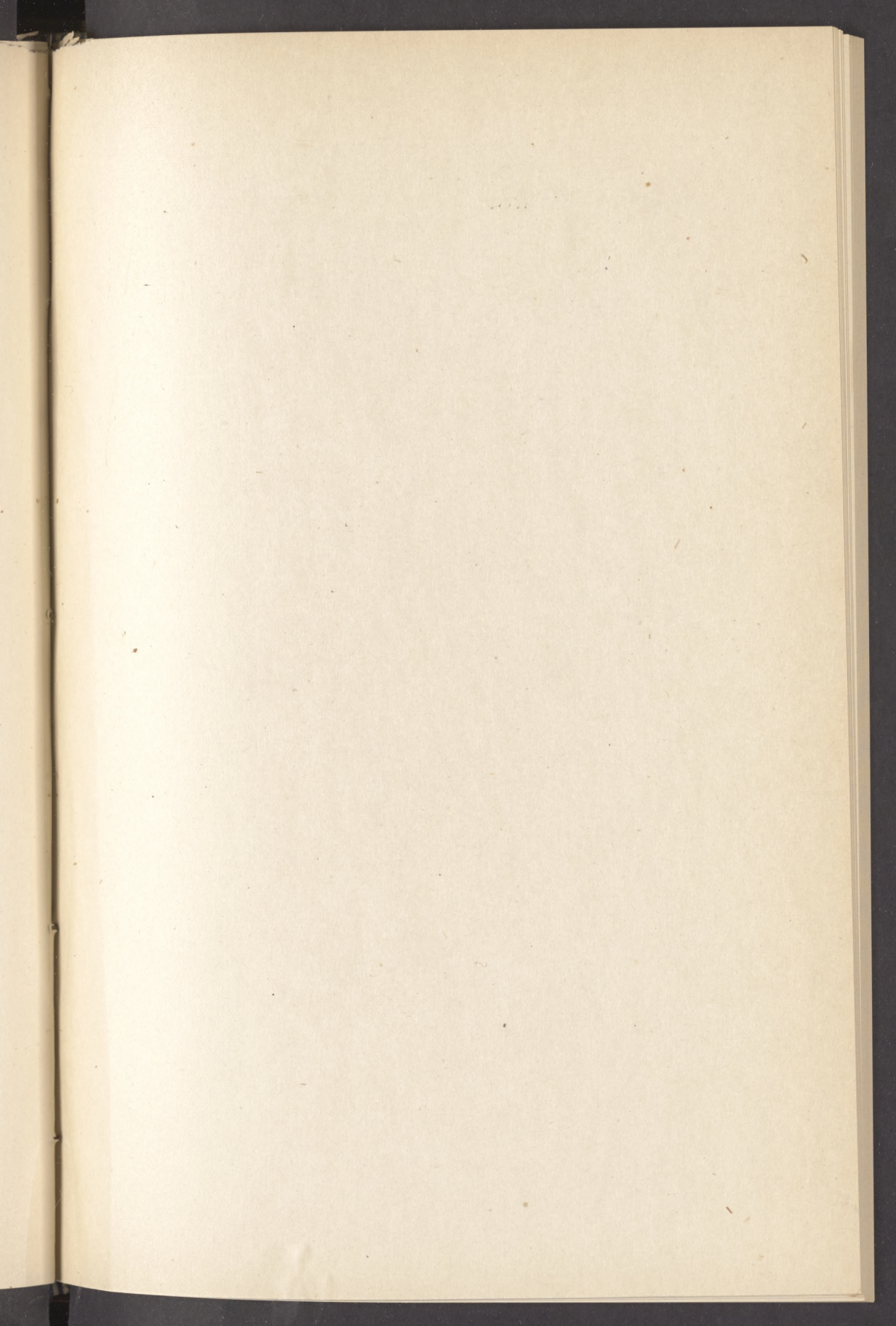
The facts in the Egan case are similar to the facts in the case in hand.

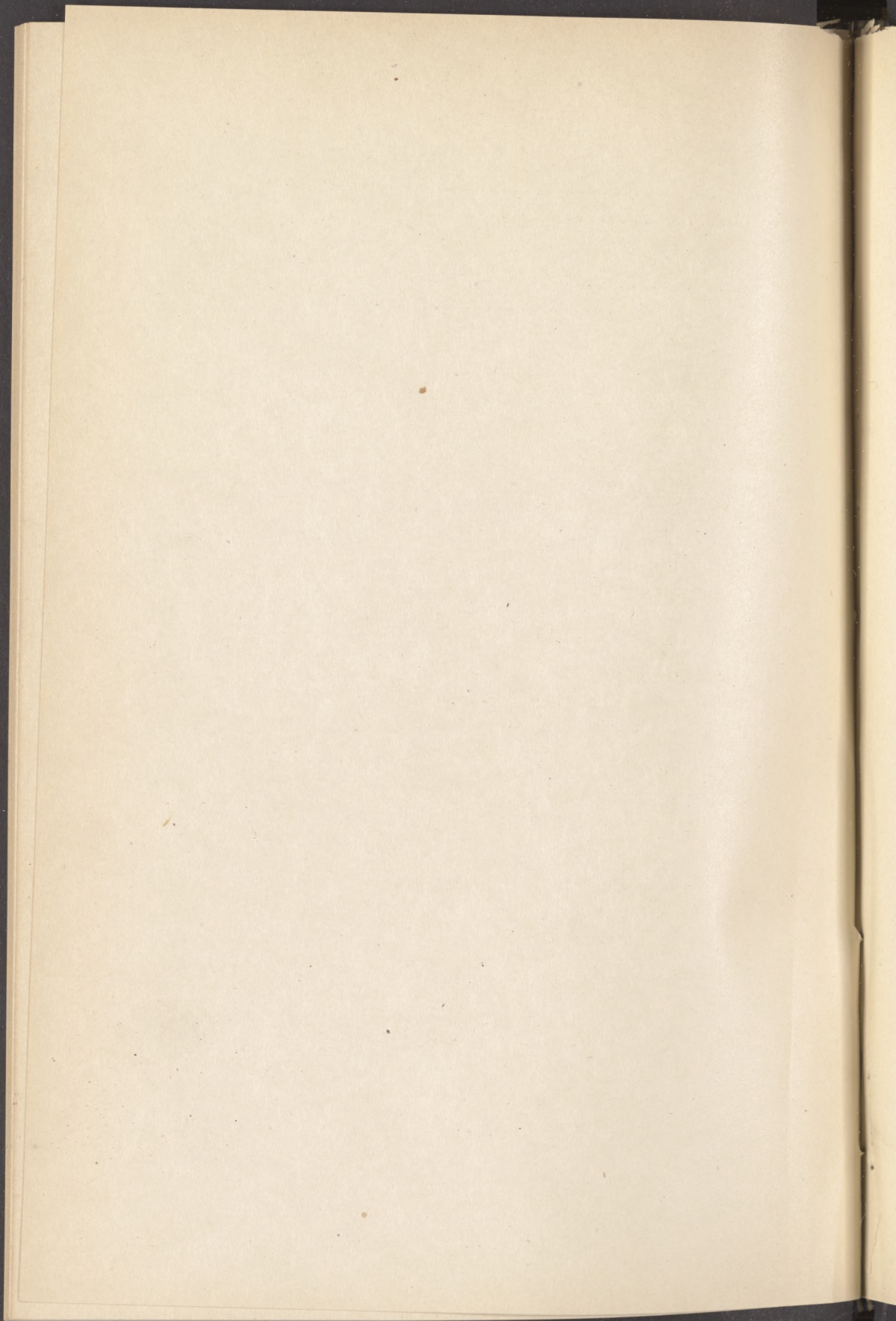
The verdict should be set aside.

W. D. EDWARDS,  
EDWIN F. SMITH,  
Of Counsel with Defendant, **30**  
Plaintiff in Error

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## INDEX.

	PAGE
Writ of Error .....	1
Return .....	2
Declaration .....	2
Plea .....	6
Judgment .....	6
Motion for Non-Suit.....	74
Motion for Direction of Verdict.....	74
Requests to Charge .....	74
Charge of the Court.....	76
Exceptions to Refusals to Charge.....	80
Assignments of Error.....	83

### PLAINTIFF'S WITNESSES.

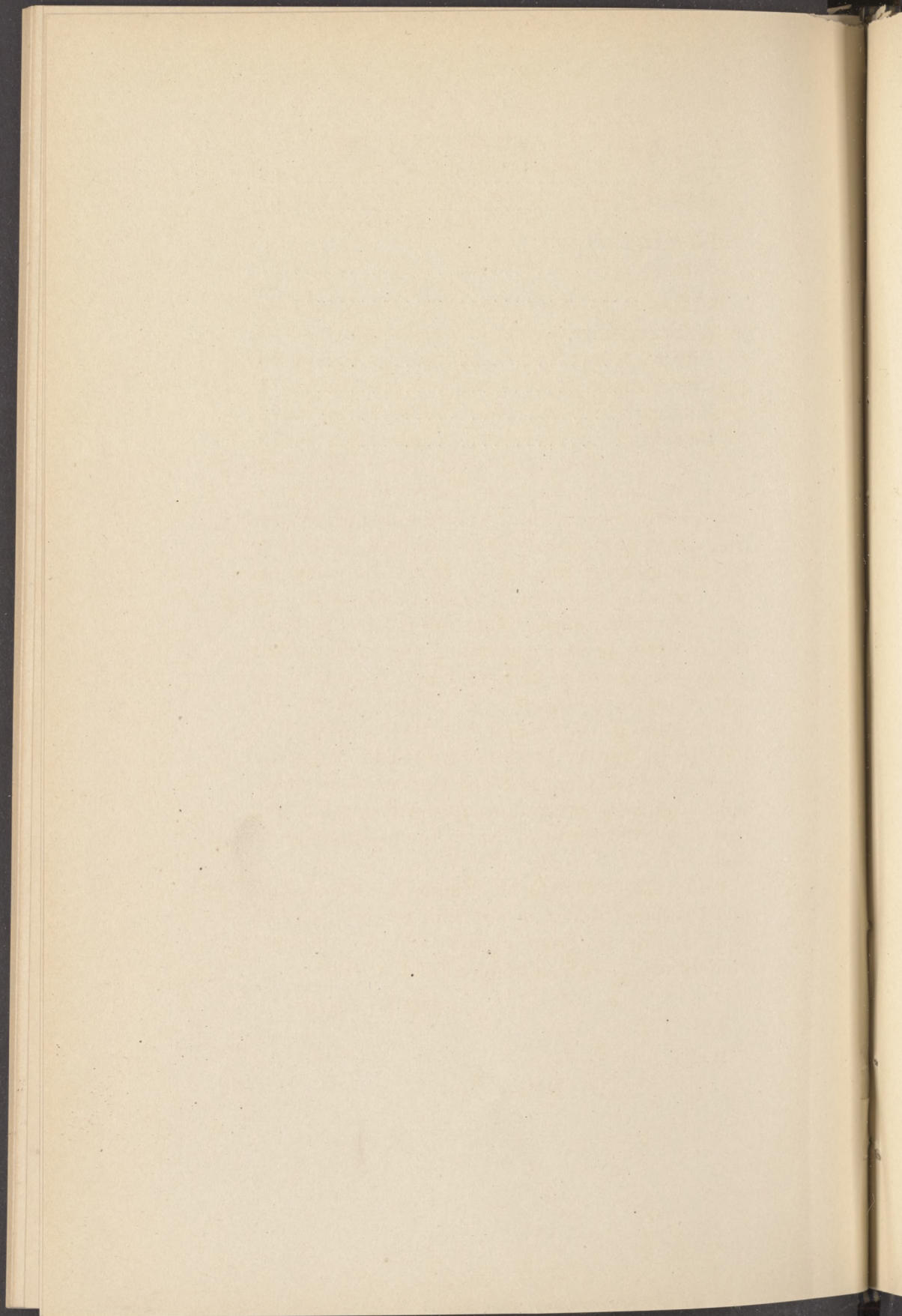
George H. Schuler,	
Direct Examination .....	8
Cross .....	14
Recalled:	
Direct .....	72
Cross .....	73
Gordon K. Dickinson,	
Direct .....	20
Cross .....	21
Henry Ertel,	
Direct .....	22
Cross .....	25
Henry Fick,	
Direct .....	28
Cross .....	30

	PAGE
Dorothy Hamill,	
Direct .....	32
Cross .....	34
Ella Higgins,	
Direct .....	36
Cross .....	38
Mrs. Alberta Strang,	
Direct .....	39
Cross .....	42
Recalled:	
Direct .....	46
Cross .....	47
Bessie Strang,	
Direct .....	43
Cross .....	45
Dr. Henry Spence,	
Direct .....	50
Cross .....	51

#### DEFENDANT'S WITNESSES.

Richard Connell,	
Direct .....	52
Cross .....	54
Maurice Halloran,	
Direct .....	56
Cross .....	58
Re-direct .....	61
Re-cross .....	61
Percy Deming,	
Direct .....	62
Cross .....	63
George Heck,	
Direct .....	64
Cross .....	65

	PAGE
John Hunt,	
Direct .....	66
Cross .....	67
Dr. Edward Hart,	
Direct .....	67
Cross .....	69
Dr. William Arlitz,	
Direct .....	70
Cross .....	71
Re-direct .....	72
Re-cross .....	72



NEW JERSEY, ss.:

THE STATE OF NEW JERSEY to  
the Hon. Benjamin A. Vail, Judge of  
(Seal.) our Circuit Court at Jersey City, in  
and for the County of Hudson,

GREETING:

Because in the record and proceedings, and also  
in the giving of judgment in a plaint which was in  
our Circuit Court, holden at Jersey City, in and 10  
for the County of Hudson, between George H.  
Schuler, plaintiff, and the North Jersey Street  
Railway Company, defendant, of an action in tort,  
manifest error hath intervened, to the great dam-  
age of the said North Jersey Street Railway Com-  
pany, as by its complaint we are informed, we be-  
ing willing that speedy justice should be done to  
the parties aforesaid, in this behalf do command  
you, distinctly and openly, to send under your seal 20  
the record and proceedings aforesaid, with all  
things touching and concerning the same, to our  
Judges of our Court of Errors and Appeals in the  
last resort in all causes, at Trenton, on the 7th  
day of March next, together with this writ; that  
the record and proceedings aforesaid, being in-  
spected, we may cause to be further done there-  
upon what of right and according to the law and  
custom of the State of New Jersey ought to be 30  
done.

WITNESS, William J. Magie, our Chancellor  
and President Judge of our said Court of Errors  
and Appeals at Trenton, aforesaid, the 16th day  
of February, nineteen hundred and seven.

S. D. DICKINSON,  
Clerk.

WILLIAM D. EDWARDS,  
Atty.

40

The answer of Benjamin A. Vail, Esquire, the Judge of the Circuit Court holden in and for the County of Hudson, whereof mention is within made, the record and proceedings of the plaint within named, with all things touching the same, I send to our Court of Errors and Appeals in the last resort in all causes in New Jersey, at Trenton, at the day and year within contained, in a certain  
 10 schedule to this writ annexed, as within commanded.

B. A. VAIL,  
 Judge.

HUDSON COUNTY CIRCUIT COURT,

Of the fifth day of November, nineteen hundred  
 and six.

20

HUDSON COUNTY, ss.:

The North Jersey Street Railway Company, a street railway corporation, organized under the Laws of the State of New Jersey, the defendant in this suit, was summoned to answer unto George H. Schuler, the plaintiff herein, in an action of tort; and thereupon the said plaintiff, by Black & Drayton, his attorneys, complains, for that whereas, the  
 30 said defendant, on the eighth day of August, Nineteen Hundred and Six, was the owner and possessor of a certain passenger car or cars, which were operated, propelled and run along by electric power, in, on and upon certain railway tracks running in opposite directions, in the possession of and under the control and management of the said defendant, the said tracks being situated upon and extending along Bergen Avenue, at a point where  
 40 Highland Avenue intersects the said Bergen Avenue, being a public street and highway in the City of Jersey City, in the County of Hudson aforesaid,

and it then and there became and was the duty of the said defendant to use due and proper care in the use, management and control of the said passenger car or cars, while being operated, propelled and run along said public street or highway, running in opposite directions thereon, and upon said tracks as aforesaid, so as to avoid colliding with and running into persons lawfully walking along or crossing said public street or highway, after alighting from one of said cars, at Highland Avenue aforesaid, and to use due and proper care in operating, propelling and running said car or cars along and across public streets or highways, so as to avoid colliding with or running into persons lawfully walking along or crossing said public street or highway, after alighting from said car or cars, and to operate, propel and run said car at such a rate of speed so as to keep the same within safe and proper control and to give due, proper and timely notice or warning by sounding a gong or ringing a bell, of the approach of the said car at the crossing and crossways of streets or public highways, when approaching a car standing on the other track, for the purpose of letting off passengers, which car was going in the opposite direction from the car so approaching;

Yet the said defendant, not regarding its duty in that behalf did not use due and proper care in the use, management and control of said passenger car, while said car was being then and there operated, propelled and run along said public street or highway, known as Bergen Avenue, at the point where Highland Avenue intersects the same; while a car going in the opposite direction had stopped for the purpose of letting off passengers, and at the crosswalk at that point over Bergen Avenue, so as to avoid then and there colliding with and running into persons lawfully walking

along or crossing said public street or highway, known as Bergen Avenue, at a point where Highland Avenue intersects the same, and it, the said defendant, did not use due and proper care in operating, propelling and running said car along the said public street or highway, known as Bergen Avenue, at the point where Highland Avenue intersects said Bergen Avenue, so as to avoid col-  
10 liding with and running into persons walking along or crossing said public street or highway known as Bergen Avenue, at the point where Highland Avenue intersects said Bergen Avenue, who had alighted from a car going in the opposite direction, which was standing at that point, and did not then and there operate, propel and run said car at such a rate of speed so as then and there to keep the same within said and proper control, as it ap-  
20 proached the car on the other car, standing at that point for the purpose of letting off passengers, and did not then and there give any notice or warning by sounding a gong or ringing a bell, of the approach of said car at the crossing of Bergen Avenue, at Highland Avenue, where it intersects Bergen Avenue, but wholly failed and neglected so to do.

And the said defendant did, on the day and year  
30 aforesaid, at Jersey City, in the County of Hudson aforesaid, by its servants, so carelessly, negligently and improperly operate, propel and run said car, in, on, and upon and along said public street or highway known as Bergen Avenue, and upon said tracks as aforesaid and at such a high rate of speed, so as to lose the proper control of the same, and did not then and there give any notice or warning by sounding a gong or ringing  
40 a bell, of the approach of said car at the crossing of Bergen Avenue, at Highland Avenue, where the same intersects Bergen Avenue, and while a cer-

tain other car of the said defendant was standing still to let off and take on passengers, so as to warn persons getting off the said car so standing still, and crossing Bergen Avenue, of the approach of said car coming from the opposite direction, he, the said plaintiff, could not then and there see or hear the approach of the car going in the opposite direction at Highland Avenue, and at the intersection of Highland Avenue, on the crosswalk of Bergen Avenue at that point, and thereby then and there collided with and ran into the said plaintiff, and without any fault, neglect or carelessness on his part, the said plaintiff, who was then and there, as he had by law a right to be, crossing the said public street or highway known as Bergen Avenue, at the crosswalk at Highland Avenue, where it intersects Bergen Avenue, he, the said plaintiff, having alighted from the car of the said defendant company, going in the opposite direction, it having stopped for that purpose, the said car of the defendant company going in the other direction from the one so standing, and with such force and violence struck the plaintiff so as to throw the said plaintiff upon said street or highway, whereby the plaintiff was badly bruised, cut and knocked to the ground insensible. his forehead and head was cut, his shoulder bruised, and he was then and thereby seriously, painfully and permanently bruised and wounded internally and injured to such an extent that the plaintiff's life was despaired of; that by means of the premises. the plaintiff became sick, sore lame and disordered, and so remained and continued for a long space of time, to wit, from thence hitherto, during all of which said time, he, the said plaintiff, suffered and underwent great pain, and in the future and during his natural life will suffer and undergo great pain and so hinder and prevent, and in the future will be hindered and

prevented from transacting and attending to his necessary and lawful business affairs, by him during all that time to be performed and to be transacted, and lost and was deprived of great gains, profits and advantages which he ought, and otherwise would have devired and acquired, and thereby also the plaintiff was forced and obliged, and will in the future  
 10 be forced and obliged, to lay out and expend divers large sums of money, amounting in the whole to the sum of Two Hundred and Fifty Dollars, in and about endeavoring to be cured of said wounds and bruises and injuries so received as aforesaid, at Jersey City, in the County of Hudson aforesaid; wherefore the said plaintiff says, that he is injured and has sustained injuries to the amount of Five Thousand Dollars, and therefore  
 20 he brings his suit, etc.

BLACK & DRAYTON,  
 Attorneys for Plaintiff.

And the said defendant, the North Jersey Street Railway Company, by Bedle, Edwards & Holmes, its attorneys, comes and defends the wrong and injury, when, etc., and says that it is not guilty of the torts above laid to its charge, or any or either  
 30 of them, or any part thereof, as the said plaintiff hath above thereof complained against it, and of this it puts itself upon the country, etc.

BEDLE, EDWARDS & HOLMES,  
 Attorneys of Defendant.

Therefore, to try the issue above joined let a jury come before the said Circuit Court at Jersey  
 40 City aforesaid on the fifth day of February, A. D., One thousand nine hundred and seven, as yet as the term of December, in the year of our Lord, one

thousand nine hundred and six, who neither, etc., by whom, etc., to recognize, etc., because as well, etc., the same day is given to the parties aforesaid, at this day before the said Circuit Court come the said parties by their attorneys aforesaid and the jurors of the jury above mentioned also come, who to speak the truth of the matters aforesaid, being chosen and tried and sworn, say upon their oath, that the said defendant is guilty as the said plain- 10  
tiff hath above thereof complained against, and they find in favor of the plaintiff and against the defendant, and they assess the damages of the plaintiff on occasion of the premises at Two thousand dollars (\$2,000) over and above his costs and charges by the said plaintiff about his suit in this behalf expended.

Therefore it is considered that the plaintiff do recover against the said defendant his damages 20  
aforesaid in manner aforesaid found, and also  
dollars and  
cents for his said costs and charges by the said Court now adjudged, and which said damages, costs and charges in the whole amount to  
dollars and

And the said defendant in mercy, etc.

Judgment entered and signed this seventh day of February, One thousand nine hundred and 30  
seven.

B. A. VAIL,  
Judge.

GEORGE H. SCHULER.

HUDSON COUNTY CIRCUIT COURT,

DECEMBER TERM, 1906.

10	GEORGE H. SCHULER,  <i>vs.</i>  THE NORTH JERSEY STREET RAILWAY Co.,	}	Tort.
----	-------------------------------------------------------------------------------------	---	-------

Mr. Black for Plaintiff.

Mr. Smith for Defendant.

This cause was tried at the Hudson Circuit on  
 20 February 5th, 1907, before Judge Benjamin A.  
 Vail, with a jury.

Mr. Black opens.

GEORGE H. SCHULER, the plaintiff, being  
 sworn, testified as follows:

DIRECT EXAMINATION BY MR. BLACK:

30 I live at 45 Highland Avenue, Jersey City; have  
 lived there since March; previous to that at 318  
 Fourth Street, Jersey City; have lived in Jersey  
 City all my life; born here; I am thirty-two years  
 old; I remember the 8th day of August last, I was  
 on one of the cars of the defendant on that day,  
 in the evening about half past six; I transferred  
 from the Montgomery Street car to the Bergen  
 Avenue line car going toward the Court House;  
 40 there are two tracks on Bergen Avenue, the Ber-  
 gen Avenue line runs north and south; the track  
 on the right, going from Montgomery Street to

## GEORGE H. SCHULER.

the Court House, runs north; the cars on the other track run south. The first street after leaving Montgomery Street is Glenwood Avenue; then comes Highland Avenue. Glenwood Avenue ends at Bergen Avenue, on the other side of Bergen Avenue it is called Mercer Street. The next street is Highland Avenue; that is west of Bergen Avenue, and does not cross Bergen Avenue, it runs west from Bergen Avenue. On the southeast corner of Highland Avenue is the old Dutch Reformed Church, on the opposite side of Bergen Avenue is a cemetery. Highland Avenue does not cross Bergen Avenue. 10

Q. On this evening were you riding on the car of the defendant company? A. Yes, on the car going from Montgomery Street toward the Court House. 20

Q. What happened when you got to Highland Avenue. A. The car stopped at Highland Avenue to let me off, it stopped on the south side, at the crosswalk, that is the side nearest Montgomery Street, that is the side that is approached first going in that direction, that is the side on which the church is.

Q. What did you do after the car stopped? A. 30  
The car stopped to let me off, it stopped on the lower side of Highland Avenue.

Q. Tell us whether or not there were any other passengers on that car? A. There were other passengers on that car.

Q. Did you know any of them? A. No, sir.

Q. How many? A. I don't know how many were there, it was a pretty full car, people coming home from work. 40

Q. You say the car stopped, what did you do?

A. I got off the car, I passed round behind the

## GEORGE H. SCHULER.

car to go down Highland Avenue, as I came from behind the car I looked and just as I looked the car coming without ringing the bell at a good rate of speed, struck me, the car coming from the north.

Q. Did you see the car? A. No.

10 Q. Why not? A. I looked to see, it was coming too fast, I couldn't see it, didn't have time to see.

Q. Do you know about how many miles the ordinary car travels? A. Some very fast, some very slow, I should judge the way it hit me I should judge it was going very fast.

Q. Fast, as compared with the average travel? A. It came upon me so quick I could not have time to say how fast. didn't have time to get out  
20 of the way, or anything, it was coming very fast.

Q. What is the distance between the two inner rails of the tracks, that is the west rail of the northbound track and the east rail of the southbound track? A. About the same distance as the rails are apart.

Q. About how wide is Bergen Avenue at that point? A. I could not say, about the ordinary width of any street.

30 Q. Tell us whether or not at the point where the car stops there was a crosswalk, across Bergen Avenue, leading to Highland Avenue? A. Yes, there is a crosswalk there, also a crosswalk at the upper side.

Q. Where did the car strike you? A. Struck me full in the body, that is all I know, until after I came to at home. I was in bed for a while before I came to.

40 Q. Indicate to the jury in what position you were when the car struck you? A. It must have struck me on the right hand side and threw me, and I struck my head, I landed on my head.

## GEORGE H. SCHULER.

Q. What part of the car struck you? A. The front part of the car.

Q. What do you mean by the front part? A. The car struck me so quick I could not say just the exact point of the car that struck me, when it struck me I didn't know any more. I know the car hit me.

Q. Where did it carry you to? A. I was insensible, it threw me on the other side of the street. 10

Q. What was the next that you knew anything about? A. When I was in bed.

Q. From the time that the car struck you until you were in bed you don't know anything about the occurrence? A. No, only that when somebody brought me some water and I came to and realized I was hurt very bad when they were carrying me home. 20

Q. Where were you when you realized that? A. After they gave me the water they carried me home.

Q. Do you know where you were with reference to the church at that time? A I know they had me on the other side of the street when they gave me water and I came to, I was on the other side of the street by the cemetery, I mean the other side from the church and on the cemetery side. I was on the east side of Bergen Avenue, that is the cemetery side. 30

Q. After you were taken home did you send for a physician? A. My father, I believe, sent for the physician, Dr. Henry Spence.

Q. Any other physician attend you? A. Dr. Gordon K. Dickinson attended to me after that. 40

Q. How long were you laid up in bed? A. I was in bed four weeks.

## GEORGE H. SCHULER.

Q. How long were you in the house? A. About six to eight weeks.

Q. What was your business? A. In the trucking business, New York City, for myself.

Q. What became of your business during the time you were laid up? A. While I was laid up I had to hire a man to run my business and pay him a big salary. The business was neglected and I lost three firms. I worried in bed every night.

Q. What became of your trucking business? A. I had to sell out my trucking business.

Q. What did the trucking business consist of? A. I did trucking for business men.

Q. That requires personal supervision? A. Yes.

Q. Was it a paying business? A. Yes.

Q. What became of it? A. I had to sell it, it was not taken care of and I was losing money.

Q. Who did you hire? A. A man named Barry. I had to pay him twenty-five dollars a week.

Q. Did you pay him that during the whole time that you were laid up? A. Yes.

Q. As the result of this six weeks housing, what was the result of that to your business? A. A total loss, financial loss, a loss in not taking care of it. I lost four of the best houses that I done work for, and I had to sell the business because I was not fit to take care of it. I had to sell it at a sacrifice.

Q. How much of a sacrifice? A. About five thousand dollars I had to sacrifice in the business.

Q. You spoke of Dr. Spence attending you; did he come there that night? A. Yes.

Q. How often did he attend you? A. He came every day until I was able to get up out of bed.

## GEORGE H. SCHULER.

Q. Have you had a bill from him? A. No, sir.

Q. How many visits did he make? A. Fourteen visits.

Q. What was the occasion to call in Dr. Dickinson? A. Dr. Spence got Dr. Dickinson to call in to examine me.

Q. Did Dr. Dickinson render you a bill? A. 10  
Yes, \$22.

Q. Any other expenses such as drugs and medicines? A. Drugs to take inwardly, and liniments to rub me with.

Q. From whom were those purchased? A. From the druggist.

Q. What was the cost of those? A. I should judge about twenty-five dollars.

Q. So that the expenses you have paid out are 20  
the liniments and drugs, Dr. Spence, Dr. Dickinson \$22, and a man at twenty-five dollars a week for six weeks? A. Longer than six weeks; I could not attend to the business after I got out of bed.

Q. Did you have a nurse? A. No, sir, my mother and my sister nursed me, and my young men friends sat up with me nights.

Q. Tell us how you were hurt on the body? A. 30  
my head was cut on the left-hand side of the forehead, a deep gash, and it was all swelled up from the terrible jar I got, my back was hurt, my ribs, my side, my shins were all black and blue, and my eyes black and blue, my back is hurt so that I cannot do any very hard work yet. I suffered untold agony with my head and back and side.

Q. Any of your limbs broken? A. No.

Q. You were laid up in bed how long? A. Four 40  
weeks.

Q. How long altogether? A. Six to eight weeks, then Dr. Dickinson ordered me out to get fresh air and walk. I was lame.

## GEORGE H. SCHULER.

Q. Are you at work? A. Yes, I am helping my father in New York City.

Q. When did you first do any work? A. Two weeks before Christmas.

Q. About the 11th of December? A. Yes.

10 Q. From the 8th of August to the 11th of December you want us to understand that you did nothing? A. Yes.

Q. And you want us to understand that was the result of these injuries? A. Yes.

Q. Is there any other fact or circumstance either as to the cause or as to the injury, that you have not detailed, that you want to? A. No, sir.

## CROSS-EXAMINATION BY MR. SMITH:

20 Q. Where did you get on this car? A. Montgomery Street.

Q. Did the car stop at Glenwood Avenue? A. Yes, it stopped at Glenwood Avenue.

Q. Then came on to Highland Avenue? A. Yes.

Q. And stopped on the south crosswalk? A. Yes.

Q. Is that the usual place of stopping?

30 Question objected to. Admitted.

A. I don't know whether it is the usual place, but most of the cars stop there, and it is according to the motorman whether he stops there or not; he did stop at that time at that corner.

Q. And the car stopped still? A. Yes.

Q. Standing still while you got off? A. Yes.

Q. You didn't see the other car at all? A. No, sir, I didn't see it.

40 Q. As soon as you stepped from behind the standing car that was the time that you were hit?

A. As I crossed the track coming from behind, the

## GEORGE H. SCHULER.

other car it came so quick and I didn't see it until I stepped on the track.

Q. Your conclusion as to the rate of speed is merely what you think? A. She come so fast?

Q. You didn't see it coming? A. As I got from behind the other car it struck me.

Q. As you stepped from behind the car you were struck? A. Yes. 10

Q. You didn't see the car coming south? A. I saw it just as it struck me, I had no time to get out of the way.

Q. How soon before it struck you did you see it? A. Just on the minute.

Q. You didn't see it before that? A. No.

Q. Didn't see it coming from Vroom Street? A. No, sir, as I came from behind the car I looked and saw it, and it struck me at the same time. 20

Q. You didn't know whether it was going fast or not? A. It must have been, the way it hit me.

Q. That's the reason you say it was going fast, because of the way it hit you? A. Yes.

Q. Were you the first one off? A. Yes.

Q. You turned round behind it? A. Yes.

Q. In a hurry? A. No, sir. 30

Q. Slowly walked along? A. Yes.

Q. Did you look for the car? A. I looked for it, as I came from behind I looked for the car.

Q. You could not see the car because your car was in your vision, obstructed your view? A. Yes.

Q. Was the front of the car on the south crosswalk of Highland Avenue? A. The rear of the car was on the crosswalk. 40

Q. It was right at the crosswalk when you got off? A. Yes.

## GEORGE H. SCHULER.

Q. You didn't jump off the car before it stopped? A. No.

Q. Were you on the rear platform before the car stopped? A. Yes.

Q. Were you standing there all the way up from Montgomery Street? A. Yes, I was standing on the platform.

10 Q. Were you standing on the platform when the car stopped? A. Yes.

Q. You don't know whether anybody else got off there or not, do you? A. I don't know.

Q. You were knocked unconscious? A. Yes.

Q. Who did you first speak to after you were hit? A. After I was struck and after they brought me water and I had come to, I saw my father there. I didn't speak to anybody.

20 Q. Did you talk to a couple of policemen there?

A. I didn't see any policemen there.

Q. Did you say to anybody there that you didn't want to go to a hospital? A. I said I didn't want to go to a hospital, I don't know who I said it to.

Q. How long were you unconscious? A. I could not say.

30 Q. How many cars were there when you came to? A. I don't know.

Q. You don't know on which side of the street you were on? A. I realized that when I came to.

Q. You were on the east side of Bergen Avenue? A. At Bergen Avenue.

Q. You would be on the east side when you got off the car? A. Yes.

Q. Bergen Avenue runs north and south? A. Yes.

40 Q. You were crossing the northbound track? A. Yes.

## GEORGE H. SCHULER.

Q. You started from the east side to the west?  
A. Yes.

Q. And you got to the first rail of the southbound track when you were hit? A. Yes.

Q. When you came to you were on the east side of Bergen Avenue? A. Yes.

Q. That would be the nearest side to the first rail of the southbound track? A. Yes. 10

Q. You have not at any time reached the west side of the street? A. No, sir.

Q. Which side of Highland Avenue were you on when you came to, the south side or the north?

A. I would be on Bergen Avenue; Highland Avenue does not cross Bergen.

Q. Assuming that Highland Avenue went through the cemetery, which side of Highland Avenue would you be on? A. On the south side. 20

Q. On the south corner of Bergen Avenue and Highland Avenue is the church? A. Yes.

Q. There is a vacant lot on the corner? A. Yes, there is a vacant lot.

Q. The church is fifty feet from the corner? A. Yes, the church is called on the corner.

Q. Was it at the church you got off or was it at the corner? A. At the corner. 30

Q. What number on Highland do you live? A. 45, that is on the south side of Highland Avenue.

Q. You were in bed four weeks? A. Yes, sir.

Q. In the house six to eight weeks? A. Yes, about four weeks I was up and around the house.

Q. Then did you go to work? A. No, sir.

Q. The trucking business, where was your office? A. 21 and 23 White Street, I had three trucks and a single wagon; I employed four men in that business. I didn't do the driving nor the loading. 40

## GEORGE H. SCHULER.

Q. Was Mr. Barry a driver? A. No, he was a foreman.

Q. What did you do, superintend? A. Superintend.

Q. You did nothing of the loading and unloading? A. If there was nobody there to help put a case on I helped put it on.

10 Q. From your office? A. Where my office was at 23 White Street, there are four firms in that building, and I did the trucking for those four firms. The other houses brought the goods there, once in a while I would help the drivers load.

Q. You paid Mr. Barry? A. Yes.

Q. For how many weeks? A. I paid Mr. Barry for about ten weeks altogether; I paid Mr. Barry

20 until I sold out my business.

Q. Still kept him on after you got back there? A. Yes.

Q. How long after the accident did you go back to work? A. Never went back to work, I just went over and looked around.

Q. How long after the accident did you go over and look round? A. After I first got out of the house and walked round for a week or so, I went

30 over there, in the afternoons, took a stroll, to see how things got along, just asked them how things were running; he run it to the best of his ability; he had sufficient ability, but the firms wanted to see me. It was my busiest time of the year.

Q. Couldn't you have gone round to see the firms? A. I was able to walk over there.

Q. Able to walk and talk all right? A. Yes.

Q. Didn't do any of the heavy work? A. No.

40 Q. Why didn't you work? A. I suffered so much with my back and head, I could not be on my feet, and there was so much worry and so much work, I couldn't do it; the worry of mind and the

## GEORGE H. SCHULER.

work I couldn't attend to it from the suffering in my head and back.

Q. And that was the reason you kept Mr. Barry on? A. Yes, sir.

Q. How long had you had that business? A. A year or more.

Q. Anybody in it with you? A. No, sir. 10

Q. Your father was not in it? A. No, sir.

Q. Who did you buy it from? A. From Robert Norr.

Q. What did you pay for it? A. \$3,500.

Q. How many horses and wagons did you have when you bought it? A. Two horses and two old trucks. When I stopped I had three trucks, a delivery wagon, all new trucks.

Q. Who did you sell it to? A. Henry Moser, 20  
922 Bergen Avenue.

Q. For how much? A. Fifteen hundred dollars.

Q. Is Mr. Moser any relation of yours? A. No, sir.

Q. How many trucks did you sell him? A. Three trucks and the delivery wagon.

Q. How many horses? A. Four.

Q. How long have you known Mr. Moser? A. I have known him since he answered my advertisement about the business. He bought the trucks and the good will of the business for fifteen hundred dollars. 30

Q. How many times did Dr. Spence come to see you? A. Fourteen times.

Q. Once a day? A. Yes, sir.

Q. So that after fourteen days he didn't come to see you? A. I haven't got his bill yet, he came every day.

Q. But he came about fourteen times? A. About 40  
fourteen times.

## DR. GORDON K. DICKINSON.

Q. Fourteen days? A. Yes.

Q. Dr. Dickinson was your family physician?

A. Yes, sir.

Q. How many times did he see you? A. Dr. Dickinson saw me about—he was two or three times there.

10 Q. Did you send for him each time? A. No, sir, he came himself.

Q. He gave you a bill of \$22.00? A. Yes, sir.

## RE-DIRECT EXAMINATION BY MR. BLACK:

20 Q. You have been asked where you were when you were struck, in reference to the east rail of the southbound track—I understood you to say it was while you were on the east rail of the southbound track, is that so—the rail next to the track on which the car was that you were getting off? A. That would be the west rail, wouldn't it?

Q. That's what I want to make clear; it was the east rail of the southbound track, the rail nearest to the cemetery? A. On the track that the car was coming on.

30 Q. Is that correct? A. That would be the east rail of the southbound track, that is where I was when I was struck.

Q. That is the rail nearest to the track from which you alighted? A. Yes, sir.

Q. You paid your fare on the car? A. I paid my fare on the Montgomery Street car and got a transfer on the Bergen Avenue line.

DR. GORDON K. DICKINSON, sworn for the plaintiff, testified as follows:

## 40 DIRECT EXAMINATION BY MR. BLACK:

I am a practicing physician and surgeon in Jersey City; my office is on Montgomery Street; I have been practicing thirty years; I am a graduate

## DR. GORDON K. DICKINSON.

of Bellevue; I am connected with the City Hospital and Christ Hospital; my practice is largely surgical.

I know the plaintiff; I had occasion to see him professionally last Fall; I have been the family physician for some twenty years; I was on my vacation when I learned he was injured; my associate, Dr. Spence, attended him; on my return Dr. Spence told me about the case and I ran in and made a couple of calls to assure myself of what his condition was. I don't recall whether I made a detailed examination of him, probably not; I concluded he was suffering from traumatic neurasthenia; that is a prostration of the nerves due to the fright and accident. He was at his home when I saw him, in a reception room. 10

Q. What in your judgment will be the probable result of his condition? A. He will recover. 20

Q. What is his condition now? A. I haven't seen him since the first week in September.

Q. What would you say as to his ability to attend to business at the time you saw him? A. It would depend upon the character of his business.

Q. Ordinary trucking business? A. He might do some of it, I don't know how much.

Q. But he was not a well man? A. He had not completely recovered. but was recovering. 30

Q. What were your charges? A. Two visits, I believe, two dollars a visit.

Q. He says you sent him a bill for twenty-two dollars? A. I don't know; I have a bookkeeper; I don't know.

## CROSS-EXAMINATION BY MR. SMITH: 40

Q. When did Dr. Spence call your attention to him and you say he had practically recovered? A.

## HENRY ERTEL.

That was my impression when I saw him, that he had practically recovered; that was the first week in September, I think.

10 Q. That man's business was superintending a trucking business, and occasionally lifting, don't you know that when you saw him he was capable of going on with that business? A. I would not want to give an opinion from what I saw. A man must have a clear mind to superintend his work. I would not want to give an opinion on a case so far back and seeing so little of him.

Q. At the present time? A. I haven't seen him since September.

20 Q. If he had kept on the way he was going on he would have recovered? A. Sometimes they do very nicely for a long time and then they run along very slowly for a year.

Q. Assuming that he had gone on at the same rate of progress? A. I can give no opinion as to his condition at this time.

HENRY ERTEL, sworn for plaintiff, testified as follows:

30

## DIRECT EXAMINATION BY MR. BLACK:

I live at No. 20 Woodlawn Avenue, Jersey City; I am a brakeman on the Central Railroad of New Jersey; have lived in Jersey City all my life; have been a brakeman since the 10th of September last, before that I was driving trucks.

40 . Do you remember some time about the 8th of August last being on the street car on Bergen Avenue? A. Yes, I had taken the car at Union Hill, and transferred to the Court House car, I was on my way home down in the Greenville section.

## HENRY ERTEL.

Q. Do you remember any occurrence on that car at Highland Avenue? A. Yes, between six and seven.

Q. Do you know Mr. Shuler? A. I know him from his being hit with the trolley; I had never seen him before; the first I seen him was when I picked him up, when I got out of the car to pick him up; I was standing with my face toward the street, straight ahead; I saw the car strike him. 10

Q. Where was he when the car struck him? A. He was just starting to come round the other car, he just come around enough in front of the car for the car to hit him.

Q. What was standing on the other track? A. The trolley.

Q. Were there any other passengers on the car on which you were riding? A. It was filled. 20

Q. About how fast was the car running when it struck Shuler? A. I should judge about fifteen miles an hour, it was going pretty rapidly.

Q. As compared with the ordinary way that the cars run through the street, was it going faster or slower than the ordinary way in which you have observed them?

Question objected to. Question withdrawn. 30

Q. How fast was the car running in your judgment? A. About fifteen miles an hour.

Q. Were you in a position where you could see the motorman? A. Yes.

Q. Did he or did he not sound the bell or ring the gong? A. I didn't hear no bell or gong.

Q. About how far did the car run after it struck Shuler? A. Half a block.

Q. That would be about how many feet? A. I should judge 75 to 100 feet. 40

## HENRY ERTEL.

Q. How long was the car on which you were riding? A. About 25 feet, I guess.

Q. In reference to the church on the corner? A. I seen there is a church there.

10 Q. In reference to that church how far did the car run after it struck Shuler? A. It struck him at Highland Avenue, and it run down about half way of the block.

Q. After the car stopped what did you do? A. I jumped out of the front of the car, a friend and I, and picked him up and carried him to the curve.

Q. Who was that friend of yours? A. Mr. Fick.

Q. On which side of the street was Mr. Shuler when you picked him up? A. He was on the side of the graveyard.

20 Q. Who reached him first? A. Mr. Fick and I were about at the same time together.

Q. Where was the car that struck him? A. It was down about half way of the block.

Q. Did the motorman or the conductor come back? A. I believe the conductor did come back after somebody ran for him and brought him back.

Q. What was Shuler's condition when you reached him? A. He was knocked senseless.

30 Q. After you got to him how long after that did he revive? A. About fifteen or twenty minutes.

Q. Any evidence of bruises or cuts about him? A. Yes, he was cut on his forehead and around his head.

Q. Which side? A. Left, I believe.

Q. Cut anywhere else? A. Not as I know of.

40 Q. What did you do? A. I run and got water and bathed his head and carried him home, he couldn't lay anyway from pain in his back and side, wherever we catched hold of him it hurt him, he said it pained, he kind of groaned no matter where we touched him.

## HENRY ERTEL.

Q. Where did you take him to? A. To his home, Highland Avenue, into his bedroom, we left him in charge of his mother and sister.

Q. Is that the way you and he became acquainted? A. That's the only way I have ever known him.

## CHOSS-EXAMINATION BY MR. SMITH:

10

Q. When did you next see him? A. About two weeks ago from this time now, at my home, he called there; I had given him my name and address when he got hurt, I gave it to his people.

Q. Where were you standing in the car? A. Standing in the front part of the car where the doors are, my friend was sitting down, he was talking to the third person from the door, I was looking out of the door, looking straight ahead, I was facing right out of the front door, the door was closed. 20

Q. The first thing you saw was when this man stepped from behind the car? A. When he stepped round the corner of the car, our car hit him just that minute.

Q. When was the first you saw the other car? A. I saw the other car coming up the street and it had stopped. 30

Q. Was that car standing still or moving? A. It was standing still and our car was going.

Q. Did you see it coming up the street before it stopped? A. Yes, we were about coming round on that turn at Vroom Street, and the car was coming up from Mercer Street, it had passed Mercer Street and was coming up toward us and we were going toward it. 40

Q. Which car reached Highland Avenue first? A. The car coming up, coming north, that reached Highland Avenue first.

## HENRY ERTEL.

Q. Which side of Highland Avenue did it stop on? A. I don't now.

Q. How far had your car got past that car when this man was struck? A. It didn't get more than two feet past.

10 Q. On which side of Highland Avenue did that car stop? A. I can't say.

Q. Where was the man when you picked him up? A. He was knocked to the gutter behind the car that had stopped.

Q. You said you picked him up in the street and carried him to the gutter? A. We picked him up in the street and carried him up to where the grass was.

20 Q. Where was he—south of Highland Avenue? A. Yes.

Q. How fast was your car going? A. I know we were going pretty fast.

Q. How far south of Highland Avenue did you pick him? A. I don't know just how far south.

Q. Show us in this room how far? A. I should judge from here across the room south of Highland avenue.

30 Q. What was your business at that time? A. I was attending a horse sale.

Q. What was your business? A. Driving a truck; I was off that day.

Q. Have any experience in the running of cars? A. No.

Q. Or in the speed of cars? A. Yes.

Q. Tell us how you had experience? A. From riding round on them, on freights.

40 Q. Were you working on freight cars? A. I was not working on them. I rode on them.

Q. At the time of this accident you had had no experience in cars? A. Yes, riding round with my cousins, they are brakemen; sometimes they go out

## HENRY ERTEL.

three nights in the week, night time and day time, whenever they go out. That would be just as I would be off, or on an errand.

Q. When did you go to work for the Central?

A. 10th of April, at the Jersey City Ferry; freight brakeman.

Q. Who were you employed by driving trucks? 10

A. A. T. Hand, Manhattan.

Q. How long have you lived in Jersey City? A. All my life.

Q. What is on the south corner of Highland Avenue and Bergen Avenue? A. Highland Avenue does not run across Bergen Avenue. There is a church there somewhere, and I believe there is quite a piece of ground on the corner, the church is not on the corner.

Q. The church is on the corner? A. No, sir. 20

Q. How much of a lot is there on the corner? A. I couldn't tell you whether there is 25 feet or 50 feet, I don't know.

Q. When the car stopped you were on the car going south? A. I was.

Q. When the car stopped you say it was about 75 feet from the corner? A. I should judge about that, half way of the block? 30

Q. Was it in front of the church? A. About there, it was not this side, it was the other side of the church.

Q. What is the other side of the church? A. A house, a little vacant ground in between there.

Q. Was it in front of the other house? A. Not quite.

Q. You didn't hear any bell? A. No.

Q. The door was shut? A. Yes.

Q. Who was with you when you helped the plaintiff home? A. Henry Fick. 40

## HENRY FICK.

Q. Did you have hold of him? A. Yes, helped to carry him; I had my hands under his arms, I had my both arms under his arms, and his head laid against my chest, Frick had him by his legs.

Q. What was his father doing? A. Running round, excited.

10 Q. Wasn't his father with you when you went home? A. No, sir, his father went somewheres to get a doctor or something.

Q. You say it was fifteen minutes after the accident before he came to? A. Fifteen or twenty minutes.

Q. Did you see a policeman there? A. Yes.

Q. Did he talk to this young man? A. He went to talk to him and I went away for water.

20 Q. The young man was conscious when a policeman got there, wasn't he? A. I believe he was.

HENRY FICK, called by the plaintiff, and sworn, testified as follows:

## DIRECT EXAMINATION BY MR. BLACK:

I live at 24 Woodland Avenue, I am a produce dealer in Jersey City, have lived in Jersey City a.l  
30 my life; have been in the produce business since I was sixteen years old.

Q. Do you remember the 8th of August last, in the evening? A. Yes.

Q. Were you on the trolley on Bergen Avenue that evening? A. Yes.

Q. Where did you get on the car? A. At North Bergen and transferred to Palisade Avenue. I was in company with Henry Ertle; we transferred  
40 on a Jackson Avenue car.

Q. Do you know Bergen Avenue? A. I do.

Q. And the old church? A. I don't know nothing about a church.

## HENRY FICK.

Q. When you were at Highland Avenue what happened? A. I saw this friend of mine jump up, and he says "a man got hurt;" when the car stopped we got off and I went with him to help him, to help him pick him up.

Q. Where were you sitting? A. About the third seat from the front.

Q. Did you see the car strike Shuler? A. I did not see it. 10

Q. Was a gong rang or any notice given? A. I couldn't tell you; I was talking.

Q. Can you tell us how fast the car was running? A. It was going a pretty good speed, I should judge.

Q. Can you tell about how fast the car was running? A. No. 20

Q. After the car struck Shuler, what did you do? A. I jumped off the front of the car and went back and helped pick him up and carried him to the gutter. We found him right near the rails.

Q. About how far from where he was struck? A. About one hundred feet I should judge, or something like that.

Q. You remember seeing the church there? A. No, I didn't get off that way at all, he was lying a little ways the other side of Highland Avenue, at the crossing where he got hit. 30

Q. How far had the car run after it hit him before it stopped? A. About the middle of the block.

Q. How many feet? A. I can't tell.

Q. What condition did you find Mr. Shuler in? A. Found him lying there, cut over the eye; we carried him to the gutter, then when he came to he asked for a drink of water. 40

Q. Was he conscious or unconscious when you

## HENRY FICK.

first went to him? A. He was lying there unconscious, then we took him to the curb right by the cemetery. There was one cut on his head.

Q. Did he complain of pain? A. He complained of pain when we were carrying him down, in the side.

10 Q. What did you do with him? A. I told a man to get him a drink of water, I asked him would we carry him home and he said yes, and we carried him home to his house, we carried him right up to his bedroom and laid him on the bed.

Q. Did you ever know Shuler before this time? A. No, sir, this is the first time I saw him.

Q. You were subpoenaed here, were'nt you? A. Yes.

20

## CROSS-EXAMINATION BY MR. SMITH:

Q. You gave your name to him that night? A. Gave it to his mother.

Q. Did you give it to the conductor? A. No, the conductor didn't ask us.

Q. You didn't see the man hit? A. No.

Q. You can't tell just where he was hit? A. No.

30

Q. The first you knew was that Ertle said a man got hit and he ran out of the front of the car and you went out after him? A. Yes, I was talking with a man in the car.

Q. Had this other man been to North Bergen with you? A. Yes.

Q. Had been talking all the way down? A. Yes, until I was interrupted by Ertle saying somebody was hit.

40

Q. Whether the car was going fast or not you can't tell? A. No, sir.

## HENRY FICK.

Q. You picked him up from the northbound rail? A. Yes, and carried him to the gutter.

Q. You didn't see him get off the car? A. No.

Q. Did you see the other car? A. Seen the other car starting, it had started before I got to him and had gone on.

Q. How far south of Highland Avenue was the young man when you got to him? A. I should judge about 75 feet, something like that. 10

Q. That was in the direction your car was going? A. Yes.

Q. Did you see the policeman there? A. A policeman came there before we took him away.

Q. When you got to him were you talking with him? A. No, he couldn't talk to us.

Q. When you got into the gutter? A. He talked about fifteen minutes. 20

Q. Did you see his father there? A. I didn't see his father there at all.

Q. You saw the father at the house? A. No.

Q. How did you know where to take him? A. When he came to he told us where he lived and I helped him home.

Q. The car that you got off of was that going when you got off? A. It was just stopping. 30

Q. Where was it then? A. About the middle of the block.

Q. Around the church? A. I didn't see the church.

Q. How far from the rear of the car was he when you picked him up? A. About a hundred and fifty feet, I should think.

Q. You went back that distance to him? A. Certainly. 40

Q. Didn't the conductor come there? A. The conductor came when we had him to the crossing, that is the conductor of the car I was on.

## DOROTHY HAMILL.

## RE-DIRECT EXAMINATION BY MR. BLACK:

Q. Then what did the conductor do? A. Simply spoke to him and said, "Put him on the car and take him to Montgomery Street."

Q. What else did he say? A. That is all he said that I can remember; he said, "Put him on  
10 the car and take him to Montgomery Street."

Q. Did he say anything else? A. Not as I know of, he went on his car.

## RE-CROSS EXAMINATION BY MR. SMITH:

Q. You didn't go on that car? A. No, I helped carry the man home.

Q. Did you say anything to the motorman of the car? A. No.

20 Q. Did you carry him bodily to the gutter? A. Yes, both of us together.

DOROTHY HAMILL, called by the plaintiff, testified as follows:

## DIRECT EXAMINATION BY MR. BLACK:

30 Q. Where do you live? A. Highland Avenue, the first house back of the church; the windows open on to Bergen Avenue, the church stands on the corner, my house is back of the church.

Q. The church stands how far back from Highland Avenue? A. I should think there is about fifty steps from the church to the corner; we are one hundred and eighty-five feet from the corner; I know that from surveys.

40 Q. You live in the house back of the church? A. Yes.

Q. You think the church stands from Highland

## DOROTHY HAMILL.

Avenue about how many feet? A. I think there is a fifty foot lot on the corner.

Q. Do you remember the 8th of August last toward evening? A. I remember the night of the accident.

Q. Where were you? A. Sitting in my dining-room window watching for Mr. Hamill, and when this gentleman came off the car—his stature is the same as my husband's, it proved afterwards to be Mr. Shuler, I didn't know him at that time—I saw somebody get off the car, I thought it was my husband. 10

Q. Did you see the car stop from which he was getting off? A. I saw him get off plainly, he turned round to the back of the car, I got up from the chair to go to the front door to open the door; that is my custom, and another car wished past, and I wondered whether Mr. Hamill got across the tracks or not, when I got to the front door the crowd was at the corner and I could just see the end of the car. 20

Q. Did you see the car strike him? A. No, I didn't see the car strike him.

Q. Can you tell us whether or not the car that struck him was going fast or slow? A. It was going so fast, it made me shiver. 30

Q. Was there any gong or bell or other warning given? A. I didn't hear anything only the swish of the car.

Q. Then what did you do? A. I went to the front door; that was the first I knew there was an accident; I opened the door, I saw there was something the matter, I thought in a minute my husband was struck. 40

Q. Where did you go? A. I stood there and waited, for some one to tell me; I didn't know

## DOROTHY HAMILL.

who it was until they commenced to carry him down the street.

Q. You did not go to the corner? A. No.

Q. You don't know how far the car ran afterwards? A. I could see the end of the car from my window.

10 Q. Where it had stopped? A. Where it had stopped.

Q. Who did you see carry Mr. Shuler? A. Four men carried him bodily.

Q. Did you recognize two of them on the witness stand? A. Yes.

Q. How did they carry him? A. Seemed to be two at his head and two at his feet; a young man had his head.

20 Q. You didn't know what was the matter with him? A. I knew he must have been awfully hurt.

Q. Have you seen Mr. Shuler since then? A. I never spoke to him until December, when he asked me if I would be a witness. I didn't know him until that time.

Q. Were you subpoenaed here? A. Yes.

## CROSS-EXAMINATION BY MR. SMITH:

30 Q. The first time he spoke to you he asked you to be a witness? A. In December.

Q. How did he know that you had seen anything? A. The neighborhood knew, because I had become hysterical. As soon as I saw something was the matter I was sure it was my husband that was injured.

40 Q. Then you told the people in the neighborhood? A. I didn't have to tell them; there was no other reason for my becoming hysterical.

Q. When you were at the front door you could see the end of the car? A. Yes.

## DOROTHY HAMILL.

Q. Your house sets back from the street? A. I thing we set back 28 feet from the street.

Q. So that you were almost on a line with the rear of the church? A. Almost; we come out a little, so that looking out I could see the end of the car.

Q. When you sat there as you saw this car come up, did you see it there? A. Yes, the first car stopped still. 10

Q. On which side of Highland Avenue? A. I could not say; I could see the gentlemen get off the car. It could not have been on the south because they must have got a little farther for me to see them. It must have been a little toward the north crosswalk I saw a gentleman get off.

Q. You did not see the other car hit anybody? A. No, but I heard the car. 20

Q. You didn't see the car hit anybody? A. No, sir.

Q. When you sat there you saw somebody get up to get out, did you see him getting out? A. I just saw the gentleman step from the car.

Q. And the car you thought at that time was standing? A. Yes, I think the car stopped for him, and I got right up from the chair to go to the front door and the other car swished past, I didn't see it, I knew it was a car, I didn't see it, it came so fast. 30

Q. When you stood up without seeing anything you heard a noise like a car going? A. I knew it was the car.

Q. You knew it was the car? A. Yes, I heard the noise of a car, and I went to the front door, then I saw the crowd. 40

Q. Then you saw just the end of the car? A. Yes.

## ELLA HIGGINS.

Q. Could just see the end of it standing still there? A. Yes.

Q. Where was the crowd when the car stopped? A. I didn't notice where I could see them.

Q. You became hysterical then? A. I had occasion to be.

10 Q. How far do you say from the corner of Bergen Avenue your house is? A. 185 feet; 285 feet, I beg your pardon—285 feet from the corner, our house is the first house, the church, then the lawn, then our house.

Q. Was it light then? A. Oh, yes.

Q. You say four men carried him? A. I think it was four men, I didn't count the men, but I thought four people carried him, yes.

20

ELLA HIGGINS, sworn for plaintiff, testified as follows:

## DIRECT EXAMINATION BY MR. BLACK:

Q. Where do you live? A. 6 Highland Avenue.

30 Q. How far is that from where Mrs. Hamill lives? A. She is quite a little distance down, she is on the other side; I am on the north side, she is on the south side, she is on the side of the church.

Q. No. 6 Highland Avenue is how far from the corner? A. It is the third house, I couldn't tell you the distance.

Q. Do you remember the 8th of August last in the evening? A. I do.

40 Q. This occurrence that has been testified to here? A. Yes, at that time I was on my front stoop, it was light, I should judge about half-past six.

## ELLA HIGGINS.

Q. Had you known Mr. Shuler before that time?

A. Yes.

Q. Did you see the car from which he got off?

A. No, I didn't see him get off the car.

Q. Did you see the car stop? A. No, I was reading.

Q. You didn't see the car on which he was riding? A. No. 10

Q. Did you see him get off? A. I did not.

Q. Did you see the car that was going in the other direction? A. I saw it after he was struck, he was lying on the track and the car had got directly in front of the church.

Q. Did you see the car before it had gotten in front of the church? A. No, it was going so quick it didn't give anybody any time to see it. 20

Q. When was the first you saw the car that struck Mr. Shuler? A. When it stopped there.

Q. You didn't see it till it stopped? A. No.

Q. Where was the car in reference to the corner of Highland Avenue when it stopped? A. When it stopped it stopped directly in front of the church.

Q. How far is that from the corner? A. I could not tell you about the distance, there is a lot alongside of the church; I should judge that lot is about 50 feet wide. 30

Q. The church has how many pillars? A. Four large pillars.

Q. The car was directly in front of the church? A. Yes.

Q. Where did you first see Mr. Shuler? A. Lying on the east track.

Q. Did you go there? A. No. 40

Q. How far in feet is that house, about, from the tracks at Bergen Avenue? A. There is about three houses, on about two and a half lots, I guess.

## ELLA HIGGINS.

Q. Did you go where Mr. Shuler was? A. Yes.

Q. What did you see? A. I saw two gentlemen pick him up and carry him to the curb, one of them came to my house for water, that was the first one that has testified here.

10 Q. Then how soon after that did you see the car go on? A. Didn't stop very long.

Q. What did they do to Mr. Shuler? A. In about ten or fifteen minutes they carried him home.

Q. Did they take him past your house? A. Yes, on the opposite side of the street; I think four men were carrying him, they had to stop because he was in such agony.

Q. That was the last you saw of him? A. That was all.

20

## CROSS-EXAMINATION BY MR. SMITH:

Q. When the car stopped the rear end of it was not quite past the church, was it? A. Yes, the car was midway between the front doors.

Q. Could the end of the car be seen from the south side of Highland Avenue at a distance of 285 feet? A. No,—the end of the car you mean?

30 Q. Yes? A. No, you could not, because it was in front of the church.

Q. All hidden by the church? A. You could see a little bit through the lot.

Q. Looking up from the west of Highland Avenue you could see the end of the car? A. I believe so. I could look directly through the pillars.

Q. The first you saw of Mr. Shuler was when he was lying there? A. On the east track, yes.

40 Q. How far south of Highland Avenue was he lying? A. He was lying about the middle of the street, midway between the two crossings of Highland Avenue.

## MRS. ALBERTA STRANG.

Q. Where did they take him to? A. Took him over on to the curb beside the cemetery and they lifted him up and carried him over.

Q. He was on the east track when you first saw him? A. Yes.

Q. In front of what house was he there? A. No house there, right in front of the cemetery. 10

Q. How far north did they have to carry him? A. Where they picked him up would be from Dr. Buffett's house, where they picked him up.

Q. The cemetery runs all the way up to the clubhouse? A. Pretty near.

Q. From the doctor's house to the center of Highland Avenue is quite a distance? A. I am not quite sure about distances.

Q. You don't know where they picked him up? 20  
A. I know where he lay, there was such a crowd around I could not be certain as to distances. I seen them pick him up.

MRS. ALBERTA STRANG, sworn on the part of the plaintiff, testified as follows:

DIRECT EXAMINATION BY MR. BLACK: 30

Q. Where do you live? A. 84 Clendenny Avenue.

Q. That is south of Montgomery Street? A. Yes.

Q. How long have you lived there? A. About two months.

Q. And previous to that? A. 543 Mercer Street, near Bergen Avenue.

Q. Do you remember the evening of August 8th 40 last, about this occurrence that has been testified to? A. Yes, sir.

## MRS. ALBERTA STRANG.

Q. Do you know Mr. Shuler? A. I just know him since the accident, I see him here, I didn't didn't know him before that time.

Q. Where were you at the time of this occurrence? A. On Bergen Avenue on the right hand side, walking this way toward the Court House; that is on the side of the cemetery and on the side  
10 opposite the church.

Q. How far were you from Highland Avenue? A. Almost opposite, I should think; pretty near opposite.

Q. Did you see a car going toward the Court House stop and Mr. Shuler get off? A. Yes, as nearly as I could judge he got off directly near Highland Avenue.

Q. On the church side or the other side? A. I  
20 didn't see him when he got off the car; I thought he got off on the right hand side coming this way.

Q. In reference to Highland Avenue? A. I really didn't see.

Q. Did you see the car stop? A. Yes.

Q. Can you not designate the place where it stopped? A. I know it stopped right there at Highland Avenue on the side by the church, I  
30 think.

Q. Where were you with reference to where the car stopped? A. Almost opposite where the car had stopped, near Dr. Buffett's house.

Q. Did you see him get off? A. No, I saw him after he was struck, struck by the car and threw over the fender.

Q. Did you see the car coming on the other track? A. Yes.

Q. How was that car running? A. Fast.  
40

Q. Was there any gong or bell sounded? A. I can't remember; I didn't take notice of any.

## MRS. ALBERTA STRANG.

Q. Did you notice whether the car stopped on the other track? A. I know that it met the car just as the young gentleman had got off; it was going so fast.

Q. Did you see where the car struck Mr. Shuler? A. No, sir, I don't recollect.

Q. What part of the car struck him? A. The front of the car, I really could not say which. 10

Q. How far did the car run before it stopped? A. I should judge it run along to about the middle of the church, I really could not say, I was so excited at the time.

Q. Where did Mr. Shuler fall? A. He fell a little ways from the car, the car threw him quite a distance, the fender threw him quite a distance from the car, I saw some men pick him up, I was standing right there when they brought him to the sidewalk. 20

Q. Was he conscious or unconscious? A. There was a crowd there, and I didn't say anything or interfere, I think he was unconscious. I saw them hold him up and give him water, and after a time they carried him hime.

Q. Where did you go? A. I went home.

Q. Did you go home before they took him away? A. No, sir; I saw them take him down home, then I went right home, too. 30

Q. What became of the car that struck him? A. It stopped, that's the one that stopped.

Q. How long did it stop? A. It might have stopped five or ten minutes, possibly fifteen minutes, then went on.

Q. Did it stay there until they took Shuler away? A. Yes, I think so, I was so excited at the time. 40

Q. Who was with you? A. My daughter.

Q. You were subpoenaed here? A. Yes.

## MRS. ALBERTA STRANG.

## CROSS-EXAMINATION BY MR. SMITH:

Q. How old is your daughter? A. She is eighteen.

Q. She was with you walking up Bergen Avenue toward the north? A. Yes.

10 Q. Did you see this car coming up north pass you? A. Yes.

Q. You didn't see this gentleman get off the car? A. I really didn't see him, but I saw him after he was struck.

How far from Highland Avenue were you when the car passed you? A. We were almost directly opposite, we were right near Dr. Buffett's home there.

20 Q. Then the car coming up went past you? A. Yes.

Q. And you saw it go by? A. Yes.

Q. You didn't see anybody get off? A. I didn't see him get off the car.

Q. The other car stopped for him? A. The one that hit him stopped; the one that he got off came right on without stopping and travelled right on.

Q. You didn't see him get off the car? A. I didn't see him get off.

30 Q. Did you see that other car coming south? A. Yes.

Q. Coming right along? A. Yes.

Q. You didn't hear any bell? A. No.

Q. Where were the two cars when they passed each other. A. I think right near Highland Avenue, right near the corner of the church, that is where they pass each other, as near as I could judge, one going one way and the other the other.

40 Q. Then you saw the young man on the ground? A. Yes.

Q. Where was he when you saw him—on the

## BESSIE STRANG.

track? A. No, sir, he was some little distance, I would say he was almost as far from the track as from here to that desk. (Witness indicates about ten feet.)

Q. Then you saw three or four men pick him up?

A. Yes, three or four men picked him up and carried him to the curb, and laid him there, braced him up. 10

Q. The car that stopped, that is the car that hit him, just where did it stop? A. It stopped as soon as the motorman could possibly stop it, right there. It was crowded with passengers, they were right in front of the church I think. I didn't take notice, I was so excited at the accident.

Q. The car that was going toward the Court House went right on and disappeared? A. Yes, 20 the car that he got off of went right on and disappeared.

BESSIE STRANG, sworn for plaintiff, testified as follows:

## DIRECT EXAMINATION BY MR. BLACK:

Q. You live with your mother on Clendenny Avenue? A. Yes. 30

Q. You lived with her on Mercer Street before you lived there? A. Yes.

Q. You were with her walking on Bergen Avenue, on the 8th of August last. she said? A. Yes.

Q. You were on the side of Bergen Avenue next to the graveyard? A. Mama was walking on the inside and I was on the outside, on the side of the street by the graveyard. that is the side opposite 40 the church, it was about half-past six.

## BESSIE STRANG.

Q. Did you see Mr. Shuler? A. I saw him on the back platform of the car going toward the Court House, in the same direction I was walking.

Q. Did you see the car stop? A. Yes, I saw the car stop, and I saw Mr. Shuler getting off.

Q. In relation to the crosswalk, which one did  
10 it stop at? A. The side nearest the church; there is a crosswalk there.

Q. You saw the car stop, did you see Mr. Shuler? A. Yes, I saw Mr. Shuler get off, he went behind the car, the car coming from the other way struck him.

Q. How fast was that car running? A. Pretty fast; I didn't see it till it struck him.

Q. Did you hear the bell? A. No.

20 Q. Did you see where it struck Mr. Shuler? A. I don't just remember. I saw the car throw him. I turned round when it struck him, it threw him to one side.

Q. How far from where it struck him? A. I just don't remember.

Q. Did the car that struck him stop? A. Yes, it run to almost the other end of the church before it stopped.

30 Q. In reference to the church door, which is in the center of the church, where do you think the car run to? A. There are four doors there; it stopped at the opposite end.

Q. What next did you observe? A. I remember the two men picking him up.

Q. Could you tell whether Mr. Shuler was conscious? A. I don't know.

Q. What did they do with Mr. Shuler? A. In a  
40 few minutes they carried him home.

Q. What became of the car that struck him? A. It stood there a few minutes and then moved on.

## BESSIE STRANG.

Q. Had you known Mr. Shuler before that? A. No, never saw him.

Q. You were brought here by a subpoena from this court? A. Yes.

## CROSS-EXAMINATION BY MR. SMITH:

Q. Where were you with reference to Highland 10 Avenue, when you saw the car coming toward the Court House? A. Right in front of Dr. Buffett's that car passed us, I just happened to glance at it, and I saw Mr. Shuler standing on the rear platform, when the car stopped he stepped off. It stopped just long enough for him to get off and then went on.

Q. Did you see the motorman or conductor of that car? A. I did not. 20

Q. After the accident? A. No.

Q. When the car stopped, did it stop perfectly still? A. I don't remember. It stopped for him to get off, I saw him standing on the platform, I saw him step down on the step.

Q. And the car was moving then? A. No, there was a crowd on the back platform, the car was not moving.

Q. When he stepped down on the step where 30 was the car? A. The car was standing still, we had to move out from the crowd.

Q. The car stopped long enough for him to get out of the crowd and down on the step, and then down on the street? A. Yes.

Q. When he stepped down on the street did he stand there? A. No, he turned round to the back of the car.

Q. Then is when he was hit? A. Yes. 40

Q. That minute? A. Yes.

## MRS. ALBERTA STRANG.

Q. He hurried round back? A. An ordinary pace.

Q. Not slow? A. No, nor quick.

Q. You didn't see the other car? A. I didn't see the other car till it struck him.

10 Q. Then when he was struck did he lay right on the track going north? A. Yes, till somebody picked him up.

Q. This car that was going south, where did that stop? A. Corner of the church.

Q. Was not the rear end of that car out toward Highland Avenue? A. Yes.

Q. And could be seen from the west of Highland Avenue? A. I don't know.

20 Q. Which side of Highland Avenue did the car that was coming from toward the Court House stop? A. Right on the side where the church is.

Q. Front platform? A. No, the rear platform at the corner and the body of the car in the middle of the street.

Q. You don't know how long the car going south stopped? A. I think it stopped about fifteen minutes.

30 Q. The car that he got off. how long did that stay there? A. I don't know.

MRS. ALBERTA STRANG, recalled, testified as follows:

## DIRECT EXAMINATION BY MR. BLACK:

40 Q. There is some uncertainty as to what you said in reference to the car from which Mr. Shuler got off, whether it stopped or not, now what is the fact? A. The car that Mr. Shuler was on stopped.

## MRS. ALBERTA STRANG.

Q. And the car that struck him, what do you say about that? A. It stopped a little distance, as soon as they could get it stopped, a little distance from where he was struck?

## CROSS-EXAMINATION BY MR. SMITH:

Q. You say this car coming toward the Court House, passed you while you were walking on Bergen Avenue? A. There were almost opposite where I was. 10

Q. The car that was going toward the Court House was the car the plaintiff was on? A. Yes.

Q. This car passed you as you were walking on Bergen Avenue? A. Yes. Mr. Shuler got off, and we were almost directly opposite where it stopped? 20

Q. You didn't see him get off? A. No, I didn't.

Q. You did not see him until he was struck? A. No, I saw him when the car threw him to the street.

Q. The car going north toward the Court House, did you see that car stop? A. Only when he got off, it went right on.

Q. You didn't see him get off? A. No, I don't think I did. 30

Q. Then you didn't see it stop, did you? A. Well, yes, I saw the car stop.

Q. Stopped still? A. Yes, but the other car was standing between where I was and it. The car that struck him was on my side. I was on the other side of my daughter. I was on the cemetery side.

Q. The car coming north is the car nearest you, the car coming up this way, isn't it? A. Maybe it is, I was so nervous at the time until now, and I have been trying to think; the car that Mr. Shu- 40

## MRS. ALBERTA STRANG.

ler got off must have been on the east side; the one that was going south is the one that injured him.

Q. The one coming this way is not the one that injured him? A. No, that's the one he got off.

10 Q. You didn't see him get off the car? A. I wouldn't say for sure; I turned when I saw the accident.

Q. Before that you didn't see him? A. I don't recollect.

Q. Before that you hadn't taken any notice of the car? A. No.

Q. What you saw was——. A. When he was thrown off.

20 Q. You didn't notice either of the cars before that? A. I saw both cars.

Q. While they were going? A. Yes.

Q. This car that was going north came right along, didn't it? A. After he got off.

Q. You didn't see him get off? A. I took notice of the car going right on after the accident, as soon as the accident happened it went right along.

Q. You didn't see it stop there? A. Yes, I saw this car stop and then start on again.

30 Q. Did you see anybody else get off? A. No, sir.

Q. Didn't see anybody get off the car? A. No, sir.

Q. The first you saw was when the accident happened? A. Yes.

Q. And the standing car still there; anybody get on it? A. I didn't take notice.

40 Q. Do you remember a young man calling on you on August 10th? A. There was a young man stopped to see me and I could not really say.

## MRS. ALBERTA STRANG.

Q. Do you remember talking to that young man about this accident? A. Yes.

Q. Do you remember saying to him, "My daughter Bessie and I were bound for Bergen Square, we were walking in a northerly direction on the east side of Bergen Avenue, when we were at a point about 20 feet south from Highland Avenue I noticed a young man jump from the rear right step of a northbound Belt Line car that was passing slowly, and when it was about opposite Highland Avenue, and just as he jumped from this car he passed quickly behind it and was struck by the front of the fender just as he stepped on the southbound track by a closed car coming south." Do you remember saying that to the young man? A. I think I told him where we were, as nearly as I could think, right where we were walking at the time of the accident. 10

Q. Do you remember saying to that young man that he jumped from the rear right step of a northbound car? A. I don't recollect it. 20

Q. Do you recollect saying the car went right on? A. Yes.

Q. So that when this accident happened those cars were passing each other in motion, one going up and one going down? A. Yes. 30

Q. Did the company subpoena you here? A. I think so, yes.

Q. You got more than one subpoena? A. I got two subpoenas. I have them with me.

## DR. HENRY SPENCE.

DR. HENRY SPENCE, sworn on the part of the plaintiff, testified as follows:

## DIRECT EXAMINATION BY MR. BLACK:

I am a practicing physician and surgeon in Jersey City; my office is 681 Bergen Avenue; I  
 10 have been practicing since 1892; I am a graduate of the Medical Department of Columbia University; I am connected with Christ Hospital as surgeon; I am a general practitioner of medicine and surgery. I know the plaintiff. I remember being called in on or about August 8th to attend him at his home on Highland Avenue. I was telephoned for to come to see him; he was a stranger  
 20 to me; he informed me that he was Dr. Dickinson's patient; Dr. Dickinson was away on his vacation.

Q. What did you do? A. I found him in bed; I ordered him to bed when they telephoned for me; I found him undressed in bed; I examined him all over the body, I found that he had bruises, pretty generally over his body, a good deal of muscular soreness and tenderness. A good deal of  
 30 tenderness especially along the muscles of the back and of the neck, and in the side of the neck, and he also seemed to be suffering somewhat from shock. He had a cut on his head, a superficial wound. I saw him every day for some time. Then gradually put my visits farther apart; I attended him through August until September, until Dr. Dickinson came home, then turned the case over to Dr. Dickinson.

Q. What did you prescribe for him? A. Tonics,  
 40 liniments, massage, and remedies that would make his muscles recover their tone and usefulness.

## DR. HENRY SPENCE.

Q. What was his condition when you last saw him? A. Able to be about his room, he was very lame and very tender. He complained at that time of considerable headaches, and he was generally depressed.

Q. To what did you attribute his trouble? A. To the accident and the injuries he had received. 10

Q. What effect did it have on his nervous system? A. It depressed his nervous system.

Q. What would be the ultimate outcome of it? A. It seemed to me that he would make a complete recovery after a time.

Q. When you last saw him was he capable of attending to any business? A. Not at that time.

Q. What became of your charges? A. As the patient was Dr. Dickinson's I turned the number 20 of visits over to him. The dates of the calls.

Q. Mr. Shuler says he received a bill of twenty-two dollars from Dr. Dickinson; Dr. Dickinson says he attended him twice. What would you say as to that compensation? A. I should think it was a very small compensation for what I did for him.

## CROSS-EXAMINATION BY MR. SMITH: 30

Q. You have not sent him a bill? A. No. I have nothing to do with the bills.

Q. When you saw him in September last you thought he would ultimately completely recover?

A. I thought so, yes.

Plaintiff Rests.

Defendant moves for a non-suit on the 40 ground that no negligence is shown on the part of the defendant or its agents, and sec-

## RICHARD CONNELL.

ond, that the evidence shows contributory negligence on the part of the plaintiff.

After hearing arguments of counsel the court refuses a non-suit.

To which refusal of the court, the defendant prays that an exception may be allowed, and it is allowed, and signed and sealed accordingly.

B. A. VAIL, (Seal)  
Judge.

RICHARD CONNELL, called by the defendant and sworn, testified as follows:

## 20 DIRECT EXAMINATION BY MR. SMITH:

Q. In August last were you employed on the North Jersey? A. The Public Service, the Jersey City, Hoboken and Paterson Street Railway Company.

Q. Were you the conductor on the Jackson Avenue car? A. Yes, that is the car going south. I was the conductor in charge of this southbound car.

Q. As your car got near Highland Avenue, about how were you going? A. Going about half speed, about seven or eight miles an hour. We were two blocks from Montgomery Street.

Q. On this evening did you see this plaintiff there? A. After he was struck, yes. It was about half-past six.

Q. When did you first see him? A. Right after he was struck.

Q. Tell us the first you saw of him? A. Right after he was struck. The first I saw of him was

## RICHARD CONNELL.

when I got off my car and went over and picked him up. I went with the two witnesses here and picked him up. I asked him to get on the car and go to Montgomery Street until I got him a doctor, but he said no, so we took him to the curbstone.

Q. Did you see the other car coming up the 10 street? A. I saw it before they got near us.

Q. Was it moving? A. Yes, they slowed up passing us and our car slowed up passing them; both cars were in motion.

Q. How soon after you passed the car was it the plaintiff was struck? A. The cars were side by side when he was struck; they may have been extending a little at each end.

Q. Tell us where in relation to Highland Ave- 20 nue was he struck? A. To the best of my knowledge about twenty-five feet south of Highland Avenue he was struck.

Q. At the time these cars were nearly opposite each other they were still in motion? A. Still in motion, one going south and one going north.

Q. How far did your car go after the striking? A. It did not go no more than ten or twelve feet 30 and stopped.

Q. Where was your car in relation to the plaintiff when you picked him up? A. About thirty-five or forty feet from Highland Avenue.

Q. Where was he in relation to your car? A. He was not quite to the tail end of our car; I had to walk round the car to get hold of him. He was thirty-five or forty feet south of Highland Avenue, that is right front of the church door.

Q. What kind of a car was the other car? A. 40 A belt line car.

## RICHARD CONNELL.

Q. What became of it after the accident? A. The belt line car stopped on the north side of Highland Avenue to let a passenger off. After this man had been struck I went and walked after him and they started on. We stopped after this man had been struck.

10 Q. You are not employed by the company now?  
A. No.

Q. Doing what? A. I am not working now.

Q. How long have you been away from the company? A. About five months.

## CROSS-EXAMINATION BY MR. BLACK:

Q. Your car was running about half speed, about seven or eight miles an hour? A. To the best of  
20 my knowledge.

Q. Do you know within what distance one of those cars can be stopped? A. They can be stopped within five or six feet by reversing the power.

Q. Running at full speed? A. Not at full speed, they cannot stop that short, running at full speed.

Q. When you say they can be stopped in five or six feet—on what speed? A. About half speed.

30 Q. At full speed they can be stopped at ten feet?  
A. I wouldn't say that.

Q. At half speed they can be stopped in five or six feet? A. Yes.

Q. Sure about that? A. I wouldn't say every one of them can.

Q. How long did you work on them cars? A. Three years.

40 Q. That gave you considerable opportunity to observe the working of these cars? A. Yes.

Q. From your experience of two years you feel justified in saying a car can be stopped running

## RICHARD CONNELL.

as this was, at seven or eight miles an hour, in about five or six feet? A. Yes.

Q. What kind of a day was it? A. Nice, clear day.

Q. What time? A. Half-past six; you might say it was day time, in August, summertime.

Q. As you approached Highland Avenue what part of the car were you in? A. Standing at the hind door looking ahead of me. Looking through the front door. 10

Q. How many passengers had you? A. Thirty or thirty-five.

Q. You saw the other car approaching you? A. Yes.

Q. Did you see your car strike this man? A. No. 20

Q. Why was that? A. Because I could not see, he did not reach to the top of the vestibule in front, I couldn't see him.

Q. You saw the car? A. Yes.

Q. Did you see it stop? A. At Highland Avenue when it stopped.

Q. When he was struck? A. It didn't stop.

Q. Sure of that? A. Yes.

Q. How far did the car run after Shuler was struck? A. Ten or twelve feet after it was struck; it stopped in front of the church, about 25 feet from Highland Avenue. 30

Q. You say you went to Shuler and picked him up? A. Yes.

Q. He was not unconscious? A. He was not.

Q. You wanted to take him on your car? A. I asked him to get on the car and come to the Montgomery Street stables and I would telephone for a doctor, and he said no. 40

Q. You are sure of that? A. Yes.

## MAURICE HALLORAN.

- Q. Sure of that fact as of the others? A. Yes.
- Q. You don't think there can be any mistake about that? A. I am sure there is no mistake.
- Q. Did you ask him how he was hurt? A. No.
- Q. How long were you there with him? A. About fifteen minutes all told.
- 10 Q. Did it take all that time for him to say that he would not go with you? A. No, when he would not go with me we took him to the curb-stone.
- Q. It didn't take fifteen minutes to say all that? A. No, I took the names of witnesses.
- Q. Do you think you stayed there fifteen minutes? A. About fifteen, I am sure of the time; not less than ten minutes.
- Q. Shuler was not unconscious? A. He was  
20 not.
- Q. You asked him to get on the car? A. Yes.
- Q. He would not? A. No.
- Q. You saw Mr. Ertel there and Mr. Fick? A. Some young fellow helped bring him to the curb-stone. I got blood on my hand from a cut on his forehead, that's the only thing that seemed to bother him. He had his hand up to the cut.
- Q. Did you stay with him until they took him  
30 from the curb-stone? A. No, I left him there; the policeman was there when I went away. We had the whole line blocked up.
- Q. You were never a motorman, were you? A. No, sir.

MAURICE HALLORAN, sworn on the part of the defence, testified as follows:

## 40 DIRECT EXAMINATION BY MR. SMITH:

Q. You are a motorman? A. Yes, on the Jackson Avenue car.

## MAURICE HALLORAN.

Q. You remember this August 8th when this plaintiff was injured? A. Yes.

Q. When your car was approaching Highland Avenue, about how were you going? A. I think six or seven miles an hour.

Q. Half speed? A. No, not half speed.

Q. Did you see the belt line car coming north? 10  
A. Yes.

Q. Where did you pass that car? A. Just about five or six feet from Highland Avenue, south of Highland Avenue.

Q. That is when you first reached it? A. Yes.

Q. Then was it moving? A. Yes, both cars were moving.

Q. When did you first see the plaintiff? A.  
When I struck him. 20

Q. When was that, had you passed the other car? A. No, my front end was at his tail end.

Q. How far south of Highland Avenue would the tail end of his car be? A. The tail end of his car would be about three or four feet south of Highland Avenue.

Q. The front of your car would be near the end of his car? A. Near the tail of his car.

Q. Where was he when you first saw him, when 30  
you struck him? A. On the street.

Q. Where on the street, what was he doing?  
A. He came right in front of my car about three or four feet south of Highland Avenue.

Q. Tell us how you came to strike him? A. He came to me like a flash, in front of my car from behind the other car and at the same time I struck him.

Q. Had he just turned behind the other car? 40  
A. Just came from right behind the other car.

Q. He didn't get in front of you on the track?

## MAURICE HALLORAN.

A. No, just the corner of the fender hit him and he fell one side.

Q. How far did your car go? A. I stopped my car right there.

Q. How far? A. I should judge about six or seven feet.

10 Q. Was that a long car you had? A. No, a double truck car; it is the kind they use on the elevator, kind of a short car.

Q. After you stopped did you go back to this young man? A. I stopped the car, took my trolley handle off and went back, didn't have to go back not quite the length of the car.

Q. What became of the other car? A. It went right down to Highland Avenue.

20 Q. Where did it stop? A. I didn't notice.

Q. At the time this man stepped from behind the car going north was it moving or standing still? A. Both cars were going.

Q. Did you ring your bell when you got at the corner? A. Yes, always at every crossing.

## CROSS-EXAMINATION BY MR. BLACK:

30 Q. Where are you employed now? A. With the Hudson Company, in the tunnel in New York.

Q. How long had you been employed by the North Jersey Street Railway Company? A. About four months.

Q. Previous to that what had been your employment? A. Deckhand.

Q. Had you any experience as motorman prior to that? A. No, sir.

40 Q. So that on the 8th of August you had had four months experience as a motorman? A. No, sir, I was altogether four months working for them.

## MAURICE HALLORAN.

Q. You remember the evening of the 8th of August? A. Yes.

Q. You recollect the location of this accident? A. Yes.

Q. Do you remember seeing the car coming on the other track? A. Yes.

Q. You remember seeing it stop? A. No, sir. 10

Q. You think it did not stop? A. Not as I know of.

Q. Do you feel sure of that? A. Yes.

Q. Are you sure of that as you are of all the other facts? A. Yes.

Q. Were you running at full speed at Highland Avenue? A. No, we always throw off our power when we come to a crossing, and ring our gong; I had my power throwed off; I was going six or 20 seven miles an hour.

Q. Within what distance could you stop that car running six or seven miles an hour? A. I could stop it in about three feet if my emergency brake worked all right.

Q. After you struck this man what did you do?

A. I put my brake on and stopped the car right there. I took my trolley handle off, opened my gate, and went down and looked at him. 30

Q. Was Shuler conscious? A. Not as I know of.

Q. Was he unconscious? A. No, I could not exactly say how he was.

Q. Did you hear him say anything? A. No, because there was a crowd around him. They picked him up then and fetched him over to the curbstone.

Q. Did you hear Shuler say anything to the conductor? A. No.

Q. Did you hear the conductor say anything to 40 him? A. I wasn't close enough at the time.

Q. Where did you leave Shuler when you left?

## MAURICE HALLORAN.

A. After I seen the officer there I went back to my car.

Q. How long did you hold the car? A. Fifteen or twenty minutes, until I was told to go ahead; say fifteen minutes anyway.

Q. What became of the other car on the north-  
10 bound track? A. I don't know.

Q. Did you see it stop after it passed you? A. I didn't look.

Q. Before you struck Shuler had you sounded your gong? A. Yes; as I approached Highland Avenue on the other side.

Q. How far were you from Highland Avenue when you sounded your gong this particular time?

A. I couldn't exactly say this particular time.

20 Q. Where was the car on the northbound track, how far was that from you when you sounded the gong? A. I sounded the gong as the car was passing me and I sounded the gong as I approached Highland Avenue, sounded it right along.

Q. How far were you from Highland Avenue when you sounded the gong? A. Right near before I struck Highland Avenue, before we approached the crosswalk, say three or four feet.

30 Q. Do you remember it or do you guess at it? A. I could not remember, I should judge that anyway, I know I sounded the gong; I always sound the gong coming to all crossings.

Q. Do you remember this particular instance? A. Yes.

Q. How far were you from Highland Avenue when you sounded the gong? A. Three or four feet, I guess.

40 Q. At that point where was the car that was going north, how far from you? A. The car was not at Highland Avenue at all yet.

## MAURICE HALLORAN.

Q. Did you sound the gong after you reached Highland Avenue? A. Yes, I sounded it till I passed the crossing when this other car was approaching.

Q. Where was your car in reference to Highland Avenue the last time you sounded it? A. The other side of the crosswalk of Highland Avenue. 10

Q. How far were you then from where you struck Shuler? A. About three or four feet.

Q. How far had the other car gone? A. The tail of it was passing my front end.

Q. How fast was that going? A. I could not say.

Q. Did you see that other car stop? A. No.

Q. You don't know whether it did or not? A. No. 20

## RE-DIRECT EXAMINATION BY MR. SMITH:

Q. You know you sounded your gong before you reached Highland Avenue? A. Yes, that's the rule.

Q. That is what you did at this time? A. Yes.

Q. And as you were going across the avenue? A. Yes. 30

## RE-CROSS-EXAMINATION BY MR. BLACK:

Q. Do you say that you remember it or that it was your practice? A. I remember that I did it.

Q. Did you always do it? A. Yes.

Q. You remember doing it on this particular instance? A. Yes, I remember.

Q. What makes you remember? A. On account of hitting Mr. Shuler. 40

Q. (Deft.) It is impressed upon your memory because of the accident? Is that so? A. Yes.

## PERCY DEMING.

PERCY DEMING, called by the defence and sworn, testified as follows:

## DIRECT EXAMINATION BY MR. SMITH:

10 Q. You were a passenger on this car, the car going south? A. Yes.

Q. Where were you sitting? A. Sitting on the right hand side away up forward.

Q. As your car got near Highland Avenue, was it going fast or slow? A. It was not going fast.

Q. Did you hear any bell ring there? A. No.

Q. Did you see this other car going up? A. No, I did not.

20 Q. What first did you see of the accident? A. The first I saw of the accident was the man coming across behind the other car.

Q. What was that car doing? A. I was not sure whether it was moving or standing still.

Q. Where was it? A. Right abreast of us.

Q. Where were you? A. I was inside.

30 Q. Where was that car in relation to Highland Avenue, had it passed Highland Avenue? A. It was at the south crossing of Highland Avenue, that is the front of the car.

Q. When you first saw this man? A. That is about the place I first saw the man; I saw him come from behind that car. I don't know whether the car was moving or standing still.

Q. Was he hurrying? A. He passed the space that I could see through the door very quickly. That was the first I saw of him.

40 Q. And at the same time he was struck, when you saw him? A. Struck immediately after that.

Q. How far did your car go? A. I went out to

## PERCY DEMING.

the front door, our car went about from the front of the car back to where the man lay was about a length and a half, that is where the man lay in back of us.

Q. Did the conductor go back, too? A. I believe so.

10

## CROSS-EXAMINATION BY MR. BLACK:

Q. How large are those cars, how long? A. I should judge about thirty feet, I don't know, something that way.

Q. You say you went back about a car and a half? A. About a car and a half, I should think.

Q. You saw it sitting in the car, the car that you were riding in being the car that struck Mr. Shuler, you saw it on the Highland Avenue crossing, is that correct? A. About on the Highland Avenue crossing, on the south side. 20

Q. You think it was about at the crosswalk? A. Yes, about.

Q. As you now recall it you think the car ran about a length and a half after it struck Shuler? A. No, the distance from where I got out of the front of the car back to where the man lay was about a length and a half behind the car. 30

Q. The car on the other track—was it standing still? A. I couldn't say whether it was or not.

Q. What became of the other car? A. It was on the other side of Highland Avenue when I got out of the car, it was stopped there. I went up to Shuler, he was partly conscious anyhow.

Q. Did you hear the conductor say to him that he would take him on the car to a hospital? A. No, I didn't hear him. 40

Q. Did you hear Shuler say he would not go? A. I didn't hear that. When they picked him up they took him to the curbstone.

## GEORGE HECK.

Q. Did you board the car and go on with it when it started off? A. I did.

Q. How long did you stay there before the car went on? A. Ten or twelve minutes.

Q. Not more than that? A. I don't think so.

Q. Where was Shuler then? A. Sitting on the  
10 curb stone a man each side of him holding him up.

Q. Was he conscious when you left him? A. Yes, he was conscious, he gave his address as 45 Highland Avenue.

Q. How fast do you think the car was running in which you were riding? A. I don't think the car was running over three or four miles an hour.

Q. Did you hear any bell or gong? A. No, sir, not until just when it struck that man; as the man  
20 appeared he rang the bell.

Q. (Deft.) After you got out of your car you saw the other car at the north side of Highland Avenue? A. Yes, the car that he came out from behind of was stopped at the north side of Highland Avenue.

Q. (Deft.) And that was just as soon as you got out of your car? A. Yes.

Q. (Deft.) You were subpœnaed by the other  
30 side? A. Yes.

GEORGE HECK, called by the defence and sworn, testified as follows:

## DIRECT EXAMINATION BY MR. SMITH:

Q. You are a policeman in Jersey City? A. Yes.

Q. You remember the evening of August 8th  
40 last? A. Yes.

Q. Do you remember seeing the plaintiff that night? A. Yes.

## GEORGE HECK.

Q. Where? A. I seen him on the east side of Bergen Avenue, I should judge about ten feet east of Highland Avenue, he was half sitting and half lying, with his hand up on his head.

Q. Did you talk with him? A. Yes.

Q. How soon after the accident did you get there? A. I could not say. 10

Q. He was conscious when you got to him? A. Yes.

Q. What did you see, if anything, as to the injuries to him? A. I noticed that on his head he had a bruise like a cut I would call it.

Q. Did you take him home? A. No.

Q. Did you see the motorman there on the car?  
A. Not at that time.

Q. When did you see him? A. I seen him after 20  
I saw Mr. Shuler lying there. I asked him what happened, he said "I have just been struck by a trolley car," and I says, "do you wish to have this man arrested, do you wish to make a complaint against him," and he says "I certainly do;" the starter was about to start the car and I hailed the car and I told this motorman that he was under arrest. According to our rules I had to take him to Jackson Avenue, and I brought him to Jackson 30  
Avenue, I tried to have him transferred there and they wouldn't transfer him, and so I went down to Hoboken and brought him back to the Seventh Precinct, on Montgomery Street and Bergen Avenue.

## CROSS-EXAMINATION BY MR. BLACK:

Q. Where was Mr. Shuler when you first saw him? A. Just by the curb. 40

Q. You don't know how long he had been there?  
A. No, sir.

## JOHN HUNT.

Q. Was he apparently conscious or unconscious? A. He was perfectly conscious.

Q. Did you hear the conductor say to him that he would put him on the car and take him to the hospital? A. No, I didn't hear any conversation they had at all. The conductor and the motorman were on the car when I got there.

10 Q. How long did the car wait after you got there? A. The car that struck Shuler they were just about going off when I got there, I told Officer Hunt to take care of that man as Mr. Shuler wants to make complaint against him and I am going to take him to the station.

Q. (Deft.) The conductor could have had a conversation with him before you got there? A. Yes.

20

JOHN HUNT, sworn for the defence, testified as follows:

## DIRECT EXAMINATION BY MR. SMITH:

Q. Tell us what you know about this affair? A. I was on reserve the night of the accident. The sergant told me to go up to Bergen and Highland Avenues to see what the trouble was, when I got there Roundsman Heck and I met about the same time. Crowd of people there, about a hundred or a hundred and fifty, Shuler was lying on the grass near the cemetery, in a half lying position, the roundsman says, "I am going on the car with the motorman, and you take charge of this man."

30 Q. Was he conscious? A. Yes.

Q. Talking to you? A. I asked him did he want to go to the hospital, and he said no, somebody said they had been to his house and that his father was coming down.

40

DR. EDWARD HART.

Q. Did his father come? A. A gentleman came, and a couple of men took him home.

Q. When you got there the man was conscious?  
A. Yes.

Q. Talking to you? A. Yes.

Q. Did you see any evidence of a wound? A. I believe there was some blood on his forehead, that 10  
was all I could see.

CROSS-EXAMINATION BY MR. BLACK:

Q. Did you stay there till he was taken to his home? A. Just as soon as they picked him up I left.

Q. Did they carry him? A. It seemed to me that one had him under each arm.

Q. How many? A. Two or three had him; one 20  
under each arm.

Q. What was the third man doing? A. He was in front of him. They had just started to take him.

Q. Did he walk or did they carry him? A. It seemed to me that he walked.

DR. EDWARD HART, called on behalf of the defence, testified as follows: 30

DIRECT EXAMINATION BY MR. SMITH:

Q. You are a practicing physician in Jersey City? A. Yes.

Q. For how long? A. Close to ten years.

Q. Graduate of what institution? A. Long Island College Hospital, Brooklyn.

Q. Been practicing always in Jersey City? A. 40  
Yes.

Q. Do you remember seeing the plaintiff in this

## DR. EDWARD HART.

case? A. I do. I saw him within a day or two after the accident. His residence is on Highland Avenue. I also called the first night but I was not permitted to see him.

Q. When you saw him where was he? A. In bed.

10 Q. Did you examine him? A. I examined him in consultation with Dr. Spence.

Q. What did you find? A. He was in bed. He hadn't any bandages or dressings of any kind on at that time; he had a contused wound on the head and the skin was somewhat broken, and a contusion of the shoulder, and a contusion on the back, and he complained of quite a good deal of pain in the back, I thought he would be confined to his  
20 bed, a disability for about three weeks, I thought the disability would last that length of time barring any complications. I did not see him again till I saw him in court to-day; I observed him in court, and also examined him in the ante-room with Dr. Arlitz and Dr. Spence to-day; he seemed quite cheerful, and at times laughed and joked, he didn't act at all like a neurasthenic, didn't seem to be depressed much; we examined him in the other  
30 room stripped. It was my opinion he has not any neurasthenia now, if he has had any it has disappeared. I had seen him previous to the accident, he looks about the same now.

Q. Can you tell whether a man has neurasthenia or not without examination? A. I could not. I don't know how it is possible to make a diagnosis of neurasthenia without examination of the patient.

40 Q. If a man was injured on the 8th of August and had been under the doctor's care until the first week in September, and had had no treatment

## DR. EDWARD HART.

since September last, would you consider that that man had had traumatic neurasthenia? A. It would be possible, but generally when they have it they require treatment of some kind.

Q. If he had had neurasthenia he would have had treatment? A. I think he should, because it demands treatment.

10

## CROSS-EXAMINATION BY MR. BLACK :

Q. Do you know whether he has had treatment yet? A. I don't know personally.

Q. This examination you had was in the presence of Dr. Spence? A. Yes.

Q. A voluntary permission on the part of the plaintiff, for the purpose of letting you testify? A. I presume so.

20

Q. Didn't you and Dr. Spence, in your examination there, conclude that he was not cured yet? A. I don't know what Dr. Spence's opinion was, I didn't ask the doctor, I was examining for myself, and we didn't consult as to whether he was cured or not.

Q. When you went to his home two or three days after the accident you went there as a representative of the company? A. I did.

30

Q. Mr. Shuler let you examine him? A. Yes.

Q. No objection of any kind. A. No, sir.

Q. You had all the opportunity to examine him that you required? A. Yes, there was no objection of any kind. I telephoned Dr. Spence and asked him if I could see the case with him, and he said yes.

Q. It was understood that you were there as a representative of the Traction Company? A. I believe so.

Q. (Deft.) It is your opinion at this time that he has no neurasthenia? A. I don't think he has, no, sir.

## DR. WILLIAM J. ARLITZ.

DR. WILLIAM J. ARLITZ, sworn on the part of the defence, testified as follows:

## DIRECT EXAMINATION BY MR. SMITH:

I am a practicing physician in this county; have been practicing seventeen years, graduate of the  
 10 Medical Baltimore College; I am one of the visiting surgeons and neurologists of St. Mary's Hospital, Hoboken, New Jersey.

Q. Have you examined the plaintiff in this case?

A. I examined him in the ante-room, shortly after two o'clock to-day; I had him under observation for quite a length of time this morning.

Q. Tell what you found? A. This morning I observed him to determine if he had any tremor; I  
 20 made a note of his color, of his eyes, of his temperament in court; I found that his color was good, his eye was brilliant, there is an absence of tremor; by watching him this morning I noticed that he laughed and commented on several occasions about the testimony of one of the ladies present, and of a witness; in the ante-room I partially stripped him, I examined his skin and his heart, and his lungs, I measured his legs, I examined his  
 30 lumbar flexes, his nerves, I examined his choler reflexes, his skin reflexes, his patella reflexes. His reflexes were all normal. I had him walk about two-thirds of the length of the ante-room with his eyes closed. I had him walk backwards and forwards with his eyes closed. I found his reflexes all normal; I then examined him in the upright posture with his eyes closed and heels together; there was no perceptible swaying which is always  
 40 indicative of neurasthenia. I questioned him relative to the examination, and he said he was quite nervous about it; I found his pulse about 105, and

## DR. WILLIAM J. ARLITZ.

I attributed that to the examination; 105 is higher than it normally should be. His body is generally well nourished; he said that he had had some pain in the lower part of the back; I measured his legs to determine if there had been any permanent injury to the nerves supplying the extremities. The measurement is the same in both legs. I went over 10 his back and his sides very carefully to determine if the parts were unduly sensitive or otherwise, as a result of a lessening of the nervous force, I found the superficial reflexes all normal. From my observation and my examination of him, and my conversation with him I should say he is not suffering from neurasthenia at this time.

## CROSS-EXAMINATION BY MR. BLACK: 20

Q. From anything you observed about him would you say that he had been suffering from neurasthenia? A. He might have been, I could not say anything about that.

Q. Would you say from your examination that he is an entirely cured man? A. I would say so.

Q. Your examination was held under the same conditions as Dr. Hart's and Dr. Spence's? A. Yes. 30

Q. By his voluntary submission? A. Yes.

Q. He made no attempt to conceal anything? A. No.

Q. Perfectly frank and open? A. Yes.

Q. What is neurasthenia? A. In the layman's language it is a nervous prostration, it is a lessening of the general nerve force, without the pathology, that is without any organic trouble.

Q. Such a shock as you have heard described 40 here this morning would that be sufficient to pro-

## GEORGE M. SHULER.

duce neurasthenia? A. He might have had a slight neurasthenia and gotten over it.

## RE-DIRECT EXAMINATION BY MR. SMITH:

10 Q. How often do you run across a case of neurasthenia unconnected with an accident, in general practice? A. Where litigation is not a factor it is exceptional. In other words where there is no litigation there is very seldom neurasthenia, basing my conclusions on hospital experience.

## RE-CROSS-EXAMINATION BY MR. BLACK:

Q. You mean it is exaggerated on account of the litigation? A. All neurologists think so.

20 Q. You have seen no evidence of exaggeration on the part of Dr. Dickinson or Dr. Spence? A. None whatever. They are both gentlemen and both clever physicians.

## DEFENDANT RESTS.

GEORGE M. SHULER, recalled on his own behalf, testified as follows:

## 30 DIRECT EXAMINATION BY MR. BLACK:

Q. The conductor of the car said in substance that he carried you over to the curb, and that you were not unconscious, and that he asked you whether you wanted to go to a hospital, and you said no; do you recollect seeing the conductor there? A. No.

Q. Did you say that to him? A. No.

40 Q. Did he, so far as you know, make any offer of that kind? A. No, sir.

Q. Did he do anything for you? A. No, sir, I

## GEORGE M. SHULER.

didn't know the conductor, never saw him before to-day.

Q. It has been testified by somebody that you haven't had any treatment since Dr. Dickinson examined you?

MR. SMITH: I object; there has been no such testimony, and it would not be proper rebuttal. 10

Question admitted.

Q. What medicines, if any, have you taken? A. Dr. Dickinson prescribed medicine for me, he said it was for the nerves, and when that bottleful is gone have it refilled four or five times, which I have done and have kept on taking it.

Q. So far as you are concerned you have placed 20 at the disposal of the defendant and their doctor all sorts of information as to your health which they requested? A. Yes.

Q. Submitted to an examination? A. Yes.

Q. Whenever they asked for it? A. Yes.

## CROSS-EXAMINATION BY MR. SMITH:

Q. In other words you thought you would be fair? A. Yes. 30

Q. When Dr. Hart first called he was not allowed to see you at your house—was that putting at the disposal of the defendant's physicians all sorts of information? A. I will tell you how that happened.

Q. You say the conductor did not talk to you, didn't say anything to you at the time they picked you up, you don't know anything about that, do you? A. No, sir. I was unconscious at the time. 40

Q. You don't remember? A. I was unconscious at the time.

Q. How do you know you were unconscious?

A. People told me they carried me over there unconscious, and I didn't know anything until after I came to.

EVIDENCE CLOSED.

Defendant moves for a direction of a verdict on the grounds stated on the motion to non-suit.

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The Court declines to direct a verdict.

To which declining the defendant prays an exception may be allowed, and it is allowed, and signed and sealed accordingly.

B. A. VAIL, (Seal)  
Judge.

THE COURT: Have you any requests to charge?

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MR. SMITH: I will hand them up to the Court before the Court charges the jury.

MR. BLACK. My requests to charge will be found in the Scott case. I shall ask your Honor to charge as stated there by Judge Lippincott, modified by the circumstances of this case.

COUNSEL SUM UP.

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Defendant's Counsel requests the Court to charge the jury as follows:

I. In crossing the roadway a foot passenger must use his powers of observation to discover approaching vehicles, and a like judgment when and how to cross without collision.

2. If the approaching car could have been seen by the plaintiff before going on the track in front of the same, and he did not see it (although he

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states he looked) the law will presume he did not look, or that having perceived it coming he thrust himself in front of it and took his chances of getting across ahead of it.

3. The plaintiff having resided in the immediate vicinity of the accident for some time, he must be presumed to have known that cars were liable to pass at any time.

4. If the plaintiff knew that a car was liable to pass on the adjacent track and his view was obstructed by the standing car, he should have waited until the car had proceeded or until he could have assured himself there was no danger before going on the track.

5. If the plaintiff knew cars were liable to pass on the southbound track, and if the standing car temporarily intervened to prevent observation, reasonable prudence would dictate delay until such observation as was requisite had been made, before going upon the track.

6. The plaintiff can only recover compensatory damages.

7. The plaintiff must prove negligence upon the part of the defendant by a preponderance of evidence; the mere happening of an accident is no proof of negligence.

8. If the plaintiff entered upon the southbound tracks without first looking for an approaching car, he was guilty of such contributory negligence as would bar a recovery.

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Gentlemen of the Jury :

The plaintiff in this case was injured on the evening of August 8th last by being struck by a car of the defendant company, on Bergen Avenue in this city. He claims that the injuries he then received were the result of the negligent act of the defendant company, and asks you to give him by your verdict such compensation as will compensate him for the injuries which he then received, and for the disbursements he was obliged to make in consequence of his injuries, and also for his losses in business. In order to recover he must have shown to you by a preponderance of proof that the defendant company was negligent, that is that it failed to perform some duty which the law imposed upon it, because no matter how serious the injuries of the plaintiff may have been, no matter how much he suffered or how much he lost pecuniarily unless it resulted from some act of negligence on the part of the defendant company, he cannot charge the company with his loss or his suffering. So that the first question you must determine under the evidence in the case is, was the defendant company guilty of negligence?

The defendant had a right under the law, to occupy the streets with its rails and with its cars, but it has no greater rights upon the streets than persons who are driving carriages or who are walking across the streets. The streets are for the equal use of everybody; no one has a greater right upon the streets than any other person, and the law charges every one in using the streets with a duty of exercising due care and caution not only for his own safety but to prevent accidents happening to any one upon the streets with equal rights. This is the law so far as the use of the streets is concerned, and before you go to another

question in the case you must say that the defendant in this case was guilty of negligence, that is in failing to use the streets in such a way as the law says it should do, having proper regard for the safety of persons who might be upon the street where its car was. In deciding that question you will carefully go over the evidence in the case.

The plaintiff testifies that he was getting off a car at the time in question, that the car stopped to let him off at the corner of Highland Avenue, and that after the car stopped he got off, and in passing round the rear of that car in order to go to Highland Avenue, and just as he got past the rear of the car he looked and saw nothing, and was struck by an approaching car. There is evidence on the part of the plaintiff, that the approaching car was going at a high rate of speed, and there is also evidence on the part of the plaintiff, that no gong was sounded. The motorman on the part of the defendant, says, that he was going at a moderate rate of speed, and that he had his car under control, and that he rang the bell and sounded the gong before approaching Highland Avenue, and he also says that the car from which the plaintiff alighted was moving at the time and was not stopped still as the plaintiff and his witnesses say it was. If the car from which the defendant alighted was moving, if you are satisfied from the evidence it had not stopped, the motorman of the other car was not charged with the same degree of care that he would be if the car was stopped, because there would be no presumption that a person was going to alight and pass around the end of that car and in front of his car, and consequently he would not be charged with the same degree of care as he would be in the event that the car had stopped in order to let other passengers get off at that point.

Now, you must say from all the testimony in the case, whether you think that the motorman of the car that struck the plaintiff had his car under proper control, and whether he used the warnings which it is proper that a prudent man should use in passing the other car, to notify persons at that point that a car was approaching. Now, if you find that is so, if you find that he did that, if

10 he acted the part of a careful prudent man, both in the manner in which his car was being run, and in the signals he gave to warn people, that ends the case, and you will necessarily bring in a verdict for the defendant. You cannot give any verdict to the plaintiff for sympathy, nor because you think the defendant is able to pay, but you must say, before you go any further, whether or not you are satisfied from the evidence in the case, that the

20 defendant failed to perform the duty which the law imposed upon it, and so use the streets, which they had a right to use, with proper regard for the safety of persons who were on that street, with equal rights with themselves. You must be satisfied by a preponderance of evidence that the defendant was guilty of negligence, and if you find that then you go to the other question, that is whether the plaintiff in this case contributed in

30 any way to his injuries, because no matter how negligent the defendant may have been, it may have been utterly reckless, and if the plaintiff himself failed to exercise that proper care for his own safety that the law says he should do, no matter how reckless or negligent the defendant may have been, the plaintiff cannot recover. The law does not allow juries to apportion negligence between parties, and if the plaintiff by his own act,

40 or want of care for his own safety, failed to exercise that care which the law says he should exercise, he cannot recover in this case.

Now, he had a right—any one has a right—to presume that the streets are in a safe condition. That does not mean that a person has a right to close his eyes and deliberately walk across the street without looking. The law says every one must use his senses, and must exercise proper care. More care is required in crossing a crowded street than would be required out in the country where you can see a long distance either way, for we all know that in crossing these streets we must constantly keep our eyes open and wits about us, look in every direction, act the part of a careful, prudent person, and if we do not do that we are negligent, and if we are injured we cannot call upon other parties to compensate us for these injuries.

Now, gentlemen, if you should find in this case that the defendant company was guilty of negligence, and if you should find that the plaintiff was not guilty of contributory negligence, that he acted as a careful, prudent man should do, and notwithstanding that he was struck by this car, then you come to the question of damages, and the damages would be merely compensation. He was somewhat injured, no question about that, and if you find that he is entitled to anything at all you will give him such sum as will compensate him for pain and suffering which he endured in consequence of this injury, and that he may endure in the future. Then you will also give him what he paid out or what he owes to the physicians; he has paid the doctor twenty-two dollars, and he also says he paid twenty-five dollars for medicines, or about that. He also says that while he was laid up for about ten weeks, he had to pay a man twenty-five dollars a week to do the work which he would have done himself in the conduct of his business, that amounts to two hundred and fifty dollars; he also claims

he is entitled to compensation for the loss of his business. That is very uncertain. He might have lost his business in some other way. A man cannot merely because he is injured, sit quietly down and say "I will not do any more work, this defendant injured me and I am not going to do anything more, and I will make the defendant pay." A man must do the best he can if he is injured, if  
10 he cannot conduct the business he conducted before the injury he can go into some other business.

It does not appear from the evidence in the case how much he has earned since the injury. The plaintiff is now working for his father. If you think from the evidence in the case, that he was compelled as a result of the accident to sell out his business at a loss, you will allow him such  
20 compensation for that as you think he ought to have. But he should not be permitted to speculate on his injuries against the defendant, but you will give him such fair compensation as you think he ought to have because of the injury inflicted upon him, the same as if it was the act of a person, an individual, and not by a company that is amply able to pay.

30 BY MR. SMITH:

I desire to except to the Court's refusal to charge the second request to charge of the defendant as follows:

"If the approaching car could have been seen by the plaintiff before going on the track in front of the same, and he did not see it (although he states he looked) the law would presume he did not look, or that having perceived it coming, he  
40 thrust himself in front of it and took his chance of getting across ahead of it."

Which exception having been granted was signed and sealed accordingly.

B. A. VAIL, (Seal)  
Judge.

Also to the Court's refusal to charge the third request to charge of the defendant, as follows:

"The plaintiff having resided in the immediate vicinity of the accident for some time he must be 10 presumed to have known that cars were liable to pass at any time."

Which exception having been granted was signed and sealed accordingly.

B. A. VAIL, (Seal)  
Judge.

Also to the Court's refusal to charge the fourth request to charge of the defendant as follows: 20

"If the plaintiff knew that a car was liable to pass on an adjacent track, and his view was obstructed, by the standing car, he should have waited until the car had proceeded, or until he could have assured himself there was no danger before going on the track."

Which exception having been granted was signed and sealed accordingly.

B. A. VAIL, (Seal) 30  
Judge.

Also to the Court's refusal to charge the fifth request to charge of the defendant, as follows:

"If the plaintiff knew cars were liable to pass on the southbound track, and if a standing car temporarily intervened to prevent observation, reasonable prudence would dictate delay until such observation as was requisite had been made 40 before going upon the track."

Which exception having been allowed, is signed and sealed accordingly.

B. A. VAIL, (Seal)  
Judge.

Also to the Court's refusal to charge the eighth request to charge to the defendant as follows:

10 "If the plaintiff entered upon the southbound tracks without first looking for an approaching car, he was guilty of such contributory negligence as would bar a recovery."

Which exception having been granted, was signed and sealed accordingly.

B. A. VAIL, (Seal)  
Judge.

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NEW JERSEY COURT OF ERRORS AND  
APPEALS.

<p>GEORGE H. SCHULER,  Plaintiff,  Defendant in Error,  <i>vs.</i>  NORTH JERSEY STREET RAILWAY COMPANY,  Defendant,  Plaintiff in Error.</p>	<p>Assignments of Error.</p>	<p>10</p>
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And now, at this day, the said defendant, plaintiff in error, assigns the following causes of error: 20

1. Because after the plaintiff rested his case, the Court refused to non-suit the plaintiff, although a non-suit should have been granted.

2. Because it clearly appeared from the evidence produced by the plaintiff, that the plaintiff had been guilty of such contributory negligence as would bar a recovery in said action, and a non-suit should have been granted. 30

3. Because the plaintiff proved no actionable negligence on the part of the defendant, and a non-suit should have been granted.

4. Because the Court refused to direct a verdict for the defendant upon the ground (1) that no negligence had been shown on the part of the defendant, and (2) upon the ground that the plaintiff had been guilty of such contributory negligence as would bar a recovery. 40

5. Because the Court erred in refusing to charge the jury at the request of the defendant, as follows:

10            “If the approaching car could have been seen by the plaintiff before going on the track in front of the same, and he did not see it (although he stated he looked) the law would presume he did not look, or that having perceived it coming he thrust himself in front of it and took his chance of getting across ahead of it.”

6. Because the Court erred in refusing to charge the jury at the request of the defendant, as follows:

20            “The plaintiff having resided in the immediate vicinity of the accident for some time he must be presumed to have known that cars were liable to pass at any time.”

7. Because the Court erred in refusing to charge the jury at the request of the defendant, as follows:

30            “If the plaintiff knew that a car was liable to pass on an adjacent track, and his view was obstructed, by the standing car, he should have waited until the car had proceeded, or until he could have assured himself there was no danger before going on the track.”

8. Because the Court erred in refusing to charge the jury at the request of the defendant, as follows:

40            “If the plaintiff knew cars were liable to pass on the southbound track, and if a standing car temporarily intervened to prevent ob-

servation, reasonable prudence would dictate delay until such observation as was requisite had been made before going upon the track."

9. Because the Court erred in refusing to charge the jury at the request of the defendant, as follows:

"If the plaintiff entered upon the south-bound tracks without first looking for an approaching car, he was guilty of such contributory negligence as would bar a recovery."

Dated, February 27, 1907.

WILLIAM D. EDWARDS,  
Attorney of Plaintiff in Error.

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