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City and County of New York - Part II.

PAUL KELLY

: Hon. James T. Malone, J.
: And a Jury.

Indicted for Manslaughter in the Second Degree.

A P P E A R A N C E S:

For the Defendant, Mr. Robert J. Haire.

Official Stenographer.

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MR. TRAIN: This indictment charges this defendant with the crime of manslaughter in two counts, and the People have no intention of pressing the first count, so that at this time it might just as well be withdrawn if the Court will so direct.

THE COURT: Yes, I so direct.

MR. TRAIN: In regard to the facts provable under the second count, by agreement with counsel for the defendant each side is prepared to make certain concessions which will materially shorten the trial. Perhaps I better state what they are.

It is conceded by the defendant and by the People mutually that the defendant in this case, Paul Kelly, was in the employ of the Interborough Rapid Transit Company on the date mentioned in the indictment. The date and place, I understand, are reserved by the Court in withdrawing the first count of the indictment and will be read into the second count.

It is conceded that the Interborough Rapid Transit company was a corporation duly existing under the laws of New York and authorized to maintain and operate a railroad in the County of New York known as the Manhattan Elevated Railroad, which railroad was in due operation on the date aforesaid.

It is also conceded that the said Kelly was one of

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the motormen of the said corporation, and was, in the due course of his employment on that day, assigned to duty by the said corporation as a motorman on one of its trains conveying a large number of people down the Ninth Avenue Elevated Line.

MR. HAIRE: If you leave out "a large number of people" I have no objection to that.

MR. TRAIN: All right. And that as the result of an accident which occurred at the junction of 53rd Street, where the Sixth Avenue branch of the Ninth Avenue line leaves the main line, one of the cars of the train of which the defendant, Kelly, was acting as motorman was projected over the structure into the street, by reason of which a certain person named Solomon Newgass was killed -- and that he was the Newgass mentioned in the indictment.

I think that is as much, probably, as Mr. Haire would care to concede.

THE COURT: You concede so much?

MR. HAIRE: What is the last of that last concession?

(The stenographer reads.)

MR. HAIRE: I cannot concede that. I will make no question however about Newgass being killed at that time, but as to the manner of it, the projecting of the car and so forth, I think that should be a matter of proof.

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MR. TRAIN: There is nothing in the concession, as I put it, that relates to any culpability of the defendant.

MR. HAIRE: I understand that, but at the same time I do not want on the spur of the moment to concede all that.

MR. TRAIN: Do you concede that a certain person named Solomon Newgass was killed on the morning of September 11th, 1905, on Ninth Avenue at the juncture of Ninth Avenue and 53rd Street, about seven o'clock in the morning and that he had been riding --

MR. HAIRE: A passenger on that train.

MR. TRAIN: And that he was a passenger on that train.

MR. HAIRE: That I will concede.

Mr. Train opened the case on behalf of the People as follows:

If the Court please, Mr. Foreman and Gentlemen:

As you already have been informed, the defendant Paul Kelly, is charged by the Grand Jury of this County with the crime of manslaughter in its second degree, by an indictment filed on the 30th day of March, 1906, to which the defendant pleaded Not Guilty on the 18th of July, 1907.

Now, this indictment charges that the defendant

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Kelly on the 11th day of September, 1905, was employed as a motorman by the Manhattan Elevated Railroad, and that at about the hour of seven o'clock in the morning, on September 11th, which was a Thursday, he was operating, as a motorman, a downtown Ninth Avenue Elevated train, consisting of about five cars. This train was coming down the Ninth Avenue elevated structure towards a switch which exists at the corner of 53rd Street and Ninth Avenue for the purpose of sending Sixth Avenue trains down Sixth Avenue; and that owing to his culpable negligence the train, at that point, was derailed and thrown to the street below and a large number of persons met their death.

Now, some of you have told the counsel for the defendant that you had sat in homicide cases before; but you will observe that there is a great difference between the kind of homicide which the Grand Jury charges this defendant with and what is ordinarily known as homicide, that is to say, murder or manslaughter in the heat of passion, because the ordinary kind of manslaughter, the cases in which you have probably sat, are cases where the defendants evinced some depraved or wicked mind, by reason of their act they desired to take human life and took it, and were either murderers or at least criminals on that account.

Now our law, which you are called upon here to ad-

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minister, is not like the law of England, the common law, but our law is all statute law, it is codified, and all the law that you will be asked to apply to the facts in this case, all the law that the court will give you will be found written or printed in book, either the laws of the State or the decisions of the Court of Appeals.

Now, under the old common law there was not any such thing as manslaughter in the second degree. Society did not apparently require it. When the common law grew up in the early days of England there were no Elevated trains, there was no dynamite, there was not even gun powder, and people could get along without being particularly careful of other people if they were only careful of themselves. But as society progressed and machinery was invented and manufactured and vice became exceedingly complicated it became necessary to protect society not only against people who went around with revolvers and knives trying to kill other people, but people who by their blameworthy negligence did things which they ought not to have done and by virtue of which a large number of people, or any person was killed or injured.

Now, you will see that in the City of New York it is almost as important to the public to prevent trains being thrown off the Elevated structure at an hour in the morning when people are going to their work as it is to prevent

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people from shooting each other in the street below.

Now, the negligence of a motorman, as you can easily see, might result in a great many more deaths than would result where a person ran amuck with a revolver.

This is merely said in order that you may understand the reason for the law under which the defendant is being tried.

Now, the Grand Jury charges Kelly with, first, not doing something which he ought to have done, and the thing which they charge him with not doing is neglecting to see the signal which if he had obeyed would have resulted in his train remaining where it ought to have remained, at a stop, on the Elevated structure until those signals were changed.

Now, you will see that this whole case depends on your first deciding what the signals were, and then deciding what Kelly's duty was, and then determining whether he did the duty or not.

Now, it will be necessary and profitable for me to outline to you before the witness are called what the signal system of the Ninth Avenue Elevated Road was on the 11th of September, 1905.

In the first place you have got to know what signals were displayed, and then you have got to know what he ought to have done, then you have got to determine what he did do,

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and then whether he is culpable or not.

Now, the Ninth Avenue Elevated road at 53rd Street and Ninth Avenue consists of four tracks, two of those tracks -- I may be wrong as to whether there are three or four, but there are more than two, I think there are only three -- the middle track is an express track and the side tracks are local tracks.

MR. HAIRE: You are speaking of the Ninth Avenue line?

MR. TRAIN: Yes. Of course all of the Sixth Avenue trains come down the Ninth Avenue Elevated until they get to 53rd Street and then they are switched across through 53rd Street upon Sixth Avenue.

Now, for the purpose of doing that switching there is a tower at the corner of 53rd Street and Ninth Avenue, with a man stationed there at all times who is charged with a very clear and precise duty as to the manipulation of the track and the signals.

Now, the Ninth Avenue trains coming down Ninth Avenue stop at 59th Street, and they then proceed in a southerly direction until they get about 336 feet north of 53rd Street, where there is displayed an ordinary Elevated railroad signal which consist of a lantern, a round disc outside of the lantern, and at night the lantern shines through a hole in the disc showing red, or green, or yellow

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or white, whatever the signal is -- and by day the disc itself shows what color is displayed.

Now, under the rules of the Ninth Avenue Elevated road any yellow signal, as it is known, is a cautionary signal and instructs any motorman who sees it to reduce the speed of his train to, I think about 15 miles an hour, or, in other words, to have it under control so that he can stop it on seeing the next signal. In other words, the cautionary signal always refers to some other signal, and as you will see this cautionary signal is after leaving 59th Street on your way to 53rd Street and it is 336 feet north of 53rd Street. It refers to a signal displayed at 53rd Street relative to whether or not the track is set up for a Sixth or Ninth Avenue train.

THE COURT: Whereabouts is this displayed?

MR. TRAIN: This cautionary signal?

THE COURT: Where is it displayed?

MR. TRAIN: It is displayed on an elevation at the side of the track. It is on some sort of a piece of pipe.

THE COURT: With reference to 53rd Street, is it at 53rd Street?

MR. TRAIN: No sir; it is at 55th Street, 336 feet north of 53rd Street, two blocks north of the other signal.

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MR. HAIRE: That should be 336 yards.

MR. TRAIN: I am perfectly willing to stand corrected.

MR. HAIRE: A block is about 400 feet, so that it must be more than 336 feet.

MR. TRAIN: We can make that correction when I am through if I am wrong.

Now, that is the first signal that a motorman comes to and that is a white disc, and a white disc means "Danger, Stop" and it is used also when a train has been crossed over from the express track on to the local track.

Now, inasmuch as there was no crossing over on this particular morning of any express trains from express to local tracks, or inasmuch as it is not contended that any white or danger signal was displayed at that point, why it is enough for you to remember that the cautionary signal, which is the regular signal displayed at that point, was there on this occasion.

Now, under the rules of the company, as I said before, that means, that cautionary yellow signal means "Slow down, get your train under control".

Now, as you go on towards the switch at 53rd Street the next signal you come to is the "home" signal and that is the same kind of a signal as the other signal, but that

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shows red and green. Red means "Stop" and of course we mean a clear track, go ahead. It may have some other color but for the purposes of this case it does not enter into it.

Now, 30 feet further on, beyond that home signal there is another signal, a track signal, which indicates exactly which track is set up, namely, the Ninth Avenue track or the Sixth Avenue switch, around into Sixth Avenue.

If the Ninth Avenue track is set up that "pot" signal, as it is called, the track signal shows green. If it shows yellow it means that the Sixth Avenue track is set up.

Now, I don't expect you to remember all these things right off, but they are very simple and within a very short time you will be able to tell me if I should call on you just what lights tell a mortorman to go down Ninth Avenue or Sixth Avenue or to stop.

Let me run over them again..

At 55th Street is your cautionary signal, yellow, meaning slow down.

At 53rd Street there is the home signal showing red and green, the red meaning "Stop" and green meaning "Go ahead".

Then there is the "Pot" signal, and a few feet fur-

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ther on, say 30 feet further on, at the juncture of the switch, showing green and yellow, green meaning Ninth Ave. set up and yellow meaning Sixth Avenue set up.

Now, before taking up the duties of a motorman, let us see what the duties of the tower man are for this reason -- that in this case the tower man and the motorman were held equally negligent by the Grand Jury, and the tower man has already been tried and convicted for his negligence. We have now reached the trial of the second man, Kelly, the motorman. If you will follow the evidence closely you will see that the contention of the People is that there was a reciprocal and equal duty upon both the tower man and the motorman to do certain things and both were negligent and hence the accident. If only one had been negligent there would have been no accident, hence they are both equally responsible.

Now, Jackson was the tower man. The normal position of the Ninth Avenue track is set up for Ninth Avenue; the normal position of the switch at 53rd Street is set up for Sixth Avenue. The first thing that the tower man has to do if he wants to put the track in normal position is to set it for Ninth Avenue trains. You see.

Now let us decide what it was the tower man's duty to do after a Sixth Avenue has passed around the curve to

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Sixth Avenue, because on this particular morning the train that had preceded Kelly's train was a Sixth Avenue train. Kelly was on a Ninth Avenue train, because the track was still set up for a Sixth Avenue train and because Kelly was coming down at a rate of about 25 miles an hour, and when his Ninth Avenue train took the Sixth Avenue curve why the whole thing was thrown into the street and the people were killed.

Now, after a Sixth Avenue train gets around the curve there is a very precise and distinct duty on the part of the tower man and I will tell you exactly what it is. He is up there in the tower operating these switches and these signals by means of a mechanical interlocking device which was in perfect working order on that morning, and which enables him to throw the home signal which, I have told you is red and green, red meaning "Stop" and green meaning "Go ahead" -- he could throw that from green to red and from red to green and then he could throw the track from Sixth Avenue -- he could throw the switch on or off, Sixth Avenue switch.

Now, if a Sixth Avenue train is coming down Ninth Avenue and turns southerly into 53rd Street on its way downtown the first thing which the rules of the company require and which is imperative, is that the man in the tower should

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change the home signal from green, as it was before, directing the Sixth Avenue train to go ahead, to change that to red, which means to stop, that is to stop to protect the next train, and he has to leave at "Red" or stop until he can see from the tower which kind of a train is coming, whether it is another Sixth Avenue or whether it is a Ninth Avenue train. It is left at "Red" or stop until he can see what is coming, whether it is a Ninth Avenue or a Sixth Avenue train.

Now, if the next train is a Ninth Avenue train it is his business to determine that fact from the discs exhibited on the front of the engine and then to change the switch so that the Ninth Avenue train can go on down Ninth Avenue instead of being thrown into Sixth Avenue and when he has done that then to change the "Home" signal from red to green, which means go ahead.

Now, at the same time that he changes the switch, throws the switch over so that a Ninth Avenue train can go down Ninth Avenue, the "Pot" signal, the track signal which is on the track, changes from yellow to green, meaning that the track is set up for Ninth Avenue. Now, the motorman at the head of a Ninth Avenue train in the normal condition of things would see this -- supposing he knows he is following a Sixth Avenue train -- although it doesn't make any difference whether he knows it or not -- he comes on down

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Ninth Avenue, stops at 59th Street, then he sets his train going say at 25 miles an hour until he gets to 55th Street, then he meets the cautionary yellow signal, which means slow down, and, of course, he has got to slow down in order to see what lights are displayed or what colors are displayed at 53rd Street. So he reduces the speed of his train and the next thing he sees will be the red signal, he probably will see it, which the tower man has set to protect him until the tower man can see whether the train that is coming is a Ninth or a Sixth Avenue train. Then he will see that red signal change to a green or go ahead signal changed by the tower man, and then it is his business, incidentally, to see not only the home signal but the signal which is displayed on the track, in other words, he has and three signals, he has got the cautionary signal as he approaches 53rd Street he has got to see two signals of the same kind. If he gets the red signal, the home signal, of course he stops until he gets it changed to green to go ahead. When he sees the green signal he is also charged with the duty of seeing what the track signal says, in other words, to go ahead, a Ninth Avenue motorman has got to see two green signals, because those are the only signals which mean that the Ninth Avenue track is set up. If he sees a green signal and a white or yellow signal on the track, that is an imperfect signal, which means that he has got

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the home signal, the green signal, to go ahead, but that track is not set up for him to go ahead. It is what is known as a danger signal in railroad affairs because an imperfect signal. It tells him that an impossibility has arisen, namely, that he is instructed to go ahead and yet the track is not free for him to go on.

Now, I hope that I have made that clear, although with a great many words and a great deal of repetition.

Now, what happened on this morning was this -- instead of the tower man, after the Sixth Avenue train had gone around the curve doing his duty, the tower man went downstairs to relieve himself; he was a victim of cramps or diarrhea and all kinds of things, and he, instead of resorting to any other expedient which might not have been pleasant, being taken short, in common parlance, he thought he had time to slip downstairs and come back before the next train. He did not. The Sixth Avenue train having gone around the curve and the signals, the home signal showing green, meaning "Go ahead" to the Sixth Avenue motorman, and the "Pot" signal showing yellow, meaning that the Sixth Avenue switch was set up of course, the Sixth Avenue train having gone around into Sixth Avenue was all right, but the tower man was not there to change the track from Sixth to Ninth Avenue -- the tower man was not there to change the

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track, for he was downstairs. So the track remained set up for a Sixth Avenue train and the lights that were displayed, the signals that were displayed, were the green "Home" signal and the yellow or Sixth Avenue signal; so that the motor-man coming down the track should have seen an imperfect or danger signal, in other words, he was instantly informed, if he had his eyes open, that it was an impossibility, he could not proceed. He was a Ninth Avenue man and he got the Sixth Avenue combination signal, so that he could not go on and he should have stopped his train or his train should have been so under control that he could have stopped it.

Now, you can see that the situation presents two acts of negligence, and if either of these acts of negligence had not occurred no one would have been killed. Of course the tower man was very negligent in not either throwing the danger signal in front of the Ninth Avenue train and stopping it while he went downstairs to relieve himself, or in not doing something else and staying there and properly manipulating the signals or tracks for the Ninth Avenue train. If he had stayed there and when he saw the Ninth Avenue train, which was run by Kelly, coming down the track, had set the track up for a Ninth Avenue train, no matter how fast Kelly was going, Kelly would have pro-

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ceeded on down Ninth Avenue and nothing would have happened. The signals and the rules are intended to prevent accidents by making everybody careful. If Kelly when he saw these signals or at least when he did not see them -- if Kelly, as he was obliged to do, had looked at the signals as he came down Ninth Avenue he would have seen that he could not go on, he would have stopped, as it was his duty to do, and no accident would have occurred; in other words, in order to have this accident, both these men had to be equally negligent. If either of them had obeyed the rules, had obeyed their instructions, had obeyed what they were supposed to do every time they passed a signal of that sort no accident would have occurred at all. So that you cannot say that one was any more negligent than the other. The accident would not have occurred if either one of them had done his duty. Now, it is the contention of the People that the track being set up for a Sixth Avenue train, and Kelly not having reduced his speed as he should have at 55th Street, having paid no attention to this cautionary signal, was coming lickety split, 25 miles an hour, down across that switch. Even if he had seen the pot signal showing that the track was set up for a Sixth Avenue train it is very doubtful if he could have stopped the train as he was going so fast. Apparently he did not see it; he did not

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make any effort to stop his train and when the Ninth Avenue train struck the Sixth Avenue switch it was going so fast that it simply was thrown right over the structure and some twelve or fifteen people were killed and forty more were injured.

Thereupon Kelly ran away, disappeared and could not be found for a long long time, a couple of years.

In the meantime Jackson who remained on the spot was indicted and I tried him here in this very Court about a year ago and he was convicted for his negligence.

Along about last Summer Kelly was found out in San Francisco somewhere and brought here to get his trial. The mere fact that Jackson has been convicted for his share of the disaster, of course, has nothing to do whatever with the responsibility of Kelly. They both were equally responsible and if they had done their duty no one would have been killed.

THE COURT: Gentlemen of the Jury, you must not talk about the case or discuss it among yourselves or with others and do not form any opinion about it. Keep your minds open and free until it is finally submitted to you. We will take a recess until a quarter past 2.

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AFTER RECESS.

ENOS V. DUTCHER, a witness called and sworn in behalf of the People, testified as follows:

(Two photographs are marked People's Exhibits 1 and 2 for identification.)

A diagram by consent is marked People's Exhibit 3 in evidence.

MR. HAIRE: Subject to correction if any is necessary?

MR. TRAIN: (To the jury) This diagram represents the Ninth Avenue Elevated tracks showing the switch and the location of the signals at 53rd Street where this thing occurred.

DIRECT EXAMINATION BY MR. TRAIN:

Q Mr. Dutcher, where do you live? A I live at 145 West 116th Street.

Q What is your business address? A My business address is 155th Street and Eighth Avenue.

Q What is that? A The office of the Elevated Railroad Company.

Q Now, what is your official position with the Railroad Company? A Instructor of motormen.

Q Do you know the defendant? A Yes sir.

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Q paul Kelly? A Yes sir.

Q Did you instruct him? A I did sir.

Q How long ago? A How long ago?

Q Do you remember? A It was in March, 1905.

Q Now, at the time that you instructed him did you furnish him with any circulars or documents relative to his duties? A Yes sir.

Q Will you state what you gave him? A What was known as the Signal Bulletin No. 1 and an Instruction Book.

Q I show you Signal Bulletin No. 1 -- I show a pamphlet and ask you if that is a copy of what you gave him?

A Yes sir.

Q Of the book which you gave the defendant Kelly?

A Yes sir.

Q What instructions did you give him at the time relative to the contents of that book? A I showed him the signals and what they meant and where they were located.

MR. HAIRE: I object to that. He is stating conclusions, that he showed him this and that and what they meant. Let him state what he said.

MR. TRAIN: I withdraw the question.

Q Did you give him any instructions in regard to the book? A I gave him instructions on the road.

MR. HAIRE: I object to that. That answer should be yes or no.

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THE COURT: Answer yes or no.

THE WITNESS: Relative to the book, no sir.

Q What did you do, just give him the book? A Yes sir.

Q What verbal instructions did you give him at the time? You can confine yourself to that portion of the Elevated structure, and his duties, in conducting trains down the Elevated structure between 59th and 52nd Street?

A That I gave him on the train.

Q On the train? A Riding with him.

Q What instructions in the first place, -- what instructions -- in the first place, tell the jury what signals there were displayed on the Elevated track at that time and also on September 11th, 1905?

MR. HAIRE: I object to that question.

MR. TRAIN: I withdraw it.

Q Tell the jury what signals, if any, were displayed on the south, for southbound trains on the Ninth Avenue Elevated track at 55th Street?

MR. HAIRE: When was that?

MR. TRAIN: When he instructed the defendant.

THE WITNESS: What signals were at 55th Street?

Q Yes. A There was a pot signal, known as a "pot".

Q Not at 53rd Street, at 55th Street? A Known as signal No. 1; it had two positions, one yellow and one red.

Q One yellow and one red? A Yes sir.

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Q Now, what did you instruct him in reference to that signal? A When it was yellow it was a cautionary signal and was to show him that he must have his train under control, knowing that the home signal would be either at danger or clear.

Q What instruction did you give him in regard to that pot signal known as Signal No. 1 when it showed white?

A It didn't show white, it could not show white.

Q Red? A yes; red is danger, he must stop at all times before passing.

Q Now, was that signal the same on September 11th, 1905, as to colors and its mechanism -- on September 11th, 1905, as it was when you instructed the defendant in regard to it?

MR. HAIRE: That question is objected to.

THE COURT: I will take it and give you an exception if you know. He has directed his attention to both kinds. I will take the evidence.

Exception.

A It was, yes sir.

Q Now, what signals, if any, were displayed on the Elevated track, the Ninth Avenue Elevated track when you instructed this defendant as to his duties at 53rd Street, between signal No. 1 and the curve? A There was what was known as the "home" signal.

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Q Describe that to the jury? A That was a signal which was set at danger when it was red, it was danger, to stop; when it was clear, at that time, it was white.

Q You mean when you instructed the defendant it was red and white? A Yes sir.

Q White meant what? A Clear.

Q Go ahead. A Yes sir; and danger when it was red.

Q Now, what other signals, if any, were between that signal and the curve? A There was a low pot signal connected to the switch point.

Q What colors did that show? A It showed yellow and green.

Q Yellow and green? A Yes sir.

Q What did you instruct the defendant the significance of those two colors were? A When that signal showed yellow it was a sure indication that he was going to take a diverging route or turn through 53rd Street from Ninth Avenue.

Q When it showed green? A It was a clear track, straight ahead.

Q Now, I will ask you if on the 11th of September, 1905, the home signal and the pot signal which you have just described in your last answer were the same as to mechanism and color as when you instructed the defendant in regard to them?

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Objected to; objection overruled; exception.

A Yes sir; I think it was.

MR. TRAIN: I offer this book in evidence.

MR. HAIRE: I object to it.

BY THE COURT:

Q Was that given to him at the same time that you instructed him, did you give him this book? A Yes sir; that was given to him.

The book referred to is marked in evidence People's Exhibit 4.

MR. TRAIN: Now, gentlemen, this book is in evidence and at your service. Of course, it won't be necessary for me to read to you all of its contents, but I will read just some parts of it.

(Mr. Train then reads to the jury the paragraph from People's Exhibit 4 relating to red, yellow, green and imperfect signals.)

Q Now, Mr. Dutcher, did you instruct the defendant that his duties were in regard to looking out for these three signals when conducting a southbound train on the Ninth Avenue Elevated Railroad? A Yes sir.

Q Will you tell the jury what you told him in regard to them and what he should do? A I told him he should always watch the pot signal connected with the switch, to see whether he had the right route or not; if not he should stop

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before passing it, regardless of whether the home signal was clear or not.

Q When you say the pot signal -- we want to be sure which one you refer to. What do you mean by the switch?

A The low pot signal connected with the switch point.

Q Tell the jury exactly how you instructed him as you say you did? Riding beside him,

on the front platform of the train, a train should be conducted south from 59th Street, describe the different signals he should look for, that you told him he should look for and what to do in the event of their showing different colors? A After leaving the 59th Street station he should first look at signal No. 1.

Q That is where? A 55th Street.

Q 55th Street? A Yes sir.

Q How far north from the switch is that? A About 300 feet.

Q He should look at that signal? A Yes sir; he should look at that signal. If that signal showed yellow he should then have his train under control so that if he found the home signal at danger he could stop, or any part of it be out of order.

Q Or what? A Or any part of it out of order, meaning a bad signal --

MR. TRAIN: I object to what you meant, unless you

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told him.

THE COURT: Only what you told him.

Q Did you tell him what signals would instruct him to go down Ninth Avenue if he saw that at 53rd Street? A Yes sir; if the pot signal connected with the switch point was green he had the right of way south, providing the home signal was clear.

Q Which was what color? A Red, danger, or green, for clear.

Q Now you say red and green. In the first place I thought you said red and white? A These signals were changed previous to that time, I believe, I don't remember the date when the signals were changed there, just what time, but they were changed in 1904.

Q In 1904? A Yes sir; I think it was.

BY THE COURT:

Q Where was the home signal, at 53rd Street? A Yes sir.

BY MR. TRAIN:

Q How far north of the switch was the home signal?

A Why it is about 6 feet, I should judge, north of the switch point.

Q How far north of the pot signal, the low pot signal?

A The low pot signal -- only about two feet apart.

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Q How far? A About two feet I should judge.

Q I think you are mistaken on that point. At any rate there are two signals there? A Yes sir.

Q Now, did you instruct him what combination of signals at 53rd Street meant a clear track, go on down Ninth Avenue? Yes sir.

Q Tell the jury what the combination was? A There was only two signals there for him to look at, one was the low pot signal connecting the switch point; the other was the home signal standing near to it; where they were both green it meant to go down Ninth Avenue.

Q Did you instruct him what to do if the home signal showed green but the pot signal showed yellow? A Yes sir.

Q What? A That he should stop, it was a sure indication that he had the wrong route, and he didn't want to go that way.

Q Is that combination what is known in railroad parlance as an imperfect or danger signal? A It is over the route he wanted to take.

Q For a Ninth Avenue train? A Yes sir.

BY THE COURT:

Q It would be the "low pot" or "home" or both?

A No sir; the low pot would be yellow.

BY MR. TRAIN:

Q Now, in order that he could make sure of the clear

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track for a southbound Ninth Avenue train -- that would be indicated by a green home signal and a green pot signal?

A Yes sir.

Q The stop signal would be a red home signal irrespective of the pot signal? A Yes sir.

Q A clear track for a Sixth Avenue train would be a green home signal and a yellow pot signal? A Yes sir.

Q But for a Ninth Avenue train a green home signal and a yellow pot signal would be an imperfect or danger signal signifying "Stop"; is that correct? A Yes sir.

CROSS EXAMINATION BY MR. HAIRE:

Q Now, how many trips did you take with Paul Kelly from 59th Street on his car down below 53rd Street? A Well, I haven't got any record of the number of trips, perhaps there might have been twenty.

Q You may have made twenty trips with him? A Yes sir.

BY MR. HAIR:

Q Instructing him all that time? A I did not tell him all these things every day, no sir.

Q When did you first instruct him? A Some time in the month of March.

Q What year? A 1905.

Q 1905? A Yes sir.

Q You think at that time that the signal No. 1 -- that

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the home signal was white, do you, when it was a clear track for a Ninth Avenue train? A I don't think it was -- I think it was changed the year before that.

Q Then when you first testified you were thinking of it before the change? A Yes sir.

Q So that at the time that you gave Paul Kelly the instructions they were in effect this, that the first signal was always yellow, wasn't it? A Yes sir.

Q Unless they wanted a train to stop? A Yes sir.

Q Practically a stationary signal which indicated Caution? A Yes sir.

Q Is that right? A Yes sir.

Q Then if he were to go on the next signal must be green? A To be clear.

Q Is that right? A Yes sir.

Q And also the signal at the tower, what do you call that? A The pot signal at the switch point.

Q The pot signal? A Yes sir, low pot signal.

Q Do you know anything about the mechanism by which these signals are worked from the tower? A No sir.

Q They are all worked from the tower, are they not? A Yes sir.

Q If a train was coming down Ninth Avenue, leaving 54th Street, we will say, a Ninth Avenue train the duty when approaching the first signal is to get the train under

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control, is it? A Yes sir.

Q Being a Ninth Avenue train he sees the two green signals and he continues, don't he? A Seeing the two green signals, yes.

Q Yes. A Yes sir.

Q He would continue on 9th Avenue. Now, how far below signal No. 1, the northermost signal is it to signal No. 2 as I will call it for the purpose of designating it, or the home signal? A I should judge about three hundred feet.

Q About 300 feet? A Yes sir.

Q Now, how is signal No. 2, or the home signal, situated as to the switch on the track, that is the switch which turns the train from the Ninth Avenue downtown track over onto 53rd Street? A If I understand your meaning right the switch has to be turned first before they can turn the home signal.

Q What I want to know is this, that is signal No. 2 that you call the "home" signal, don't you? A Yes sir.

Q Is that situated directly at the side of the switch, or where the track turns? A It is within a very few feet of it.

Q Now, at any time when a train is approaching from the north the man controlling that switch could shift it at any time before that train reached the switch, couldn't

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he? A Before he reached the home signal?

Q Yes. In other words, a train coming down, we will say a Ninth Avenue train had passed the first signal, the second signal is green and the third signal green the motor-man would keep right on, wouldn't he? A Yes sir.

Q Now at any moment before the wheels struck the switch where the pot signal or signal No. 2 is, that switch could be shifted, couldn't it? A No sir.

Q What is that? A No sir.

Q What was there to prevent it at that time? A There is a locking bar.

BY THE COURT:

Q A locking bar? A Yes sir, that the wheels strike.

BY MR. HAIRE:

Q Where do they strike that? A Right alongside the running rail; I don't know whether it extends past the home signal or not, if it does not it extends to the home signal.

Q The home signal is the one I am speaking of? A Yes sir.

Q How many feet above, or north of the switch does this bar that you spoke of extend? A I don't know the length of it, sir.

Q Does it extend north of it at all? A Yes sir.

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Q How many feet? A I could not tell you that.

Q Five feet? A Yes sir, more than that.

Q Ten? A Yes sir; I should judge thirty.

Q Thirty feet? A Yes sir.

Q You don't know? A No sir.

BY THE COURT:

Q Thirty feet from the switch? A Yes sir; from the switch point.

BY MR. HAIRE:

Q Then after a train had come within thirty feet of the home signal the switch could not be changed, is that right? A Thirty feet from the switch point I said.

Q From the switch point? A Yes sir.

Q It could not be changed? A No sir.

Q At any time before thirty feet was reached it could be changed, couldn't it? A As far as I know.

Q Then if the signal man were to make a mistake and turn that switch to Sixth Avenue it would also turn the signals, wouldn't it? A He would have to turn the signals first before he would turn the switch.

Q Don't the switch and the home signal move in unison? A No sir.

Q He has to turn two levers? A Yes sir.

Q That is, one turns before the other -- does it make any difference which one he changes? A Yes sir; he has got

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to change the home signal first.

Q I thought you said you were not very familiar with the working of the tower? A I am not; I could not tell you the mechanism of the tower.

Q But can you tell how it is worked? A No sir; I can only tell you that they have got to turn the home signal to danger before they can change the switch.

Q How long has that been the case? A Ever since there has been a switch tower there.

Q You mean that that is owing to the mechanical arrangement? A Yes sir.

Q Then if the man in the switch tower when a train was approaching took it for a Sixth Avenue train, at any time before the train came within thirty feet of the home signal he could switch it, couldn't he? A He would have to change the home signal first and then the switch signal.

Q That is done instantly, by moving a couple of levers? A I never ran them myself and I couldn't tell how quick it could be done.

Q You don't know whether it is done with a lever or not? A I know it is done with levers.

Q Does it take very long to move it? A I never tried that.

Q You don't know anything about the length of time, do you? A No sir.

Q Do you know anything about the manner in which the last signal is changed, the home signal, the one furthest downtown? A The one at the tower, that is the home signal we are speaking of.

Q I thought the home signal was the signal which indicated which way the train was to go? A No sir; the home signal is the signal which stops the train, shows danger, and the low pot signal connected with the switch indicates which way the train is going.

Q This pot signal indicates the direction? A Yes sir.

Q Then we will call the signals 1, 2, 3, commencing from the north, that is signal No. 3, is it? A Yes sir.

Q Is that what you would call the home signal? A No sir; that is what we call the pot signal, signal No. 3.

Q Now, let me see, does the pot signal indicate it is clear? A That is yellow and green.

Q Yellow and green? A Yes sir.

Q The pot signal, the third signal, if it was green, what was the duty of the motorman on a Ninth Avenue train? A If he had the home signal green why he could go straight down the Ninth Avenue track.

Q These signals there are only a couple of feet apart? A That is about all.

Q Now, are you still of the opinion that it is only

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two feet between those signals? A I could not tell you just how far it was between those two signals.

Q You have been instructing people on that line for how many years? A Ever since 1902.

Q These signals are all at the right, are they not, as the train is coming down? A Yes sir.

Q Had you taken any notice of the mechanical contrivance there which was used for the purpose of changing the switch or changing the signals previous to the 11th day of September, 1905? A No sir; nothing but casual notice, that is all.

Q You are not a mechanic, are you? A Not of that class.

Q No. A No sir.

Q Do you know when the last changes were made in connection with the mechanical contrivances for the shifting of the signals or of the switch? A No sir; I could not give you the dates of them, no sir.

Q Do you remember about when the last one was made?

THE COURT: You mean prior to the 11th of September, 1905?

MR. HAIRE: Since.

MR. TRAIN: I object to that as immaterial.

Objection sustained. Exception.

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Q Now, has there been a change since the 11th of September, 1905?

Objected to; objection sustained. Exception.

MR. HAIRE: I want to press this, if your Honor please.

THE COURT: You have an exception. You had better go on to something else.

MR. HAIRE: I want to state the reasons for the question.

THE COURT: very briefly.

MR. HAIRE: My reasons are these: Supposing that immediately afterwards it had been discovered there was something defective in these appliances at that time, or the time of the accident, wouldn't it be competent to show that in our endeavor to show that changes were made?

THE COURT: If you can show by this witness that immediately after the 11th of September there were changes made I will permit the inquiry, but your question is comprehensive enough to come down to the present date.

MR. HAIRE: I did not want to make it so, your Honor. If it was not immediately wit would be of no effect.

THE COURT: If you can show that directly afterwards there was some change I will permit you to do that; otherwise not.

BY MR. HAIRE:

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Q Do you know whether there was a change made shortly after the 11th of September, 1905? A I think it was two years after before there was any change made.

Q You don't know of any change made immediately? A No sir.

Q Who is the officer of the road who would have charge of such things as that? A The Chief Engineer.

Q What is his name? A Mr. Pegram.

Q Mr. Pegram? A Yes sir.

Q Now, do you know whether there is a record kept of those changes? A I could not tell you that.

Q That is outside of your department entirely?
A Yes sir.

Q Do you keep a record of the time when you instruct a man as to his duties as a motorman? A Yes sir.

Q Have you a record as to the time when you first instructed Kelly? A No sir.

Q Why not in his case? A Well because we had a bunch of new men coming at that time and it took more than one man to instruct them.

Q That was it? A Yes sir.

Q You were in need of extra men at that time? A Yes sir.

Q Now, as a matter of fact, you did not give him the same attention to Kelly that you would have done had he not

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come at a time when you were employing a lot of new men?

A Not personal attention, no sir, but I gave it to him after he was there a little while.

Q Do you know when he made his first trip? A Why I have it on record, yes, I haven't got it with me.

Q Will you kindly look it up between now and tomorrow?

A Yes sir.

Q Do you know of any changes having been made in connection with the mechanical appliances for changing either the switch or the signal No. 2 just previous to September 11th? A No sir.

Q 1905? A No sir.

Q Mr. Pegram would be the man that would know about those, is he? A Yes sir.

Q Over how long a period of time did your instructions to Kelly continue? A Well, I constantly rode with him, with all the men, in fact, I am riding all the time, I am not riding with every man every day, but I probably rode with him once or twice a week from March 7th, 1905, until the time of the accident.

Q Until the time of the accident? A Yes sir.

Q Do you remember how long before that you rode with him? A Why I think it was a week, perhaps, I rode with him once or twice.

Q When riding with him did you find him thoroughly

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conversant and experienced? A Yes sir.

Q Now, you never saw anything, on his part, to indicate but what he was thoroughly conscientious and careful in the performance of his duty, did you? A No; I never did.

Q On the contrary, didn't you consider him an exceptionally good motorman? A Well, I considered him as good as the average.

MR. TRAIN: I now offer in evidence two photographs made from the same plate of the switch and signals at 53rd Street and Ninth Avenue.

(The two photographs were received in evidence and marked People's Exhibit 1 and 2.)

MR. HAIRE: Suppose we consent to name those signals 1, 2 and 3?

A JUROR: I would like to know how large the signals are.

MR. HAIRE: I want the witness to identify the signals on people's Exhibit 3.

BY MR. TRAIN:

Q Will you point out on this diagram the first signal up at 55th Street? A Signal No. 1 (indicating).

Q Mark it with a line No. 1? A Yes sir.

Q Where is signal No. 2? A Signal No. 2 is the home signal (marked No. 2).

Q Where is No. 3? A No. 3 is the Pot Signal connect-

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ed with the switch point.

Q Did you ever make any test of Kelly's eyesight? A I believe he was before the doctor, yes.

Q Can you state positively whether he was or not?

A Well, the superintendent has it on record.

Q He has it on record? A Yes sir.

Q Mr. Smith? A Yes sir.

Q How frequently is that made? A If a man passes the doctor satisfactorily he is examined again in two years.

Q How large is Signal No. 1, can you indicate to the jury? A No, sir, I could not give you the exact size.

MR. HAIRE: The defendant makes no point about there being any trouble about seeing these signals. So that that will save time.

THE COURT: You concede that his eyesight was good?

MR. HAIRE: Yes sir.

BY MR. TRAIN:

Q Are you able to state how far up the track you could see the signal? A What signal?

Q On a clear day see the home signal or the pot signal, how far away from them? A How far away you could see it? You could see it when you left the 59th Street station.

Q You could see clearly? A Yes sir.

Q Both those signals? A Yes sir.

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Q By day as well as by night? A Yes sir; it was a clear day.

Q You could see the home signal at 53rd Street?
A Yes sir; from 59th Street.

Q Now taking this piece of board with this white piece of paper on it as the Ninth Avenue track? A Yes sir.

Q And this piece of paper as the switch and track at 53rd Street? A Yes sir.

Q Do the spots that Mr. Derby has pasted on here for our convenience indicate a clear track for a Ninth Avenue train? A Yes sir.

Q This is 55th Street, No. 1, the Cautionary Signal?
A Yes sir.

Q This is No. 2, the Home Signal and this is the Pot Signal? A Yes sir.

Q These two being green indicate a clear track for a Ninth Avenue train? A Yes sir.

Q Now, reversing the board that shows a green home signal and a yellow pot signal? A Yes sir.

Q That is the condition which you say you instructed the defendant to mean an imperfect or danger signal? A Yes sir; for a Ninth Avenue train.

BY MR. HAIRE:

Q In other words Signal No. 2 and Signal No. 3 should be green in order to warrant his continuing in his course,

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is that right? A Yes sir.

Is that board offered in evidence? I did not know whether you wanted to mark it in evidence or only use it for the purpose of illustrating the witness's testimony.

MR. TRAIN: I will offer it in evidence.

(The board with strips of paper pasted on it is marked People's Exhibit No. 5.)

MR. HAIRE: I have no objection to its going in.

BY MR. HAIRE:

Q Now, witness, I would like to have you look at this paper. You have just indicated the places of the various signals. I think a mistake has arisen as to the distance of the Cautionary Signal, Signal No. 1, to Signal No. 2. Now, will you look and see if you can tell the distance?

A No sir; I have never measured it; I could not tell.

BY THE COURT:

Q can you tell from looking at that diagram? A No sir; I could not tell from that.

MR. HAIRE: I think there is a mistake made there. One shows 600 and the other 300 and something, but it being nearly two blocks I take it for granted it must be wrong. I know the distance of a block.

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F R A N K H E D L E Y, a witness for the People, being
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Mr. Hedley, what is your connection with the Ele-
vated, Ninth Avenue Elevated Road? A General Manager.

Q Did you go to the elevated structure at Ninth avenue
and 53rd street on the morning of September 11, 1905?

A Yes, sir.

Q What time did you get there? A About eight o'clock.

Q What condition did you find. Describe to the jury.

A First I found a single motor car standing on the south
bound track, headed to the east, which had been the leading car
of a Ninth avenue train.

Q Was that around at 53rd street? A Yes, sir, around
in 53rd street.

BY THE COURT:

Q The leading car? A Yes, sir; the leading car.
A car that had been the second car in that train was lying
in the street; a third car of the train was partly hang-
ing over the structure with the north trucks still upon the
structure. The three rear cars of the train were still on
the track. The south end of the third car was on the curve,
and the north end of the rear car in the train was back on
the straight main line.

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BY MR. TRAIN:

Q Now, let me ask you if you are familiar with the mechanical arrangements of the tracks, switches and the rods connecting the switches with the levers in the tower at that point? A Yes, sir.

Q Is it possible, a train having once taken the switch at 53rd street for any change to be made in the signals?

MR. HAIRGE: I object to that. I don't think this witness is qualified.

THE COURT: Not as yet.

Q What condition did you find the signal to be in?

A The pot signal was yellow and the home signal was green.

Q Did you see the defendant at that time? A No, sir.

Q When did you first see him? A A few months ago.

Q During the year 1907? A Yes, sir; that is the first I saw of him since the accident.

Q During the year 1907? A Yes, sir.

Q Will you describe for the benefit of the jury the mechanism of the interlocking system at that point on the elevated structure?

MR. HAIRE: I think the witness should qualify as a mechanic before he does that.

BY MR. TRAIN:

Q Are you familiar with the system? A Yes, sir.

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Q How long have you been superintendent of the road?

A Since 1903, the last time.

Q Are you able to describe the interlocking system at that point to the jury?, A Yes, sir.

Q Will you do so?

MR. HAIRE: As he says it existed on the 11th of September?

MR. TRAIN: Yes.

THE WITNESS: At 59th street and Ninth avenue, just south of the point where the Sixth avenue trains turn around into 53rd street, there is what is known as an interlocking tower; that interlocking tower is a mechanical tower which it makes it necessary for the tower man to handle each lever in its proper turn. There are mechanical dogs, mechanical pins which engage one with the other, so as to make it impossible for a man to pull any but the right lever at the right time. There are pipe lines leading from that interlocking tower out onto the structure which are connected up with the switches, by detector bars and signal or switch locks.

Q Will you explain to the jury how if the track had been, at that date, set up for a Ninth avenue train the tower man would and must, according to your description of the machinery, set up the track for a Sixth avenue train. What would be the first thing he would do, the first lever he would pull?

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A Well, the first lever that must be pulled is the home signal. The tower man cannot change either the locking bars or the switches until he has first set the home signal at danger.

Q Now, I asked you if you would describe to the jury what was the next thing he would do? A If it is a Ninth avenue train coming south the normal condition of the signal No. 2, which is the home signal, is red. When that signal is red the tower man then pulls the lever which unlocks the detector bar. He can then pull another lever which throws the switch. After he has thrown the switch he then has got to again pull the second lever mentioned in order to lock the switch, and after he has done that he then can pull off No. 2 signal, the home signal, making it green so that the train can proceed south on Ninth avenue.

Q Then the tower man must go through five separate motions with three separate levers in the tower before he can change the track, set up for Ninth avenue, for a Sixth avenue train, or vice versa, is that correct? A Yes, sir; my best recollection is that that move at that tower necessitates five times pulling the lever to set up the route.

Q In order to work the mechanism at all he must change the home signal to red? A Yes, sir.

Q He must then pull another lever before he can turn the switch? A Yes, sir.

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Q He must then turn the switch? A Yes, sir.

Q He must then lock the switch and then he is in a position to change the signal from red to green, isn't he?

A Yes, sir, as I recall it there.

Q Now, will you describe -- what is the name of that bar that runs along? A The detector bar.

Q Will you tell the jury what a detector bar is?

A A detector bar is a safety device which is installed alongside, sometimes inside and sometimes outside of the running rail upon which the wheels run; that detector bar is always sufficient distance away from the switch point so as to make it impossible for the tower man to throw the switch between the trucks of any one car.

Q Now, how far north of the home signal does that detector bar begin? A It is about at the home signal.

Q It begins about at the home signal? A Yes, sir.

Q Is it possible for the tower man to change either signals or switches when he sees a train has caught the detector bar at the home signal? A No, sir.

Q Are you able to say then that it would be mechanically impossible for any alteration to have taken place in the switch or signals between the time the train which you found standing, or part of it standing on the elevated structure, struck the detector bar at the home signal, and the time when you arrived there at eight o'clock? A Yes, sir; it is im-

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possible for any change to have been made.

Q Did you observe whether the cautionary signal at 55th street showed yellow? A I don't recall going back to look at that.

Q The only other color it could show was white?
A No, sir; red.

Q Danger? A Yes, sir.

Q Can you state from personal observation the distance between the pot signal or switch signal No. 3, and the home signal? A It is about 33 or 34 feet.

Q Are you able to state in feet the distance between the pot signal No. 3 and the cautionary signal at 55th street?
A That is about 300 feet .

Q Something like 300 feet? A Yes, sir.

CROSS EXAMINATION BY MR. HAIRE:

Q What is that bar called, a detector bar? A A detector bar.

Q Now this detector bar you say extends from the point of the switch north, does it, at this particular place?
A Yes, sir.

Q It extends about as far as signal No. 2? A Yes, sir.

Q Is that right? A Yes, sir.

Q Now, that detector bar is only made secure to prevent

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its being removed by the wheels being shifted by the wheels reaching it, isn't it? A By the wheels reaching it and standing on it.

Q By the wheels reaching there? A Yes, sir.

Q Now, the wheels in the truck are several feet from the front of the car, are they not? A They are about four feet, perhaps four feet six.

Q Four feet six from the front of the car? A Yes, sir.

Q And the motorman stands clear at the front of the car, doesn't he? A No, sir; the motorman stands just about over the wheels of the truck.

Q Then there is only the platform that extends forward of the wheels, is that right? A The platform and the bulkhead of the car.

Q The motorman is separated only by the material of which the front end of the car is built? A Yes, sir.

Q When you reach d there this morning you found signal No. 2 -- you callit the home signal? A Yes, sir.

Q That was green? A yes, sir.

Q That indicated a clear track for what? A That indicated that a track was clear.

Q Without indicating which track was clear? A Yes, sir.

Q Then it was the pot signal which would indicate which

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track, is that it? A Yes, sir.

Q That pot signal you say was yellow? A Yes, sir.
That indicated that a track was clear.

Q Would indicate which track was clear? A Yes, sir.

Q Then it was the pot signal which would indicate which track, is that it? A Yes, sir.

Q That pot signal you say was yellow? A Yes, sir.

Q Now you have spoken of the five movements of this lever. Can a man with five turns of the hand that way (illustrating) move it? A No, sir.

Q How many levers does he use? A In that particular case he uses three levers, I think.

Q Then with three levers he makes five movements, is that right? A Yes, sir.

Q What space or distance does his hand cover while moving the lever, one of those levers? A The levers in the tower are arranged about seven inches from centre to centre, but whether the three levers that I have described are grouped in the machine together or not I don't recall; it is possible that one lever may have been two feet away from any one of the others, and on the other hand they may all three be grouped together.

Q What is the length of these levers? A From the pin in which they are fulcrumed they are about four feet six or eight long.

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Q My object is this, I want to know how far -- sup-
posing a lever is here and it has to be pulled over, now
what is the distance from the point where you take hold of
that lever before pulling it to the point where it is pulled
to? A Oh, I should imagine that was about 16 or 18
inches.

Q At any time before the wheels under the car reach this
detector bar the signal could be shifted, could it not?

A Yes, sir.

Q What is necessary to shift the pot signal, or signal
No. 3? A The pot signal at that time was coupled up to the
switch.

Q With the switch? A Yes, sir; the fact that the
switch moved ~~XXXXX~~ moved the pot signal at the same time.

Q Then those motions that you have spoken of necessary to
go through to make the shift are not added to, in part, by
the shifting of the pot signal, are they? A No, sir; that
is coupled up to the switch.

Q In other words, five movements of these levers would
change both of these switches? A Yes, sir; I am pretty
sure it is five movements to make that move, although I am not
positive, because our towers vary.

Q Did you examine any portion of the track on the 11th
of September when you went there? A Yes, sir.

Q Did you look for any breaks in the rail? A Yes, sir;

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I examined the tracks carefully.

Q What was the condition of the track where the car had left the rail? A The track appeared to be and was in good condition. The evidence was on the timber guard rail showing about where the wheels first left the rails.

Q And struck the woodwork? A Yes, sir; and struck the woodwork.

Q How far was that from the point of the switch? A It was between the frog and the switch points.

Q What is the distance between the frog and the switch points? A Well, I should say about 35 feet.

Q And it was about half way, is that right? A It was a little nearer the frog, I think it was about 10 or 12 feet from the frog, as I recall it.

Q Then the car had taken the switch and traveled about half of the distance, or a little more, on the curve, had it not? A No, sir; that is not half of the curve.

Q What is that? A That is not one-half of the curve, it is some portion of the curve.

Q I should not have said the curve, probably, but that is the first part of the curve, isn't it? A Yes, sir.

Q I suppose there was no joint in the rail or anything, at the point where it had left? A Why I cannot answer that question. The rails are -- there are a great many joints around, especially passing a curve of that character.

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Q But for all practical intents and purposes there was no joint or mechanism there which could be changed, was there, in the rail? A No, sir.

Q Did you examine the trucks or wheels which were under the car which left the track and fell to the street?

A Only in a very superficial way.

Q You did not examine them for the purpose of seeing whether there were any breaks of the flange or anything of that kind? A No, sir; I have never known of a break of a steel tired wheel flange.

Q You are very positive, are you not, that it was the second car which left the track and fell to the street?

A As I recall it, it appeared that way to me.

Q In other words, ^{the} first car had passed, had taken the switch all right, while the second car broke its coupling, or must have done so, must it not? A Yes, sir.

Q And continued directly on? A Yes, sir; it appeared that way.

Q One car went clear to the street? A Yes, sir.

Q And the other to the edge of the structure? A Yes, sir.

Q Where were you when you first heard of that accident? A I was in my home.

Q Where was that? A That was at the Ostend Apartment house on Broadway and 112th street.

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Q In what manner did you receive the message?

A Over the telephone.

Q Did you then go at once to the scene of the accident?

A Yes, sir.

Q About how long after the accident before you reached there? A Oh, about an hour or a little less.

Q Whom did you see there that you knew, at the scene of the accident? A Why, I saw a very large number of our employees.

Q Any from the engineering department? A Yes, sir.

Q Owing to that accident did you make any changes in regard to the switches or signals at that point?

MR. DERBY: Objected to unless he specifies the time when those changes were made.

THE COURT: Yes. Give the time.

MR. HAIRE: I said it was owing to that accident.

Q Did you about that time, owing to the accident make any changes or what you might term improvements?

MR. TRAIN: I object to that.

THE COURT: I will take it.

A Something after a year after the accident a change was made there.

Q Were those changes made because of this accident, because of something which was called to your attention by the accident? A They were made by a recommendation which

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was made by the then State Railroad Commission.

Q When investigating this accident? A Yes, sir.

Q After an investigation? A After investigating this accident.

Q Did those changes apply to the switch or signals or both? A It applied to both.

Q Is there less danger now in a train coming down that track than there was before? A No, sir; we don't think so.

Q You don't think your changes then were any special improvement as far as safety was concerned? A No, sir.

Q Were any of the rails either in connection with the switching into 53rd street or of the Ninth avenue elevated broken when you examined the scene of this accident?

A No, sir; I don't recall finding anything the matter with the rails.

Q You did not look over that portion of it specially?

A I looked over that portion of it specially from the front end of what had been the fourth car in the train to the tail end of the last car. I know the track was in good condition, that portion of it.

Q You were examining the car more particularly than the track? A The car as it stood on the track particularly I was examining, yes, sir.

Q Do you know whether there was any trouble at that

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time in connection with working the levers in the power house? A I don't understand what you mean by the power house.

Q I should say the tower, the place where these levers are worked, the switch house, what do you call it? A The switch tower.

Q The switch tower? A No, sir, I don't know of any trouble having existed there.

Q You were a witness in the case of the People against Jackson, were you not?, A Yes, sir.

Q When did you last see Mr. Jackson? A This morning.

Q Is he in court now? A I saw him in the hall this morning; I have not seen him since.

Q Do you know whether or not it was contended at the trial of Mr. Jackson that the signals in the front of the car in which this defendant was motorman was set for the Sixth avenue track? A Shall I answer that question, your Honor?

THE COURT: There is no objection to it. Go ahead.

THE WITNESS: As I recall it, I stated in my direct testimony that the front motor car, when I arrived on the scene, was carrying Ninth avenue signals.

Q Was carrying the Ninth avenue signals? A Yes, sir.

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Q Now, my question is a little different from that. I asked you if you knew whether it was contended by the defense in the trial of Jackson that that car was carrying -- before it reached the switch, of course, carrying Sixth avenue signals?

Objected to. Objection sustained.

Q What was necessary to do to change the signal in front of the car by the motorman, to indicate whether it was a Sixth avenue or Ninth avenue car?

Objected to as immaterial.

Objection sustained.

MR. HAIRE: I thought it might save my recalling this witness later.

THE COURT: Let us have him later if it is made material. The case is important enough to ask him to return.

MR. HAIRE: I may want to recall this witness.

That is all I can think of at present.

BY MR. TRAIN:

Q Now, counsel for the defendant asked you in regard to the condition of the tracks and the working of the levers at this time. Did you make any test to determine whether the mechanism was in condition or not? A No, sir; not on the ground.

Q What do you mean by that? A (No answer).

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Q Did you make a test anywhere? A When the wreck was standing, the two cars were standing on the track it was impossible for any one to make a practical test as to whether the machine was in operating order, because the wheels standing on the detector bar locked the machine so that it could not be operated.

Q Well, after the wreck was removed was the mechanism tested by you? A Yes, sir; after the wreck was removed the signal foreman reported to me that.

Objected to. Objection sustained.

Q You did not make a personal examination? A No, sir.

Q Did you make a test or observe any test made as to the condition of the controllability of the car by the motor, to ascertain whether the motor was in running order? A Personally, no, sir.

Q What department has charge of that? A The war department, superintendent of cars and equipment.

Q Are you able to state the physical cause of the accident, not the responsibility/ I mean the cause, the physical cause which led the car to leave the track?

Objected to. Objection sustained.

Q At what rate of speed is it possible for a Ninth avenue train, or for any train to take the switch and curve in 53rd street, and remain on the track?

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MR. HAIRE: I object to that question.

THE COURT: I think the witness may be able to testify in answer to that.

Q How long have you been superintendent of this system? A Since 1903.

Q Prior to that time had you also been superintendent of it? A No, sir; prior to that time for ten years I was general manager of three Chicago elevated roads.

Q Three roads in Chicago? A Yes, sir; prior to that I was master mechanic for the Brooklyn Elevated.

Q Are you familiar with the speed at which trains can take switches and curves similar to those at 53rd street, with safety? A Yes, sir.

Q Have you seen tests made? A Yes, sir.

Q Have you familiarized yourself with more than one accident regarding such points? A Yes, sir.

MR. TRAIN: Now I press my original question.

MR. HAIRE: I still object to it.

THE COURT: I think you have enough to take his testimony, from the experience that he has had, -- he is able to express an opinion and I will give you an exception, Mr. Haire.

MR. TRAIN: I will ask him if he is able to state with reasonable certainty.

THE COURT: I think you have enough to get his

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answer to that question. You have shown that he has participated in tests, observed them being made, and has had experience in such matters.

Q (Question repeated as follows:) At what rate of speed is it possible for a Ninth avenue train or for any train to take the switch and curve in 53rd street and remain on the track? A I believe that a train coming south on the Ninth avenue track could go around that curve at a speed of twenty miles an hour; if it was any greater speed than that it would be extremely dangerous. Twenty miles an hour would not be a safe speed to run around that curve regularly. Eight or nine miles an hour is as high a rate of speed as a train should run around that in normal operation.

BY MR. HAIRE:

Q Did you ever know of a train going around that above ten miles an hour? A Yes, sir.

Q Under what circumstances? A At times it is necessary to discipline motormen for running their trains around curves at too high a rate of speed, and once in a while it is done.

Q You have compelled them to go at a high rate of speed? A We compel them to limit themselves to a fixed rate of speed on all curves.

Q How high a rate of speed have you known them to take

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that curve at? A Well, I have seen them go around some what faster than eight to nine or ten miles an hour; I can't tell exactly how fast, I am unable to say.

Q Did you ever see a train go around that curve at the rate of twelve miles an hour? A I don't know as I have, that particular curve.

Q Have you ever tested that curve to see how much speed it would take in safety? A No, sir; we have not.

Q Isn't that the sharpest curve in the city of New York? A No, sir.

Q On your road? A No, sir.

Q What is a shorter one? A There are shorter curves -- one at Park Place.

Q The Sixth avenue road? A Yes, sir.

Q Now, you never had any complaints against Kelly for running his train beyond the speed limit, did you? A No, sir.

Q In fact, you never had any complaints against him at all, did you? A No, sir; his record was perfectly clear.

Q That curve is a pretty short one, is it not? A Yes, sir; it is a bar curve.

Q It is a bad curve? A Yes, sir.

Q One which requires a great deal of care in handling trains? A Yes, sir.

Q Now, when you spoke of the speed at which a train

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might take -- or make when taking curves of that kind, it would depend something upon the condition of the track, it might be affected by a foreign substance, might it not?

A yes, sir; but when giving my testimony regarding this speed I did not take into consideration any foreign substance.

Q No. I understand that.

BY MR. TRAIN:

Q Are you able to state with reasonable certainty at what rate of speed the Ninth avenue train which you found hanging over the structure and on the sidewalk must have been going to have been derailed? A No, sir.

FREDERICK S. JOHNSON,, a witness for
the People , being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Mr. Johnson, where do you live? A 362 West 117th street?

Q Were you a passenger on the south bound Ninth avenue train that came to grief at 53rd street? A Yes, sir.

Q On the morning of Thursday, September 11, 1905?

A Monday, September 11th?

Q Monday? A Yes, sir.

Q What car were you in? A The motor car, the forward car.

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Q Which car? A The first one.

Q You were in the first car? A Yes, sir.

Q Do you remember when the train pulled out of the 59th street station? A No, sir; I cannot say that I do. The last station I remember stopping at was 66th street.

Q That is the last one you remember stopping at?

A Yes, sir.

Q Do you remember it was the 66th street station?

A No, sir.

Q Do you remember seeing the sign? A No, sir; I was comparing my watch with the clock on the tower of the Miller Building.

Q Now, do you recall the train stopping at 59th street? A No, sir; I do not.

Q Are you able to state at what rate of speed -- how often have you ridden on the elevated road? A Well, practically every day for the last twelve or fourteen years.

Q Are you familiar with the speed of running vehicles, bicycles, wagons, and so forth? A Not as an expert, no, sir.

Q Are you able to tell the difference between a vehicle that was going at six and one that is going at twenty-six miles an hour? A Yes, sir; I think I could tell that.

Q Now, did you observe any slackening in the speed of the

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train on which you were riding prior to the accident?

Objected to.

THE COURT: I think it is a little leading. If it is objected to I sustain the objection.

Q State what you observed, if anything, in regard to the speed of the train on which you were riding and which was derailed at 53rd street? A Well, the last station I remember distinctly of stopping at was 66th street and it seemed a very short time until we struck that curve.

Q Can you tell anything about the speed of the train?

A Well, I should judge, in my judgment, at least twenty miles per hour.

Q That is before the accident? A Yes, sir.

Q You were expecting to go down Ninth avenue, weren't you? A Yes, sir.

Q Where did you go? A Well, I went down Ninth avenue as far as 53rd street, and then met the curve and we went down about one-third way to 53rd street and Eighth avenue.

Q Describe to the jury what happened? A Well, I was in the first car, about the third or fourth seat, opposite the motorman. I was reading my paper. I paid no special attention until as I say I reached 66th street when I noticed the time, compared my watch, and the next I remember distinctly was striking that curve.

Q What happened? A Well, as I say, we were going very

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rapidly.

Q You took the curve? A Yes, sir.

Q Is that all that happened? A No, sir, we came to a very sudden stop and when I looked back I saw that our car was alone; I saw that there was no other car immediately behind us. Then I got out and I walked back on the structure to the rear of the car and there I could see the car in the street, and I saw the other car hanging over. Then I immediately went back, walked down to the 53rd street station, into the street and went home.

BY THE COURT:

Q Was this car directly back of you in the street?

A The one directly back of me was the car that was hanging over.

BY MR. TRAIN:

Q You say the stop was sudden? A Yes, sir; very sudden.

Q Did it throw you out of your seat, what effect did it have on you, if any? A In the first place when we struck the curve we were thrown forward to the other side of the car; then it stopped so suddenly that we were thrown toward the front end of the car.

Q Did you see what became of the motorman? A No, sir; I did not; I don't remember seeing him come out of the compartment.

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CROSS EXAMINATION BY MR. HAIRE:

Q Now, I don't suppose that you ever timed a train to see how fast it was going? A Not a local train.

Q You don't even remember of stopping at 59th street? A No, sir.

Q You didn't take any note of the speed at all, did you, at the time? A Only as I say we were very quick in getting down there.

Q Isn't it a fact that the first time you thought about the speed that had been made was after the accident? A Yes, sir.

Q Then your mind reverted back to the fact that the last you remember was 66th street? A Yes, sir.

Q And that you must have come down pretty quick, is that it? A Yes, sir.

S Y L V E S T E R D. S M I T H, a witness called on behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q What is your connection with the Ninth Avenue Elevated Road? A Superintendent of the Manhattan Railway Division of the Interborough Rapid Transit Company.

Q Did you make an examination of the track and con-

dition of the car, the head car of the Ninth Avenue train which came to grief at 53rd street and Ninth avenue, and of the mechanism controlling the switches and lights at that point? A Not of the car.

Q But of the switches?, A Yes, sir; after the wreck was cleared up.

Q I can't hear you? A Yes, sir; after the wreck was cleared up.

Q Immediately after? A Yes, sir.

Q What was the condition of the switches and the tower mechanism and the lights found to be? A Perfect.

Q Now, did you make any effort to find the defendant, Paul Kelly, at the time or immediately after the time of the accident? A Yes, sir.

Q What did you do? A Well --

MR. HAIRE: We admit that Mr. Kelly went away, if your Honor please. I object and at the same time I make an admission.

MR. TRAIN: Will you state how long he stayed away?

MR. HAIRE: Why he left the city a few days after the accident and remained away until the 29th of June last.

MR. TRAIN: There is a witness, your Honor, who ought to be here. He is the conductor of the train and he will testify as to the rate of speed. If there is

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no objection to my calling him when he comes to-morrow morning, I will rest the case.

You concede that Solomon Neugass mentioned in the indictment was in the car that has been described as having been thrown off the structure into the street?

MR. HAIRE: I think my concessions were pretty full in the first place.

MR. TRAIN: I ask you if you concede that fact?

MR. HAIRE: I have conceded that the person named in the indictment is dead and that he died about the time of that accident, and that the accident was the cause of the death.

MR. TRAIN: If that is your concession I will rest the case. That is my case with the exception of two minor witnesses as to the speed of the train. There is no objection to my calling them to-morrow morning.

THE COURT: You must not discuss this case or form or express any opinion on it until it is finally submitted to you. Be very careful not to visit the scene of the accident.

(The Court then adjourned the further trial of the case until to-morrow, Friday morning, January 24, 1908, at 10:30 o'clock.)

PEOPLE v. KELLY (CONTINUED).

New York, January 24, 1908.

TRIAL RESUMED.

TIMOTHY HIGGINSON, a witness for the People,
being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HART:

Q What is your occupation? A A guard on the Ninth
avenue elevated train.

Q Where do you live? A 2305 Eighth avenue.

Q Try and speak as distinctly as possible? A 2305
Eighth avenue.

Q Now, was that your occupation on September 11th,
1905? A Yes, sir; guard.

Q At 7:05 o'clock in the morning, where were you on that
day at that time? A I was on the south end of the third
car going down.

Q Of what train? A Of a Ninth avenue train.

Q Was this defendant the motorman of that train?

A Yes, sir.

Q Now, how long had you been employed in that capacity
at that time? A Well, over two years and a half.

Q Then had you frequently estimated, or had opportu-
nities to estimate the speed of trains?

MR. HAIRE: I object to that.

THE COURT: The form of it is, perhaps, objectionable but still I presume we will come to it finally. I will sustain the objection if you make it, Mr. Haire.

MR. HAIRE: I do.

BY MR. HART:

Q Mr. Higginson, state whether or not you had been in the habit of observing the speed of trains? A Yes, sir.

Q During the period of your employment? A Yes, sir.

Q Will you please state what, in your opinion, was the speed of this train of which the defendant was the motorman?

MR. HAIRE: I object to that.

Q On the 11th day of September, 1905?

MR. HAIRE: I object to the question on the ground that --

MR. HART: I have not finished my question.

Q (Continuing:) As this train approached 53rd street, as it approached the cautionary signal at 55th street -- I will amend it that way.

MR. HAIRE: To that question I object upon the ground that the witness is not sufficiently qualified.

THE COURT: I do not think, Mr. Hart, you have qualified him sufficiently to take his opinion. I will sustain the objection.

BY MR. HART:

Q Well, Mr. Higginson, I wish you would tell us just

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what your experience has been along that line a little fully?

A It was going at 25 miles or 30, to the best of my opinion.

THE COURT: Strike that out. Just answer Mr. Hart's question.

Q My question is this -- we want to know how much you know about speed, in other words, whether your judgment about the speed of trains is any good or not -- before you are allowed to tell what your opinion was? A I generally go around there about ten or twelve miles an hour.

Q Do you know what the average rate of speed is, what the general rate of speed at that particular point on the road is? A Yes, sir.

Q From experience, and have you compared the distances and time tables in such a way that you have known about the rate of speed that trains ordinarily went?

MR. HAIRE: I object to that as suggesting the answer.

THE COURT: I think you had better ask him how he got his information as to speed, what opportunities he had for knowing the speed, and what tests he made.

Q Just answer this question? A Well, it was going at the rate of 25 miles an hour.

MR. HART: Just answer the Court's question.

THE WITNESS: Well, it was going at the rate of 25
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miles an hour.

THE COURT: You do not comprehend my question.

BY THE COURT:

Q You are a guard on the Ninth Avenue Road? A Yes, sir.

Q You have told the District Attorney that you know something about the rate of speed? A Yes, sir.

Q Tell us how you got that information, how you know something about the rate of speed? A Well, the schedule time.

Q Is that the only thing. You were a guard on the road for two years? A Yes, sir; past two.

Q Going up and down on that road you know what it was for two years? A Yes, sir.

Q Now, do you say you know something about speed --- what observations have you made with reference to the rate at which you were going during those two years? A It goes generally twelve miles an hour down there at 53rd street.

Q How do you get that information and knowledge, of twelve miles an hour? A I was asking the conductors and we know it ourselves.

Q You know it yourself? A Yes, sir.

Q How do you know it yourself. Do you take out your watch and see at different points the time, and make observations yourself. That is what the Court would like to know

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Do you or not? (No answer).

Q What do you do to get the knowledge of the rate of speed that the train is going at? (No answer).

BY MR. HART:

Q Have you got a watch? A Yes, sir.

Q Do you use it? A Yes, sir.

Q Did you ever use it in estimating the speed of trains?

A Sure.

Q Upon an occasion if you want to know about the schedule, whether you are on schedule time you don't always ask somebody, you sometimes look at your own watch? A Yes, sir.

Q So that your experience is based upon your own observations? A Certainly.

Q And upon the opinions of others in the railroad business, to a certain extent, is that right? A That is right.

Q Now, these observations of yours, comparison of time and distances with your own watch, and your own eyes, the use of your own eyes extended over the period of two and a half years, the period of your employment? A Yes, sir.

Q Now do you think you could make a fair estimate of the speed at which a train is going? A Why, sure.

Q You do? A Yes, sir.

MR. HART: Now I submit the witness is qualified to answer the question, and if counsel is not satisfied he may cross-examine.

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MR. HAIRE: I am not satisfied. I still object.

THE COURT: I will sustain the objection, but I want to ask the witness a question myself.

BY THE COURT:

Q Mr. Higginson, you know the distances between the different points of starting on the road, do you not?

A Yes, sir; I do.

Q Do you know the different mile points on the road?

A Yes, sir.

Q If you reach a certain point you know it is so many miles from one point to the other? A Yes, sir.

Q Either north or south, is that so? A Yes, sir; that's right.

Q During your two years occupation as guard, have you taken out your watch frequently -- not once or twice, but frequently to find out the length of time it would take a train to go from one mile point to another? A Well, once in a while.

Q Have you done that, not once in a while but frequently during your two years as a guard for the purpose of having a knowledge of a rate of speed at which a train is going. Now, you have or you have not -- you may say so -- it seems to me you are taking a long time to say so? A Well, once in a while,,I don't continue to do it because the conductor is in charge of the train.

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Q Have you done it frequently? A No; I didn't do it every day.

Q But during the two years have you had occasion from time to time, or were you curious enough from time to time to take out your watch and time a train from different points to find out the rate the train was going at for miles? A Oh, yes, sure I did often.

Q Often during the two and a half years? A Yes, sir.

THE COURT: Now if you frame a question I think the witness is sufficiently qualified to take his opinion, and it is for the jury to say what weight they shall give to it:

BY MR. HART:

Q On the day in question, September 11, 1905, I want you to state to the Court and jury your opinion as to the rate of speed this train was going at when it approached the cautionary signal at 55th street?

MR. HAIRE: To that question I object.

THE COURT: I will take the evidence.

MR. HAIRE: I take an exception.

A It was going at the rate of 25 miles or 30 miles to the best of my opinion.

Q Between 25 and 30 miles an hour? A Yes, sir.

Q At what rate of speed was that train going, in your

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opinion, when it got to this home signal? A It was going
at the rate of 30 miles there.

Q At what rate of speed was it going when it got to
this 53rd street -- the low pot signal? A Sure I can
tell you, it ran so far there that the whole business went
down into the street.

Q Was it going faster there than before it reached there?
A I am sure it was.

Q Then there was an increase of speed? A Yes, sir.

Q As the train passed from 55th street to the point
where it went off? A Yes, sir; there was an increase.

Q Increasing? A Yes, sir.

Q What is the general rate of speed? A Twelve miles.

Q About how much? A Twelve miles around there,
passing curves.

Q After you passed the first cautionary signal at 55th
street down to the home signal, about what is the rate of
speed there? A Generally go down to eight, to ten or
twelve miles an hour.

Q But when you get to the home signal, between that
signal and 53rd street, at what rate of speed do the trains
ordinarily go? A I suppose eight or ten miles.

BY THE COURT:

Q Between the cautionary and the home signal, about
eight, did you say, or less than eight? A Eight or ten

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miles.

BY MR. HART:

Q Ordinarily does the speed increase or decrease? A Decreases.

Q Until it passes 53rd street? A Yes, sir.

MR. HAIRE: I now move to strike out the entire evidence of this witness as incompetent.

THE COURT: I deny the motion.

Exception.

CROSS EXAMINATION BY MR. HAIRE:

Q How long have you been a guard on the elevated road?

A Past two and a half years at that time.

Q Did you receive any instructions as to your duty?

A Why, sure.

Q Did those instructions include your taking notes of the speed of trains? A Yes, sir; it did.

Q What instructions did you receive as to taking the speed of trains? A Well, I got a book of rules.

Q How is that? A I got a book of rules.

Q A book of rules from whom? A When I was three days breaking in.

Q Did the book of rules which you received contain anything in regard to speed? A I don't think so.

Q Did you have anything to do, in the course of your

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duties, with the speed of your train? A No, sir; I did not.

Q Was it your duty to speak to the motorman who was running the train? A No, sir; I am too far back from him.

Q Then you never had anything to do with the speed of the train, did you? A No, sir; I did not.

THE COURT: The witness has said that it was from curiosity, counsellor, that led him, between different points, to look at his watch to determine the rate at which the car was going.

Q Now, will you tell me the length of the round trip?

A They counted twenty miles.

Q The round trip? A Yes, sir.

Q For that train was 20 miles?

A Yes, sir.

Q Sure of that? A well, I am not particularly sure.

Q Not particularly sure? A No, sir.

Q Where did you start from? A 135th street.

Q Now, from 135th street where is the first mile point below that? A Well, 110th street.

Q 110th street? A Yes, sir.

Q From 135th street is that the first mile point?

A Well, I am not exactly sure about the mile point.

Q Did you ever take your watch and time a train as to

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the length of time that it took to make a mile? A Well, we go by miles --

Q Did you ever do that?

THE COURT: Let the witness answer.

THE WITNESS: It never went by miles.

Q Will you answer that question yes or no. What are you looking at the District Attorney for? A I am not looking at him.

MR. HART: Have you any way of estimating miles?

MR. HAIRE: I object to that. I want an answer to my question.

THE COURT: You are entitled to it.

Question repeated as follows: Did you ever take your watch and time a train as to the length of time that it took to make a mile?

A No, sir; I did not.

Q Do you know how long, running at the average rate of speed, it take for a train of the Ninth Avenue Road, similar to the one which you have described, to make a mile?

A Well, two minutes, a minute to two minutes.

Q Is that the regulation time? A Well, I don't know if it is.

Q How do you come to say two minutes, is that your guess?

A Well, at some points it takes a minute and some it takes two.

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Q Whereabouts does it take a minute, what portion of the track? A Well, the other side of 81st street and 72nd street.

Q 81st street to 72nd street? A Yes, sir.

Q What is the distance between those two stations?

A Well, it is over half a mile.

Q From 72nd street to 81st street is over half a mile, is it? A Yes, sir.

Q Sure of that? A I am not very sure.

Q Are you sure of anything in regard to the time of running on the Ninth Avenue Elevated Road. Can't you answer that question? A No, sir.

Q What is that? A No, sir.

Q You cannot? A No, sir.

Q Now, you were acquainted with the defendant Kelly?

A No, sir; I never knew the man.

Q How did you know that he was in charge of the train upon which you rode that morning? A Well, afterwards, afterwards I knew it, I did not know it at that time.

Q You knew nothing of it at that time? A No, sir.

Q Now, Kelly was a new man on the road, wasn't he?

MR. TRAIN: Objected to. This man is not competent to testify to that.

THE COURT: If he knows I will take it. I don't think it is very material but if he knows he may answer.

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A I could not tell you how long he was on the road.

Q You have learned since the accident how long he was on the road, haven't you?

MR. TRAIN: I object to that as immaterial.

MR. HAIRE: I will show the bias of this witness.

THE COURT: I will take it, Mr. Train, if counsel thinks it is material.

A No, sir; I don't know when did Kelly come on the road.

Q Aren't you prejudiced against this defendant? A Yes, sir-- well, I don't know how long a time.

THE COURT: Answer his question, Mr. Higginson. Just listen to what he says. He asked you if you are prejudiced against the defendant.

THE WITNESS: No, sir.

BY MR. HAIRE:

Q Now, you were prejudiced against all the men that came in and helped during the strike, were you not? A No, sir, that didn't count. No, sir, I had done myself --

Q What is that? A I have done myself --

Q You were one of the strikers? A No, sir; I was one of the strikers that went out; I went out on strike at that time.

Q You went out on strike about the time that Kelly came onto the road, didn't you? A Well, I do not know whether he was one of them or not.

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Q Haven't you learned since the accident that he was one of the new men? A You can't believe what you hear; one will tell you he was and another one will say no.

Q How did you happen to be called as a witness here, do you know? A Well, I was on that train.

Q Whom have you talked with about your testimony?
A Well, we were all arrested there.

Q What is that? A We were all arrested that day.

Q You were arrested? A Yes, sir.

Q Have you ever been called to the witness stand in any other case? A Yes, sir, but I never was called up, I don't think.

Q Don't you know whether you have ever testified in any other case in connection with that accident? A No, sir.

Q You know you did not, don't you? A I was in Jackson's case but I was not called up.

Q You did not testify in the Jackson case? A No, sir.

Q Now whom have you talked with in regard to your testimony?

THE COURT: What is the purpose of that, Mr. Haire?

MR. HAIRE: Only to test the reliability of his memory and his credibility. I will withdraw the question. I don't think his testimony amounts to anything.

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Q How long does it take to make a round trip?

A 36 minutes each way.

G E O R G E E B E R T, a witness for the People, being
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Mr. Ebert, are you a track walker on the Ninth Avenue
Elevated Railroad? A I was yard man.

Q On the 11th of September, 1905? A Yes, sir.

Q Were you on duty on the morning of that day?

A Yes, sir.

Q At seven o'clock? A Yes, sir.

Q What were your duties at that time? A Well, to
take care of the switches and look over the frogs.

Q Examine the condition of the track? A Yes, sir.

Q Did you examine the condition of the track? A Yes,
sir.

Q At about 53rd street and the switch? (No answer).

Q Did you examine any portion of the track leading around
into 53rd street?

MR. HAIRE: When?

MR. TRAIN: At seven o'clock on the morning of
September 11th.

THE WITNESS: Yes:

Q Did you? A Yes, sir; I always made it my busin-

ess.

BY THE COURT:

Q That was your business? A Yes, sir.

Q To do that? A Yes, sir; to overlook that.

BY MR. TRAIN:

Q Now, had you made an examination on that morning?

A Yes, sir.

Q With a view to determining the condition of the tracks and switches? A Yes, sir.

Q Did you? A Yes, sir.

Q Have you any doubt about it? A No, sir.

Q Well, why don't you answer positively instead as if you were guessing that you had made an examination. We simply want to find out what you know about this, you understand, tell us what you had done? A Well, I only looked over to see if everything was all right.

Q When did you do that? A Well, a little before, about seven o'clock, or a little before seven o'clock.

Q How long before you discovered that a train leaped over the structure at 53rd street had you made a personal examination of the track of the Ninth Avenue Elevated Road at that point? A Well, I was on my way going down.

BY THE COURT:

Q You said a little before seven, can you give him any nearer than that? A Well, about five minutes before

A W

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seven.

Q About five minutes before seven? A Yes, sir.

BY MR. TRAIN:

Q Do you know whether or not any train had passed over the track between the time that you examined it and the time that this particular train fell over the elevated structure?

A No, sir; I was at 52nd street.

Q Well, when you examined the track what direction were you walking in? A South.

Q South? A Yes, sir; towards --

Q Did you continue to examine the track as you walked along? A Yes, sir.

Q You were examining it and had reached about 52nd street when you learned of the accident? A Yes, sir.

Q What did you find the condition of the track to be between 55th and 53rd streets? A Well, I walked down the centre and it was all right.

Q You didn't notice anything wrong? A No, sir.

Q That is about the size of it? A Yes, sir.

MR. HAIRE: No questions.

F R E D E R I C K C. G O H M A N N, a witness for the

People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Where do you reside? live at 141 East 96th

A I

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street.

Q What is your present employment? A Present employment is motorman.

Q For what company? A The Interborough, Manhattan.

Q On the 11th day of September, 1905, what was your employment? A A guard.

Q A guard? A Yes, sir.

Q Where were you employed, what were you doing early, at about seven o'clock on the morning of September 11, 1905?

A I was down there acting as flagman.

Q Where do you mean by there? A I was relieving another man; I was relieving another man supposed to be a flagman who had to go into that tower that night --

Q Where, at the 53rd street junction? A He had to go into the switch tower, I believe, to go into the tower.

Q We want to know where you were? A I was there.

Q You said something about 53rd street? A I was at 55th street that morning.

Q And what, where were you? A 53rd street and Ninth avenue.

Q And Ninth avenue? A Yes, sir.

Q Were you on the elevated structure? A Yes, sir.

Q Whereabouts on the elevated structure? A 55th street and Ninth avenue.

Q Whereabouts on the structure? A About near the

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home ball, in the middle track.

Q The home ball? A Yes, sir.

Q What is the home ball, is it anything like the home plate? A No, sir.

Q Well, what is it? A It is the cautionary signal there.

Q The cautionary signal? A Yes, sir.

Q You had a flag in your hand? A Yes, sir.

Q Were you watching the trains that came in either direction? A No, sir; only the expresses.

Q Only the expresses? A Yes, sir.

Q Did you notice Kelly's train? A Yes, sir.

Q Well that was not an express, was it? A That was a local.

Q Then you noticed one train besides an express?

A There was no expresses coming down that morning, I happened to be going up there, and standing at 55th street.

Q What we want to know is what you did in the way of observing the train that Kelly was running, if you saw it at all? A Certainly I did see him coming down.

Q You saw Kelly coming down? A Yes, sir.

Q Did you see his train leave 59th street? A Yes, sir.

Q How much before 59th street did you notice his train?

A I seen him until I heard the crash occur, he passed me at

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55th street.

Q Did you see Kelly's train before it reached 59th street? A No, sir; not before.

Q Did you see it stand still at 59th street? A Yes, sir.

Q Then you saw Kelly's train from the time it pulled out of 59th street until the accident? A Yes, sir.

Q Is that right? A Yes, sir.

Q Now, did you see another train immediately preceding Kelly's train? A No, sir.

Q Well, the only train you did see was Kelly's train? A Yes, sir; that is the only train I seen.

Q How long have you been an employe of the company? A About eight years.

Q During that time have you, being a flagman, observed and examined into the rates of speed at which the trains that went by you were running? A Well, I was switchman at that time. Give me that question over again.

Q Are you able to form an estimate with approximate accuracy, of the speed at which elevated trains proceed upon the elevated structure? A Yes, sir.

Q Were you able to do that on the 11th of September, 1905? A Well, I wasn't very long on the road, we used to run at that rate up in the yard.

Q I ask you if you could do what you now can to-day,

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namely, form an estimate of the rate of speed of elevated trains, at that time on the 11th of September, 1905? A Yes, sir.

Q Now, are you able to state, with reasonable certainty, the approximate rate of speed at which Kelly's train moved between the 59th street station and the switch at 53rd street? A Yes, sir.

Q Did the speed change or alter in any way? A Not as I know of.

Q Did you see Kelly's train when it passed 55th street, the cautionary signal? A Yes, sir.

Q Did you slow down? A That I could not say.

Q What do you mean by "you could not say"? A I was standing there, I don't know whether he applied the brake or not.

Q Did you see the train stop or slow down? A No, sir.

Q Was it going at the same rate or faster? A It was going at the rate to me about 18 to 20 miles an hour.

Q Did that rate change at any time between 59th and the 53rd street switch? A Well, after he pulled out of 59th street he was going to 55th street where I was stationed, at about 18 to 20 miles an hour; whether he applied the brakes to reduce the speed after that I don't know.

Q Why don't you know? A Because I was not on the train; it passed me at that time

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Q You were looking at that train? A Yes, sir;
as it passed me, that is all.

Q Can you testify, for the benefit of this jury, anything in regard to the speed of that train after it reached 55th street? (No answer).

Q Do you know that the train did not stop between 55th and 53rd streets? A Yes, sir; I know that.

Q How do you know that? A Because when I was standing at 55th street I turned around as I heard the crash, and I know then he was down in the street, I turned around and seen the condition the train was in from where I was standing at, and I know that --

Q Did you follow the movements of that train with your eyes all the time? A No, sir.

Q I thought you told the jury you watched the train all the way down? A They passed me at that rate.

Q It passed you at that rate? A Yes, sir.

Q You were standing where? A 55th street.

Q Did you turn around? A No, sir.

Q You were walking north? A Yes, sir.

Q You did not observe any diminution or reduction in the speed of the train? A No, sir.

Q How long a space of time was it after the train went by you and you noticed it was going at 18 or 20 miles an hour, that you heard the crash? A About a minute or a

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minute and a half.

Q A minute and a half? A Yes, sir.

Q You can't tell whether the train stopped or not?

A No, sir.

Q I thought you said you could tell it did not stop?

A I could not tell you whether he applied the brake after he passed me or not.

Q How do you know he did not stop the train at the home signal, 53rd street, do you know? A Not after he passed me.

Q You don't know after he passed you? A No, sir.

Q Is that it? A After he passed me I was going north.

Q Do you know whether or not Kelly stopped his train after he left you? A At the home signal? No, sir.

Q You don't know? A No, sir.

CROSS EXAMINATION BY MR. HAIRE:

Q In other words, you did not see the train after it passed you at 55th street? A No, sir.

MR. TRAIN: I am perfectly willing to have the witness's testimony stricken out.

MR. HAIRE: Let it stand for what it is worth.

MR. TRAIN: I don't regard it as worth anything.

You may.

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J O H N M c D E V I T T, a witness called on behalf of
the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Mr. Mc Devitt, what is your present address??

A 67 West 100th street.

Q Your present employment? A Guard on the Elevated
Road.

Q What was your employment on the 11th of September,
1905? A Guard on a Ninth avenue train, train guard.

Q You often speak louder than that when you are asking
passengers to move up? A Sometimes, yes, sir. I was a
guard on a Ninth avenue train.

Q Now, how long had you been an employe of the Ninth
Avenue Elevated on the morning of September 11th? A Well,
about two years.

Q Two years? A Yes, sir.

Q Are you able to form, from your experience and ob-
servation, from what you have seen and done, an estimate of the
speed, the rate of speed at which a train is running on the
elevated structure if you were on that train? A Well, I
should judge between 25 --

Q Did you form an opinion? A No, sir; I cannot, not
exactly.

Q Supposing you are on a train -- say when you leave the
court room you go down and act as a guard on a train, could you

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tell or can't you tell from where you stand on the platform about how fast the train is going? A Not exactly, no, sir.

Q Could you tell pretty nearly? A Yes, sir; pretty nearly.

Q How close could you come? A Well, I have no way of, no particular way of counting it.

Q Could you tell whether a motorman slows down or not? A Yes, sir.

Q You could tell that? A Yes, sir.

Q Now, were you on Kelly's train on the morning of September 11th? A I was, yes, sir.

Q The train that was thrown over the structure? A Yes, sir.

Q Do you remember when the train pulled out of 59th street? A Yes, sir.

Q Now, are you able to state, with reasonable certainty, at what rate of speed that train went from 59th street say as far as 55th street?

MR. HAIRE: I object to the question.

THE COURT: I don't think he has been qualified as yet. He says he thinks he can tell but that would hardly qualify him.

BY MR. TRAIN:

Q Did you ever time trains? A No, sir; I did not.

Q You did not? A No, sir.

Q Did you ever see anybody else time a train?

A No, sir.

Q Now, did the train upon which you acted as guard, on the morning of September 11th, proceed from 59th street to 55th street at the same rate of speed that it had proceeded from 66th street to 59th street? A Yes, sir.

Q And what rate of speed was that? A Well, I believe it was going at top speed, full speed at that place, I don't know the --

Q After it reached 55th street did it change its speed at all? A No, sir; it did not; it increased speed.

Q It increased speed? A Yes, sir.

Q That is at 55th street? A There is a caution signal there.

Q What made you notice that the train increased its speed when it reached 55th street? A Well, I thought he should have slowed up at that time.

Q You knew he should have slowed up? A Yes, sir.

Q And instead of that the train went faster? A Yes, sir.

Q That you are sure of? A Yes, sir.

CROSS EXAMINATION BY MR. HAIRE:

Q How are you sure of it? A Well, it struck me he

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should have allowed up at that point.

Q When did you first think it should have allowed up?

A When it came close to the caution signal.

Q What particular act were you engaged in at that time?

A Standing on the platform.

Q What were you doing? A I held onto the stanchion of the car, I suppose.

Q Although you had never had any experience in timing trains, you think that this car was going faster than usual?

A Yes, sir; at that point.

Q When did you first notice that? A Well, when it came within a few feet of the caution signal, I thought he should have slowed up.

Q Were you on the westerly side of the train so that you could see the caution signal? A No, sir; I could not see the caution signal.

Q Which side of the train were you standing on?

A A foot on each platform, the fourth and fifth cars.

Q Which way were you facing? A Westerly.

Q Whom did you first tell that this train was going faster than usual? A I did not tell anybody.

Q You did not tell anybody? A No, sir.

Q You did not tell anybody that same day? A No, sir.

Q You did not tell anybody the next day? A No, sir; not that I remember of.

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Q Not that you remember of? A No, sir.

Q Never told of it until you came on the witness stand here? A I may have; I don't remember.

Q You don't remember telling any lawyers or anybody in the District Attorney's office? A I may have told them.

Q Don't you know whether you did or not? A No, sir.

THE COURT: Just give him a chance.

THE WITNESS: I may have made a statement to that effect.

BY MR. HAIRE:

Q You may have done so? A Yes, sir.

Q Don't you know?, A I don't remember.

Q You don't remember? A No, sir.

Q Well, you remember all about that accident, don't you? A Yes, sir.

Q Yet you didn't talk about this to anybody unless you made a statement to the District Attorney's office, is that right? A That is right.

RE DIRECT EXAMINATION BY MR. TRAIN:

Q Are you able to state at what speed the train was going when it struck the switch? A Not the exact speed, I should think between 20 and 25 miles an hour.

BY THE COURT:

Q Had it slowed up? A No, sir.

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Q Did it remain the same, or did it seem to increase between 55th street and the switch? A Increased speed, in my opinion.

Q That is your recollection, is it? A Yes, sir.
BY MR. HAIRE:

Q Are you prejudiced against this defendant? A I am not.

Q You made up your mind that he was guilty of wrongdoing, haven't you? A Not exactly.

Q Not exactly? A No, sir.

Q Yet you say he was running the train at 25 miles an hour -- now if he was doing that he was guilty of doing something wrong? A Yes, sir.

Q You have not made up your mind about it. Do you belong to the Trainmen's Union, or something of that kind? A I did once, not now.

Q Did you then? A Then, no, sir.

Q Do you know whether Kelly did or not? A I don't know.

BY THE FIRST JUROR:

Q Now, when standing on the platform you can feel when that train starts a little faster, can't you? A Yes, sir.

Q And when it slows up? A Yes, sir.

Q Can you? A Yes, sir.

BY MR. TRAIN:

Q Now, I want to ask you this question: What do you

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think about Kelly's act in increasing the speed at 55th street?

MR. HAIRE: I object to that.

THE COURT: Objection sustained.

MR. TRAIN (To the stenographer): Then will you kindly read Colonel Haire's questions to me so that I may frame mine on them.

(The stenographer complies.)

BY MR. TRAIN:

Q Have you made up your mind as to whether the defendant was guilty of wrong-doing?

MR. HAIRE: I ask that that be answered yes or no.

THE WITNESS: I knew he was not obeying the rules, that is all.

MR. HAIRE: I move that the answer be stricken out as not responsive.

THE COURT: Strike it out.

BY THE FOURTH JUROR:

Q Is that the only time you noticed a train going so fast at that point, or did you notice that at some other time also in other trains; is that the only time that you noticed that a train went so fast at that part of the road? A Well, at that point, yes, sir, supposed to slow up.

Q That is the reason it attracted your attention?

A Yes, sir; that is just the reason.

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BY THE NINTH JUROR:

Q You said he came down from 59th street at full speed, did you say so? A I said increased speed.

Q Top notch? A Increased speed.

Q Is it top notch? A I believe it was.

Q Now, you said coming down increased his speed?

A Yes, sir.

Q From top notch, is that it? A Increased speed, yes, sir.

Q How could you increase if it is on the top notch?

A I said he increased the speed from he left 59th street.

BY THE TENTH JUROR:

Q In response to the District Attorney's question you said that this motorman was coming down from 66th to 59th street at top notch? A No, sir,; I did not say that.

Q Full speed -- top notch, that is the word you used, and you said that after he left 59th street he went faster? (No answer).

THE COURT: Now, I think there is some confusion there because the Court's minutes show that the witness said that at 59th street, coming down from 66th street to 59th street the train was going at top speed.

BY THE COURT:

Q What is the rate of speed that that train was coming from 66th to 59th street at? A I can't tell that.

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Q Was it going at the usual speed? A Yes, sir; I suppose it may have been, I don't remember.

Q But your testimony is that after leaving 59th Street the speed was increased? A Yes, sir.

Q Then if you testified that it was going at the highest speed possible you want to change that testimony, do you --- between 59th and 56th Streets? A Well, I only suppose it was going, I think it was going at top speed when it struck the switch.

Q When it struck the switch? A Yes, sir.

Q That is what you mean? A Yes, sir.

Q Going at top speed when it struck the switch? A Yes, sir.

Q Not that it was going at top speed when it reached 59th Street? A No, sir.

Q But it was going rapidly at 59th Street, and your testimony is that between 59th Street and 55th Street it increased over the rate between 66th and 59th Street? A Exactly.

Q And at the switch it was going, in your judgment, at top speed? A Yes, sir.

THE COURT: I think now we have it.

BY THE THIRD JUROR:

Q You are familiar with the speed between all stations, and the comparative distances? A Not exactly; I cannot tell

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the exact time.

Q Well, you are able to compare, in some measure, whether you go faster between 72nd and 81st Street, than you do between 72nd and 66th Street? A Well, I think about the same.

Q Well, I mean you know whether you are going faster or slower at one time or another, if you run faster say from 72nd Street down to 66th Street? A I believe it is the same rate of speed between the two stations.

Q Were you going as fast as you usually travel between stations when the train reached 55th Street? A Yes, sir; we were going at that point faster than we should have.

Q Were you going as fast as you usually would between stations? A When we struck the switch?

Q When you got to 55th Street, before you struck the switch? A Well, I don't fully understand you.

Q Were you going as fast as you usually travel between stations when you reached 55th Street? A 55th Street, yes, sir.

Q Were you going as fast as you usually do between stations? A Yes, sir.

Q Sure of that? A Yes, sir.

BY MR. TRAIN:

Q Now, did you ^{after} ~~at~~ that point go faster than you usually go between stations? A After what point?

Q You have told the third juror that between 59th and

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55th Street the train was going at the usual rate of speed at which trains run on the elevated between stations, is that right? A Exactly.

Q Now, do you mean to testify that after leaving 55th Street, or passing that point, the train increased its speed to above the speed usual between stations? A I don't fully understand you.

Q (Question repeated) A Well, I testified that it increased the speed from it left 59th Street until it struck the switch point.

Q After you left 59th Street? A Yes, sir; increased speed until we struck the switch point.

Q But what I want to get at is whether the increased speed began between 59th and 55th Street? A Well, that I cannot answer.

Q That you cannot answer? A No, sir.

BY MR. HAIRE:

Q As a matter of fact do you know whether he slowed up at the cautionary signal or not? A It did not.

BY MR. TRAIN:

Q That it did not? A It did not, --- it did not.

BY THE FIRST JUROR:

Q When you struck the switch at 53rd Street you were going at top speed? A I believe we were.

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Q Are you sure of that? A Not exactly, no, sir.

Q You were going at increased speed? A Increased speed from 59th Street.

BY THE THIRD JUROR:

Q Sure you were going very fast there? A Yes, sir; very fast.

J A M E S W . J O H N S O N , a witness called on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Mr. Johnson, what is your present address? A 606 East 140th Street.

Q What is your present occupation? A I am an advertising solicitor for John A. Taylor & Company, Philadelphia.

Q On the 11th of September, 1905 what was your occupation? A A conductor on the Ninth Avenue line of the Interborough Rapid Transit Company.

Q Is there one conductor for an entire train? A Yes, sir.

Q Or one conductor for each car? A One conductor for a train with several guards.

Q Now, were you the conductor in charge of the Ninth Avenue elevated train which Paul Kelly, the defendant, was

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the motorman of conducting down Ninth Avenue? A Yes, sir; I was the conductor.

Q Now, will you describe to the jury what happened to that train from and after leaving 59th Street until the time of the accident. Describe what occurred in your own language and take your time? A Well, it is rather hard, perhaps, to describe it. It has been a good while ago and it is rather indefinite and was at that time for me to describe exactly what took place on that train.

Q Do the best you can? A (Continuing) As my mind, perhaps, was temporarily off on something else. Having passed 59th Street --- 66th Street, I recall nothing particularly except that the usual occurrences until we struck the switch, just Then I knew that we were off the track and, that quick to me, I didn't know anything, I am satisfied, however, that the rate of speed was not any more than normal or usual.

Q What do you mean by that? A Because if it had been any increased speed ---

Q What do you mean by normal or usual rate of speed? A Usual rate of speed at approaching that place and going over that crossing.

Q What is that --- A Was always reduced.

Q What is that? A The usual speed would be reduced, perhaps, to 11 miles an hour, perhaps less.

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Q Now, you say that the train was going, in your judgment, at 12 miles an hour? A At the time it struck the switch, no, sir, I think it was possibly going faster than that.

Q How fast, in your judgment, was the train going, your train going when it struck the switch at 53rd Street? A Well, I am not a good judge of speed; I would not want to put myself up as being an expert on speed.

Q But you have taken occasion to tell the jury that you were not going above normal speed and the jury are entitled to know what you mean by that? A Well, I don't think it was going over 18 miles an hour, 20 at the outside, when it struck the switch, when the derailment took place.

Q As the conductor on the Ninth Avenue road at that time you know at what rate of speed motorman are permitted to take that curve, weren't you? A Well, as a matter of fact, this motorman was not expected to take that curve.

Q Will you kindly answer my question? A I don't know; I never ran on the Sixth Avenue line, sir.

Q Don't you know as a matter of fact, that motormen are not permitted to take a curve on the Ninth or Sixth Avenue elevated at a greater speed than 9 miles an hour? A Well, I should presume that would be about it.

Q Don't you know that is the rule? A Not having ever worked ---

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Q Don't you know that, yes or no? A No, sir; I don't know it.

Q You don't know? A No, sir.

Q Now then, when you say that the train was not going at more than the normal rate of speed, do you mean not more than the normal rate of speed for a Ninth Avenue train between 59th Street and 42nd Street? A Certainly, that is what I mean.

BY THE COURT:

Q You mean between stations? A Yes, sir.

Q Going at the ordinary rate between stations? A Yes, sir.

BY MR. TRAIN:

Q You don't mean it was not going at the normal rate of speed at which a Sixth Avenue train would go around the curve, you don't mean that? A No, sir.

Q Now, did your train go at the normal rate of speed between 55th and 59th Streets? A As near as I can come to it.

Q As near as you can remember the normal rate of speed was continued between 59th Street south until you struck the switch? A Well, just before we struck the switch I think an application of the brakes --- I think there was an application of the brakes.

Q How long before? A About a car's length I should imagine, that is what first made me grab --- I grabbed the

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stanchion at that time.

Q Then you did feel an application of the brakes? A Yes, sir.

Q Before the thing occurred? A Yes, sir; . of the air just before we struck the switch.

Q Did the application and the striking occur almost instantly, one after the other? A Almost simultaneously, perhaps a matter of ~~x~~ seconds, the distance of a car length, the train going at the rate of ---

Q Are you able to state, Mr. Johnson, whether or not the train slowed up at 55th Street? A Well, I am not, I would not be able to say under oath positively whether it slowed up or not, but I was under the impression at that time that it did, as it was a usual occurrence, the cautionary signal for the Ninth Avenue was to slacken ---

Q You say you were under the impression at the time that it did? A Yes, sir; and I am yet.

Q Are you still under that impression? A Yes, sir.

Q Is that impression based on the fact that that is a rule of the company and that motormen with whom you were riding always did slow up at 55th Street? A Yes, sir; that is my impression.

Q Is it based upon anything that you observed at the time? A On that particular trip, that particular moment I could not truthfully say whether there was a halt or temporary

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slackening of the train at that point or not.

Q Are you able to say whether it possibly increased or not or can you say anything about it? A I am satisfied that it did not increase.

Q I don't ask you what you are satisfied of, you may be satisfied of being a great many things in this world and the world to come but that has nothing to do with the case. Now, what we want to know is whether you can give us any help in determining the question of whether or not at 55th Street anything happened to the speed of that train? A I say that I could not swear that it was --- that there was any application of the brakes made at that point.

Q Can you swear anything about it? A Later on, nearer the point of the switch, ~~x~~ where the derailment took place, there was an application of the brakes.

Q Then there was a difference in what you observed, in the accuracy and force of what you observed between 53rd and 55th Street because you swear there was an application an instant before you struck the switch? A Yes, sir.

Q Anything that you may have observed at 55th Street was so vague as to be indefinite, or as to lead you not to be willing to swear to what it was? A I would always be willing to swear that there was an application of air made at that point as usual as there was nothing out of the ordinary occurred.

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Q Can you swear that that impression of yours is based upon observation rather than on the fact that it always did happen? A It is based upon the fact that it always did happen; there was nothing out of the ordinary to attract my attention.

Q You think your attention would have been attracted if Kelly had not slowed up a little at 55th Street? A I think it would; I think it would have been attracted to that because I know I was usually on the lookout ; that morning I did not look out myself; usually I was always looking out.

Q Now, which car were you on? A I was on the first platform of the second car in the train.

Q Weren't you on the car which was thrown over? A I was --- that was the car which was thrown over, the second car in the train.

Q What happened to you? A Well, I miraculously live to tell it.

Q Did you go down with the car? A No, sir; I hung on to the uprights like a spider. My head was down and my feet were up but I righted myself, lived through it and am here to tell about it, not injured to any extent.

Q Was that the accident where the people made their exit by going through an apartment house? A The third car in the train pushed the second car down to the street and as I told the coroner's jury they jack-knifed one another, dropped down,

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the other end, I was on the end that stood up on the street.

Q Weren't you examined shortly after the accident? A I testified before the Railroad Commission, I think.

Q Do you remember your testimony before them? A I don't recall it, no, sir.

Q Didn't you testify before the Railroad commission, or before some examiner for the railroad that the train was going at 23 miles an hour at 54th Street? A 23 miles an hour? Possibly, but I wish to say to the jury ---

THE COURT: At 54th Street?

THE WITNESS: That I am not an expert on speed.

THE COURT: Was that at 54th Street?

MR. TRAIN: Yes, sir, that is my question.

BY MR. TRAIN:

Q Now, what have you to say, if anything, on the question of how fast the train was going at 54th Street? A Well, it possibly could have been going at the rate of 23 miles an hour.

Q To the best of your judgment was it? A I don't believe so now.

Q Did you think so when you testified before the Railroad Commission? A I evidently did or I would not have testified to that.

Q I don't say that you did, I ask you whether you did or not? A Well, if my testimony was that --- to the best of my belief at that time.

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Q Has anything occurred to lead you to change your estimate of the rate of speed at which the train was going? A No, sir; only my observation since that time, having observed and timed trains more than ever before. Since leaving the service of the company I had had occasion to time trains between stations and make calculations and estimates that I never before done .

Q Do you remember that at that time you did estimate the rate at 54th Street at 24 miles an hour? A I may have stated in my opinion that was the rate.

Q Do you remember that that was your opinion as contrasted with your present opinion? A I can't remember that.

Q You can't remember that? A No, sir, I think my testimony was between 20 and 25 miles an hour.

Q That is your impression? A Yes, sir, that was my impression, from my testimony at that time.

Q Let me ask you this --- I want to be perfectly frank with you --- I have here no official record.

MR. HAIRE: Then I submit these questions here are all improper.

THE COURT: No, I don't think so. I think
a
this is a proper explanation. He is only trying to get at the truth, and he is asking the witness if he did testify to that effect; he is not certain himself of it but he is giving him the best he has.

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BY MR. TRAIN:

Q Let me ask you if it is not a fact that at the time that you testified before the Railroad Commissioners, or before any person examining into the matter for the railroad, you did not say that the speed was increased between 59th Street and the switch? A Certainly I said that. If the speed had not been increased between 59th Street and the switch it would never have reached the switch; it would have stopped at 59th Street.

Q Did you make a statement that the speed of the train was increased between 59th Street and 53rd Street before the Railroad Commission? A Well, I don't quite --- I made a statement, of course, that the train started from 59th Street.

Q I did not ask you that. Now, as I said before I have nothing official, no minutes, but I have certain notes as to your testimony before the Commissioners, and apparently you now recollect that you did testify before the Commissioners, that, in your opinion, the train at 54th Street was going at 20 or 25 miles an hour, whereas you now say it was not going at more than normal speed. A I said not more than 20 when it struck the switch.

Q When did you say that? A I said that in this testimony.

Q I thought you said 18? A Not more than 18 or 20.

Q Between 18 and 20? A Very little difference between

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18 and 20 miles an hour.

Q You have selected these figures, there is very little difference between 18 and 16. Now, we want to know what your testimony is to-day as to what rate that train was going at at 54th Street, to the best of your knowledge and belief?

A 20 miles an hour.

Q 20? A Yes, sir.

Q Why did you say not more than normal, meaning 18, when you first testified at the beginning of your examination. Do you wish to change your testimony? A I don't wish to change at all.

BY THE COURT:

Q Let me ask you a question here. Did you wish to convey to the examiner and to the jury that when you said "normal, 18 or 20 miles" at the switch that it was going at the rate usual between stations on the elevated road, is that what you meant? A The usual rate, that is what I meant, yes, sir.

BY MR. TRAIN:

Q Now, when you testified before the Railroad Commissioners that it was going between 20 and 25 ---

MR. HAIRE: I object to that.

MR. TRAIN: I have not finished my question.

Q As I understand it from your own present testimony did you mean that it was going at the normal rate of speed between stations? A That is what I meant.

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Q Well then, if you meant at that time between 20 and 25 miles as the normal rate of speed, do you also, at the present time, mean by the normal rate of speed between 20 and 25?

A Certainly, if the normal rate of speed is between 20 and 25 I am --- I am satisfied the normal rate of speed of these trains is not 20 or 25.

Q You used the expression before the Railroad Commissioners between 20 and 25 miles an hour. Did you have another opinion at that time?

THE COURT: Mr. Train, he has explained to the jury and to you that since he left the employ of the company he has taken more exact observations and he is better able to determine the rate at the present time than he was then and that that is the inducing cause of his saying now 18 or 20 miles.

BY MR. TRAIN:

Q Then all I wish to get at is this --- you have not changed your opinion as to the rate of that particular train at all? A No.

Q Since the time of the accident? A No, sir.

Q You have merely made investigations which enabled you, perhaps, to fix it a little definite? A Yes, sir.

Q Now, to continue. Did you testify before the Railroad Commissioners, or any other body of persons, at or about the time of the accident that the speed of that train of which you

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were the conductor was increased at the cautionary signal?

A I don't remember having so testified.

BY THE THIRD JUROR:

Q Would your memory at that time be any better upon the subject if you did so testify? A It possibly would. It has been two years since that occurred, since having testified, and two years is quite a while, I have been over the United States backwards and forwards since then.

Q That was close to the time when the accident took place? A Yes, sir.

CROSS EXAMINATION BY MR. HAIRE:

Q When were you employed by the company? A Employed by the company March 7th, 1905.

Q If there was any increase in the speed you would generally notice it? A Yes, sir.

Q Upon this occasion there was nothing that attracted your attention at all in connection with the running of the train, was there, between 59th Street and until it struck the switch? A Just before we got to the switch.

Q You felt the brake? A Yes, sir, an application of air.

Q Now you have been in the habit of --- the train had been in the habit of slowing down, had it, at 55th Street?

A Usually.

Q Usually? A Not always --- the Ninth Avenue trains didn't stop at 55th Street.

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Q They don't stop there if the track is clear?

A Prior to that time trains of the Ninth avenue line if the signal "Clear right of way" was given, they went right across; there was no rule compelling a Ninth avenue motorman to stop at the cautionary signal if he had a clear signal for a straight track.

Q If he had a clear signal it went along that track at normal speed? A Yes, sir.

Q So far as your judgment goes the train upon that occasion was going at normal speed in case of a clear track?

A Yes, sir.

Q And with the taking of the curve you had nothing to do, had you, neither had the motorman on the Ninth Avenue Road?

MR. TRAIN: I object to that.

Q Had nothing to do with taking it?

Objected to. Objection sustained.

Q Now, you were called upon as a witness in connection with some proceedings growing out of that accident shortly afterwards, I suppose, were you not? A Yes, sir.

Q Did you then testify that the train was going at the usual rate of speed at which it did at that place? A I don't think my words were --

Q The normal rate? A Well, I think I made a different assertion at that time.

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Q But were you positive at that time, according to the best of your judgment, that the train was going at the normal rate of speed at that place? A Yes, sir; that was the best of my judgment.

RE DIRECT EXAMINATION BY MR. TRAIN:

Q Mr. Haire has asked you in regard to the trains stopping at 55th street, was it not the custom and the rule that trains should slow down at 55th street at the cautionary signal? A If there was -- I should presume so -- I am not a motorman, understand.

Q But you have testified in answer to Mr. Haire that it did not stop? A Not always.

Q Now, we don't care whether it stopped or not, but what I want to know is whether it slowed down or was supposed to slow down at the cautionary signal? A Well, the rules of the mormen are to slow down at cautionary signals, I presume.

Q And you said that because it was always the custom -- A I thought he did that morning.

Q You think he did that morning? A Yes, sir.

Q Well, you don't mean to change anything you have said? A No, sir; I don't.

Q It was the custom for them to slow down? A Yes, sir.

Q You expected them to slow down and you expected Kelly

to slow down? A Except Ninth avenue trains --

Q You did expect Kelly to slow down? A Yes, sir.

Q Just as all motormen and trains slow down at 55th street? A They did not always do it. I didn't expect him to do it.

Q Did you or didn't you expect Kelly to do it?

A No, sir; because the Ninth avenue trains --

Q Did you expect Kelly that morning to slow down at 55th street? A No, sir.

Q Didn't you tell the jury in the early part of your examination that you thought the trains slowed down because the trains always slowed down, and you supposed Kelly did the usual thing? A Well, there was nothing out of the ordinary --

Q Well, what was the ordinary -- what is your testimony as to what the ordinary is at 55th street when a Ninth avenue train reaches the cautionary signal at 55th street? A Well, if there is a Sixth avenue car directly ahead of them, the expresses taking the centre track -- and various other things -- if they don't get a clear signal from the towerman that the track is clear, then they slow down, but if they can look down the track to where the stop signals are, where the up-right signal is to regular the straight track on the curve --

I know hundreds of instances where motormen don't slow down at all.

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Q If he could see these two signals? A Yes, sir;
he goes right straight through.

BY MR. HAIRE:

Q Now, as conductor, did you get any instructions
from the company as to the running of the train; did you
have any control over the time that was being made? A As
conductor? Why yes and no.

Q What I want to get at is this -- I will make it short--
for instance at 66th street would you receive any report or
anything? A Yes, sir.

Q Were you compelled to look out to see whether you were
on time or not? A Yes, sir.

Q You would? A Yes, sir.

Q How about that day? A Well, that morning the dis-
patcher at 66th street gave me a "skip" order.

Q What is that? A To run past a station.

Q What station were you to run past? A I recollect
it was the 30th street station.

Q Why was that skip order given you? A Because the
train was delayed or late.

Q Who gives you that order, who gave it to you?
A Well, I don't know the gentleman's name, but he wears a cap
"Dispatcher" on his cap, always stationed at 66th street.

Q Known as the dispatcher? A Yes, sir.

Q Does he give any instructions to motormen? A Yes,

sir.

Q At the same time?, A Yes, sir.

Q When you received a slip then the motorman would receive instructions from him? A Yes, sir.

Q That man who furnishes that is called the dispatcher?

A Yes, sir.

E N O S B. D U T C H E R, a witness called on behalf of the people, being recalled, testified as follows:

BY MR. TRAIN:

Q You testified yesterday that you instructed the defendant, Kelly, on reaching the cautionary signal at 55th street, to bring his train under control? A Yes, sir.

Q You did not testify on the stand at that time what you told him "bringing a train under control" was? A What it was? What is meant by a train under control?

Q What did you tell him to do when he brought his train under control? A At that point so that he could stop before he reached the home signal, that is what is meant by a train under control, if the conditions was not right for him.

Q Bring his train to such a rate of speed? A Yes, sir.

Q That if the signals at 53rd street were in perfect or "stop" he could bring his train to a standstill

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before he reached the home signal? A Yes, sir.

BY MR. HAIRE:

Q That did not mean he was to stop? A No, sir.

Q It means to have the train sufficiently under control so he could stop? A Yes, sir; if necessary.

MR. TRAIN: I have sent for another witness relating to the defendant going away.

THE COURT: That is conceded.

MR. TRAIN: That is the People's case.

MR. HAIRE: There is one question I would like to ask Mr. Hedley.

F R A N K H E D L E Y, a witness for the People, recalled.

BY MR. HAIRE:

Q Now, Mr. Hedley, I want to ask you if the centre signal, or signal No. 2, being set green, how many motions of the lever are necessary to shift the last or pot signal and the switch? A When the signal No. 2, which is the home signal, is set green, the next move that can be made is to throw that signal red.

Q Throw which signal? A No. 2, the home signal, in other words, while the home signal is set at green no other levers on the machine can be pulled.

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Q Can't you pull the lever for the pot signal then?

A No, sir.

Q When is that pulled? A Only when the home signal, No. 2, is set at red.

Q Well, the pot signal and the switch are turned by one movement, aren't they? A Yes, sir.

Q They work automatically together? A Yes, sir.

Q How do I understand you to say yesterday that the home signal was set when you reached the scene of the accident?

A The home signal No. 2 was set green.

Q That was set green? A Yes, sir.

Q Well, under what condition of switching could that signal have been set green and the pot signal yellow?

A That is the normal condition giving the Sixth avenue motor-man the right of way to pass around the curve at 53rd street, south bound.

Q Now, that is the normal way, the natural signal for Sixth avenue? A Yes, sir.

BY THE COURT:

Q That the track is clear for a Sixth avenue train?

A Yes, sir.

BY MR. HAIRE:

Q Could you change the pot signal before changing the home signal? A When the home signal is green you cannot change the pot signal. When the home signal is red, you

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can change the pot signal.

Q How long after this accident, if you know, were the signals or the mechanism in the tower house or the levers inspected? A Immediately after the track was cleared up.

Q That was some hours after, I suppose? A Yes, sir.

MR. TRAIN: The People rest.

MR. HAIRE: I move that your Honor direct the jury to return a verdict of not guilty upon the ground that the evidence does not sufficiently disclose negligence on the part of the defendant.

Motion denied. Exception.

(Mr. Haire opens the case on behalf of the defendant.)

During the opening address of Mr. Haire, the Court said:

THE COURT: This jury has nothing to do with the towerman's case, whether he is convicted or not convicted cannot enter into their deliberations.

MR. HAIRE: By a verbal stipulation between Mr. Train and myself made in this court room at the opening of the case that was one of the facts to be conceded.

MR. TRAIN: I think your Honor does not quite grasp what I objected to. I have no objection to Mr. Haire's referring to the fact that Jackson has been convicted,

but I do object to Mr. Haire's stating now to this jury what the contention of the People was in some other case. That is what I object to.

THE COURT: Whether he has been convicted or not cannot be a matter for your consideration, gentlemen. Do not burden your opening with any reference to it.

MR. HAIRE: I am going to ask your Honor to permit the District Attorney's concession to go upon the record-- that the towerman has been tried and convicted.

THE COURT: If you both consent to it the Court does not object to it.

MR. TRAIN: I am not in a position to object to it because I told Mr. Haire that the fact would be referred to by me in my opening. I cannot now, it seems to me, take any other position.

THE COURT: It has been referred to, and I think if it had been objected to the Court would have asked you to omit any reference to it because it believes that it has nothing to do with this particular case. The question is was this defendant responsible, was his act the proximate cause of the death of one Newgass.

MR. HAIRE: I understand that the concession is a part of the record?

THE COURT: If the District Attorney consents to it I have no objection to it, but I am going to charge the

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jury that whether he has been convicted or not is not a matter for them at all.

MR. HAIRE: That is very true, your Honor, but it throws some light upon the remarks of counsel, that is all.

THE DEFENSE.

P A U L K E L L Y, the defendant, being duly sworn,
in his own behalf, testified as follows:

DIRECT EXAMINATION BY MR. HAIRE:

Q You are the defendant in this case, are you, Kelly?

A Yes, sir.

Q, How old are you? A 39 years of age, sir.

Q When did you first go into business similar to that in which you were engaged on the 11th of September, 1905?

A 1893, sir.

Q Then you had been in the business as a motorman --

A Yes, sir.

Q For about two years previous to that time -- that is, nearly twelve years? A Thirteen years.

Q Where did you work? A On the Sixth Avenue, the Amsterdam Avenue, 59th street, Eighth Avenue, I worked for the Consolidated Traction Company five years. You have got letters of recommendation from them. I worked for the St. Louis Transit Company, ran the United States Mail for them five

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years in the State of Missouri.

Q You entered the employment of the Manhattan when?

A On March 6th or 7th, I think.

Q As a motorman on the Ninth Avenue Elevated? A Yes, sir.

Q That was in 1905, the same year as the accident?

A The same year as the accident.

Q Now, Kelly, I want you to tell this jury just what you did and what occurred from the time you arrived at 66th street on the Ninth Avenue Elevated, up until the time of the accident? A Yes, sir.

Q You were running a train that morning? A Yes, sir.

Q When I speak of what occurred, I want to know what occurred in connection with the particular train in which the accident occurred? A Yes, sir.

Q When did you leave 66th street? A 7:04.

Q Seven o'clock and four minutes after? A Yes, sir.

Q Did you get any instructions there? A I did, sir.

Q What were those instructions? A I got a skip for 30th street.

Q Instructed to skip 30th street? A Yes, sir; 30th street.

Q That is not to stop at that station? A Yes, sir; not stop at that station.

Q Now then what did you do? A Well, I made the usual

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stop at 59th street, got the bell to go ahead.

Q How about the speed between 66th and 59th? A The usual speed, fifteen miles an hour.

Q After stopping at 59th street, what did you do?

A I got the signal to go ahead, sir, I started ahead; I put on the brakes slightly, making a slight slow-up to make sure that No. 1 cautionary signal was all right and it was all right.

Q That is, signal No. 1? A Yes, sir; and I went ahead then, and put the power on again, went ahead at the regular rate of speed, fifteen miles an hour, and when I reached between 56th and 57th streets where you can get a view of the pot signal, because it is a small dummy.

Q Between what streets is that? A 56th and 57th. I seen the pot signal exactly green, and the home signal exactly green, both signals said to go straight ahead, the same as No. 1 cautionary, giving me the right of way. I may have taken my eye off for about two seconds to glance my eye at the brake power, that is usually done on all trains, to make sure that you got air.

Q What is this you glanced at? A The register, and at that time I had 100 pounds of braking power; I had plenty of braking power to stop ten trains. I brought my eyes onto the signals again and by that time I was within three coaches' length of this switch.

Q You were what? A I was within three cars' length of the switch, and No. 3 pot signal changed yellow, indicating a Sixth Avenue train. I knew as well as I do to-day what happened -- that the tower man mistaked me for a Sixth avenue train. I set the brakes -- I set the brake and I set the brake so quick that the momentum and the weight of it carried it completely faster really, sliding, than if the wheels were revolving. I knew she was sliding, and I eased off the brake to get the wheels revolving to save going into the street; as I knew by striking it with the wheels locked that I would jump and go to the street. By that time I reached the point of the switch. The motor car took the switch and went around the curve with ease, but the second coach, -- I don't really know what was wrong with it -- if it was the flanges was worn down or if the frog of the switch was worn down or a broken flange, but it deliberately walked away from the first coach and continued east over the centre express track, and over the north bound local tracks and down onto the street. The front end of that car, the second car, rested on the sidewalk, the rear end was hanging onto the structure of the third car, the fourth car broke away also and continued over the centre express tracks, partly over the north bound local track and remained on the structure; it did not fall. The fifth and sixth cars did not come uncoupled; they remained on the centre express tracks, jump-

ing the switch the same as the others, coupled about thirty feet from the switch; that was the position of all the cars when I got off the motor car and looked, that was the position exactly as if they were placed there by the hand of man. It was all done in an instant, as quick as a flash, I done my best to stop at this point; I done all I could to stop and I could not stop; it would be impossible for me to do so.

Q Now, let us see if I understand you. The first car, the motor car in which you were took the curve? A Yes, sir.

Q And went on to 53rd street? A Yes, sir.

Q The second car was attached to the first, was it not? A Certainly.

Q Supposed to be coupled? A Yes, sir; supposed to be coupled.

Q Now, that coupling had to be broken before the other, the second car, could leave the first, didn't it? A It either had to be broken or she was not coupled right.

Q Had you anything to do with the coupling of the cars? A I did not, sir.

Q Now, how are those cars coupled, do you know? A In ordinary coupling, the same as any other steam railroad.

Q Is it an iron coupling? A Yes, sir.

Q With a link and pin? A Yes, sir.

Q Now, did you examine or notice the condition of the

link as between the cars? A After the accident? No, sir, I did not.

Q Now, the first car having taken the curve means that it remained upon the rail all the time? A Yes, sir.

Q And the switch being set for the Sixth avenue it followed the rail right along? A Yes, sir.

Q And when it reached the acute point the hind end of that car reached a place in the switch the second car jumped the rail, didn't it? A Yes, sir.

Q Left the rail? A Yes, sir.

Q And continued southward? A Continued east.

Q Where did that jump the rail? A On 53rd street.

Q After you started to turn on 53rd street? A Just as we were turning on 53rd street, and it went in this direction on Ninth avenue, on the east side.

Q Well, where it left the rail then it must have been about the easterly side of the line running straight down town? A The easterly side, yes, sir, exactly:

Q Well, is that the shortest part or the most acute angle of the curve at that place? A Yes, sir.

Q Now, the two cars left the track, where did you say the next one was, the fourth car? A The Fourth car was over the north bound local track, did not fall to the street.

Q What track was it on? A The north bound local track.

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Q The north bound local track? A Yes, sir.

Q In other words, it had gotten clear over the express track, had it? A Yes, sir.

Q And gotten on the track, of the north bound local?
A Yes, sir; exactly.

Q How about the next car? A The fifth and sixth cars jumped and remained on the centre express track.

Q On what? A Remained on the centre express track.

Q Of the Ninth avenue? A No, sir; the centre express track.

Q Does that run through 53rd street? A Yes, sir.

Q There is a centre track there? A Yes, sir; there is three tracks at 53rd street.

Q Now that track -- as your car came around -- was to your left, was it, or right? A Which track, sir?

Q The centre track which you say the s-- where the fifth and sixth cars were? A When you get around at 53rd street you cross right over east, the centre express track.

Q Was it the centre track that your car was on? A No, sir; the Ninth avenue local, south bound track.

Q You were coming down of course? A Coming down.

Q You came down on the westerly track, which is the south bound local for the Ninth avenue road? A Yes, sir.

Q Now, to the left of the south bound local track there is an express track, isn't there? A Yes, sir; certainly.

Q For the Ninth? A Yes, sir.

Q Is there also one turning into Sixth avenue? A No, sir.

Q Now, then, what express tracks were the fifth and sixth cars on? A In the centre, between the two local tracks.

Q How is that? A Between the two local tracks.

Q Of the Ninth avenue line? A Yes, sir.

Q Were they above or below the curve which your car took? A The south side of 53rd street.

Q On the south side of 53rd? A Yes, sir.

Q Then these two cars, when they reached the centre of the track, jumped the track there too? A I think they got onto the -- I believe they ran onto the centre track and remained there, I believe they did, they jumped the local track and ran onto the centre express track.

Q Have you any -- are you capable, from your experience as a railroad man, of forming any opinion as to why the first car took the curve without jumping the rail and the second one jumped the rail? A Yes, sir; there must be --

Q Will you tell us how it could have been done?

A There must be something wrong with the flanges or frog of that switch.

Q By flanges, you mean the flanges on the wheel?

A Yes, sir; a broken flange or worn down flange, with nothing to hold it on.

Q Some trouble with the flanges? A Yes, sir.

Q One car going over, being coupled to the next one, would naturally pull the next one in the same direction?

A Yes, sir; pull the whole lot in succession.

Q Now, what did you do after the accident, Kelly?

MR. TRAIN: Objected to.

THE COURT: I will take it.

MR. HAIRE: It is already conceded what he did.

BY MR. HAIRE:

Q What did you do? A I got off the motor car and I stood on the centre express track.

Q Stood where? A On the centre express track, looking south, and Mr. Jackson came over from the tower house and spoke to me, and asked me what I was going to do about it, and I says I was going to --

THE COURT: We will not take any declarations that this witness made, but any movement that he made we will take.

MR. HAIRE: I am not asking for declarations.

THE WITNESS: He asked me what I was going to do.

Q Wait a minute. Tell what you did?

THE COURT: Tell your movements after the accident. What did you do.

BY MR. HAIRE:

Q You had a conversation with Jackson? A Yes, sir.

Q The tower man? A Yes, sir.

Q Then what did you do? Don't tell what that conversation was? A What did I do?

Q Yes? A I left the structure.

Q Did you have any conversation with anybody else. Don't tell what it was? A There was a gentleman that I walked with to 53rd street and Eighth avenue, I don't know the gentleman, he was on my coach. I got over to 53rd street and Eighth avenue and I took a local service, express track, and I went to the Bronx, took off my working clothes. I went over and visited a friend of mine at 126th street and Third avenue and I asked him his opinion on it.

MR. TRAIN: Objected to.

THE COURT: Tell us your movements.

THE WITNESS: We went downtown. We read all the papers, the Journal and the World, especially the World said --

MR. TRAIN: Objected to.

THE COURT: Nothing of that sort.

Q You can tell what you did, don't tell what you read or said to anybody or what they said to you? A All right.

Q What did you do then after reading the Journal and

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World? A I read the World and I seen by the World --

THE COURT: Nothing about that.

Q Don't tell what you saw, what did you do after you read it? A I took lunch down at Cortland street and Broadway in a restaurant.

Q What then? A From there I went down to the Cortland Street Ferry and went over to Jersey.

Q That day? A Yes, sir; that very day. I went to Newark, New Jersey.

Q Well, continue? A I went to Newark, New Jersey by the Pennsylvania Railroad? I stopped in Newark until eleven o'clock that night and I took a train from there to St. Louis, Missouri, and I remained in St. Louis, Missouri three days, and I took a train from there to Mexico, Las Vegas, I remained a few days and the place seemed lonesome; I left there and took a train into San Francisco and I remained there, worked in San Francisco until I got arrested on the 29th of June, 1907.

Q Then you returned here without a requisition? A I did, sir.

Q Now, why did you go away after the accident? A The reason I left --

MR. TRANE: This is cross-examination.

THE COURT: I think so. I will sustain the objection. If it is objected to the objection is sus-

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tained.

MR. HAIRE: I don't want him to explain anything more than --

THE COURT: You cannot have evidence of that kind on the direct examination.

MR. HAIRE: I will withdraw the question.

CROSS EXAMINATION BY MR. TRAIN:

Q Was your eyesight good on the 11th of September, 1906? A Yes, sir.

Q You were in good health? A I certainly was, sir.

Q Was there anything the matter with your mechanism or the mechanical end of your car which you were operating, as far as you know? A No, sir; as far as I know. The passengers complained of the train jerking.

Q What is that? A The passengers complained of the train jerking, that is, being rough.

Q But you were able to stop your train? A Yes, sir.

Q You didn't have personally any difficulty with it on your downtown trip? (No answer).

Q Now, where was the car upon which you were riding when you saw the pot signal at 53rd street, signal No. 3, changed from green to yellow? A Three coaches off.

Q The length of three coaches? A Yes, sir; three ordinary coaches.

Q You were north of that light three coaches' length,

you were coming towards it? A Yes, sir.

Q You were still distant from it the length of three passenger coaches? A Exactly.

Q Had your body passed the home signal, signal No. 2 at 53rd street? A No, sir.

Q Then you were also north of the home signal? A I certainly was, sir.

Q How far north of the home signal were you, at the head of that train, when you saw the green pot signal change from green to white? A About something -- two cars' length, a little over two cars' length:

Q Now from how long a distance had you been able to see that the home signal was green at 53rd street, as you came toward it? A I seen it exactly when I came to 58th street.

Q You had pulled out of the 59th street station one block? A Yes, sir.

Q Then your eye caught the two signals at 53rd street? A Yes, sir.

Q And they were both green? A Yes, sir; both green.

Q Now, at that time was there any other downtown train in sight ahead of you that you observed? A No, sir; not that I observed.

Q Was there any train, downtown train, between you and the switch? A Of course there must be.

Q Why? A I must have a leader.

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Q What do you mean by that? A There must be a train ahead of me.

Q Was it at that time -- was there a train ahead of you at that time between your train and the 53rd street switch, or had it passed around into Sixth avenue -- (No answer).

Q The question is where was the train ahead of you?

A Where was the train ahead of me? That was leading me?

Q The train immediately ahead of you? A I could not tell you.

Q Was it between you and the switch? A No, sir.

Q If it had been you could not have seen the signals, could you? A I could not, no, sir, I could not.

Q You could not? A I could not see the pot signal.

Q Now, at any time after your eye caught the two signals at 53rd street, the home signal and the pot signal which you say were both green -- A Yes, sir.

Q Did the home signal change at all? A Not that I had seen.

Q Well, don't you know whether it changed or not?

A No, sir; not that I had seen.

Q Did you watch it? A I certainly did watch it.

Q It did not change as far as you could see? A No, sir.

Q The ^{signal} pot changed from green to yellow? A No, sir.

Q Well, what did it do? A It changed from yellow to

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green.

Q Changed from yellow to green, but I thought you told us that you had a clear track? A I mean from green to yellow, yes, excuse me.

Q Well, I was correct? A Yes, sir; excuse me.

Q The pot signal had changed from green to yellow?

A Yes, sir.

Q And that was the only change, as I understand your testimony, that occurred in the signals which you saw between the time your train left 59th street and the time it took the switch? A Yes, sir; that is all, sir, I did not notice any more changes.

Q Now, your explanation, as I understand it was to your counsel for this accident is that Mr. Jackson, the tower-man, must have taken you for a Sixth avenue train, and given you a Sixth avenue set up, isn't that what you told Mr. Haire, is that what you told Mr. Haire? A I told Mr. Haire that he mistaked me for a Sixth avenue train.

Q He set up for a Sixth avenue for you to take?

A No, sir; I did not -- never said any such thing.

Q Well, he did set up the tracks for Sixth avenue, didn't he? A He did at three cars' length.

Q At three cars length? A Yes, sir.

Q Your explanation, as I understand it, is that he thought you were a Sixth avenue train, and in the last minute

threw the switch so that it was a Ninth avenue train to take the Sixth avenue track? A Yes, sir; exactly.

Q We are not at counter-purposes? A Exactly.

Q All right. Now, you had been a motorman on the elevated structure for some six months, hadn't you, Mr. Kelly?

A Well, from March 6th or 7th until September 11th.

Q Somewhere around that? A Yes, sir; September 11th.

Q Well, had you ever seen the pot signal at that point change from green to yellow, or from yellow to green, without the home signal first changing from green to red? A I have seen the home signal changed.

Q You have seen the home signal changed? A Yes, sir.

Q I suppose you have? A Yes, sir.

Q But that is not my question. My question is, have you ever seen the pot signal changed without the home signal first having been changed to red? A No, sir; I never seen that combination of signals.

Q You never saw that happen before? A No, sir; I never did.

Q You told the jury it did happen on the morning of September 11th? A It may have changed the home signal.

Q That is what you did say? A Yes, sir.

Q You say that the pot signal changed from green to yellow? A It certainly did.

Q Without anything being done to the home signal at all?

A It certainly did; I don't know what happened to the home signal.

Q Without seeing anything happen to the home signal?

A The reason I kept my eye more on the pot signal is because it controls the switch.

Q I want to be perfectly fair to you. I want to find out just what your contention is. Now, I gather this, that you think -- do you think that the home signal was changed or not? A I guess it must be.

Q You think it must have been? A Yes, sir.

Q And that you failed to see it? A I might fail to see it.

Q If you had seen the home signal changed from green to red, in order that the tower man might change the pot signal from green to yellow, what would have been your duty?

A Well, I would know they changed switches, I would know he was going to set for a Sixth avenue.

Q What would be your duty on seeing a red signal displayed at 53rd street? A A red signal?

Q A red signal, the home signal? A "Stop", sir.

Q Stop the train? A Yes, sir.

Q Well now you failed to see any such signal as that?

A I certainly did.

Q Had you seen any such signal as that would you have stopped your train? A I certainly would.

Q After you stopped your train you would have then seen, would you not, that Jackson was going to give you the Sixth avenue track? A I beg pardon.

Q If you had seen the home signal change from green to red, and had stopped your train you would then have seen that the Sixth avenue track was being set up for a Ninth avenue train, would you not? A He would not throw it to red to set it up for Sixth avenue.

Q Do you say that it was not necessary for the tower man to make the home signal red before he changed the pot signal? A Red is danger.

Q Now, Mr. Kelly, it is important that we know, both of us, exactly what the other means. Now I asked you several questions, a series of questions, all directed towards whether or not it is necessary to turn the home signal red before you can change the pot signal at 53rd street. Let us get that perfectly clear. Supposing you are coming down Ninth avenue, that the track is set up for Ninth avenue, and the tower man, through some mistake, wants to change the switch so that the track ~~is~~ is set up for Sixth avenue, it is necessary for him, as you understand it, is it not, first to turn the home signal to red and then to change the pot signal, or do you understand and believe that he could change his pot signal and set his switch without doing anything to the home signal? A I think the home signal works independently to the pot

signal; that is my idea of it.

Q Then as I understand it, you contend that Jackson could have changed the track, set it up for a Sixth avenue train, without doing anything to the home signal at all? A I certainly do.

Q Well, then, I asked you a moment ago if you thought that Jackson had turned the home signal to red, and I understood you to say that you understood he did? A I told you I never seen him --

Q You didn't see it? A (Continuing:) --if he did.

Q But you say it was not necessary for him to do it anyway? A My opinion is that it is not.

Q That it is not necessary? A Yes, sir.

Q You have heard the testimony, haven't you, of Mr. Hedley? A I did, sir.

Q And Mr. Smith and Mr. Dutcher? A Yes, sir.

Q You have heard them all swear positively that the mechanical interlocking device on the elevated structure, at that point, was such that you could not throw the switch unless you first changed the home signal to red? A I heard them say that.

Q That does not affect your opinion at all? A No, sir.

Q You still adhere to the belief that you could change that switch without first touching the home signal? A I be-

lieve that home signal works independently to No. 1 safety and No. 3 pot signals.

Q What do you mean? A It is independent.

Q Do you mean that the tower man could set the track up in a different way without first changing the home signal to red? A Well --

Q Explain what you mean by independently. You say the home signal worked independently? A I have seen it work independent with the naked eye.

Q What do you mean by that? A I have got irregular signals on that very junction.

Q What do you mean by "independently", do you mean now, Mr. Kelly -- give me an answer to this question, if you can -- in order that Jackson should set up the Ninth avenue tracks for Sixth avenue, could he do it without doing anything to the home signal if he wanted to? A To set up the Ninth avenue?

MR. TRAIN: I withdraw the question and I will put another.

Q Supposing Jackson wanted the track, having been set up for Ninth avenue, to fix the switch so that the next train would go around it to Sixth avenue-- do you follow me? A Yes, sir.

Q Could he do it without first having changed the home signal to red? A My opinion is that he could.

Q And the testimony of Dutcher, Hedley and Smith does

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not affect your opinion at all on that subject? A No, sir.

Q Well then your testimony is, anyhow, that if Jackson did change the home signal to red, you did not see it?

A Yes, sir.

Q And it was not necessary for him to change it any way. You have just said it wasn't necessary? A Let it go at that; that is my opinion.

Q In your opinion? A Yes, sir.

Q All right. Now, are you quite sure, and are you prepared to have the jury accept as facts your statement that your car, on which you were standing, controlling that train was two coaches' length north of the home signal when the pot signal changed from green to yellow? A Yes, sir; I am most sure of it.

Q You are? A Yes, sir.

Q Now, in your opinion, Mr. Kelly, is it possible for any of those signals to be changed after a train gets past the home signal? A Yes, sir; the 16-foot bar there -- as long as the train is within 16 feet of the switch they claim you cannot straddle --

Q What is your opinion? A That it cannot.

Q You have heard Hedley, Dutcher and Smith all testify that the detector bar prevented any change of the signals? A Yes, sir.

Q If the train was within sixteen feet of the home signal? A No, sir; sixteen feet from the switch, from the point of the switch; it has nothing to do with the home signal, the 16-foot bar, it reaches from the point of the switch back onto the track, 16 feet long.

Q How far is the home signal north of the pot signal?
A Why it is 37 feet.

Q 37? A Yes, sir.

Q Now then you say that, in your opinion, a train could proceed past the home signal and yet the pot signal could be changed if the train did not get any nearer than 16 feet of the pot signal? A No, sir, because it could not be changed anything at 16 feet.

Q If it didn't get within 16 feet he could change the pot signal? (No answer).

Q Tell us, Mr. Kelly, please, what your understanding is about the detector bar? A He could change that any time as long as I did not catch that bar.

Q How soon do you catch that bar? A Within 16 feet of the switch.

Q Had you caught the bar? A I had not.

Q On that morning? A No, sir; I had not.

Q Now, the detector bar is north of the switch, isn't it? A Sir?

Q Question repeated: The detector bar that you are

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talking about is north of the switch? A It certainly is.

Q And you know that you might get over the switch with your train, or get over it with your car, but you would first have to take the detector bar, wouldn't you, you would have to pass over it? A No, sir; unless I was running on a straight track.

Q Assuming that the track is set up for Sixth avenue-- assuming that the track is set up for Ninth avenue? A Yes, sir; you would have to pass over the detector bar, certainly.

Q The track being set up for Ninth avenue there is a detector bar that runs alongside the track to a distance of 16 feet north of the switch? A Yes, sir.

Q And your car, or any train for that matter, having once reached that point, 16 feet north of the switch, it then becomes impossible to change that switch, doesn't it? A It certainly does.

Q And that is your understanding, or your opinion? A It certainly does.

Q Now, have you ever given any other explanation of how this accident happened? A I might have. I dropped a letter to Mr. Dutcher, that is, I gave it to a friend of mine in Jersey and asked him to post it to him. I just stated in the letter that I would be back.

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Q Well, what explanation, if any, other than the one you have given here? A I forget now, it is over two years ago, I just really forget what I said; I know I stated that the switch, the pot signal and switch were thrown on me at three cars' length.

Q That is your present explanation? A Yes, sir.

Q What were you doing when you were arrested? A I beg pardon.

Q (Question repeated). A I was working at reinforced concrete, working for Woodruff & Company.

Q What kind of a job did you have? A I was running the mixer.

Q The mixer? A Yes, sir.

Q That is where they mix the concrete? A Yes, sir; it is called a mixer of the stuff that goes in the buildings.

Q Were you working under the name of Paul Kelly?

A No, sir.

Q What name were you working under? A Working under the name of John Curtis.

Q What is that? A That is the name I always had in San Francisco.

Q Who was it discovered you at the mixer under the name of John Curtis? A I think his name was Mc Vey.

Q You were locked up, weren't you? A Yes, sir; that was the name I worked under.

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Q Did you make an explanation after you were arrested as to how this accident occurred to a man named John J. O'Mara, and a man named T. F. Regan? A No, sir; I made an explanation to no man, told them simply it was an accident, that is all.

Q Were you committed to the City Prison in San Francisco? A I was.

Q Were you there on the 6th of July? A No, sir.

Q What is that? A No, sir; oh, yes, certainly I was on the 6th of July.

Q Do you remember Mr. Peter Beery, the officer that came out from New York? A I remember Mr. Beery very good.

Q Don't you remember on the 9th of July, Mr. Beery, who had come out for the purpose of taking a statement from you as to how this accident occurred? A Yes, sir.

Q Now, at that time, was not your explanation of this accident that after the train had gotten over the switch the tower man had jack-knifed the train by throwing the switch? A Oh, no, sir.

Q It was not? A No, sir; that was talked in the paper, it could not be jack-knifed, that was paper talk; it would not be.

Q You say you never made any such statement? A I made a statement to Mr. Beery like this --

Q Pardon me. I am asking you if you made that state-

ment? A No, sir; I did not.

THE COURT: In substance that.

THE WITNESS: No, sir; I did not.

BY MR. TRAIN:

Q Now, let me read you a question and answer and ask you if you made that answer to that question in the presence of Mr. Beery in the City Prison in San Francisco on the 9th of last July: What was this trouble. Tell us about it?

A I will tell you. I was a motorman on the elevated railroad there; there was no trouble; it was an accident; I was going down Ninth avenue from Harlem; there were about six cars in the train; I think three motors and three trailers. When I got to the 53rd street the tower man had a yellow and two green signals out; they indicated that the track was clear to go ahead; I started over the switch and after the motor, and I think one car went over -- the tower man must have turned the switch and what we call jack-knifed the train. One car went through a house and some of them fell down into the street." A Well, jack-knifed --

Q Now, did you make that answer to that question?

A I spoke about jack-knifing --

Q Did you make that answer? A No, sir, I did not.

Q You did not?, A No, sir.

Q In point of fact, as I understand it, at the present time it would be impossible to turn the switch after one car

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had gotten over? A As long as the cars would be going
over the switch; as long as they would remain on the bar.

THE COURT: We will take a recess now, gentlemen,
until a quarter past two. Meantime do not discuss the
case or form any opinion on it until it is finally submit-
ted to you.

(R e c e s s).

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P A U L K E L L Y, resumes the stand:

CROSS-EXAMINATION CONTINUED BY MR. TRAIN:

Q I was asking you about a statement which you said you did not make to Mr. Beery, that you started over the switch and after the motor and one car went over, the tower man must have turned the switch, and what we call jack-knifed the train-- you say you did not make that statement? A When I spoke about jack-knifing--

Q You say you did not make that statement? A I spoke about the jack-knife to Mr. Beery.

Q What I want to know-- A I told him the second and third cars jack-knifed themselves.

Q Answer my question? A I did not make it.

Q You did not make that statement? A No, not in that way.

Q Did you say this-- "Do you think the switch man, or tower man, as you call him, did that on purpose? A No, I think he got rattled and forgot to turn the switch, to change the signals until he saw the train coming, and then turned it quick, not thinking that the train was on the switch." A If I said that-- yes, I said it, yes, sir.

Q "Not thinking the train was on the switch"? A I did not put the words "on the switch", because I know that sixteen foot bar was there.

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Q Did you make that answer, did you say that the tower¹⁶¹ man must have turned the switch not thinking that the train was on the switch? A No.

Q You didnot say that? A No.

Q You know that would have been impossible? A That would have been impossible.

Q You did not make that statement? A No, I did not.

Q Do you recall the trip down town? A I do.

Q At what rate of speed did you conduct the train from 66th to 59th Street? A Fifteen miles an hour.

Q What is the normal? A Fifteen miles an hour.

Q Can you-- or permitted rate of speed on the 9th Avenue Elevated Road? A Fifteen miles an hour.

Q Who instructed you as to that? A The table calls for it.

Q The table? A Yes, sir; time table. I have taken the time from the time table.

Q You received some instructions from Mr. Dutcher, or from other instructions of the Company when you became a motor-man? A Yes, sir.

Q What were your instructions in regard to taking curves? A My instructions was always, when I would take a curve to make sure to have my train serious, half-speed.

Q What is half speed? A Five points.

Q What is it per hour? A They call it serious.

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Q About what rate per hour-- can you answer that question? A I can answer that question.

Q Is it half of fifteen miles an hour? A Sir?

Q Is it half of fifteen miles an hour when you say it is half speed, and you say the normal speed is fifteen miles an hour, do you mean that serious is seven and a half miles an hour, or thereabouts? A It is four minutes to the mile.

Q What is four minutes to the mile? A Four minutes to the mile on the regular running time.

Q When you take a curve, what are your instructions as to reducing speed? A I beg your pardon.

Q What were your instructions as to reducing speed on curves? A Come down to that.

Q To come down to what? A About I suppose half speed, that is the only way.

Q Do you mean by half speed half of fifteen miles an hour? A Yes.

Q Between 66th Street and 59th Street, you say you ran ordinary speed, fifteen miles an hour? A Where?

Q 66th and 59th? A Fifteen miles an hour.

Q After leaving 59th Street at what rate of speed did you go? A fifteen miles an hour.

Q Did you change or alter your speed in any way up to the time of the accident? A Not until I saw the switches-- the block signal, I did not.

Q Not until you were within two car lengths of the home signal? A Yes.

Q And that time you say you were going fifteen miles an hour? A Running the usual speed on the straight rail.

Q What were your instructions as to stopping when you came to a cautionary or yellow signal? A On the straight line?

Q Whenever you get to a cautionary signal? A Well, at the cautionary signal, of course you slow down to see if it is thrown over, see that it is all right, at the cautionary signal.

Q See what is thrown over-- when you come to a cautionary or to a yellow signal, what are your duties in regard to the speed of your train, what were they on the day of the accident? A Well, called for slow down.

Q Called for a slow down? A Yes.

Q On the morning of September 11th, 1905, on reaching the cautionary signal at 55th Street, did you slow down your train? A I did.

Q To what speed? A Well, I slowed it down considerably, sufficient, the way if he did throw the red danger signal on me, that I could stop.

Q So you could stop? A Yes.

Q You were going at fifteen miles an hour? A Yes.

Q And you were two blocks north of the home signal,

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that is to say, you were about three hundred and thirty feet away, and you reduced your speed so that in case the tower man should turn that home signal red you could bring your train to a stop, is that right; is that what you did? A You mean at 53rd Street?

Q When you got to the cautionary signal at 55th Street, which the testimony shows is some three hundred and thirty odd feet north of the home signal, or the switch, did you so reduce your speed that had the tower man thrown the home signal to red, you could have stopped your train within those two blocks? A Yes, sir; that is the instructions.

Q How ^{long} did you keep your train at that reduced speed before resuming your normal speed? A I couldn't say that. I couldn't say just exactly that.

Q What? A I couldn't say exactly that. I was running the usual speed and I shut the current off, and applied the brakes lightly just to check the speed of the train, and then if that cautionary signal was thrown on me I had the shoes sufficiently to the wheel that three pounds of air more would make a full stop.

Q I do not think you grasp what I mean; you have testified that when you got to the cautionary signal at 55th Street, you did slow down your train? A I did.

Q Did you resume normal speed after? A I certainly did/

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Q How soon after leaving 55th Street did you resume normal speed, which you say is fifteen miles an hour? A I guess I would have it resumed at 56th Street.

Q Within a block you were going at full speed again?

A Yes, sir.

Q Where was it noticed that the pot and the home signal both showed green at 53rd Street? A 56th and 57th I should say.

Q Between 56th and 57th? A Yes.

Q That is to say, before you got to the cautionary signal? A No, sir; I guess it would be-- yes, it would be 55th and 56th.

Q Between 55th and 56th? A Yes.

Q 55th and 56th, do you mean between those two streets, or the two signals at 53rd Street were both green? A Yes, sir.

Q Now, seeing that they were both green, in other words, being notified according to your statement, that you had a clear track down Ninth Avenue, why did you stop at 55th Street, why did you slacken your speed at 55th? A At 55th?

Q Yes. A Well, there is the usual order to slow down at this cautionary signal. That is all; to see that you are safe. It is simply to save yourself.

Q In spite of the fact that you received the instructions at 53rd Street that you had a clear track? A Yes, sir.

Q And the two green lights, you nevertheless obeyed the

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general order to slow down at the cautionary signal at 55th¹⁶⁹
Street? A Yes, sir; I certainly could slow there.

Q You are sure you did that? A Yes, sir; sure.

Q Can you tell the jury how much you slowed down at
55th Street? A Not exactly. I did not check the speed but
very little.

Q Very little? A Yes, sir; just to put your shoes on
the wheels sufficient to know that you can check her; make an
application of three pounds of air is all you want, that is
sufficient.

Q If the train is going at fifteen miles an hour at
that place on the 9th Avenue road, within what distance can
you stop your train? A I take two train lengths.

Q I cannot hear you-- two train lengths? A Yes; and
a six car train I would take twelve car lengths.

Q What is that? A Well, I couldn't tell you the number
of feet in the twelve cars,- I don't know exactly, but I
judge that is the distance.

Q About how long is an ordinary car? A I guess about
fifty feet-- fifty or sixty-five feet, I guess.

Q You say that it takes two train lengths of six cars,
to stop, when you are going at fifteen miles an hour? A You
can make the stop much quicker, but that is the usual way that
I did stop the train.

Q I do not ask you that, I ask you how soon you can stop

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a six car Ninth Avenue Elevated train going at fifteen miles¹⁷⁰ an hour? A I can run into a station, any station on Ninth Avenue at fifteen miles an hour, and throw the current off at the end of the station and stop her before I get to the stop signal.

Q What is the closest, the shortest distance that you can stop such a train in? A You can stop a train---

Q Going at fifteen miles an hour? A If you have a good rail and use the emergency brakes, you could stop a train perhaps in the space of 25 or 30 feet.

Q Then this other figure you gave of two train lengths merely is a comfortable way of stopping a train? A Yes, that is the proper and comfortable way.

Q So the passengers won't be incommoded-- did you receive one of these signal bulletins? A Yes, sir.

Q Were you familiar with the rule which requires when you saw a yellow or cautionary signal to proceed slowly?

A Yes, sir.

Q And were you familiar with the rule that a red signal is a signal to stop? A Yes, sir.

Q And that a green signal is a signal to go ahead?

A yes, sir.

Q And that a yellow pot signal means that the switch is set for a diverging route? A It is according to--

Q If you were on a straight track and there was a yellow pot, you are familiar with the rule that said that that meant

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that the diverging route was set up? A That meant Sixth Avenue at 53rd Street.

Q Were you familiar with this rule, "Imperfect signals. A signal imperfectly displayed, or the absence of a signal at a point where a signal is known to be located is an indication of danger, and must be acted upon accordingly"? A Yes, sir.

Q You were familiar with that rule? A Yes, sir.

Q Now, Mr. Kelly, if you had seen not two green signals at 53rd Street, but had seen a green home signal and a yellow pot signal, what would have been your duty in regard to your train as you understood it? A My duty would be to slow down sufficiently to enable me to get around that curve.

Q Supposing you were a motorman of a Ninth Avenue train, and you came down Ninth Avenue, and when you get within stopping distance of 53rd Street, you saw there was a green home signal and a yellow pot signal, what would have been your duty in regard to the conduct of your train? A To stop as quick as I could.

Q To stop the train? A As quick as I could.

Q You say no such signals were displayed until you were too close to the switch to stop your train? A You are right, that is it exactly.

Q You say you have never made any contradictory explanations of how the accident occurred? A No, I did not. I

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have not said a word to nobody about it.

Q You knew the facts just as you have stated them before the jury on the 11th of September, didn't you? A Yes.

Q You knew that on the facts as you knew them you had not been guilty of any neglect of duty, or worthy of any blame?

A I certainly thought I was not to blame.

Q Did you know Jackson? A I never spoke to him in my life until that morning.

Q Did you know after leaving New York that your presence was desired here? A I thought so. I had that idea.

Q Had you seen this reward, seen that pasted up in St. Louis? A Never until Mr. Beery showed it to me.

Q Mr. Beery? A Or Mr.--- I forget his name-- the gentleman who arrested me in Frisco. He showed me the picture.

Q That was the first time? A Yes.

Q You had not heard that Mr. Neugass' father had offered a reward of a thousand dollars for your apprehension? A No, sir.

Q Or that the police department of this City had offered a reward of five hundred dollars? A No, sir.

Q For your apprehension? A No, I never heard of it.

Q That played no part in your staying away? A No, sir; I never heard of it.

Q Are you quite sure, Mr. Kelly, that with a Ninth Avenue train, such as you were in charge of, on the morning of

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September 11th, going at fifteen miles an hour, that you could stop it within twenty-five feet? A Well, I never had made an emergency stop that we are taught in the--

Q I want to know what your testimony is on that proposition? A I could not--

Q You say you could not stop it with in twentyfive feet? A I say that I could stop it according to instructions at that pace. I never did do it.

BY THE COURT:

Q How could you do it, how could you make an emergency stop? A There is an emergency stop on all the trains.

Q How could you make it? A On each brake there is what they call the emergency, and by applying that emergency, it sets the brakes much tighter on every car quicker than to make the usual application.

Q Is that emergency brake under your control? A Yes.

BY MR. TRAIN:

Q Within how short a distance could you stop such a train going at that rate? A I never made a stop in my life with the emergency, but I have been taught that, that it was thirty feet with that stop.

Q You have been taught what? A We have been taught it was thirty feet, between thirty and thirty-five feet.

Q You told the jury not long ago, if I recollect correctly, that you could stop a train of that sort going at fif-

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teen miles an hour within twenty-five feet, that was my ¹²⁴ recollection.

THE THIRD JUROR: From twenty-five to thirty feet.

BY MR. TRAIN:

Q Now, do you mean to stand ~~by~~ that statement or change it? A I could make that stop, I know, according to the instructions, and according to the way that the instructor taught me, that it could be made if I had a good dry rail, but if it was a damp rail it would be dangerous to use it.

Q Do you mean by that you were taught in form that you could stop your train within thirty feet, but that in point of fact you don't think you could? A No.

Q What do you think is the shortest distance within which you could stop such a train going at fifteen miles an hour? A I think that---

Q Thirty feet? A I think you could if you had a proper rail.

Q If you had a proper rail? A If you had a proper dry rail.

Q You say these signals were changed on you when you were two car lengths north of the home signal? A Three car lengths.

Q North of the home signal? A Yes.

Q I do not want to take any advantage of you, but my impression is that you said three car lengths north of the

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switch, and two lengths north of the home signal, which is ¹⁷⁵
it? A It is three.

Q Do you tell the jury that you saw the Ninth Avenue route changed to the Sixth Avenue route while you were still three car lengths north of the home signal? A Yes.

Q And a car length is something like seventy feet?

A Yes; I guess so.

Q So you were 210 feet north of the home signal when you saw the Ninth Avenue route changed to the Sixth Avenue route?

A Yes, sir.

Q And you had 210 feet to stop your train? A Well,---

Q Do you say that? A Well, I explained exactly when I put the brakes on my train slid faster and faster.

Q I want the facts, I want to know if you did have 210 feet within which to stop your train? A I don't know that exactly. I don't know just exactly the length.

Q Three car lengths? A Threeordinary car lengths.

Q You had that distance to stop your train? A Yes.

Q And you say you could not do it? A No, sir; I failed to do it, and I couldnot do it. I tried, though.

Q You failed to do it? A Yes.

Q That is not the question I want from you now; we want to know what steps you took to stop your train. A I put the brakes on.

Q Why didn't you stop your train within thirty feet?

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A Because she slid and got away from me. She slid, and I found that she was locked, and the wheels were sliding and I knew I could not stop while the wheels were sliding, because she would go two blocks with you on a damp morning like that. There was sort of a haze track that morning.

Q While you were in San Francisco, did you meet your conductor, Mr. Jackson? A Mr. Johnson.

Q Mr. Johnson, I mean? A Yes, I did.

Q Before you were arrested? A After I was arrested he came to---

Q Did you meet him before you were arrested? A I never did.

Q After you were arrested he came to the City prison? A He came to see me at the prison.

Q Did he come frequently? A No, he made one visit, I think.

Q Only one? A One or two, two visits I believe.

Q Didn't he make a half a dozen? A Mr. Johnson?

Q Yes. A No, he did not.

BY THE COURT:

Q Whereabouts, here or in San Francisco? A San Francisco. I think it was two visits.

BY MR. TRAIN:

Q Did you talk to him about the rate of speed at which your train was going? A No, we did not have anything to say

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about the rate of speed, to my knowledge.

Q Did you have anything to said to him about how the accident occurred? A I did.

Q Did you say anything to him or did he say anything to you--- A He asked me---

Q Pardon me. I did not ask you what he said--- did you say anything between yourselves, as to what he had testified to before the Railroad Commissioners? A No, sir; he didn't say anything about what he had testified to.

Q You did not know? A No, sir; I did not ask him either.

Q Did you tell him what rate of speed you were going at? A I told him that---

BY THE COURT:

Q Did you, or not? A I told him I was running at the usual rate.

Q Did you tell him or not? A Mr. Johnson, yes, I believe I did. I think I did. I am not sure I did. I told him I was not a bit afraid to come back.

RE-DIRECT EXAMINATION BY MR. HAIRE:

Q You were asked if the record which was offered for you had played any part in your going away, or staying away; I ask you now what did play a part in it, what was your reason for it? A For going away?

Q Yes. A Well, as I stated before, I seen in all the

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papers, at the Battery, that I was a Sixth Avenue train, and I carried Sixth Avenue signals, and that the tower man threw the switch for Sixth Avenue, and I was to blame for the wreck. I thought then after leaving the structure that somebody did change the markers on my motor car, making it a Sixth Avenue train, and I was sorry for leaving the structure, and I came to the conclusion that they would give me the whole blame for the wreck.

Q Signals such as have been described here as being set at the time of the wreck, or immediately after it, namely, No.1 yellow, No.2 green, and No.3 yellow, would be called irregular signals? A For Ninth Avenue.

Q Irregular for Ninth Avenue? A Yes.

Q What other signals would be called irregular signals?

Objected to as immaterial.

THE COURT: I will receive it.

A A yellow on the home signal and a green on the pot signal would be an irregular for Ninth Avenue, and irregular for Sixth Avenue both.

Q Have you ever, before this accident, at that point, seen irregular signals? A Yes, sir.

Q And when you saw an irregular signal, what did you do? A Brought the train down to a walking pace and blew the whistle twice for a straight track.

Q On this occasion did you apply the emergency brake when you saw the signals were irregular for Ninth? A No.

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sir; because I had plenty of time to stop. I had plenty of time to stop when I saw that irregular signal. It was shown all the way down from 58th Street.

Q After you saw the irregular signal, if you had plenty of time to stop, why didn't you stop--- do you understand my question? A Not quite.

Q I ask you why you could not, if you did apply the emergency brake, when you saw the signals were irregular?

A You mean the day of the accident?

Q Yes.

THE COURT: He answered that. Read his answer.

(The stenographer reads the answer of the witness as follows: "Q On this occasion did you apply the emergency brake when you saw the signals were irregular for Ninth? A No, sir; because I had plenty of time to stop; I had plenty of time to stop when I saw that irregular signal. It was shown all the way down from 58th Street.")

BY MR. HAIRE:

Q Now, when did you mean that you saw it all the way down from 58th Street, what time did you refer to? A I guess about three minutes ahead of the accident.

Q Three months ahead of that accident.

Q When you say you had plenty of time to stop, you were not referring to the accident? A No.

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Q You were referring to a time I asked you, about, having¹⁸⁰ seen an irregular signal at that station? A Yes, sir; that is exactly what I referred to.

Q From 59th to 53rd Street, is it a down grade?

A It is.

Q And that morning, what was the condition of the rails?

A Damp.

Q A damp morning? A Yes.

Q Did you, upon that occasion, the occasion of the accident, apply the emergency brake? A No, because my train slid before I put her in the emergency.

Q You could not work the emergency brake? A No, because it was sliding; it would be no good.

Q What did you do to stop the wheels as you commenced to slide? A I eased on the brake and gave her one point and revolved the wheels.

Q In the opposite direction? A No, sir; going ahead, to get the wheels revolving, to save me jumping the switch.

Q When you saw the switch was turned to Sixth Avenue, you took such speed, or took such measures as you thought would carry you around the switch? A I certainly did. I knew I was going around without being able to make the stop.

Q Why couldn't you have applied the emergency brake then? A I would, if she didn't slide, if the train did not slide.

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Q When it commenced to slide you could not do it,
is that right? A Yes.

Q In approaching the cautionary signal or yellow signal,
do you begin to slow up just before you reach that, or at
the time you reach it? A Just two or three cars length, I
just took an application of three pounds of air and that would
bring it down a little, just sufficient to know you are all
right, and then go right ahead again.

Q And when you passed that signal and see the two sig-
nals ahead right, you put on speed? A Just go on fifteen
miles an hour on the straight line.

Q That was the rule at that one place? A Yes; that
was the rule, never heard any other rule for a straight line.

Q Was there any special rule or instruction given you
in regard to going any slower, after you passed signal No.1,
or the cautionary signal, at that point, than at any other
point between stations, provided the signals were set for
Ninth Avenue? A No, sir.

Q What is the length of time you make a round trip in?
A Seventy-two minutes.

Q What is the distance? A Eighteen miles.

Q You are supposed to run on schedule time? A Yes, sir.

Q And that would be about four--- A Four minutes to
the mile.

Q That includes stopping? A Yes, sir.

Q Didn't you say it was hazy that morning-- the weather¹⁸² was not quite clear that morning, was it? A No, sir; it was a little sort of a haze on the track, and the air was not quite clear.

BY THE SEVENTH JUROR:

Q The weather was clear enough for you to see the signals as far as from 58th Street, the signals that were located near 53rd Street? A They showed plain from 58th Street.

Q Showed plain-- how soon after the train, which you call the leader, the train before you, how soon after this train passed, would the tower man change the signal? A He should change it every time.

Q Right away? A Yes.

Q Immediately after it passes? A Yes, sir; he should always keep it on the straight line.

Q In your testimony you said you had seen two green signals, a clear road, when you were as far as 58th Street? A Yes, sir.

Q Is it not likely that you saw the signals which were set for the train that passed ahead of you? A No, sir.

Q You are pretty sure this was the signal set for you? A Yes, unless it was a train that went on the straight line. I can't tell that.

Q I mean by this question, were you told to guide yourself by the signals you saw as early as 58th Street? A Yes.

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Q Or were you not to wait until 55th Street, when you came nearer those home and port signals, before you watched your signal at all? A As long as he gives you No.1 safety, or one cautionary, he opens the way for you to go clear through, and then as long as you look down and see those two home signals green, and No.3 signal green, you know everything is all right.

Q Your order to skip 30th Street, did it also imply an order to make quicker time between 66th and 30th? A No, sir-- you may make quicker time--

Q Were you trying to make better time on that particular trip in that connection? A No, sir; because I left two minutes late, and I was two minutes late when I struck 66th Street.

Q After you got the order to skip 30th Street? A Fifteen miles an hour just the same.

MR. HAIRE: In other words, you received instructions to save the time you would have occupied by making one stop-- that is all.

THE DEFENSE RESTS.

C O R N E L I U S A. J A C K S O N, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Where do you reside? A Unionport, New York.

Q Your age is what? A Forty-four.

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Q And how long had you been employed on the New York Elevated Railroad on the 11th of September, 1905? A Between ten and eleven years.

Q Had you in due course become a tower man, having passed through other grades? A Yes.

Q How long had you been a tower man at that time? A Since March 7th, 1905.

Q Had you been in that particular tower at 53rd Street during that time? A Yes.

Q Now, on the morning of September 11th, 1905, was the mechanism, the interlocking system, under your control at that point, in working order?

MR. HAIRE: I object as not rebuttal.

Objection overruled. Exception.

A Yes, sir.

Q How long had you been setting signals, switches, and the track at that point, on that morning, prior to the accident which had occurred? A From 12 o'clock midnight.

Q Since 12 o'clock? A Yes.

Q Had you during that time set the signal at 55th Street and the two signals at 53rd Street for down coming Ninth Avenue trains? A It is not necessary to set one at 55th Street at all. The home signal and the pot signal.

Q You had set signals, and set the switch for the trains as they came? A Yes.

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Q Ninth and Sixth? A Yes.

MR. HAIRE: May it be noted without renewing my objection, that this is all taken subject to objection?

THE COURT: No, you must object, if you think it is important, because may be I shall be in accord with you on some of your objections.

BY MR. TRAIN:

Q About seven o'clock on that morning, did you see a train leave 59th Street station and proceed south? A Yes, sir.

Objected to.

THE COURT: At what time?

MR. TRAIN: That is as close as I can get it, about seven o'clock.

MR. HAIRE: I object.

Objection overruled. Exception.

THE WITNESS: Yes.

Q What was that train, as indicated by the signals on the side of the smokestack?

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

BY MR. TRAIN:

Q Was it a Sixth or a Ninth Avenue train? A A Sixth Avenue.

Q It was a Sixth Avenue train? A Yes.

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Q At the time you saw this Sixth Avenue train coming from 59th Street, tell the jury what the situation of the track with respect to switches and signals was?

Objected to. Overruled. Exception.

Q What was the condition of the track as to signals and switches when you saw that there was a Sixth Avenue train pulling out of 59th Street station? A The cautionary signal was set at yellow, and the home signal at red, and the pot signal was set at green.

Q In other words, you had protected the 59th Street train?

MR. HAIRE: I object.

MR. TRAIN: I have not finished.

THE COURT: Let him get through with his question, and then we will see what it is, and then I can pass upon it.

BY MR. TRAIN:

Q Had you protected that train which you saw in the distance until you should see whether it was a Sixth or Ninth Avenue train, by putting the home signal at red? A Yes, sir.

MR. HAIRE: I object.

THE COURT: I sustain the objection.

MR. HAIRE: I move to strike out the answer.

THE COURT: Motion granted.

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MR. HAIRE: And I ask your Honor to instruct the witness not to answer until you have ruled upon my objection.

THE COURT: Wait until the Court passes upon the objection.

BY MR. TRAIN:

Q Having seen that was in fact a Sixth Avenue train, what alterations in signals or tracks did you make?

Objected to as immaterial and not rebuttal.

Objection overruled. Exception.

BY MR. TRAIN:

Q Having observed that this oncoming train was in fact a Sixth Avenue train, by observing the discs on each side of the smokestack, what change in the home signal or other signals did you make? A I changed the pot signal from green to yellow, and the home signal from red to green.

Q Giving the Sixth Avenue train-- A The right of way.

Q And telling it to go ahead? A Yes.

Q And how near the switch was this Sixth Avenue train when you changed the home signal to green, and the pot signal from green to yellow, and thus telling the train to go ahead?

Objected to. Overruled. Exception.

Q About where was that train when you did that? A At 57th Street.

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Q Were you able at that time to see any other down-coming¹⁸⁸ train on the Elevated Structure? A No, sir.

Q Having so set those signals, what did you then do?

A I went downstairs to the toilet.

Q How long were you gone to the best of your recollection? A I should judge in the neighborhood of a minute and a half, probably a little more or a little less.

Q Did you hear that train pass? A The Sixth Avenue train, yes.

Q You had at that time been some seconds in the toilet?

A Yes.

Q What caused you to return to the tower? A On account of seeing this Ninth Avenue train coming.

Q From where you sat in the toilet, did you see a Ninth Avenue train coming? A Yes, sir.

Q Where was it when you saw it? A About 55th Street.

Q What did you do? A I rushed upstairs as quick as possible, and when I got upstairs he was on the trailing bar, what we call the trailing bar.

Q Were you able to move the switch or set any signal?

A No, sir; none whatever.

Q Did you observe the unfortunate result that happened?

A Yes.

Q And you remained thereafter at your post? A Yes, sir; at my post until my relief came.

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Q And as switchman, you had no assistant-- as tower man?

A No, sir.

Q And no way to relieve the call of nature, except by going from this tower down to the street? A No, sir.

Q How far was it from the tower down to the street?

A You don't go to the street.

Q Where do you go? A The bottom part of the tower.

Q About how far is that? A I should judge about 20 feet or 25 feet, at the most.

Q There you sat down? A Yes.

Q And while you were there you say you heard the Sixth Avenue train go by? A Yes, sir.

Q Was there any flagman about there at that time?

A One at 55th Street.

Q What were his duties? A To flag the express trains.

Q Any other employees about the track there, whose duties were to look after anything? A Except Mr. Ebert, or Epert, whatever his name may be.

Q He was trackwalker? A Yes, sir.

Q Did you see anybody about the tower besides yourself?

A No, sir.

Q Now, your contention is-- what you state in substance-- that you saw a Sixth Avenue train coming, that you placed

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the signal right, showing a right of way, or clear of track¹⁹⁰
for a Sixth Avenue train? A Yes.

Q And that after doing so you went away, as you were compelled to do? A Yes, sir.

Q And when you came back the Ninth Avenue train was taking the curve? A When--

Q On the Sixth Avenue track, is that right? A Yes.

Q And it was so far along that you could not shift the switches? A No, sir.

Q You have been tried and convicted of this offence, of manslaughter? A Yes.

Q Your case is on appeal? A Yes.

Q You are out on bail? A yes, sir.

Q Have you been told that if you would testify here against Kelly that you would receive any immunity, or benefit?
A No, sir.

Q Has your lawyer told you it would be better for you to do so? A No, sir.

Q You realize that if the testimony you have given here is true, that you are not guilty, do you not?

MR. TRAIN: I object. He is guilty.

Objection sustained.

THE COURT: Both may be, and one may be, and the other not, and both may be innocent.

MR. HAIRE: I except.

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I suppose you testified in your own behalf? A Yes, sir.

Q When you were tried? A Yes.

Q What was the trouble with you that day, had you been sick some time? A I was taken sick that night.

Q About what time? A Probably two or a little after.

Q That sickness continued right along up until seven o'clock? A Continued all that night from two o'clock until the next night.

Q You had no assistance, nobody to help you? A Only the night yard man was with me during the night time up until six o'clock.

Q Until six o'clock in the morning? A Yes.

Q While he was with you, did you go down below? A Yes, sir.

Q On several occasions? A Yes.

Q And he took charge of the switch while you were absent?

A Yes, sir.

Q Now, from six o'clock in the morning until the time of this accident, you had nobody to assist you? A No, sir.

Q Did not the road ever furnish you with any assistance?

A No, sir.

Q Regularly? A No, sir.

Q Made no provision for anybody taking your place?

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THE COURT: How is that material to this case, Mr. Haire? Does it affect the credibility of this witness?

MR. HAIRE: I do not think it affects the credibility.

THE COURT: Then I would not go into it, because I do not think it has any bearing upon the issue.

BY MR. HAIRE:

Q How long a time were you downstairs? A About a minute and a half, probably a little longer.

Q You could not have gone down there and made the change necessary in your clothes, in that length of time? A Yes, sir.

Q You had to loosen your clothes, and did you tighten them up, or button them up before you came up? A No.

Q Did you after coming upstairs put your hand on the levers or touch any of them? A No, sir.

Q What did you do immediately after the accident?
A Stayed right in the tower until my relief came.

Q Did you go out and speak with Kelly? A No.

Q You did not speak with him at all? A No.

Q Did not see him? A No, sir.

That is all.

MR. TRAIN: If your Honor please, Beery is now out on the Thaw case, and is not available. If Mr. Haire will

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concede this statement--

MR. HAIRE: I am willing to admit that the witness they are waiting for will testify that that was a report of the statement made by defendant.

THE COURT: In other words, you concede that it be taken in evidence, if taken entirely in evidence?

MR. HAIRE: Yes.

THE COURT: Let it be marked in evidence, but read the entire document.

Paper is marked in evidence People's Exhibit 6, and read in evidence by Mr. Train as follows:

"Q Who was that fellow that called to see you yesterday?

A There were two of them, James Greer and Robert McGowan.

Q Where do they live? A They live in this City, corner of McAllister and Baker Street. Q Where did you know them?

A I worked with them over in the tunnel-- the railroad tunnel, after I came out here. Q Did you live in the same place with them? A No, I was living at 164 Church Street with a German family.

Q Where did you last work? A I have been working for the Woodruff Construction Company. Q Where is there office? A On Pine and Franklin Street. Q Where were you living in New York when this trouble occurred? A At 146th Street and Seventh Avenue, Harlem.

Q Were you rooming there or are you a married man? A I was rooming there with a family named McCormick. Q What was this trouble, tell us

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about it? A Well, I'll tell you. I was a motorman on the Elevated Road there. There was no trouble. It was an accident. I was coming down Ninth Avenue from Harlem. There was about six cars in the train. I think three motors and three trailers. When I got to 53rd Street the tower man had a yellow and two green signals out. That indicated that the track was clear to go ahead. I started over the switch, and after the motor, and I think one car went over, the tower man must have turned the switch, and what we call jack-knifed the train. One car went through a house, and some of them fell down into the street. Q How many were killed? A I saw in the paper afterwards that six were killed. Q Do you think the switchman or tower man, as you call him, did that on purpose? A No, I think he got rattled and forgot to turn the switch, to change the signal-- until he saw the train coming, and then turned it quick not thinking that the train was on the switch. Q What did you do after this happened? A When I saw what had been done I got scared. I walked down to 53rd Street and Eighth Avenue, and took the surface car and went up to Harlem, changed my clothes. Q Where did you go to change your clothes? A I went to where I was rooming, 146th Street and Seventh Avenue, and went back down town where I met George Hughes and Shearn, friends of mine who worked on the cars of Ninth Avenue. They advised me to give myself up, but I did not do it. Q When did this accident happen?

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A I think it was on the 11th of October, 1905. Q What day of the week was it? A I think it was on a Thursday. Q What did you do after you left Hughes and Shearn? A I promised to meet them downtown again that night, but I never saw them since. Q Where did you go? A I went over into Jersey, Newark, and bought a ticket for St. Louis, Missouri. Q What name did you sign on the ticket? A Well, really I forget, but I think it was Pat Curtin. Q How long did you stay in St. Louis? A I stayed there four days. Q Where did you go from St. Louis? A I went to Los Vegas, New Mexico, but it was too hot, and I did not stay there very long. Q Well, how about getting away from New York, where did you get the money? A I had about \$145 in my room, and I took that when I went there to change my clothes. Q Did you always keep that amount of money in your house? A No, I had some money in a building in a loan association, and I got afraid it would burst up, so I took my money out of it a short time before. Q Well, they say you drew this money out before you committed the crime, so that you would have it to get away on, that you had been planning this for some time? A That is not so. I simply drew this money out of the building and loan because I was afraid I would lose it if the place busted up. Q Where is the building and loan place situated? A It was across the street from the Grand Central. I don't remember the name of the place. Q Did you go by your right name here? A No, I always went by the name of John Curtin in

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this City. Q What did you run away for if you did not commit any crime? A I was foolish, I suppose, but I got scared. I intended to go back again this Fall and give myself up. I would like to have the thing over with. If any one was to blame it was the tower man. I simply followed the signals.

Q Was there a strike on the road at the time? A No, there was no trouble of any kind. Q What was the tower man's name? A I don't know what his name was. I never saw him in my life.

Q Did he belong to the Union? A I don't know anything about that. I guess he did. Q You are a Union man? A Yes. Q Is the Union going to do anything for you? A They haven't done anything yet. Q Don't this Union out here belong to the

same amalgamation as the Union back there? A No, they are a different Union altogether. Q Have you any relatives in New York? A Yes, I have several sisters in New York. Q Are

your friends doing anything for you? A No, they are not doing anything for me here, but I suppose they will when I get back there. Q Who is this fellow Johnson who called to

see you? A He was the conductor of the train. Q Did you know that the detectives were looking for you? A Of course I did. I knew they were looking for me for two years, and I told Gibson when he copped me that I was the right man, the man he was looking for. There will be nothing to it when I get back there. There can't be for it was an accident. I never tried to kill anybody in my life. I never was arrested

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in my life until I was arrested for this."

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THE PEOPLE REST.

MR. HAIRE: I desire to renew my motion made at the
close of the People's case.

Motion denied. Exception.

*Judge Malone
has charge*

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