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

If it please the Court and you, gentlemen of the
jury:

You are already familiar with the fact that the de-
fendant is here on trial for the crime of manslaughter
in the second degree.

The circumstances under which this crime was com-
mitted are as follows, and these are the circumstances
the People will prove to you: On July 27th, 1907, the
defendant was a motorman and he was operating a car on
that day on Third avenue from 129th street on up Third
avenue to 153rd street, and on up towards the Bronx.
Now, on this day while he was operating this car the car
ran into and killed one Louis Koneman.

This occurrence or accident, as you may call it,
took place on Third avenue, on the north bound track,
that is the easterly track, just above the intersection
of 153rd street and Third avenue. The man who was kill-
ed, Louis Koneman, was driving a team of horses on the
east bound track, the same track that this car was on,
driving them north in the same direction that the car
was going. The horses were not attached to any wagon at
the time; he was walking behind the team of horses, driv-
ing them.

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This accident took place at 3:45 a.m.

Now, the Court will, I presume, take judicial notice of the fact that on that morning, July 27th, the sun rose at 4:46. This accident took place just an hour before sunrise.

We will also show you that at this place there is an elevated structure over the track, the Third avenue elevated structure is over the track. We will show you that just previous to the collision or accident the city lights went out; that there is a grade there, a down grade; that this car which killed Koneman was going down grade at the time and was going at a very high rate of speed. The defendant was in charge of this car. As you know a trolley car is a heavy car and it is bound to run on the rails which are provided for it, it cannot turn to the right or left, and the only control that the operator has is the control of the speed, stopping it and starting it in order to avoid traffic or anything there may be in the street.

We will also show you that the defendant rang no bell on the trolley car at that time and place where the accident occurred; that he disregarded all the rules and of safety which were provided at the time, that he operated this car in such a negligent manner, under the circumstances, down grade, in the dark, that he was neg-

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ligent and that because of his culpable negligence the death of Louis Koneman was the direct result.

Now, in this crime with which he is charged there is no allegation, nor is it to be proved, that there was any design to cause death. So far as we know this defendant never heard of or saw Louis Koneman, the man who was killed; he had no intention to kill Louis Koneman, but it is necessary in the community that each one act in such a way that he does not jeopardize the rights or the lives of others. It is little consolation to the family of Louis Koneman, whether he met his death because the defendant had some feeling of spite against him and intentionally killed him, or whether he so disregarded the ordinary rules of prudence that his death was accomplished.

The defendant is not here on trial because it will in any way bring reparation at all to the family of Louis Koneman; it will not bring back the same situation of affairs as existed before this accident took place, but because if he, as we contend, was guilty of culpable negligence at the time and because of that negligence Louis Koneman met his death, it may deter others who are in the same position now as this defendant from disregarding those rules of prudence and may prevent further occurrences of this same nature.

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MR. HEINZELMAN: I respectfully ask your Honor to direct that the witnesses in this case be excluded from the court-room.

THE COURT: Motion granted.

ALFRED MENDELSON, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McNISH:

Q Officer, you are attached to what precinct?

A I am attached now to the Detective Bureau.

Q On the 27th day of July, 1907, to what precinct were you attached? A The 36th.

Q The 36th precinct of the police force of the City of New York? A Yes, sir.

Q Now, on the morning of July 27th, 1907, early in the morning, were you on post? A Yes, sir.

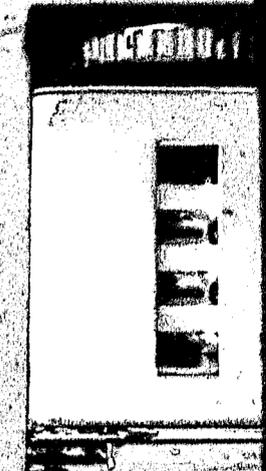
Q Where was your post? A I had what we call post 34 and 35, which took in 149th, 150th, 151st and 152nd streets from Third to Park Avenue.

BY THE COURT:

Q Give me that again. A 149th, 150th, 151st, 152nd street from Third to Park Avenue.

BY MR. McNISH:

Q Now, do you remember on that morning seeing a car go by on Third Avenue running north? A Yes, sir.



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Q At what time in the morning was it? A Well, about 3:45, quarter to four.

Q Where were you standing at the time? A At the southwest corner of 152nd street and Third avenue, in 152nd street just off Third avenue.

Q How long had you been standing there? A Probably fifteen minutes.

BY THE COURT:

Q What time was this? A 3:45 a.m.

BY MR. McNISH:

Q Just before the car went by did you see any other vehicles go by on Third Avenue, going north? A All I remember was a team of horses driven by a man passed me just previous to this car coming along.

Q Was the team attached to any vehicle? A No, sir; the man was just driving them up the avenue.

Q The man was walking behind them? A Yes, sir.

Q On what part of Third Avenue, or what part of the street was he driving on? A He was on the right hand side of the street, going north, on the tracks.

Q Driving on the trolley tracks? A Yes, sir.

Q Now, Officer, at that time were there lights on the street, were the lights on? A No, sir; the lights had just gone out, the city lights, the electric lights had just gone out.

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Q There is an elevated structure, is there not, over the track in Third avenue? A Yes, sir.

Q Did you see this man again? (No answer)

Q What was the next thing that you saw after you saw the car pass? A Well, I heard a crash shortly after that and I ran up towards where the crash came from and found a man and horse underneath the car.

Q Underneath the same car that you had just seen pass? A Yes, sir.

Q Now, will you just describe to us the situation there, how Third avenue runs up there? A Well, there is a sharp curve of the trolley track, in fact of the street at that point, at 153rd street, caused by Elton avenue running into Third avenue there, a sort of a square.

Q Third avenue turns off there, doesn't it? A Yes, sir.

Q Around to the right? A Yes, sir; and Elton avenue is on the left.

Q Elton avenue runs into Third avenue there? A Yes, sir.

Q Elton avenue is parallel with 154th and 153rd streets, is it not? A No, sir.

Q I mean at right angles? A Yes, sir; at right angles.

Q Third avenue is not quite at right angles, Third avenue turns or veers off to the right? A Yes, sir.

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Q Is there another street -- does 153rd street run through to the east side of Third avenue? A Yes, sir; it runs east of Third avenue, it crosses Third avenue.

Q And runs east? A Yes, sir.

Q How long is the block at 154th street between Third avenue and Elton avenue? A Well, I could not exactly state the distance.

Q About what is the distance?

MR. HENNING: I cannot see the materiality of it, how long 154th street is between certain avenues.

THE COURT: If it be material, it is better to have it with some degree of accuracy. The witness says that he cannot say. I don't think we ought to speculate, if you think it is material.

MR. HENNING: I think if we had a diagram here it would facilitate matters.

THE COURT: It may be material, but if it is it is so easy to ascertain that we had better have it with some degree of accuracy.

MR. McNISH: I offer in evidence this map which is consented to by counsel for the defense.

(The map referred to is marked People's Exhibit 1)

THE COURT: Does it give the distances?

MR. McNISH: It does not.

THE COURT: It is the general layout.

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MR. McNISH: The distances are not material.

BY MR. McNISH:

Q How long after you saw this man driving the team of horses along was it that you noticed the car, as near as you can remember? A Probably a minute.

Q A minute after? A Yes, sir.

Q Were there any passengers on the car? A I noticed one.

Q One passenger? A Yes, sir.

Q Was that an open or closed car? A An open car.

Q Was the car going at a high rate of speed?

MR. HEINZELMAN: Objected to.

THE COURT: I think you will have to establish that he is competent to give us some evidence on a subject of that kind.

BY MR. McNISH:

Q Did you ^{take} particular notice, or not, of that car?

A Yes, sir.

Q As it went by? A Yes, sir.

Q From what you noticed was the car going fast or slow?

A Fast.

Q How long have you been a policeman? A Going on eight years.

Q How long have you been on that beat? A Well, I have not been on that post very long; I had not been in that pre-

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cinct very long.

Q You have seen a great many trolley cars passing?

A Yes, sir.

Q On the streets of New York? A Yes, sir.

Q Both in the daytime and night time? A Yes, sir.

Q Now, how would you say this car was running, was it running at a high rate of speed or at an ordinary rate of speed?

THE COURT: I think you have that. He says it was going fast. I think that is as far as you can go.

Q Did you hear any bell?

MR. HEINZELMAN: I object to that.

THE COURT: I will take it and give you an exception.

MR. HEINZELMAN: No, I don't ask for an exception.

A No, sir; I did not hear any bell.

Q Did you take your eyes off the car, do you remember, after it had passed you at 152nd street until you ran up to the place where the accident occurred? A I did after it passed; I did take my eyes off it after it passed, but I watched it pass me at the corner.

Q How was the street, Third avenue there, as to the grade?

MR. HEINZELMAN: I object to that.

THE COURT: Received.

A There is a down grade there, I should judge so.

Q A down grade running from where? A Running from

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152nd street down towards 153rd street.

Q It is the down grade then running north? A Yes, sir.

Q Was it light at that time, was there any daylight?

A No, sir; it was dark.

Q Was it before or after the car passed that the city lights had been turned out? A The lights were turned out or went out just shortly before the car came up, just before the car came along.

Q Now, you heard the crash and then you ran up?

A Yes, sir.

Q Now, just tell us where the car was when you got there?

A The car was just about 153rd street, just above the crossing of 153rd street and Third avenue; just beyond the crossing.

Q Now, will you please mark on the map the place where the car was at the time when you ran up to it? Just make a cross. A The front platform of the car was about here where I have made that dot. (Witness makes a dot on the diagram)

Q Just describe what you saw there? A Well, when I got to the car I saw a man lying on the inside track, or the left track on the outside of the north bound road.

Q Of the north bound track, on the left track, that is the west track? A Yes, sir.

Q The left rail? A Yes, sir; there was a horse underneath the front platform of the car.

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THE COURT:

Q Under what platform? A The front platform.

W. M. McNISH:

Q Now, was the man lying on his face or on his back.

Just describe the position of the man. A The man was lying on his face.

Q Where was the car resting on him? A Well, I believe the back wheel of the car was resting on the back of his neck.

Q The back wheel of which truck? A Of the rear truck.

Q The back wheel or the front wheel? A I believe it was the front wheel, the front wheel of the front truck was resting on his neck.

Q The front wheel of the front truck? A Yes, sir.

Q Was resting on his neck? A Yes, sir.

Q Did the wheel run over his -- how was he lying, crossways on the rail? A No, sir; lying lengthways with the rail.

Q He was lying on his face lengthways with the rail?

A Yes, sir.

Q And the car had -- A The wheel had passed over him up to the back of his neck.

Q The wheel had passed over his back to the back of his neck? A Yes, sir.

Q Where was the horse? A The horse was on the right hand side of the car, on the right rail of the north bound track.

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The car was resting, one platform was resting right on his hip I should say, with his back out towards the street.

Q What else did you notice about the car there, did you notice any other persons there? A Well, there were several other persons there when I got there.

Q Were there any vehicles there? A There was an ash truck, an ash cart, or a vehicle that looked like an ash cart to me, it was just above the car with the shafts turning toward the street and when I got there the horse was lying on the walk and also a young man.

Q The driver of the ash truck? A Which I found out was the driver of the ash truck.

Q Now, what kind of an ash truck was that, two wheel or four wheel? A Two wheel, the same as they use in the Street Cleaning Department.

Q A cart? A Yes, sir.

Q Made of metal? A Yes, sir.

Q With a scoop back? A Yes, sir.

Q How far was that above the car? A Well, I should judge --

Q As near as you can say? A I should say between 10 and 15 feet above the car.

Q Now, did you see the defendant when you got there, Thomas McDermott? A When I first ran up and found out the circumstances I rapped for assistance, and then waited until

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an officer came up and then took this defendant in charge.

Q Where was the defendant when you first saw him?

A Well, when I got there he was still on the platform.

Q On the front platform of the car? A Yes, sir.

Q What was he doing, if anything? A Well, it seemed to me that at the time he seemed stunned.

Q Did you have any conversation with him? A None whatever.

Q Did he say anything to you? A No, sir.

Q Then what did you do? A Well, I held this man under my charge until the other officer came up and handed him over to him, as it was his post.

Q This was off your beat, was it not? A Yes, sir.

Q You handed him over to the officer on whose beat it was? A Yes, sir.

Q What is that officer's name? A Heitner.

Q Then what did you do? A Well, the ambulance came; we helped remove the body -- the ambulance surgeon pronounced him dead and we rolled him over on the stretcher of the patrol wagon which we called, placed it in the patrol wagon and sent the body to the station house.

Q Just state the condition of the body as you saw it there? A Well, it seemed to me that he was -- as if he had been cut in half right up to the back of his neck, his insides were pretty well spilled all over the street.

Q Apparently where had the car struck him?

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Objected to. Objection sustained.

Q You put him in the wagon and what officer was on the wagon? A Officer Balton went back with the body, beside the driver of the patrol wagon.

Q Now, what was the condition of the horse?

MR. HIRSHENMAN: The question is rather vague.

THE COURT: I will take it. I don't think it is very important.

A The condition of the horse, as far as I could see, - the horse's head was turned towards the west side of the street, in fact he was lying crossways on the track with his back towards the east side of the avenue.

Q Was it injured? A Well, it was dead, that is when I got there it was still kicking, but it died before they could get the car off it.

Q Did you see the other horse there? A No, sir.

Q Now, did you examine at that time the ash cart?

MR. HIRSHENMAN: I object to that. Up to this time there is no evidence before the Court showing that there was any connection between the car and the ash cart. The witness testified that he saw an ash cart ten to fifteen feet beyond the car.

THE COURT: I do not see the materiality of it.

MR. McNEIL: I shall connect that, if your Honor please, by the driver of the ash cart.

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THE COURT: We had better go along orderly. If it is necessary you can recall this witness to supply it. In taking evidence I like to go along a little orderly because sometimes counsel fail to connect it. I will permit you to recall him upon that subject if you feel that it is necessary afterwards.

Q What other persons did you see at the time you ran up. Do you know the names of them? A I don't; I know the names now but I didn't know then.

Q Did you see the passenger? A Yes, sir.

Q Who was on the car? A Yes, sir.

Q Did you ascertain his name? A I got his name at the time and brought him to the officer that had the case, brought him to Officer Heitner.

Q What was his name, do you remember? A I believe it was -- I don't know exactly, I would not be sure. I have seen the gentleman since.

BY THE COURT:

Q You got his name and gave it to the other officer who took the prisoner? A Yes, sir; he took the case.

BY MR. McNICH:

Q When on that morning did you first see the man who was driving the horse? A I saw him about fifteen minutes previous to the time he was killed in 151st street.

Q In what direction was he driving then? A He was

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driving then towards Third avenue.

Q Then later you say he passed you while you were standing at 152nd street, and the next time you saw him was after you heard the crash and ran up? A Yes, sir.

BY THE COURT:

Q You saw him how many minutes before you saw him pass the corner? A About fifteen minutes.

Q How far from the corner was that? A That was in 151st street near Melrose avenue, opposite the brewery there, Haffen's Brewery.

Q About fifteen minutes before? A Yes, sir.

Q That is before you saw him going by on the corner?

A Yes, sir.

CROSS EXAMINATION BY MR. HEINZELMAN:

Q Officer, how long were you attached to the 36th precinct prior to the morning of this accident? A About four months.

Q In the performance of your duties as patrolman during those four months were you frequently on Third avenue?

A Quite often.

Q And at night? A At night.

Q About the hour of 3:45 o'clock in the morning?

A Oh, yes.

Q During those four months you were on Third avenue frequently? A Yes, sir.

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Q Of course as a policeman you took notice of what was going on about you? A Yes, sir.

Q Traffic at that hour was very slight, isn't it?

A Yes, sir.

Q Very few vehicles out? A Yes, sir.

Q Is that correct? A Yes, sir.

Q An occasional milk wagon I suppose? A Yes, sir.

Q Or an ash cart or something upon that street?

A Yes, sir.

Q Don't nod your head. A Yes, sir.

Q Did you notice whether or not there was any obstruction ~~there~~ either in the shape of a vehicle, or excavation, on Third avenue between 153rd and 154th streets, east of the north bound track? A That morning?

Q Yes, that morning? A Well, an excavation?

Q Any obstruction? A Well, that was not part of my post that morning, I only went to 152nd street.

Q When you got to the car and found the unfortunate man lying under the car, did you notice between the railroad track and the curb any wagons or any other obstruction in the immediate vicinity of the car? A Well, there was this ash cart there after I got there and above that ash cart was a meat wagon.

Q Above that? A Yes, sir.

Q Were they in motion or standing there? A When I got

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there they were standing.

Q Now, the ash cart was not on the tracks, was it?

A The ash cart when I got there was -- the wheels of the ash cart were sideways, resting against the curb.

Q Now, when you first met or saw the man whom you say was subsequently killed he was walking, wasn't he? A He was.

Q He was walking north? A North.

Q That is, he had a team of horses in front of him with their harness on? A Yes, sir.

Q And he held the reins in his hand? A Yes, sir; he did.

Q He was behind the horses? A Yes, sir.

Q So that he was on the north, or in between the tracks of the north bound part of the railway system there? A He was on the north bound track.

Q He was in between the tracks? A Well, I should say he was, yes, sir.

Q You were there, Officer,- the horses were in between the track? A As near as I could see, yes, sir.

Q So that as he traveled he had his back turned toward any car which might approach on that car? A Yes, sir.

Q He was traveling north on the north bound track? A Yes, sir.

Q Now, you had seen him fifteen minutes before that? A Yes, sir.

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Q. And at that time he was crossing Third avenue?

A. No, sir; he was not crossing Third avenue when I seen him; I seen him at Melrose avenue, just west of Melrose avenue, going towards Third avenue.

Q. Did you see him turn into Third avenue? A. No, sir.

Q. You went on about your business? A. Yes, sir.

Q. All right. So that when you lost sight of him at Melrose avenue he was about apparently driving into Third avenue? A. Well, I could not say that; he may have stopped at the brewery there.

MR. HEINZELMAN: Don't tell us what he may have done. I ask that that be stricken out, your Honor.

Q. At any rate after you lost sight of him you did not see him again until you saw him lying under the car? A. No, sir; I saw him on Third avenue passing me at 152nd street.

Q. Where was he then in relation to the car tracks?

A. He was on the north bound tracks going north with the two horses.

Q. Then you say it was about a minute after that you heard the crash? A. I judge about a minute after.

Q. Now, officer, at that hour there are not many cars running, not as many as at three o'clock in the afternoon?

A. No, sir; there are not.

Q. And as the cars pass along Third avenue at that hour they do run somewhat faster than they do in broad daylight,

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don't they, or in the middle of the day? A They do as a rule, yes, sir.

Q Do you know what the rule of the Railroad Company is in relation to the speed of cars?

MR. McNISH: Objected to.

THE COURT: If he knows.

A I know what the law is, I don't know what the rule of the Railroad Company is.

Q You say there is a turn at Third avenue and 153rd street? A Yes, sir; there is a sharp curve.

Q Now, if a man is standing at 151st street and Third avenue, and he were to look north, could he see 153rd street and Third avenue?

MR. McNISH: I object to the question as incompetent.

Q I will change the question. If you stood at 151st street and Third avenue and looked north, could you see 153rd street?

MR. McNISH: I object to the question.

THE COURT: I will take it.

Q Answer. Could you or could you not? A Well, it would depend upon whether it was dark or light.

Q Assuming there were no obstructions of your view such as vehicles or fences? A Yes, sir.

Q You could see? A Yes, sir.

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Q The curve is not so long or so large but what any one could look if he had his eyesight, of course, the distance of two blocks? A Yes, sir.

Q So that he could look past where this curve is?

MR. McNISH: I object to that question, if your Honor please. I have no objection to having this matter cleared up, but that is a very broad street there.

THE COURT: He is asking him the different points about which he is familiar. He is asking him as to a certain point. I think there ought to be something in the question with reference to the condition of light, but I take it that in the daylight he has reference only to this curve, whether he could see it. I will take the evidence.

MR. McNISH: Then the objection I make to the question is, "Could the defendant see".

THE COURT: Yes; of course that is objectionable, whether the defendant could see.

MR. HEINZELMAN: I desire to get the lay of the land for the purpose of establishing a fact.

THE COURT: Eliminate that. That is objectionable.

BY MR. HEINZELMAN:

Q Now, you have already stated that standing at 151st street, looking north, you could see the intersection of Third avenue and 153rd street? A Yes, sir.

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Q On the east side? A Yes, sir.

Q Now, can you tell us, and if you can, do so, about how many feet north of the north crossing of 153rd street and Third avenue you found this car? A Well, about ten or fifteen feet.

Q Ten to fifteen feet north of the north crossing?

A Yes, sir.

Q And that would be on Third avenue between 153rd and 154th streets? A Yes, sir.

Q At any rate, officer, are you quite certain that the car had passed both crossings, the crossings which run east and west? A No, sir; the car had not. The car, I should say, was stopped on the north crossing, but the front of it about ten feet above the north crossing.

Q Ten feet above the north crossing? A Yes, sir.

Q That is the front platform? A Yes, sir; that is the front part, that much of the front car (illustrating).

Q You allowed a certain number of feet for the length of the car, which would bring the rear of the car about even with the north crossing of 153rd street? A Well, I would not say that, no.

Q How far north was the rear platform of the car? A How far north of the crossing?

Q Yes. A Well, it was not above the north crossing of 153rd street at all, the rear platform.

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Q I understand that the accident occurred on Third avenue between 153rd and 154th streets? A Yes, sir.

Q Is that correct? A Yes, sir; that is correct, just above 153rd street.

Q Now, I want to learn the distance from the north crossing at which you found the dead man lying under the car, how far? A I should judge about ten to fifteen feet.

Q Now, it was the front wheel, or one of the front wheels that was resting upon the body of the deceased? A Yes, sir.

Q Now, what sort of a car was this, how many wheels were attached to it? A I would not be prepared to say, although I believe there was four wheels.

Q You know there are some of these long cars that have a truck in front with four wheels and a truck in back which would make eight wheels. Your impression is now that this was a four wheeled car? A Yes, sir.

THE COURT:

Q And a closed car? A No, sir; an open car.

BY MR. HEINZELMAN:

Q An open car? A Yes, sir.

Q And it was which wheel, the right or left wheel on the front? A The left wheel.

Q The left wheel? A Yes, sir.

Q That would be to the west? A Yes, sir.

Q That was resting against the shoulder or back of the

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deceased? A Yes, sir; on his neck.

Q Where was the horse? A The horse was on the right hand side of the car.

Q Under the front platform? A Yes, sir.

Q The northerly platform? A Yes, sir.

Q And the man and the horse were very close together, were they not? A Well, yes, sir, they were close together under the car.

Q Now, my friend has stated in his opening that the accident occurred at 3:45 o'clock? A Yes, sir.

Q Is that your recollection? A Yes, sir; that is my recollection.

Q You were out on post that morning in the street?

A Yes, sir.

Q My friend has suggested something about the sun rising at 4:46. Now, what is your recollection of that, is that about right?

MR. McNISH: I object to that.

MR. HEINZELMAN: I am anxious to corroborate what you said.

THE COURT: I suppose we can find that out definitely and I will take judicial notice of it. I will see what the almanac says about it and that will be sufficient for me.

MR. McNISH: I have ascertained that on the morning

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of July 27th, 1907, the sun rose at 4:46.

THE COURT: I shall fortify that, Mr. Heinzelman, and I have no doubt that you will accept it.

MR. HEINZELMAN: May we not place upon the record that counsel on both sides agree that the sun rose at 4:46.

THE COURT: Yes.

MR. HEINZELMAN: That will save time.

BY MR. HEINZELMAN:

Q But the city lights were extinguished before 3:45, is that correct? A That is my opinion, yes, sir.

Q How long before 3:45? A Well, as near as I can remember the lights had gone out just previous to this accident, just previous.

Q Second or minutes? A Well, minutes I should say.

Q How many minutes? A I am unable to state exactly.

MR. HEINZELMAN: I am awfully anxious to get something definite on that.

BY THE COURT:

Q About how many minutes would you say? A Probably two or three.

BY MR. HEINZELMAN:

Q Two or three minutes previous? A Yes, sir.

Q Between hearing the crash and seeing the car coming?

A Between hearing the crash?

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Q Two or three minutes before you heard the crash the lights went out? A Yes, sir.

Q And it was one minute before you heard the crash that you saw the car pass? A Yes, sir.

Q So that would make a difference of about two minutes? A Yes, sir.

Q Between the time the lights went out and you heard the crash? A Well, that would be about right.

Q Did you see any other teams or any other wagons passing on that track going in a northerly direction from the time you saw the deceased at 151st street to the time you heard the crash? A Well, that I could not say, I am not positive of that.

Q Now, officer, when you arrived at this scene, McDermott was on the platform? A Yes, sir.

Q The front platform? A Yes, sir.

Q The man under one wheel and the horse on the other? A Yes, sir.

Q He made no attempt to move or run away? A Well, he seemed stunned to me when I first got there.

Q So stunned that you conducted no conversation with him at all? A Well, I thought it was my duty --

Q No. Wait a minute. I don't want to know what you thought. A What was that question?

Q You conducted no conversation with him? A No, sir.

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Q He stood on that platform and was trembling, wasn't he? A I could not say that.

THE COURT: You have him saying "stunned".

Q Did you notice where his hands were? A No, sir, I could not see them either.

Q Did he say anything to you at all? A Nothing at all, sir.

Q Was he removed from the platform? A He was when I came back.

Q Did you order him from the platform? A I did not.

Q You let the man stand there but you devoted your attention to the man under the car? A To getting assistance for the man under the car.

Q Now, officer, there is a station of the "L" railroad in 152nd street or where? A 156th street.

Q 156th street? A Yes, sir.

Q How about the structure overhead, is it a platform there, or are there any of the old time drip pans under the track? A Not at 153rd street, no, sir.

Q Officer, was the headlight of that car lit or burning? A Well, all the lights were lit when the car passed me.

Q How is that? A The headlight was lit.

Q The headlight was lit? A Yes, sir.

Q Quite sure about that? A Positive about it when it passed me.

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Q And the lights inside the car were burning? A Yes, sir

Q As a matter of fact the only artificial illumination around that neighborhood at that time came from the car?

A Yes, sir.

Q Now, how long were you in the presence of this defendant all told? A Well, probably twenty minutes.

Q Twenty minutes? A Yes, sir.

BY THE COURT:

Q Thirty? A No, sir, twenty.

BY MR. HEINZLIEMAN:

Q During that twenty minutes no conversation was had between you and him? A He had no conversation with me. I turned him over to the other officer.

Q Were the rear wheels of the car on the tracks?

A Yes, sir.

Q How about the front wheels? A Well, the front wheels were raised.

Q Raised? A Yes, sir, up against the body of the horse, that is the platform rested upon the horse, that is the car on that side, the right hand side.

Q But was the wheel directly over the track or elevated?

A I could not say that either.

Q You made no special effort to ascertain that?

A I must say that I did.

Q As I understand it, the horse was, so to speak,

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squeezed in under? A Yes, sir.

Q The platform? A Yes, sir.

Q The platform of the car rested upon the body of the horse? A Yes, sir.

Q Did you know the deceased prior to this time?

A I did not.

RE-DIRECT EXAMINATION BY MR. McFISH:

Q Officer, when you say that the defendant was in your presence for twenty minutes, do you mean that you were standing beside him for that time? A I do not.

Q How long a time was he in your actual custody before you handed him over to the other officer? A Just long enough for the officer to go back and ring up the ambulance, till he came back.

Q Then you turned him over to Officer Heitner?

A Yes, sir.

Q You had no conversation, or attempted to have no conversation with him further than that? A No, sir.

Q I understood you to say that the city lights went out before the car passed you, as you were standing at 152nd street, is that correct? A Yes, sir.

Q How long before that approximately, if you can tell?

A Well, I stated before that I could not exactly state the time, it seemed to me that the lights had just gone out as

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this accident happened.

Q How long was it, you stated approximately, how long was it after you saw the car pass you at 152nd street before you heard the crash? A Well, it was a minute.

BY THE COURT:

Q Officer, you had been how long on the police force?

A Going on eight years.

Q Among your duties as a police officer what have you learned with reference to the speed of cars? A Well, there is a speed limit to all vehicles.

Q Where do you get that knowledge of the speed limit?

A From the school of instruction.

Q What is that speed limit? A Eight miles an hour.

Q What is your duty with reference to the exceeding of that limit of speed, in the performance of your duty as a police officer? A To make an arrest for a violation.

Q Is it part of your duty to determine the rate of speed at which conveyances are going in the street? A Well, as near as our judgment can.

Q Have you made a study so as to be able to determine, within some reasonable limitations, the rate of speed of conveyances? A No, sir; only by --

Q From your own observation? A Yes, sir.

Q From time to time you did make arrests, if, in your judgment, based upon your observation of the rate of speed, the

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speed is exceeded? A Yes, sir.

Q You have done that, have you? A Yes, sir.

Q During the time you have been on the force?

A Yes, sir.

Q That is part of your duty? A Yes, sir.

Q To make those arrests? A Yes, sir.

Q For that reason have you given the subject some study, in determining whether the speed is being exceeded or not?

A Well, I could tell that by, just as I say, by my judgment.

That would tell me that.

Q Because it is part of your duty? A Yes, sir.

Q To make an arrest if that eight miles prescribed by the law is exceeded? A Yes, sir.

Q You have been doing that for how many years?

A Going on eight years.

Q Now, when you saw this car there at 152nd street, I believe you said you saw a man with a wagon ahead, how much time was there between seeing the man there at 152nd street and Third avenue and the car? A Well, about a minute elapsed.

Q About a minute? A Yes, sir; there was no wagon there at all your Honor.

Q What was the condition of light, could you clearly see objects at that time, at that place? A It was very dark underneath the elevated structure.

Q You said that there was a sort of a curve that ran from

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152nd street to 153rd street? A Well, I wouldn't say it ran from 152nd to 153rd; it starts about just where Elton avenue intersects Third avenue at the other side of 153rd street, a sharp curve.

Q From your recollection of the condition existing that morning, could objects be seen at 152nd street and Third avenue -- at 153rd street and Third avenue? A No, sir; not with the lights out; no, sir.

Q What was the grade -- it was a down grade as I understand you to say, what grade was there ~~at~~ ^{between} 152nd and 153rd street? A Well, the grade isn't so steep; it is not a very steep grade; there is a grade, a down grade there.

Q Was this car on which you afterwards found this defendant, when he crossed 152nd street and Third avenue, was it going at a greater speed than that which the law permits eight miles an hour? A In my judgment it was, sir.

Q It was? A Yes, sir.

Q Are you able to say, or give the jury and the Court any judgment, from your experience of eight years on the police force, and having that as a part of your duty, what rate of speed that was? A I could not state the speed, I could give an idea, as near as I could judge, I should say between 15 and 18 miles an hour.

MR. HEINZELMAN: I object to that as incompetent and it is not the best evidence.

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THE COURT: I will take it and give you an exception.

MR. HEINZEMAN: I respectfully except. I also move your Honor to strike from the record the testimony of this witness as to the law of the land in reference to the speed of vehicles, on the ground that that is incompetent and not the best evidence.

THE COURT: I will grant your motion upon that.

MR. HEINZEMAN: I ask your Honor to direct the jury to disregard the testimony of this witness as to the law relative to the speed of vehicles.

THE COURT: I will grant that motion.

BY MR. McNISH:

Q You said when you got up to the car the defendant seemed stunned. Just explain to us what you mean by stunned, what condition was the defendant in? A Well, he could not move, he was like he was glued to the spot.

Q And frightened? A Well, he was frightened.

Q What was the condition of the front part of the car at that time? A Well, the front platform on the right hand side was pretty well battered and bent, it was all bent in.

Q The platform? A Yes, sir; the dashboard as I call it.

Q Was battered and bent in? A Yes, sir.

Q How far or how near the car -- that is, how far was the

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dashboard pushed back towards the car itself? A Within a few inches of the uprights supporting the main body of the car or seat, whatever it was.

Q Within a few inches of the seat? A Yes, sir.

Q Room enough for a person to stand in there?

A No, sir; not room enough for a person to stand; there was room enough on the left hand side where the defendant was standing.

Q But on the right hand side it was pushed back against the seat? A Yes, sir.

BY MR. WEINZELMAN:

Q Did you notice the condition of the dashboard of the car as it passed you at 151st street? A I did not pay any particular attention to that.

Q You don't know but what the dashboard was bent in then? A I could not say.

Q I want to go back to a little subject and I want to make it clear, with your Honor's permission. You saw the car where, at 151st or 152nd street? A 152nd street.

Q 152nd street and Third avenue? A Yes, sir.

Q And a minute later you heard a crash? A Yes, sir.

Q One minute? A Yes, sir.

Q That is your best judgment as an intelligent man and a police officer? A That is my best judgment.

Q Fairly well accustomed to time, etc. When you heard

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the crash you looked up in the direction from where it came and you saw the car which had passed you at 152nd street, at 153rd street? A Well, I could not say that, I saw the car, the lights went out.

Q You immediately went up there? A I did.

Q Did you see the car? A Yes, sir.

Q Then, of course, that was the only car that was on that track? A That was the only car that passed at that time.

Q Give us an idea of the length of the block between 152nd and 153rd streets? A Well, I should say about --

Q Pretty short blocks, ain't they? A Well, it is longer on the east side than it is on the west.

Q Well, is it 250 feet? A Yes, sir, on the west side.

Q I am speaking of the longest distance, if you can tell us? A Well, I should say it is about 250 yards on the west.

Q 250 yards? A Yes, sir; on the east side.

Q That would be 750 feet? A Well, no, sir, it is not as long as that.

Q Give us your best judgment of the length of that block. Now, we don't expect you to give it by inches. A Well, I should say about between 250 and 300 feet on the east side.

Q So that it took the car about a minute to travel that 250 or 300 feet, that is what you have testified to, that is

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correct? A Well, but the accident happened above 153rd street.

Q Ten or 15 feet above 153rd street? A Yes, sir.

Q We will make it 315 feet, is that right? A Well, that is my best judgment, that is as near as I can tell.

Q That grade that you spoke of -- you never were a surveyor or engineer? A No, sir.

Q Now, that is not down hill there, is it? A Well, there is, just as I said before, there is a little grade there.

Q Where does it commence? A I should say about 152nd street.

Q And where does it end? A Just above the curve.

Q What curve? A At 153rd street, between 153rd and 154th street.

Q Can you give us any idea what the fall is in inches?

A No, sir; I could not.

Q To the yard? A No, sir.

Q Or block? A No, sir.

Q Now, officer, you have testified here that when you went to the school of instruction you were taught that eight miles an hour -- any car that exceeded eight miles an hour was violating the law, or something like that? A That is my recollection.

Q Did you ever see a trolley car run at a high rate of speed in the middle of the day, about eight miles an hour?

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A Yes, sir; quite often.

Q All day long? A Yes, sir; quite often.

Q Did you ever make an arrest of a motorman for running a car at a high rate of speed?

MR. McNISH: Objected to as incompetent, irrelevant and immaterial.

THE COURT: I will take it.

A No, sir; I did not.

Q Did you ever know of a policeman ever arresting a motorman for running a car at a high rate of speed?

MR. McNISH: Objected to.

THE COURT: I will take it.

A I can't say whether I did or not.

Q As a matter of fact, Officer, you know that the rule applies to vehicles, bicycles, automobiles, light road wagons and does not apply to trolley cars at all; don't you know that? A No, sir, I do not know that.

MR. McNISH: I object to the question.

THE COURT: That has been stricken out.

MR. HEINZELMAN: I am taking my chances this time.

THE COURT: I thought you would come back to this part of it. I assumed that it was going to be proved later by the production of the ordinance, but I see you are making that unnecessary.

Q Do you know that? A That is my knowledge, that is my

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opinion of the law.

Q That is your opinion of the law? A Yes, sir.

SAMUEL ROSEN SCHWEIG, called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McNISH:

Q Doctor, you are a physician and surgeon, licensed and practicing in the city and county of New York?

A Yes, sir.

Q And have been for how long? A For eighteen months.

Q On the 27th day of July, 1907, you were attached to one of the hospitals in the city of New York? A Yes, sir; Lebanon Hospital.

Q Where is that? A That is at Westchester and Caldwell Avenues in the Bronx.

Q What was your position on that hospital staff at that time? A At that time I was the ambulance surgeon.

Q On the morning of July 27th, the early morning at about 3:45 o'clock, were you called on your ambulance to attend an accident? A Yes, sir.

Q Where were you called to? A I was called to Third avenue between 153rd and 154th streets.

Q What did you there find? A I found a man lying under a car, about under the left wheel, under the rear wheel,

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the left hand side of the car, uptown track and a horse lying in front of the car, in front of the wheel. The man was pretty well mutilated; the car had passed over his body, he had several fractures of the skull and the body was cut, and there was several fractures of his arm. I found a man lying under the car with several fractures of the skull, mutilations of his body and fractures of the arm.

Q He was dead? A Yes, sir.

Q In your opinion did he die from the injuries received from these fractures and contusions? A Yes, sir; the fractures, all the injuries were sufficient to cause his death.

Q Now, if you remember, was the man lying on his face or on his back when you saw him? A I don't exactly remember that.

Q Had the car been removed from the body when you saw him? A No, sir.

Q When you got there? A No, sir.

Q What part of the car was resting upon the body of this man? A Well, it was the rear left wheel, it was the rear wheel on the left hand side of the car.

Q Do you mean the rear wheel of the car, or the rear wheel of the truck? A No, sir; of the car; there was no truck there that I saw.

Q The rear wheel of the car? A Yes, sir; on the left hand side.

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Q Was that the north end of the car or the south end of the car? A The south end of the car, on the uptown track.

Q On the uptown track? A Yes, sir; the south end of the car.

Q This car was going north, it was a north bound car? A Yes, sir; uptown.

Q How long were you there at the place? A I don't suppose I was there more than ten minutes. I just made a superficial examination, found the man was dead and went back. There was nothing to be done in these cases, just leave it in the hands of the police after that.

Q You did not help take him out from under the car? A No, sir; the patrol wagon just drove up as I was leaving.

Q You did not wait until the car was removed from the body? A No, sir.

Q Simply examined it? A Yes, sir; examined him where he was.

Q Are you quite positive -- could you not be mistaken as to whether it was the front of the car or the rear of the car that was resting on the body of this man? A It was the rear of the car because the horse was under the front of the car; I saw the body of the horse there and the horse was just opposite the rear wheel -- the horse was on the left hand side, the side towards the up track.

Q Wasn't it the ^{front} truck that the horse was under? A The

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horse was under the front wheels of the car and the man just in front of the rear wheel on the left hand side.

Q That is, the rear wheel had not run over him? A Just about touching him,- the right hand part of the wheel, there is a part of the wheel, a shaft which runs out from both sides of the wheel of the car, right under that, in front of the wheel.

Q The injuries he had received from the front wheels?

A Yes, sir, the front wheels having run over him.

Objected to. Objection sustained.

CROSS EXAMINATION BY MR. HEINZELMAN:

Q Doctor, tell us as near as you can how far north of the street crossing was the car? A I did not take notice of that.

Q Try and bring your mind back to the scene, and give us your very best judgment, I don't expect you to know to an inch or a foot, give us in a general way your best recollection?

A I suppose about almost half way between 153rd and 154th street, as far as I can remember.

Q Half way? A Yes, sir.

Q Did you make a special examination of the location of the body as it lay under the car? A No, sir.

Q Now, ^{an} ambulance surgeon you would not remove a dead man in the ambulance? A No, sir.

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Q That is for living human beings? A Yes, sir.

Q If a person is found dead your service ceases and you go back to the hospital with your ambulance? A yes, sir.

Q Now, you say from the condition of the body that life was extinct? A Yes, sir.

Q Your best judgment is that the car was about the centre of the block? A As far as I recall, that is my impression of eight months ago.

Q It was certainly more than 15 feet north of 153rd street crossing? A Yes, sir; a little more than that.

Q Considerably more than that? A Yes, sir.

Q You are not at all mixed as to the track, as to the destination of the car, you know that was a north bound car? A Absolutely.

Q The wheel that you speak of which was resting against the body of the deceased was at the southern end of the car? A Yes, sir, the rear end of the car.

Q And the horse was where? A The front of the car, resting right under the front wheel.

Q The north end of the car? A Yes, sir.

Q Did you hear that horse groan? A No, sir.

Q You paid no attention? A No, sir; paid no attention to it at all.

Q Did you hear any person speak? A No, sir, I spoke to the officers around, that is about all.

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Q. Anybody say anything about the electric current?

A. Not to me.

Q. Some one else -- did you hear it? A. No, sir; I did not hear anybody speaking about it at all.

BY MR. McNISH:

Q. Do you know the exact time it was when you made the examination of this body? A. About 4:10.

Q. About when? A. About 4:10 when I got there.

BY THE COURT:

Q. It is part of your duty to know the exact time?

A. Yes, sir; we enter the time of the call and the time of our return.

Q. You did that at that time? A. Yes, sir; always do in our ambulance book.

J O H N D. B E L T O N, a witness called on behalf of the

People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McNISH:

Q. You are an officer of the New York Police Force?

A. Yes, sir.

Q. You were such an officer on the 27th day of July, 1907?

A. I was.

Q. At that time attached to what precinct? A. At that time the 36th precinct, at the present time the 63rd.

Q. That is to say, the number of that precinct has been

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changed from the 36th to the 63rd? A Yes, sir, since that date.

Q Since that date? A Yes, sir.

Q Where is the station house? A Corner of Washington and Third avenue.

Q On the 27th day of July, 1907, were you on the patrol wagon in the early morning of that day? A I accompanied the patrol wagon from the scene of the accident 153rd street and Third avenue to the station house.

Q Did you see Officer Mendelsohn of that precinct there at the place of the accident? A He was there.

Q Was the body put in the ambulance? A When I arrived there it was not -- it was lying under --

BY THE COURT:

Q Did you go on the patrol wagon down to the place?

A No, sir; I walked down.

Q Do you know what time of day that was? A About 3:40 or 3:45.

Q You did not note the time at that time? A No, sir; not particularly.

Q You assisted Officer Mendelsohn to get this body in the wagon? A I did not.

Q You saw it put in the wagon? A Yes, sir; I saw the body put in.

Q By Mendelsohn? A Yes, sir; and several other police-

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men.

Q Did you accompany the wagon containing the body back to the station house? A To the patrol station at the station house.

Q There was an officer there -- the body was delivered over to the care of Lieutenant Fennel? A It was taken from the patrol wagon and put in the patrol station in the rear of the station house in charge of one of the hostlers.

Q Lieutenant Fennel was in command? A Yes, sir; in command, on duty in the station house at the time, yes, sir.

(No cross examination)

GEORGE FENNEL, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McNISH:

Q You are a Lieutenant of police of the police force of the city of New York? A Yes, sir.

Q You were a Lieutenant on the 27th day of July, 1907? A Yes, sir.

Q In what precinct were you assigned? A It was then the 36th precinct, now the 63rd.

Q And the station house is where? A 159th street and Third avenue.

Q Do you remember the 27th day of July, 1907, the early morning, having sent a patrol wagon to an accident? A Yes, sir.

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Q And that accident occurred at 153rd street and Third avenue? A yes, sir.

Q At what time in the morning? A Well, I sent --

Q About what time in the morning? A - I sent the wagon about four o'clock.

Q You sent the wagon about four o'clock? A Yes, sir.

Q Who was on the wagon, what officer was on the wagon?

A Officer Belton, John D. Belton.

Q The officer who has just left the stand? A yes, sir.

Q Did that ambulance return containing a body?

A No, sir; the wagon did.

Q The wagon? A Yes, sir.

Q I mean the wagon? A Yes, sir.

Q Belton in charge? A Yes, sir.

Q And the body was delivered over to you? A Yes, sir.

Q By Belton? A Yes, sir.

Q Was that body identified in your presence on that day?

A yes, sir.

Q By whom? A By Mr. Blumenauer, his employer.

Q Is that the gentleman (pointing to a witness in the court room)? A Yes, sir.

Q Mr. Blumenauer made an identification of the body?

A Yes, sir.

Q Brought in by officer Belton at that time? A Yes, sir.

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CROSS EXAMINATION BY MR. HEINZELMAN:

Q Officer, at what hour did you receive a call for the wagon, at what time? A Well, 3:58.

Q 3:58? A Yes, sir.

Q Within two minutes you sent it out? A Yes, sir.

WILLIAM BLUMENAUER, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY R. McNISH:

Q Mr. Blumenauer, what is your business? A Contractor and truckman.

Q Where is your place of business? A 151st street.

Q Near what avenue? A Between Melrose and Cortlandt avenue.

Q Did you go to the station house of the 36th precinct, then the 37th, now the 63rd precinct, on the 27th day of July, 1907? A Yes, sir.

Q Did you there look at a body? A Yes, sir.

Q Will you tell us whose body that was? A That body was Louis Konegan who was driving for me.

Q He was a driver for you? A Yes, sir.

Q What was the condition of that body? A Well, it was all smashed up.

Q All smashed up? A Yes, sir.

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Q How long had you known Louis Koneman? A I knew him a long time, long years, a good many years.

Q For how many, ten or fifteen? A yes, sir; ten or fifteen years.

Q How long had he been employed by you as a driver? A Well, he was different times, twice; the last time he was only a couple of weeks.

Q He had been with you the last time only a couple of weeks? A Yes, sir.

Q Where is your stable? A It is 617 East 151st street, in the same place where I live.

Q How far is that from Third avenue A It is two blocks from Third avenue.

Q Two blocks west of Third avenue? A Yes, sir.

Q Had you seen Louis Koneman, the deceased, on that day? A No, sir.

Q He was employed as a driver by you to drive -- what did he drive, what kind of a wagon? A He should go to Eblings' brewery, and cart a load of beer, with Eblings' wagon.

Q Did he have a team of horses? A Yes, sir.

Q The horse that was killed at 153rd street and Third avenue at that same accident was one of your horses? A Yes, sir.

Q How did you learn of the accident?

MR. HEINZELMAN: Objected to.

THE COURT: I do not think it makes much difference.

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MR. HEINZELMAN: No cross examination.

THE COURT: We will take a recess now. Gentlemen of the jury, you must not discuss this case with anybody or among yourselves, and form or express no opinion about it. Keep your minds open and free until it is finally submitted to you.

(The Court then takes a recess until 2 o'clock)

After recess.

HERMAN HEITNER, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McNISH:

Q. Mr. Heitner, you are now and were on the 27th day of July, 1907, a police officer of the City of New York?

A. Yes, sir.

Q. Attached to now the 63rd precinct, what was then the 36th precinct? A. Yes, sir.

Q. And the station house of that precinct is on Third avenue and Washington avenue, 159th street? A. Washington, Third avenue and 159th street.

Q. On the 27th day of July, 1907, were you on post in the early morning? A. Yes, sir.

Q. What were your hours on post at that time? A. From two

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o'clock in the morning until eight o'clock in the morning.

Q Where was your post? A From 149th to 153rd streets.

Q That is from 149th to 153rd streets? A Yes, sir;
from 149th to 153rd street.

Q Between what avenues? A On Third avenue, a straight
post.

Q Did you in the early morning of the 27th of July,
hear a police rap? A Yes, sir.

Q State what you did when you heard that rap, where you
were when you heard it? A At Westchester and Third avenues.

Q Westchester avenue is how far from 153rd street?

A About three blocks.

Q While there on post you heard a policeman's rap?

A Yes, sir.

Q A brother officer's rap? A Yes, sir.

Q What did you do? A I ran up and asked him what he
wanted and he said "Get an ambulance".

Q Where did you run up to?

MR. HINZELMAN: I object to that last answer and
move that it be stricken out.

THE COURT: Strike it out.

Q You ran up to the officer -- what officer was that?

A Officer Mendelsohn.

Q Of the 30th? A Yes, sir.

Q Where did you meet Officer Mendelsohn? A About 153rd

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street, about 15 or 20 feet away from the car.

Q Third avenue near 153rd street? A Yes, sir.

Q Was anybody with officer Mendelsohn at that time?

A No, sir.

Q After you met officer Mendelsohn, what did you then do? A I ran back to 149th street to our signal box and rang up the hurry call for an ambulance.

Q When what did you do? A I went back to the ambulance, and Mendelsohn had this here motorman and he handed him over to me, it being my post.

Q You mean the motorman -- is that this defendant?

A Yes, sir; this defendant.

Q Where was he standing with him at that time? A He had hold of him.

Q With reference to the car? A On the west side of the car.

Q Near the front or near the rear of the car?

A Near the rear of the car.

Q Did you have any conversation with the defendant?

A Yes, sir.

Q State what that conversation was? A I asked him, I said, "Don't you see what you done"; he says, "No, I didn't see anything until I struck the horses", he says, "and then the car stopped."

Q Did you have any further conversation with him?

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A No, sir.

Q What did you then do? A Then I got the names of some witnesses and then the wagon came and then I walked him up.

BY THE COURT:

Q What did the defendant say? A He said he didn't see anything until he struck the horses and then the car stopped.

Q That was the whole conversation? A Yes, sir; that is all the conversation I had with him.

BY MR. McNISH:

Q Did you see the man who had been killed? A Well, I seen him -- I didn't, no, sir, not there; there was a crowd, I could see an object right back of the front wheel; I just seen an object but I didn't see the man to identify him there; there was such a crowd I couldn't see.

Q You got the names of witnesses? A Yes, sir.

Q You mean the man under the car? A Yes, sir; I just seen an object.

Q Did you see a horse there? A Yes, sir, I seen a horse there.

Q The horse was down under the car? A Yes, sir.

Q Did you see an ash cart there? A Yes, sir.

Q Where was the ash cart? A In the street, in 153rd street right off Third avenue.

Q Was that on the track or near the curb, the ash cart?

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A When I got there it was about 15 or 20 feet away from the curb, in the street, on the east side of the avenue.

Q On the track or outside of the track? A Outside of the track.

Q Now, you are familiar with that locality there, the locality where this accident occurred was on your beat, wasn't it? A Yes, sir.

Q How long have you been on that beat? A Well, I have been on and off this last nine or ten months, since the 1st of April.

Q Is there a grade there at that place? A There is some kind of an incline, from about Westchester avenue down.

Q Toward 153rd street? A Yes, sir; toward 153rd street.

Q Are there any posts or signs there that you know of?

Objected to as immaterial and irrelevant.

THE COURT: I will take it and give you an exception.

Q What is your answer? A Right at the crossing attached to the elevated there is a sign "Full stop", a blue sign with white letters.

Q At what crossing is that? A 153rd street crossing.

Q Is that at 153rd street? A Yes, sir.

Q On one of the pillars? A No, sir; it is stretched across the structure; there is a wire, you know, it is attached to a wire I think, but any way it is stretched across the elevated structure.

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Q So it is above the track? A Yes, sir.

Q Directly over the track? A yes, sir; directly over the track.

Q That has been there for -- that had been there for some time since you have been on post? A Oh yes.

Q How large a sign is that? A Well, I should judge about 18 inches long, about 8 inches wide, something like that.

BY THE COURT:

Q 18 inches long? A Yes, sir; about 8 inches wide.

Q About how high above the street is the sign? A I don't know, I couldn't judge that, about 15 or 20 feet, I guess, it is right below the elevated track.

Q It is under the structure? A yes, sir; it is under the structure.

BY MR. McNISH:

Q At that point are the tracks, the uptown and downtown tracks of the elevated close together or are they wide apart?

A They are close together.

Q It is but one structure there, both tracks on the same structure? A Yes, sir.

Q The posts are just outside the car tracks? A Yes, sir.

Q This sign, as I understand it, is on the south side of 153rd street? A Yes, sir.

Q This "full stop" is at 153rd street? A Right above the crossing.

Q Is that a fire crossing there? A No, sir; not to my estimation; that is not a fire crossing.

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Q Now, how long did you stay there after you put the defendant under arrest? A Well, about three-quarters of an hour.

Q Did you see the body removed? A Well, I seen it carried to the wagon, and the wagon went up to the station house, and I left the motorman and conductor, put them under arrest.

BY THE COURT:

Q Put both of them under arrest? A Yes, sir.

CROSS-EXAMINATION BY MR. HEINZELMAN:

Q How near the 153rd Street crossing was the car at the time you arrived there? A Well, about eight or nine feet.

Q Eight or nine feet? A Yes, sir.

Q North or south of the north crossing? A South of the south crossing.

Q Of what cross street? A 153rd Street. You see this street don't cut right through, 153rd Street west cuts off there, cuts about fifteen feet distant.

Q In other words, the street doesn't run as the streets do here? A No, sir.

Q Like Franklin Street, but it would run, say, as far as Lafayette Street, and if you wanted to continue on that street you would go across the street and then walk down south perhaps fifty feet? A Yes, sir.

Q That is about it? A It ain't fifty feet.

Q About twenty-five? A Ten or fifteen.

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Q At any rate, the streets up there are not at angles with the avenue? A No, sir.

Q Now, what I want to get at, sir, is your very best recollection of the location of the car at the time that you went to the scene of the accident in reference to the cross street, in reference to 153rd Street? A The east side.

Q It was on the east side? A Yes, sir.

Q How far north or south? A About eight feet south of the south crossing.

Q It was eight feet? A Yes, sir; about eight feet south of the south crossing.

Q Of 153rd Street? A Yes, sir; of 153rd Street.

Q Then it had not crossed 153rd Street? A Yes, it had crossed 153rd Street on the west side, but it had not crossed 153rd Street on the east side.

Q I am speaking of 153rd Street on the east side?

A No, sir; it had not.

Q It had not yet crossed it? A No, sir.

Q It was eight feet south? A Yes, sir; south of the curb.

Q Now, Officer, did you notice the condition, the physical condition of this man at the time you took charge of him?

A Yes, sir.

Q What was it? A Well, he was sober.

Q Yes. A Kind of nervous at the time.

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Q He was nervous? A Yes, sir.

Q Anything else? A No, sir.

Q Was he crying? A No, sir; he was not crying.

Q Did you see any tears on his face?

MR. McNISH: Objected to as incompetent and irrelevant.

THE COURT: I will take it.

A No.

Q No, sir. A No, sir.

Q Did he volunteer any explanation to you? A No, sir.

Q Have you ever had any conversation concerning this case, with Officer Mendelsohn? (No answer).

BY THE COURT:

Q Didn't you say that you did have some conversation with him? A I did. When I walked with him and put him under arrest.

BY MR. SPINZELMAN:

Q You said to him, "See what you done"? A Yes, sir.

Q And then he said, "I saw nothing until I struck the horses, then the car stopped." A Yes, sir; then the car stopped.

Q Now, aside from that response to your question, did he at any time, at any subsequent time, volunteer any statement to you? A Why, yes.

Q He was in your custody? A Yes, sir.

Q It was a repetition of what he had already declared to

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you in response to your question, "See what you have done"?

A Well, that was, I asked him that question when I walked him up.

Q Now, he was frightened, wasn't he? A Yes, sir.

Q How? A Yes, sir.

Q And shaking? A Yes, sir; very nervous.

Q Very nervous? A Yes, sir.

Q He did not resist you in the slightest, did he? A No, sir.

Q Accompanied you willingly? A Yes, sir.

Q What kept you at that place so long, three-quarters of an hour? A I will tell you, we got the ambulance, then we got the wrecking car, and before they had this here car lifted up, and we got the body in the wagon it was about three-quarters of an hour.

Q How far distant from the car was this sign that you speak of, "Full stop"? A Right ahead of it, right above the cars.

BY THE COURT:

Q Right in front of the car, or behind the car? A This sign?

Q Was it ahead of the car? A Ahead of the car, right above the front of the car.

BY MR. HEINZELMAN:

Q Had the car passed under the sign? A No, sir.

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Q Had any part of the car passed under the sign? A No, sir.

Q Then the sign was ahead, or in advance, in front of the car? A Yes, sir.

Q So that while my friend didn't bring it out, I take it that that sign is attached to part of the trolley system there, isn't it? A I don't know. It is on a wire that is attached to the elevated.

Q It isn't on the large poles which hold up the trolley wire? A No, sir; I didn't notice, of course, I didn't notice that, I couldn't swear to that.

Q You know what that sign was for? A This sign is "Full stop".

Q For who? A For the motorman.

THE COURT: I think the jury can determine that. He saw the sign, and that is as far as he can go upon that.

Q Well, at any rate, the car had not passed under that? A No, sir.

BY THE THIRD JUROR:

Q Have you spoken to anybody about this case? A No, sir; except the District Attorney.

Q You never discussed this case with anybody in this Court building? A No, sir.

MR. WEINZELMAN: I understand that there is a witness

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whom I have subpoenaed who wished to go away. I would like to have him stay here. The District Attorney was kind enough to subpoena him for me.

THE COURT: Is he here?

MR. HEINZELMAN: Yes, sir. I would ask your Honor to instruct him to remain here.

THE COURT: (Addressing the witness Sweeney). You are under subpoena here in this case. You must stay here until you are called.

BY MR. McNISH:

Q Now, Officer, it is a fact, isn't it, that the front end of ~~the~~ car had passed the corner of 153rd Street? A No, sir; the south corner, yes, sir.

Q Had passed the south corner? A Yes, sir.

Q But wasn't it past the north corner? A On 153rd Street East, that cuts over from the west side to the east side of the avenue, it is about fifteen or twenty feet south of the south crossing of East 153rd Street; but it had passed the west side of both corners.

Q It passed the west side of both corners? Now, I show you People's Exhibit No. 1. That is approximately correct, is it not? A Yes, sir.

Q This is north? A Yes, sir; this is north, (indicating).

Q This is Third Avenue? A Yes, sir.

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MR. HEINZELMAN: I ask that the officer put his cross or mark on the plan.

THE COURT: You have not a picture of this location?

MR. McNISH: I have not, your Honor. I have made this for my own convenience from a map.

THE WITNESS: That is about right. This is north, (indicating).

Q Now, the car was going up Third Avenue in that direction? A The car would be about here, (indicating).

Q This is Elton Avenue? A Now, the other crossing, the east side crossing is about where the front of that car is.

Q Just put a mark where you think the front of that car was? A Here is the north side of the car, about here, (indicating). Here is the north side of 153rd Street, here is the west side of 13rd Street, and here is Elton Avenue, comes in here, and here is Third Avenue here, that is about where the car was, right below the cross, about here.

Q Now, that sign that you speak of, as you say, is to bring cars going north on Third Avenue to a full stop before they reach 153rd Street?

Objected to. Objection sustained.

BY MR. McNISH: Q Just show ^{us} on People's Exhibit 1 where the sign was, as you remember it? A Right about even with this point, (indicating), the point of these two seats, right about even with that.

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Q Right about the point of these two seats? A Yes, sir.

MR. WEINZELMAN: I ask your Honor to strike from the record the testimony of this witness with reference to that sign.

THE COURT: I will let it stand.

Exception.

MR. WEINZELMAN: I do so upon the ground that it is wholly unconnected with the prosecution, and there is nothing to show that it has any connection with the Car Company.

THE COURT: I will let it stand.

JULIUS LIEBERMAN, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McNISH:

Q Mr. Lieberman, where do you reside? A By Swartzchild & Sulzberger.

Q Will you speak up, so that the jurors can hear you.

Where do you live? A 318 East 45th Street.

Q In the City of New York? A Yes, sir.

Q For whom do you work? A For Swartzchild, Sulzberger & Company.

Q What do you work for them as, what is your employment? A As driver.

Q Of one of their meat wagons? A Yes, sir.

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Q On the 27th day of July, 1907, were you driving one of their meat wagons at that time? A Yes, sir.

Q Was it a double or single team? A That was a single team.

Q One horse? A No, sir; two horses.

Q Two horses? A Yes, sir.

Q What kind of a wagon was it, was it a covered wagon?

A Yes, sir; a covered wagon; covered in the front and in the back.

Q Now, on the early morning of that day you started out from where with your wagon? A From the building on 146th Street and First Avenue.

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

Q Of meat? A Yes, sir.

Q You drove on up town until you went on to Third Avenue where? A Well, I went up as far as -- over the bridge, Willis Avenue, straight up to 149th Street, and then I drove into Third Avenue.

Q Now, we will take it up to the place where you were about, say, 150 or 151st Street, along there? A Yes, sir.

Q What part of the street were you driving on? A On the right hand side.

Q Were you in the car tracks, or off the car tracks?

A I was in the car track.

Q Now, where did you turn out of the car track, if you

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did? A Well, right in 153rd Street.

Q At 153rd Street? A Yes, sir.

Q Did you see any one on the track ahead of you? A No, sir; except that ash cart.

Q The ash cart? A Yes, sir.

Q Now, what time in the morning was this, about? A That is about half-past three.

Q Half-past three in the morning? A Yes, sir.

Q Was it light or dark at that time? A Dark.

Q Do you remember whether or not the city lights were on? A There was no lights on at all.

Q You drove up, was the ash cart on the track in front of you? A Yes, sir; just right on the corner of 153rd Street.

Q Going in the same direction? A Yes, sir; going in the same direction.

Q And you pulled out? A Yes, sir; I pulled out to the left, and I went ahead over, crossed over, and I went to the east again.

Q You pulled out over the track in order to pass the ash cart? A Yes, sir; then I drove up to my customer where I had to stop there.

Q Where was your first stop that morning? A Right next, two houses from 153rd Street.

Q Where is that? A 3008 Third Avenue, between 153rd and 160th Street.

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Q Third and Sixth Street? A Yes, sir; that is only a block.

Q The right hand side? A Yes, sir; that is a block there.

Q Is the next street there 56th Street, on the right hand side? A Yes, sir.

Q Did you see anybody behind you on the track? A No, sir.

Q You could not see behind you, could you? A No, sir; I could not see behind at the time when I drove up, I did not see nobody.

Q Did you hear any bell? A No, sir.

Q Trolley bell? A No, sir.

Q Now, what did you first hear? A I heard a crash, and as soon as I heard the crash, I stopped.

Q You heard a crash? A Yes, sir.

Q You stopped? A Yes, sir; and jumped off.

Q Was that before you reached the customer? A Yes, sir; before I reached the customer, just the house before.

Q What did you do? A I jumped off, and I ran back to look what was happened, but I could not see nothing; all I could see is an ash cart with a horse on the sidewalk, and on the right hand side was laying a boy. I picked him up, and I asked him if he is hurt, and he said, "No, it's all right;" I left him go; at the same time I heard somebody was kicking,

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and I went back to see who is kicking down there, and I found a horse lying right under the car. Of course, it was dark, and I could not see if it is a horse or somebody else, but I heard the knocking the way it is where the horse was lying under there; it was dark, and I could not see the horse.

Q What else did you see? A So I started to holler at the time, and a cop came along. As soon as the cop came the conductor went over and put the switch on; he put the pole up for the light to see what is under the car.

Q Who did that? A The conductor; but on the same time the horse was lying under the car, he was alive yet, and so the cops started to holler at him, "Pull the switch down, hurry, not to kill the horse", but at the same time the horse was killed. After that we found that a man was lying under the car, behind the horse.

Q Did you see the man under the car? A Yes, sir.

Q He was on the other side of the car? A He was on the left hand side.

Q Do you remember whether he was lying on his back or on his face? A He was lying on his face, face down to the ground.

Q Could you see the condition of the man? A Oh, he was smashed up very much; that is all you could see, only the hair on the top of his head.

Q Now, about his ash cart. Just tell us how that was

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standing when you got back there, the horse was on the sidewalk? A Yes, sir; in front of the window, at the dry goods store.

Q Which way was the horse facing? A In the window.

Q Right towards the window? A Yes, sir; and the cart with the two shafts was right straight on the sidewalk, crossing over the sidewalk that nobody could pass across, and the wheels was caught right up at the sidewalk, you could not jump over the sidewalk.

Q The wheels were caught against the curb? A Yes, sir; right up against the curb, straight.

Q On which side of the horse and cart was the man whom you picked up, the driver? A The right hand side.

Q How far were you-- how far was your team when you jumped off your team, how far was it to the ash cart? A About twenty-five or thirty feet away.

Q Twenty-five or thirty feet? A Yes, sir.

Q How far behind the ash cart was this car where the horse was under? A I should say about ten or fifteen feet.

Q Ten or fifteen feet? A Yes, sir; just in the middle of the block.

Q Now, from the time that you had pulled out, as you described it, turned from the tracks in order to pass this ash cart, did you stop at any place? A No, sir.

Q You drove directly on until you stopped on hearing

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the crash? A Until I stopped at the first customer.

Q Were you driving at a trot or a walk? A No, sir;
on a walk; I had a heavy load.

Q I don't hear you, and I am sure these gentlemen don't.
A I had a heavy load on, I couldnot drive on a trot, because
it is too heavy for a team of horses to pull.

Q Driving on a walk? A Yes, sir.

Q But your horses were walking a little faster than his
horse? A Yes, sir; a little faster than his horse, just on
a walk, I beat him out.

Q You had not seen this car, had you, before you heard
the crash? A No, sir.

Q When you saw it all the lights were out in the car?
A Yes, sir.

CROSS-EXAMINATION BY MR. HEINZELMAN:

Q Now, at what street did you drive into Third Avenue?
A Well, Willis Avenue.

Q At Willis Avenue? A Yes, sir.

Q How far from 153rd Street is the intersection of Willis
Avenue and Third Avenue? A That is 148th Street.

Q Speak to these gentlemen? A That is 148th Street.

Q Then you drove your wagon on to the north bound track
of the Union Railway up in the Bronx? A Yes, sir.

Q You continued going north at a walk? A Yes, sir.

Q Until you got up to the ash cart, that ash cart was

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traveling in the same direction that you were traveling in?

A Yes, sir.

Q But slower? A Yes, sir.

Q Then you turned out towards the west, got ahead of the ash cart, and went back on to the track? A Yes, sir.

Q Now, from the time that you got on to the track at Willis Avenue, to the time that you got off the track to get ahead of the ash cart, did you see a man driving two horses?

A No, sir.

Q Without a wagon? A No, sir.

Q Then the only thing that you saw along the track was the ash cart? A Yes, sir.

Q It was quite dark? A Yes, sir.

Q Were there any lights attached to the ash cart? A No, sir.

Q No lantern? A No, sir.

Q Did you see any lantern along the track? A No, sir.

Q Did you have a lantern? A No, sir.

Q Now, you first went to the assistance of the young man who was driving the ash cart? A Yes, sir.

Q When you found that he did not need your assistance you went to the car? A Yes, sir.

Q You went to the car because you heard something that sounded like kicking? A Yes, sir.

Q You looked down, you peered down under to see what it

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was? A Yes, sir.

Q You could not see what it was? A I could see it was
a horse.

Q How close were you to the horse when you could distin-
guish it? A Maybe about a foot or two away.

Q Two or three feet? A Yes, sir.

Q Could you see ten feet away? A No, sir.

Q Could you distinguish what it was? A No, sir.

Q You had to get within one or two feet? A Yes, sir.

Q The reason for that is it was so dark? A Yes, sir.

Q Now, did you pay any attention to that car prior to the
accident. Did you see it coming? A No, sir.

Q Do you know whether it was going fast or slow?

MR. McNISH: I object to that.

THE COURT: I will take it.

A I could not tell you.

Q Did you see the car going fast or slow? A If I did
see the car going fast or slow?

Q Please speak loud? A I don't know what you asked
me. I beg pardon.

Q You saw no car at all? A No, sir; I didn't see any
car at all.

Q Of course, you can't tell whether it was going fast
or slow? A No, sir.

Q Now, where were you at the time you saw the accident to

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the ash cart? A I was on Third Avenue, on the right hand side.

Q Near what cross street? A Well, between 153rd, and 156th Street.

Q That is one pretty long block, isn't it? A Well, that is a block there, you can't make it no shorter or bigger.

Q Near what cross street? A 153rd Street.

Q How near 153rd Street? A Well, that is about two or three houses.

Q Two or three houses from the corner? A Yes, sir; from the corner.

Q Were you listening for a car, trying to hear if the car was coming? A Certainly.

Q You had your mind set on listening for a car? A Yes, sir.

Q Why did you do that? A Why, of course, I don't want to get hurt myself, if I hear a bell ringing, I want to get out of the way.

Q You know you have no right to drive on the street car tracks? A No, sir.

Q What was your answer to my question? A The question is would I ride on the track-- any way that street is too narrow. We certainly keep in the car tracks until we get out in the wide street again.

Q How wide is the street between the north bound car track and the curb? A Well, I will tell you, gentlemen; this track

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stands there, and here is the sidewalk and a truck can't pass
by any more.

Q Is it five or ten feet? A I couldn't tell you about
the feet-- about ten feet.

Q As wide as your truck is? A Well, the street is wider
than the truck.

Q The street is wider than your truck? A About four or
five feet wider.

Q Was there anything in that street between where you were
and the place that you wished to go? A Well, the elevated
post.

Q The elevated post? A Yes, sir.

Q They are within a couple of inches of the street car
track, ain't they? A Yes, sir.

Q And any driver who drives north between the track and
the curb, drives between the elevated post and the curb?
A Yes, sir.

Q Posts are not on the sidewalk, they are very close up
to the car tracks? A Yes, sir.

Q But between the elevated posts and the curb is sufficient
space for you to drive your truck? A Yes, sir.

Q Now, did you notice whether there was anything on that
roadway, any wagon standing there, or any excavation? A Well,
I didn't notice that.

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

Q You tried to drive on the car tracks because it makes it easier for your horses? A Yes, sir.

Q You get your wheels right into the track, and on the tracks-- the friction is less? A Yes, sir.

Q For that reason you travel as much as you possibly can on railroad tracks? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. McNISH:

Q Is that the man whom you picked up on the sidewalk, (pointing to a person in the court room)? A Yes, sir.

Q Beside the ash cart that you have described? A Yes, sir.

C H A R L E S O C E N A S E K, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McNISH:

Q Now, Mr. Ocenasek, will you speak up loud so that the jurymen can hear you plainly. Where do you live? A 481 East 148th Street.

Q In the City of New York? A Yes, sir.

Q What is your business? A Milk wagon, driver of a milk wagon.

Q Who are you employed by? A McNulty, Michael McNulty.

Q And how long have you been employed by him? A About

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a year.

Q As driver? A Yes, sir.

Q Have you been driving a milk wagon all that time?

A No, sir; a sewer cart and a milk wagon.

Q A sewer cart? A Yes, sir.

Q Now, on the 27th day of July, 1907, you were driving what for McNulty, on that day? A A sewer cart.

Q A sewer cart? A Yes, sir.

Q Just describe that cart to us, tell us what kind of a cart it was? A A two wheeled cart with two booms, an iron cart.

Q By booms you mean shafts? A Yes, sir.

Q What is the body of the cart made of? A Steel, iron or steel.

Q Iron or steel? A Yes, sir.

Q It has a scoop back? A Yes, sir.

Q Is it one of the wagons that we ordinarily see around the street, the city ash carts? A Yes, sir.

Q That is what it is commonly called? A Yes, sir.

Q Now, on the morning of July 27th, you had taken your cart from the stable? A Yes, sir.

Q The stable is on what street? A 148th Street.

Q You drove from the stable to Third Avenue? A Yes, sir.

Q On what street did you drive through? A 149th Street.

Q And went on to Third Avenue? A Yes, sir.

Q About what time in the morning was that? A Between

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four and five o'clock.

Q Between four and five o'clock? A Yes, sir.

Q You are not sure of the time, are you, exactly?

A Well, it was about ten minutes to four; I had to be on the job at four o'clock-- the four o'clock shift.

Q You had to be on the job at four o'clock? The four o'clock shift? A Yes, sir.

Q Then it was not four? A No, sir; it was not four, it was not quite four.

Q It was before four? A Yes, sir.

Q Now, you turned into Third Avenue at 149th Street, in which direction did you drive in? A North.

Q What part of the street were you driving on? A On the east side.

Q On the east side? A Yes, sir.

Q Were you in the car tracks or off? A In the car track.

Q Driving on the east car track? A Yes, sir.

Q Going north? A Yes, sir.

Q Now, did you see any other vehicles on that track, any other wagons? A A beef wagon.

Q You saw a beef wagon? A Yes, sir.

Q Where did you see that? A About 152nd and 153rd Street, around there, because it passed me.

Q Where was that with reference to you, the beef wagon, was it in front of you or behind you, where did it go to?

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A It passed me there, about 152nd Street, some place around there.

Q Going in the same direction you were? A Yes, sir.

Q Drove up behind you, didn't come up behind you and pass you? A Yes, sir.

Q Did you turn off the track to let it go past, or did it pull out? A No, sir; I stayed right on the car track; it pulled one side of me.

Q Now, that ash cart, was it loaded or empty at the time? A Empty.

Q What is that? A Empty.

Q Made considerable noise? A Yes, sir.

Q Did you see a man driving a team of horses? A No, sir.

Q Did you hear a trolley bell ring? A No, sir.

Q Now, after this butcher's wagon, meat wagon, passed you, tell us what happened next? A Well, I heard a noise; I was picked up by somebody, I think I was, and I went and told the boss I was hit.

Q What kind of a noise did you hear? A Well, smashing noise of windows, that is all.

Q What is that? A A smashing noise, windows, &c.

Q Was your cart struck? A Yes, sir; pushed aside.

Q Pushed aside? A The minute I got struck, I hauled up, pulled one line, drove the horse up against the window there, I was thrown off. While I had the lines I was going

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forward, and I pulled one side.

Q You tried to pull out towards the curb? A Yes, sir; when I was struck.

Q Was it struck a hard blow, describe it as best you can to this jury, so that they will know exactly what occurred there. Tell them in your own way just what your sensations were. A I was hit square in the back of the cart, the minute I heard the noise I pulled aside, I pushed the cart aside, I was about half-way out of the track when I got hit; I heard a noise, and it pushed the cart aside; the horse fell down on the flags, struck his nose up against the glass, went down; I had a blind horse.

Q Did you see what hit you? A No, sir; not until after I got up I seen what hit me.

Q You fell off your truck? A Yes, sir.

Q On the street, and thenext thing you knew some one helped you up? A Somebody helped me up; the butcher man told me afterwards.

Q What was the condition of the ash cart? A Well, both booms broke, and the harness.

Q Both booms? A Yes, sir; separated from the iron part of the cart.

Q Those were both broken? A Yes, sir.

Q And the harness was broken? A Yes, sir.

Q How about the body of the cart? A Bent in theback.

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Q The back was bent in? A Yes, sir.

Q Badly bent? A No, sir; not very much.

Q What did you do after you got up? A I told the boss I was hit by a car.

Objected to. Objection sustained.

Q Never mind what you said. What did you do after? A I went and told the boss; I told the boss.

THE COURT: You need not tell us what you told him.

BY MR. McNISH:

Q What did you do with your horse, if anything? A I let him stay there where he was.

Q You left the horse there? A Yes, sir; where he was.

Q Did you see your cart then? A Yes, sir; I did.

Q How far away was the cart, you say, from the wagon?

A Well, about twenty feet or so, about twenty feet.

Q How many feet? A About twenty feet.

Q About twenty feet? A Yes, sir; about that.

Q Did you walk back to the car? A No, sir.

Q You went right on? A Yes, sir.

Q You told your boss? A Yes, sir.

Q Back to the stable? A Yes, sir.

Q You went back to the stable? A No, sir; up to the job working in 156th Street.

Q You went up to your boss? A Yes, sir.

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Q You did not make any investigation at all of the car?

A No, sir.

Q Did you see a man there under the car? A No, sir; I didn't know; I was told afterwards.

Q Now, you didn't hear any sound at all until you heard the crash? A Yes, sir.

Q You didn't hear the car at all? A No, sir.

Q How long was it-- how far did the cart go ahead on the track before you pulled over, got over to one side? A Just about to pass one of the poles, about the length of these pillars.

Q When the back of the cart was struck, you immediately tried to pull it around? A Yes, sir.

Q How far were you slid along on the track before you got clear of the track? A Just about passing one of these poles, about the length of one of these poles, just pulled out of the way, I was shoved about the distance of one of these pillars--- about the distance of one of these pillars.

Q Were you injured? A No, sir.

CROSS-EXAMINATION BY MR. HEINZELMAN:

Q What is your name? A Ocenasek.

Q Will you keep your voice up all the way through, and we will get along nicely. Your cart was empty? A Yes, sir.

Q It was made of metal? A Yes, sir.

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Q You had a two-wheeled affair? A Yes, sir.

Q The two wheels were wider apart than the railroad track? A Yes, sir.

Q You cannot drive on the track? A No, sir.

Q You may have one on the track, and the other wheel will protrude? A Yes, sir.

Q And the street up there is paved with granite blocks, isn't it? A Yes, sir.

Q And as your metal cart goes over that granite road, it makes quite a noise, doesn't it? A Yes, sir.

Q Very much like a lot of empty milk cans? A Yes, sir.

Q Now is that? A Yes, sir.

Q While you are sitting up on the wagon the only noise that you can hear is the rattling of your cart over the granite blocks, isn't that it? A Yes, sir.

Q Of course you didn't hear any gong ring, if any was rung? A No, sir.

Q Now, it was pretty dark that morning, wasn't it? A Yes, sir.

Q Even after daylight? A Yes, sir.

Q It was a dull, hazy morning, wasn't it? A Yes, sir.

Q The first thing you knew you got a crack in the back of your wagon? A Yes, sir.

Q Wheeling that you pulled your horse around? A Yes,

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sir.

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Q To the right? A Yes, sir.

Q As you said that your cart was constantly being shoved further along? A Yes, sir.

Q Sideways like? A Yes, sir.

Q Did you look at the car while all this was going on?
A No, sir.

Q You were busy at something else? A Yes, sir.

Q You were unconscious? A I was supposed to be.

Q Well, you know whether you were or not. Did you know what was going on around you? A No, sir.

Q You don't know who was in the car? A No, sir; I do not.

Q Or what struck you? A No, sir.

Q You are only guessing it was a car? A Yes, sir.

Q A pretty good guess? A Yes; I guessed it.

RE-DIRECT EXAMINATION BY MR. McNISH:

Q How long a time should you say it was from the time that the car first hit you until you were over on the side of the curb? A It made a sudden jerk, pulled me a little ways, then -

Q Was it all done very rapidly? A Yes, sir.

Q Or done slowly? A Done rapidly.

Q When driving on your cart, and the cart is empty, you could hear a bell? A I could hear it, yes, sir.

MR. BRUNZELMAN: Objected to.

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THE COURT: You went into it. The People are entitled to walk in the door you have opened. You have some evidence that may be of some value to your case before the jury on that subject, and Mr. McNish is entitled to ask questions in reference to it.

Exception.

Q When you are driving your cart, and the cart is empty on the street, you could hear a bell behind you? A Yes, sir; I do, when I drive along in the day time I often hear bells, often in the tracks.

Q You often do? A Yes, sir.

BY MR. HEMZEMAN:

Q How long have you been driving that cart? A About seven months.

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Q You say that while driving that cart you have heard a bell? A I have.

Q You look around? A I do, and I get right out of the car track.

Q In some instances when you have heard a bell did you look around back of you? A Yes, sir.

Q How close was the car to you? A Well, when I heard the bell I turned around.

Q Now, you are driving along with your team on the car track and it is rattling? A Yes, sir.

Q You say you hear the bell? A Yes, sir.

Q How? A Yes, sir.

Q A familiar sound? A Yes, sir.

Q The sound strikes you as being the car bell? A Yes, sir.

Q You look around, turn your head around? A I turn my head around.

Q Then you find that the car is practically right on top of you? A Yes, sir.

Q That is the time you hear the bell, when the bell is right on top of you, the car on top of you? A Yes, sir.

BY THE THIRD JUROR:

Q Where did you take the track? A 149th street.

Q 149th street? A Yes, sir.

Q The horse walking slowly? A Yes, sir.

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Q The blind horse you say? A Yes, sir.

BY THE COURT:

Q Was this the first time your cart was ever touched by one of these trolley cars? A Yes, sir.

Q When you are on the track do you give any more attention to cars than when you are on the side near the curb, are you more attentive to watching for signals or for the sounding of bells on trolley cars when on the track, knowing that cars go on those tracks? A I cannot understand.

Q Do you give more attention when you are with your cart on the track than when outside, over near the curb? A I am on the track --

MR. HEINZELMAN: With all respect I must object to the question.

THE COURT: I will take his answer.

Exception.

A When I am in the car track?

Q You do give more attention? A Yes, sir.

BY MR. HEINZELMAN:

Q Did you on the morning of the 27th of July give it more attention? A I did.

Q Did you have in your mind a desire to listen for an approaching car? A No, sir; I intended to go to work that morning.

Q You were riding on your cart? A Yes, sir.

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Q I don't want you to testify to what happened at any other time during the nine months you were driving the cart, but on July 27th? A Yes, sir.

Q Did you have your mind set on listening to a car? A Yes, sir; that is my duty driving.

Q What is that? A That is my duty to watch cars.

Q Did you ever look behind for a car? A No, sir; when I hear the bell I do.

Q If you hear the bell? A Yes, sir.

Q Then you have your mind set on listening for the bell? A Not all the time; I intended to drive--

Q How about the morning of July 27th about 3:45 o'clock? A Yes, sir.

Q When you were on that railroad track, were you listening for the bell? A I was listening for the bell, yes, sir, I was listening for the bell.

Q You were then listening for the bell? A Yes, sir.

Q But you were not watching, you were not turning around to see the car? A No, sir.

Q Simply listening for the bell? A Yes, sir; listening for the bell.

Q And usually when you do hear the bell, while you are driving your cart which is empty, and you look around, the car is practically right on top of you?

MR. Mc NISH: I object to the question as already

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answered.

MR. HEINZELMAN: Very well. I will withdraw it.

BY THE COURT:

Q When you are on the track of one of the city streets with your cart do you continue on the track until you hear a bell, or do you look around to see if there is any car coming? A Sometimes I turn around, sometimes I pull out, most of the time I turn around to look and see if there is a car and I pull out.

BY MR. HEINZELMAN:

Q Do you try to listen to the elevated railroad trains passing? A Yes, sir.

Q Did many pass while you were on the track? A Yes, sir; one.

Q So between the rattling of your cart and the passing of the elevated railroad trains, knowing that these both make quite a noise, you still depend upon your sense of hearing the bell, rather than your sense of sight to look around to see if there is a car? A I always look ahead of me when I drive; I have a blind horse -- in between these pillars.

Q So you had quite some odds against you? A Yes, sir.

Q You have the elevated cars above, you have the rattling of your own cart, and you have to devote your attention to driving a blind horse? A Yes, sir.

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Q You mean to say that there was no bell rung? A I didn't hear any I said.

Q You didn't hear any? A No, sir.

Q Was there a train passing just about that time?

A Not about that time.

Q How long before? A I said a train passed while I was on the car track; you asked me did a train pass and I said yes, I don't know when.

Q Now, the elevated structure -- the tracks are very close together right above? A Yes, sir.

Q Right over the tracks on the street? A Yes, sir.

Q They are ^{not} on the sidewalk? A No, sir.

Q Very close together? A Yes, sir.

Q And passing and repassing up there very often?

A Yes, sir.

Q While you were driving on that avenue that night there were quite a few trains passed? A Yes, sir.

J O H N J. L I N D L E Y, a witness for the being,

being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. Mc NISH:

Q Where do you reside? A 2675 Marion avenue, Fordham.

Q What is your business? A Reporter.

Q Where is your place of business? A The Harlem

branch of the Sun, 241 West 120th street.

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Q You have been employed at that place for some time?

A Yes, sir; ten years.

Q On the 27th day of July last, 1907, what time did you leave your place of business there, about what time?

A About three o'clock, with a friend of mine.

Q Three o'clock in the morning? A Yes, sir.

Q And you took a car at Third avenue and what street?

A 129th street, between 128th and 129th streets.

Q That was a Third avenue car? A Yes, sir.

Q Bound north? A Yes; sir; a Fordham car.

Q Was that an open or closed car? A An open car.

Q Was that a large or small car? A Well, it was a medium sized car; it was not a large car.

Q Were there any other passengers on the car? A None that I saw, none in the car, I could not see on the rear platform because it was dark.

Q Now, do you remember where the car stopped last before it stopped on account of an accident? A 149th street.

Q The car stopped at 149th street? A Yes, sir.

Q So far as you know no passengers got on or off at that point? A None that I saw.

Q What part of the car were you in? A In the front seat, on the outside near the running board.

Q On which side? A On the right side of the car, going north.

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Q The right side going north? A Yes, sir.

Q You don't mean that you were in the front seat, that is just behind the motorman? A The front seat in the car, inside the car.

Q Facing in which direction? A Facing north.

Q You were facing north? A Yes, sir.

Q So that it was really the second seat? A Yes, sir.

Q There is a seat facing you? A Yes, sir; a seat outside on some cars, I don't know if there is on this car.

Q Then there is a seat facing you inside? A Yes, sir.

Q You were on the next seat? A Yes, sir.

Q Now, just describe what happened after the car started from 119th street, where did it stop. Describe in your own way to this jury? A Well, the car when it left 119th street, the motorman he seemed to --

MR. WEINZELMAN: I object to what he seemed to do.

THE COURT: Tell us what you saw.

THE WITNESS: I know that the car was running very fast and I had been unfortunate enough to have been in three or four accidents.

MR. WEINZELMAN: Object to that.

THE COURT: Leave that out. Strike that out.

Q Just tell what you saw. Tell us in your own way what happened from the time that the car started, after it

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stopped at 149th street? A Well, the car was going at such a fast rate that I felt if it struck anything it would be all up with me.

MR. HEINZELMAN: I move to strike that out.

THE COURT: That may be stricken out. Just answer the question.

THE WITNESS: Well, at 153rd street I had my hand on the rear of the seat, and all of a sudden I rose up, I felt something was going to happen and there was a crash.

THE COURT: Strike that out.

Q Now, just tell what happened, what you saw? A Well, I did not see it, I did not see the collision; I heard it.

Q Tell what you did at a certain point, what happened there? A There was a collision and all the lights went out and the car went off the track and I started to get off the car.

Q At what point? A Some few feet south of 153rd street.

Q In what direction were you looking after the car left 149th street? A Well, I was looking ahead.

Q Looking ahead? A Yes, sir.

Q Did you see any light on the tracks ahead of you?

A No, sir.

Q You were looking directly ahead on the track? A Well,

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as a man will when he is riding, he generally looks in the direction he is riding in, unless it is in the daytime.

Q How far behind the motorman would you say you were at the time? A Well, three feet and a half.

Q The car was running at what rate of speed would you say?

MR. HEINZELMAN: Objected to.

THE COURT: I do not think it has been established yet that he knows anything about rates of speed. You have not qualified him.

BY MR. Mc NISH:

Q You have ridden on trolley cars? A For ten years.

Q For ten years? A Yes, sir; every day.

Q At all times of day and night? A Yes, sir.

Q Have you ever driven horses? A No, sir.

Q Driven an automobile? A No, sir.

Q Have you been present at times when tests of speed were being made on railways? A Yes, sir.

Q Street railways? A Yes, sir.

Q At what time and where? A Well, I don't recall anything as in 1899 or 1898, but if my memory serves me right it was 1899, that the officials of the Metropolitan Street Railroad Company conducted a series of tests on the surface road, that is on the Lenox avenue branch of the Metropolitan Street Railway, and at those tests were President

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Vreeland and the officials of the Metropolitan Railroad Company and several reporters. I was one of the reporters, and in my paper, and the maximum rate of speed attained in most of these tests, covering a period of two or three days, was a fraction over 18 miles an hour.

THE COURT: You must not state that. We are trying to find out whether you are competent to give expert testimony on the subject of speed. Strike out the latter part of the answer.

Q How many of these speed tests were you present at?

A The first day.

Q The first day? A Yes, sir.

Q All day? A No, sir; probably, I think I was on the car about an hour and a half or two hours; I made several trips with the officials.

Q At that time were you informed by the officers in charge of the car as to the speed the car was making?

Objected to. Objection sustained.

Q How did you know on these occasions what the speed was? A The officials told me; I asked them and they told me.

Q Since then you have ridden on cars both in the day time and night time, in all parts of the city? A Yes, sir.

Q Now, I ask you what rate of speed the car was going at?

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MR. HEINZELMAN: Objected to as incompetent.

THE COURT: I do not think, Mr. Mc Nish, that you have established to the Court's satisfaction that the witness is competent to testify as an expert upon the subject of speed, in view of his evidence that on one occasion he was with others who were perhaps experts upon that subject. I cannot give you an exception but I will have to exclude the evidence on that subject. I don't believe he is competent to testify as to speed, unless he has had further experience.

THE WITNESS: That is all.

THE COURT: You may be able to establish that it went fast or slow, but as to the rate, the Court won't allow you to go into that because he is not an expert upon the subject. I think you have it already that the car was going fast, according to the witness.

Q Was the car running smoothly? A Yes, sir.

Q At the time? A Yes, sir.

Q Was there very much motion to the car? A Well, there was a sort of a swaying to and fro as any trolley car will when it is running at a fast rate of speed.

Q When you were looking ahead what is the first thing, if anything, that you saw? A Well, I saw something ahead, I could not make out what it was, whether it was the elevated structure or whether it was a man and a horse, I

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simply saw something in the distance, I could not tell what it was because it was too dark.

Q Did that car stop from the time it left 149th street until this accident occurred? A No, sir.

Q Did it slow up? A No, sir.

Q Did you feel the brakes put on? A No, sir.

Q Did you hear the bell rung? A No, sir.

Q Now, when you saw this object in front on the track what did you do? A I grabbed the seat and was going

to climb over on the rear, get further back in the car.

Q Then what occurred? A A crash, a collision.

Q Just describe that? A Well, all I saw was, I saw a horse sort of rise in the air and then the lights went out, then the car jumped the track, the lights went out, I stood there holding onto the seat, then I attempted to get off the car, and as I did I saw this horse with his hind legs under the forward truck, kicking, I was just going to step on him, I climbed over back on the seat and got off the car; I looked around; did not see a policeman, I whistled three times with my fingers, then I walked around and saw the man who drove the ash cart and I said, "Are those your horses?"

MR. HEINZELMAN: I object to that.

THE COURT: Objection sustained.

MR. Mc NICH: Never mind what you said.

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Q Did you see the defendant there? A Yes, sir.

Q Where was he when you first noticed him after the crash? A He was standing down in the street, on the curb.

Q Was the officer there then? A No, sir.

Q Did you have any conversation with the defendant?

A Well, I asked him "My dear man, didn't you see anything ahead of you, for Heaven's sake?"

Q What did he say? A He said, "No", he did not.

Q Did you have any further conversation with him?

A No, sir.

Q When the crash came did it make a loud noise?

A Yes, sir. You could hear it for at least a block.

Q Was it severe, or were you brought to a sudden stop, was there a jolt? A No, sir; we were brought to a stop within a few feet; the horse is what caused the car to jump the track and stop, that is the horse being under the car caused it to jump the track, and of course, stop, because the car couldn't go ahead, the horse was too big, jammed in beneath the forward truck.

Q Did it throw you down? A No, sir; I held onto the seat; I held my position half standing.

Q Were the windows in the car broken? A Yes, sir.

Q After you got down and walked around the car did you see a man under the car? A I did.

Q Did you examine him? A No, sir; I saw his hands
? A

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sticking out and I suppose I walked two or three feet closer and when I saw his head was crushed I walked away. That was enough for me.

Q What part of the car was he under if you remember?

A He was lying, if I remember rightly, between the forward and the rear truck, that is probably a foot or a half a foot south of the second wheel, of the forward truck of the car.

Q How long did you stay there? A Just long enough to give the conductor and policeman my name.

Q Now, was it light or dark at that time? A It was dark, that is the day was just commencing to break but it was dark.

BY THE COURT:

Q In other words, it wasn't day break at all? A No, sir.

Q It was dark right before day break? A Yes, sir; it was dark.

Q About as dark as any time in the night? A Yes, sir.

BY MR. McNISH:

Q Was there any alteration of speed before the car struck whatever there was on the track ahead? A No, sir; not that I know of; I think the motorman shut his power off; I know I saw him do something; he turned and put the brakes on when the collision occurred.

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Q At the time of the impact was there any change of speed from what there had been before -- until the impact occurred? A No, sir, because the car was going at the same rate it was after it got under way.

Q Did you notice an ash wagon there? A After the collision I saw it over against the curb on the north side of the crossing, on the east side of the avenue.

Q At the time of the impact did you see any wagon ahead on the track? A No, sir.

Q The only thing you saw was a horse? A Yes, sir; I saw the horse sort of jump up and then fall.

CROSS EXAMINATION BY MR. HEINZELMAN:

Q You felt rather indignant towards this man at the time of the accident, didn't you? A No, sir.

Q How? A No, sir; I did not feel indignant towards him; I said "For Heaven's sake --"

Q You did not?, A No, sir.

Q No feeling against him at all? A No, sir.

Q You saw this brute laying under the car kicking?
A Yes, sir.

Q Long before you knew there was a man under it also?
A Not long, perhaps a minute or a minute and a half.

Q Then you saw a man under there? A Yes, sir.

Q Weren't you kind of mad at this fellow? A No, sir; I don't say that I was.

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Q You regarded it as a piece of recklessness on his part, didn't you? A Yes, sir; I did.

Q Do you mean to say you didn't feel kind of sore against him? A No, sir; I didn't feel sore exactly, because these things occur every day.

Q Accidents occur all over this city every day?
A Yes, sir; I am not responsible for another man's acts.

Q I am not asking you that -- you as a newspaper reporter know it? A Yes, sir.

Q You gave your card to the conductor? A He asked me for it.

Q You gave it to him? A Yes, sir.

Q You knew, as a newspaper reporter, that the conductor would take your card to the officials of the company, didn't you? A I supposed he would, yes, sir.

Q No question in your mind about it, he wasn't going to keep the card or throw it away, he was going to give it to his superior officer? A Yes, sir.

Q And in due course of time you appeared at the office of the Railroad Company? A Never.

Q Did you never give a statement to the railroad officials? A I did in my office.

Q At your office? A Yes, sir.

Q They called on you? A Yes, sir.

Q Then you told them now recklessly and carelessly this

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man operated that car? A I told them the facts as they were.

Q Do you remember telling them that when you looked up you saw an object about 30 feet ahead? A It was about that distance.

Q About 30 feet? A Yes, sir.

Q But it was so dark you couldn't tell what it was, man or beast? A Yes, sir; 30 feet ahead.

Q That is true, isn't it? A Yes, sir.

Q You told us to-day that you saw this man turning something which you supposed was the brake? A After the accident, after the collision.

Q You were looking ahead? A Yes, sir.

Q Prior to that time? A Yes, sir.

Q Watching the object as you were approaching it?

A No, sir; I was not watching it.

Q You were looking ahead? A Yes, sir.

Q He made no attempt to leave the car while it was going?

A He did not.

Q He stayed right there? A Yes, sir.

Q He was all alone? A Yes, sir.

Q When you saw him turning this brake, as you believed, did you notice whether he was turning it with one or two hands?

A No, sir; I did not.

Q But you have a recollection that he was turning it?

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A Yes, sir; I do.

Q Whether using one or two hands you don't know?

A No, sir.

Q When you said to him "My dear man, couldn't you see anything ahead of you" he told you he did not? A Yes, sir.

Q What was his condition at that time, cold, calm or otherwise? A No, sir; he acted as if he was, acted to me as if in a sort of a dream, he stood there and didn't seem to know what was the matter.

BY MR. McNISH:

Q Did you notice whether or not the controller was turned on at full speed? A No, sir.

Q Before this? A No, sir; I could not see that.

Q But your attention was directed to the speed of the car? A Yes, sir.

Q For what reason?

A Objected to. Objection sustained.

Q Did you attempt to leave your seat in the front of the car and take a seat in another part of the car?

MR. HEINZELMAN: Objected to as immaterial and irrelevant.

THE COURT: I think it is. I will sustain the objection. You may get from him what he did. That may suit your purpose.

Q What did you do after the car left 149th street, after

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you were looking out in front as you described, what did you do before this accident happened? A Well, as I said before, I felt that if the car struck --

THE COURT: We don't want your feelings or emotions, we want the physical facts alone.

THE WITNESS: I started to change my seat. I had my hand on the back of the seat when the collision occurred, just as I was about to get up like that (illustrating) the crash came.

Q To change to what part of the car? A To the back.

BY THE TENTH JUROR:

Q You say it came to a standstill after it killed the horse or came upon the horse. Did you hear it crash against that ash cart before this? A No, sir.

Q You did not hear that collision? A No, sir; he struck the horse first and then the ash cart afterward; he pushed it on.

Q When he struck the horse did he still move on further to strike the cart? A Yes, sir; a very short distance.

BY MR. McNISH:

Q A part of the noise that you have described as a crash was the striking of the ash cart by the car? A Yes, sir.

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PATRICK DOUGHERTY, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McNISH:

Q Mr. Dougherty, where do you live? A I live in 591 Teasdale Place, up in the Bronx.

Q What is your business? A Motorman.

Q For whom? A For the Union Railway.

Q Are you a regular motorman or chief motorman?

A I was chief motorman at that time; I am a regular motorman at present.

Q That is to say on the day when this accident occurred, the 27th of July, 1907, you were chief motorman? A At that time.

Q What were your duties with the railroad as chief motorman? A Well, my duties was to see these men, take the men over the road for a trial trip and see he was thoroughly qualified to operate a car for the public.

Q Every new motorman? A Yes, sir.

Q That is hired by the railroad before they are sent out with a car you go over the road with them? A Yes, sir; I go with them on a trial trip.

Q On that trial trip do you call their attention to the different rules? A Yes, sir.

Q And call their attention to the different stops?

A Yes, sir.

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MR. HEINZELMAN: I object to this as leading.

THE COURT: Up to this time I can see no vice at all in the question.

Q Do you know the defendant Thomas McDermott?

A Yes, sir.

Q Do you know when he became a motorman with the Union Railway? A Well, sometime around March.

Q What year? A Well, 1907.

Q March, 1907? A Yes, sir.

Q Did you go over the road with the defendant?

A Yes, sir.

Q On his trial trip?

MR. HEINZELMAN: Objected to as immaterial and irrelevant.

THE COURT: I think it is. He was in charge of the car, Mr. McNish. He was a motorman of the company and the presumption is that he was able to conduct that car, at any rate his duty was to be able to conduct that car. For that reason I will sustain the objection.

MR. McNISH: It seems to me in cases of this kind certain rules may be laid down for the protection of the public and these rules are brought home to this defendant and his disregard of them --

THE COURT: If there are any rules that he turned over to this defendant the Court would be inclined to

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receive them.

MR. McNISH: They were not written rules.

THE COURT: The Court is against you. Go on with some other line of inquiry.

Q Were there any written rules given to the defendant, if your know? A Written rules. The full stops upon certain parts of the road, certain branches of different lines, full stops, and when these new men are going over the track, every motorman, the man that breaks them in thoroughly instructs the new motorman to come to a full stop at certain points where the full stop signs are.

MR. HEINZEIMAN: I object to this.

THE COURT: What is your motion?

MR. HEINZEIMAN: I object to it and move that it be stricken out.

THE COURT: Strike it out. Any instruction that was given to this defendant the Court will receive. Anything that is given generally may not have application to him.

BY MR. McNISH:

Q Did you take this defendant on a car and instruct him?

A Yes, sir; the man was supposed to be --

Q Answer that question. Did you or did you not?

A Yes, sir, I took him.

Q When was that, about what time? A Well, something

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about March 8th, around that time.

Q The 8th or 9th of March? A I haven't got the exact day of the week that I took this man over the road.

Q About the time he was appointed as a motorman, was it?

A Yes, sir.

Q Now, state what instructions you gave to this motorman, this defendant? A Well, I got the car up, let him take the handles and run the car. If I saw that he was thoroughly perfect in running the car and making a stop where these points call for it, where the full stop sign is --

Q What instructions did you give him, what did you say to him? You stood beside him on the car? A Yes, sir.

Q On the front platform of the car? A Yes, sir.

Q He had the controller in his hand? A Yes, sir.

Q And his hand on the brake? A Yes, sir.

Q Now, what instructions did you give him? A Well, I wait until he would make his trip --

Q Where did you go with him on that trip? A Took him from West Farms to 129th street. That was the road that I was working on; I was a motorman at the time on the car, but I was acting as chief motorman at the same time.

Q From 129th street back to where? A Back again to West Farms.

Q Did you on that trip go up Third avenue passing from 149th street on up Third avenue past 154th street? A And up

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Boston Road.

Q And then further on up Boston Road? A Yes, sir.

Q But you did go up Third avenue? A Yes, sir.

Q Past the place where this accident occurred? A Yes, sir.

Q What instructions did you give him at 153rd street and Third avenue? A I didn't have to give him any instructions because he came to a full stop for me at 153rd street and Third avenue, both ways.

Q There is a sign there? A Yes, sir.

Q Did you call his attention to the sign? A The sign was there, I didn't call his attention to it but he knew the sign was there, because the men that break them in there knew that, instructing them that is a full stop sign.

MR. HEINZELMAN: I move to strike out the latter part of the answer.

THE COURT: Yes. Only tell us what you told him.

Q How long has that sign been there, if you know? A It has been there for a good many months.

Q How is it attached? A Well, it is hung up on the elevated structure.

Q On the elevated structure? A Yes, sir.

Q Over the tracks? A Yes, sir; over the track.

Q How big a sign is it? A Well, it is about that width (illustrating).

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Q What does it say on it? A Full stop.

Q What color is the sign? A It is blue.

Q What color are the letters? A White.

Q It is where in reference to the cross street on Third avenue? A About in the centre, kind of an angle there between 153rd street, the street don't run through, it comes this way, east, and the angle swings around here (illustrating).

Q About where is it in reference to the north side or south side of 153rd street? A Well, it is more to the south side than it is to the north side.

Q That is nearer the south side than it is to the north side? A Yes, sir.

Q How long have you been a motorman? A About 12 years.

Q You have operated cars at night? A Yes, sir.

Q At night? A Yes, sir.

Q You have run cars at night? A Well, when I take a day car I don't run until probably five or half past five, sometimes six.

Q Do you know how far the headlight of a trolley car will throw the light in front of the car?

MR. HEINZELMAN: I object to that.

THE COURT: I will take it. He ought to know -- a man who has testified that he has been a motorman for a number of years and who has been chief motorman and whose duty it was to instruct others. I will take it.

MR. HEINZELMAN: I take an exception on the ground that there is no evidence before the Court that this witness has ever seen the car in question; that there is no evidence to show that he saw it at any reasonable time prior to the accident; that he knew whether the headlight of that car was at that time in working order.

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THE COURT: He is not asked about this car in particular, but is asked, generally, how far a headlight will show in front of a car. I will take the evidence.

Exception.

A I should judge between twenty-five and fifty feet, if not more, probably might be more.

Q And when it is dark and there is no obstruction?

A The headlight, the glow from the dashboard might not throw as far as the light that would be higher up.

BY MR. McNISH:

Q Are there any notices to motormen that are in the stable or in the barns of the company? A Oh, yes; notices are written up in the barns to all motormen there, those points for full stops.

Objected to.

THE COURT: Anything that is conveyed to him I will receive, but it must have been conveyed to the defendant.

Q When you broke in the defendant as a motorman, did you call his attention to the signs posted in the stable? A No, sir.

Q I don't hear your answer? A No, sir; I did not call that defendant's attention to any notice; they are printed in the stable; they are up there in large print upon a blackboard for all the new motormen to read; also up in the office and downstairs also upon a blackboard, and the new motormen

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can see them passing in and out, they are plain there upon
a big blackboard upon the wall.

Q In large type? A Well, pretty large.

BY THE COURT:

Q How long have you known the defendant? A About since
last March, since he came on the road, your Honor.

Q March of last year? A Yes, sir.

CROSS-EXAMINATION BY MR. HEINZELMAN:

Q Mr. Dougherty, you are working for the Union Railway
Company now, ain't you? A Yes, sir.

Q You were sent down by the Company down to this Court
t testify against McDemott? A NO, sir.

Q What is that? A No, sir.

Q Did you speak to your superintendent about this case
last night? A No, sir.

Q Did you speak to any person about it? A No, sir; I did
not have nothing to say about the man to anybody.

Q Did you speak about this case to anybody? A No, sir.

Q Since nine o'clock yesterday morning? A No, sir.

Q Not at all? A No, sir; nothing to say about the man
at all.

Q Did you get a subpoena to come here? A I got a sub-
poena from Mr. McNish, the attorney.

Q What is that? A I got a subpoena from the attorney
here.

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Q You got a subpoena? A Yes, sir.

Q Do you know how it happened that the District Attorney knew your name?

MR. McNISH: I object to that as incompetent, irrelevant and immaterial.

THE COURT: What is the purpose of this?

MR. HEINZELMAN: I want to show the motive of this witness.

THE COURT: If you think it is material, I will allow it.

MR. HEINZELMAN: I don't think it is very material, but I want to get at it.

Q Do you know how the District Attorney got your name?

A I do not know.

Q Do you know Mr. McCabe? A No, sir.

Q Do you know your superintendent? A I do, sir.

Q What is his name? A Mr. Kerrigan.

Q Do you know Mr. Sweeney? A Yes, sir.

Q Did you come down to this Court with him? A No, sir; I came alone by myself.

Q Now, Mr. Dougherty, you have known McDermott since last March? A Yes, sir; since he came on the road, that is all I know about the gentleman.

Q Do you know of your own knowledge as to whether or not there are more cars run on that road in the day time than

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there is at night? A Well, certainly in the day time there are.

Q Considerably more-- and after twelve o'clock midnight there are still fewer cars run on the road? A Yes, sir.

Q Do you know the time limit for the running of a trolley car between ~~at~~ 128th Street and Third Avenue, and Bedford Park, and back to 128th Street?

MR. McNISH: I object to that.

THE COURT: I will take it.

Q At about three o'clock in the morning?

THE COURT: Between what points?

MR. HEINZELMAN: I beg your Honor's pardon.

THE COURT: Between what points?

MR. HEINZELMAN: Bedford Park, 129th Street and back.

MR. McNISH: The time limit as set by what? Whether there is such a time limit is in no sense binding upon this defendant.

THE COURT: I will take it.

Q Do you know? A Yes, sir; an hour.

Q One hour? A Yes, sir; in the day time it is considered about an hour and six minutes, sometimes they can't make it in that time.

Q In the day time how long? A About an hour and six minutes.

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Q You mean to tell the jury that at noon, say, in the day time, the company requires its motormen to run these cars in an hour and six minutes? A No, sir.

Q What is it then? A Because the traffic is too strong.

Q What is the rule. I don't care about the traffic-- what is the rule, the time set? A About an hour and six minutes.

Q One hour and six minutes in the day time? A Yes, sir.

Q Is it? A Yes, sir.

Q At three o'clock in the morning what is it? A About an hour, we will say.

Q Simply a difference of six minutes? A Yes, sir.

Q Do you mean one hour and six minutes from 128th Street up to Bedford Park and back? A Yes, sir; for the round trip.

Q The round trip? A Yes, sir.

Q You say that the only difference between a day trip and a night trip at three o'clock in the morning is six minutes? A Well, there ain't so much traffic in the night, everything is cleared away, and there is only a few cars at that time of night.

Q Don't you know that they are allowed an hour and three-quarters in the day time to make the full trip?

Objected to.

THE COURT: I will take it.

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A The running time is supposed to be that, but there is no compulsion on the motormen to make the time, if they can't make it, all right, if they can make it, all right, if they don't, all right; they don't want any man to make up any lost time.

Q Of course they don't want to run down and kill people to keep within the rules. We understand that. Do you know the number of the car this man was operating on this night? A I do not know anything about it.

Q Do you know whether or not the headlight was in working order? A I do not.

Q You don't know anything about the car at all? A No, at all sir; I don't know nothing about the car or the accident.

Q You don't know anything about the mechanism on the car, whether it was in proper working order or not? A No, sir; I could not tell you; I was asleep and home in bed at the time.

MR. McNISH: That is the People's case.

THE COURT: I think if that be so, it is so near four o'clock that we won't go into the other side until tomorrow morning.

MR. WINZELMAN: I would like to make a motion to take the case away from the jury right now.

THE COURT: You better make that motion tomorrow morning. Gentlemen of the jury, you must not discuss this case or visit the scene of the trouble, or form or express any opinion until you have heard

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everything that is to be said and retired to your room for your deliberations. You may be here tomorrow morning at eleven o'clock.

(The Court then adjourned the further trial of the case until tomorrow, Friday morning, January 17th, 1907, at eleven o'clock).

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New York, January 17th, 1908.

T R I A L R E S U M E D.

MR. HFINZFELMAN: May it please your Honor, I beg to respectfully call your Honor's attention to the testimony of the witness Doherty, the chief motorman, who testified yesterday afternoon. I now move your Honor to strike from the record all of the testimony of that witness in reference to any transactions he may have had with this defendant in the month of March, 1907, as being too remote, as being no part of the issue in this case, and as absolutely immaterial and irrelevant.

THE COURT: Motion denied.

MR. HFINZFELMAN: I take an exception. I move your Honor, upon the entire case to take this case from the jury and direct a verdict of acquittal upon the ground that there is no evidence before the court showing, or tending to show, that this defendant was guilty of any culpable negligence on the night in question, and if there was any negligence on the part of this defendant it was not to the extent to render him criminally liable therefor. In that connection, I beg to call the attention of the court to the fact that the deceased, if any negligence existed on the part of anybody, was equally negligent with this defendant. His condition, and the place where he was at the time of this occurrence re-

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quired of him the same degree of care as would be required of this defendant to exercise.

THE COURT: Is that your motion?

MR. HEINZELMAN: Yes, sir.

THE COURT: The motion is denied, with this observation, gentlemen, which I think proper in a case of this character to make at this time -- that the denial on the part of the court of a motion of this character is not to convey to you the attitude of the court upon the facts that have been adduced here in evidence, because it is that is your province. Any denial of a motion must not impress upon your minds the belief of the court upon the facts, because the court has nothing to do with the facts. They are for you. Anything further, Mr. Heinzelman?

MR. HEINZELMAN: No sir.

Exception.

THOMAS MC DERMOTT, the defendant, sworn, testified as follows:

DIRECT EXAMINATION BY MR. HEINZELMAN:

Q McDermott, how old are you? A 27.

Q What is that? A 27.

Q You have got to do better than that? A Yes sir;
27.

Q Speak as I do. How long have you lived in this

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country? A Two years and a half.

Q Two and a half years? A Yes sir.

Q Try and help yourself out of this trouble by talking loud? A Two and a half years.

Q You came from Ireland? A Yes sir.

Q When you came here did you go to work? A Yes sir.

Q What did you work at first? A I was railroading with the Metropolitan Street Railway.

Q The first job you got was ~~that~~ of railroading in the City of New York? A Yes sir.

Q In what capacity? A Motorman.

Q Motorman? A Yes sir.

Q How long did you work for the Metropolitan Railway?

A Nine months.

Q Did you leave them? A Yes sir; I resigned.

Q Of your own accord or were you discharged? A No sir; I resigned.

Q What is that? A I resigned.

Q You resigned? A Yes sir.

Q What did you do then? A I went to work for the Grand Rapids Furniture Company.

Q For the Grand Rapids Furniture Company? A Yes sir.

Q How long did you work there? A Seven months.

Q Where did you go then? A I went to the Pennsylvania Tunnel.

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Q What did you work at there? A I was in the fire room.

Q You were a fireman? A Yes sir.

Q In the Fire Department? A No sir.

Q A fireman in the engine room? A Yes sir.

Q How long did you work there? A Four months.

Q Then where did you go to work? A I went to work for the Union Railway Company.

Q Up in the Bronx? A Yes sir.

Q About what month was that? A March.

Q Of the year 1907? A Yes sir.

Q As a motorman? A Yes sir.

Q Did you continue to work there down to the morning of this accident? A Yes sir.

Q Now, during all the time that you had been a motorman, did you ever have an accident? A No sir; a runaway horse ran into my car one day, but it was standing --

Q A runaway horse struck your car when it was standing?
A Yes sir.

Q Did you ever strike anybody with a car? A No sir.

Q Or run over anyone? A No sir.

Q Then this was your first accident? A Yes sir.

Q Now, McDermott, what time did you go to work in the management of this particular car? A Five o'clock in the afternoon.

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Q Five o'clock in the afternoon of July 26th? A Yes sir.

Q How long did you continuously run it until you left the car? A Until ten minutes after eleven.

Q Ten minutes after eleven? A Yes sir.

Q What happened then? A I had supper.

Q You had supper? A Yes sir.

Q What did you do with the car while you went to supper? A I put it in on the side track at Bedford Park.

Q What is that? A I put it in on the side track at Bedford Park.

Q Where was that? A Bedford Park, the Bronx Park station.

Q How long did the car remain there? A One hour.

Q One hour? A Yes sir.

Q Did you then board the car? A Yes sir.

Q And run it on the main track? A Yes sir.

Q Brought it downtown to 128th Street? A Yes sir.

Q Now, when you brought the car back to Bedford Park, after you had your supper, you took it to 128th Street and back to Bedford Park? A Yes sir.

Q How then you started out again from Bedford Park? A Yes sir.

Q What time was that? A Ten minutes after one.

Q Ten minutes after one? A Yes sir.

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Q In the morning? A Yes sir.

Q The morning of the 27th? A Yes sir.

Q Then you made a full trip, did you, and got back at two o'clock in the morning? A Yes sir; got back at ten minutes past two.

Q Now, the next trip is the one on which the accident occurred? A No sir.

Q You left there at ten minutes past two, Bedford Park?
A Yes sir.

Q That brought you to 128th Street at what time?
A Twenty minutes to three.

Q Twenty minutes to three? A Yes sir.

Q What time did you leave 128th Street? A Twenty minutes to three.

Q How is that? A Twenty minutes to three.

7 Q You had another trip, you brought the car back to Bedford Park then? A Yes sir; ten minutes past three.

Q I want you to bring your mind down to the trip during which the accident happened, what time did you leave Bedford Park? A Ten minutes after three.

Q What time did you arrive at 128th Street? A Twenty minutes to four.

Q What time did you leave 128th Street? A Twenty minutes to four o'clock.

Q Then you proceeded north? A Yes sir.

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Q On the northbound track? A Yes sir.

Q Were you late? A No sir; I was not late.

Q Now, I may as well ask you as my friend will -- had you been drinking? A No sir.

Q Are you a drinking man? A No sir; I am not.

Q Were you alone on the front platform? A Yes sir.

Q All the time from twenty minutes of four? A Yes sir.

Q Now then bring your mind down to the operation of your car when you got up to say 149th Street; do you remember that street? A Yes sir.

Q Everything going along well? A Yes sir.

Q Now, when you got to 151st Street did anything happen then? A Not that I know of.

Q In relation to the lights? A Yes sir; it was dark; it got dark some time at that time.

Q What do you mean by that? A The lights went out.

Q The streets are lit there by electric light, are they not? A Yes sir.

Q The lights suddenly were extinguished? A Yes sir.

Q So that there were no lights there except your own? A That is all.

Q Now, were you doing anything at all except operating your car? A No sir.

Q You had nobody on the platform with you? A No sir.

Q In what direction were you looking? A North.

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Q Had you a full view, as far as you believed and knew, of the track in front of you? A I had, as far as I knew.

Q Now, McDermott, there is a sign at or near 153rd Street with the words "Full Stop" on it, isn't there? A Yes sir.

Q You knew it was there? A Yes sir.

Q You invariably stopped your car there, don't you?
A Always.

Q Now, when you approached that street did you know that you were in the neighborhood of 153rd Street? A Yes sir.

Q Did you have control of your car? A Yes sir.

Q What, if anything, did you see ahead of you? A I seen something before me, I thought it was a truck.

Q A truck? A Yes sir.

Q How far ahead of you was the truck? A About twenty feet.

Q About twenty feet? A Yes sir.

Q That is your idea of it? A Yes; as far as I know.

Q Twenty feet? A Yes sir.

Q What, if anything, did you do? A I tried to stop my car.

Q Now, do you have a bell on your car? A Yes sir.

Q What, with relation to the bell, did you do? A I

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rang the bell; always ring my bell at night.

Q When you say you always do, be a little more explicit. At what part of your travels do you ring the bell?

A On the street crossings.

Q On the street crossings? A Yes sir.

Q Did you do it at that time on your 3:20 trip north?

A Yes sir.

Q On all crossings? A Yes sir.

Q Now you say you saw a wagon or something about 20 feet ahead. Now, as you made an attempt to stop did you notice anything or feel anything? A I ran into this thing.

Q What is that. Did you see a man driving a couple of horses? A I did.

Q You did? A Yes sir.

Q What did you do? A Then I twisted my brake.

Q Twisted your brake? A Yes sir.

Q You applied the brake to the wheel? A Yes sir.

Q Did the car keep on going? A Well, it smashed into this thing.

Q What is that? A It smashed into this --

Q It kept going? A Yes sir.

Q Notwithstanding the fact that you had twisted your brake? A Yes sir.

Q Can you remember everything that you did right then and there? A No sir; I cannot; I don't remember it exact-

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ly.

Q The car kept going, didn't it? A Yes sir; for a little while.

Q And as has been testified to here, I suppose it is true and correct, suddenly panes of glass became broken?

A Yes sir.

Q The lights went out? A Yes sir; I was thrown against the glass.

Q Against the glass? A Yes sir; when the car hit this thing.

Q You were backed up? A Yes sir.

Q Can you describe to us, and if you can do it to the very best of your ability, McDermott, your own condition mentally at that time? A Well, I don't know right what I was doing.

Q What is that? A I didn't know properly what I was at.

Q You didn't know what you were doing? A No sir, not after -- when this happened.

Q Not at that particular time? A No sir.

Q Prior to that time, before you were thrown back and while you were going along say from 151st to 152nd Street, were you cool and calm? A Yes sir; there was nothing the matter with me.

Q Nothing wrong with you at all? A No sir.

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Q Mot until you were thrown back? A No sir.

Q Then what was your condition -- I am not allowed to lead you -- tell us, as best you can, we don't expect you to know it all? A It was bad.

Q What is that? A It was bad; I know that I don't remember right now it was.

Q It was bad? A Yes sir.

Q In what way do you mean? A Well, I was all nervous and I was scared.

Q Nervous and scared? A Yes sir.

Q What made you nervous and scared? A Seeing I had an accident.

Q What is that? A Seeing I had an accident.

Q Now, McDermott, there are two apparatus on the dashboard in front of the motorman, isn't there? A Yes sir.

Q One is the brake? A Yes sir.

Q And one is the controller of the electric current?

A Yes sir.

Q Can you now recollect what, if anything, you did concerning that controller? A All I can tell you I know I twisted my brakes.

Q What is that? A I twisted my brakes; I don't remember about the controller.

Q Now, in the ordinary course of conducting a car where it is the purpose to stop, what does the motorman usually

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do? A He twists his brake and throws off his power.

Q Now, tell us, if you can, what you did when you felt the jolt and were thrown back to the glass? A I don't know what I did then.

Q You knew that you had an accident? A Yes sir.

Q Is that it? A Yes sir.

Q Can you tell us what you did with both your hands?

A I cannot.

Q How is that? A No sir; I cannot answer that.

Q Now, how long after you were thrown back upon the glass did that car stop? Or, rather, what distance did it continue to travel? A It did not continue very far, I don't think; I don't know right.

Q The car was thrown from the track, wasn't it? A Yes sir.

Q And the pole from the wire? A Yes sir.

Q Then everything was in total darkness? A Yes sir.

Q Having had experience in running trolley cars the length of time that you did, I ask you whether or not you had your car sufficiently under control that you could stop it getting to the full stop crossing? A I had it under control; I always stopped there if I had got a chance to stop.

Q Now, police officer Mendelsohn and the gentleman who was a reporter, testified that your car was going

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fast. Now, at what rate were you going, as best you can tell us? A Well, I don't know what rate I was going at.

Q How is that? A I don't know what rate I was going at, but we always go pretty fast as night.

Q Well, very fast? A No sir.

Q Mendelsohn says that he saw you passing him at 152nd Street and about a minute afterwards he heard the crash, about 315 feet north. You can travel a little faster than 315 feet in one minute, can't you? A Yes sir; I should think so.

Q What is that? A I think so.

Q Did you have your car under your control? A Yes sir; I intended to stop at 153rd Street.

Q Were you behind time? A No sir; I was on time.

Q Have you ever been in any trouble before in your life? A No sir; never.

Q You say you twisted your brake, that means you turned the handle in front of you, turned around this way? A Yes sir; stopped the car.

Q Then down at the lefthand there is a comptroller? There is a handle there? A Yes sir.

Q You insert that into a square nut or piece of iron? A Yes sir.

Q In order to stop the car you do two things, ~~if~~ you twist the brake? A Yes sir.

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Q And turn off the controller at the same time? A Yes sir.

Q With the controller you have removed the current from the car and applied the shoes on the brake at the wheel?

A Yes sir.

CROSS EXAMINATION BY IR. HART:

Q Now, you were an experienced motorman, weren't you?

A Yes sir.

Q Did you realize it was an employment that required a good deal of care? A Yes sir.

Q You knew that if you lost control of your car it might result in the death of different people? A Yes sir; I did.

Q Where were you the night before this accident occurred? A I was working.

Q Where did you spend the night, were you at work the night before? A Yes sir.

Q What were you doing during the day? A I was in bed.

Q You were in bed all day? A Yes sir.

Q What time did you get up? A I got up about four o'clock to go to work.

Q Speak a little louder? A I got up about four o'clock to go to work.

Q Four o'clock? A Yes sir.

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Q You had some meals before that, didn't you? A No sir; I went into a restaurant and had my dinner.

Q You went to your dinner? A Yes sir.

Q What time? A About half past four.

Q From there you went right to the car barn? A Yes sir.

Q Now, how is this car operated, have you got a hand brake or an air brake? A A hand brake.

Q One of those wheels on top that you twirl around? A Yes sir.

Q How many times do you have to whirl it around before you set the brakes? A Three or four.

Q On which side of the front platform is the wheel, the brake wheel? A On the right hand side.

Q Right to the right of the centre? A Yes sir.

Q Where is the controller? A At the lefthand side.

Q Is there a front seat there? A Yes sir.

Q Was anyone sitting on that front seat? A No sir.

Q Where were you standing? A In the centre.

Q Did you have your hand on the controller? A Yes sir.

Q What is that? A Yes sir.

Q Now, are you just thinking you did, or do you have a distinct memory about it? A Well, we always keep our hand on the controller.

Q Then you only say you had your hand on the controller

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because you usually did keep your hand there? A That is the only place you can put your hand on the car when the power is on.

Q Do you leave your post a little, stand a little one side when business is dull? A No sir; only when the power is off.

Q Did you ever stand over one side a little and let it go? A No sir; not unless the power is off.

Q Do you mean to say you never, in your experience, running at night, have stood one side and let go your brake and controller, let go at full speed? A I don't believe I ever did.

Q You may have done it at some time? A I may have; I couldn't swear it, I don't know.

Q Now, on this particular night, have you any distinct recollection as to the exact place in which you stood? A I remember that I was arrested where the car was.

Q I don't mean that, I mean the exact part of the platform on which you were standing? A I was in the centre.

Q Before the accident? A I was in the centre of the platform.

Q How do you know you were? A Well, I always stood there.

Q But at this time? A Yes sir.

Q But there were times, weren't there, in your life,

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when you have stood a little aside from the centre? A I could not say where I would be standing at that time of night anywhere else.

Q In the whole of the time, nearly two years, that you have been a motorman, there have been occasions when you had stood one side of the centre of the platform, haven't there?

A I don't think there ever was when the car was going.

Q You don't think you ever did? A I don't believe I did.

Q You only had one passenger on the car, didn't you?

A Well, I don't know.

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

Q You knew you didn't have very many? A Yes sir.

Q What were you thinking of that night, what was in your mind before this accident occurred? A Well, I could not tell you, only the running of the car, that is all.

Q What is that? A I suppose just the running of the car.

Q I suppose when you run the car your thoughts wander to other things, don't they? A I don't know that.

Q You don't mean to say that you stand on the front platform thinking about "My car, my car" and the track all the time, you sometimes have other thoughts, don't you?

A I would always be afraid to hit anything.

Q But you would let your mind think of other things,

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wouldn't you? A I suppose I do.

Q Do you remember what you were thinking of this night before the accident? A No sir; I do not.

Q What is that? A No sir.

Q Now, you say you had your car on your mind and you were always thinking of avoiding accidents? A Yes sir.

Q You had been taken over the road and knew the rules, you knew the places where there were full stops? A Yes sir.

Q Did you intend to obey those rules that night?

A Yes sir; I always did.

Q Where was it this collision occurred? A 153rd Street.

Q What part of 153rd Street, north or south of the north crossing? A South of the crossing.

Q What is that? A South of the crossing.

Q What crossing? A 153rd Street.

Q The north or south crossing? A South of the crossing of the street.

Q Did you see your car after it stopped? A Yes sir.

Q Where was it? A When I was standing on the sidewalk.

Q Where was it, north or south of the north crossing at 153rd Street? A South.

Q The whole car was south of the north crossing of 153rd Street. Now, think a minute. You have heard the other

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witnesses testify where the car was, the policeman officer and everybody else? A Yes sir.

Q Do you want to go on record as saying that the car was south of the north crossing of 153rd Street after it stopped -- after the accident? A I knew it was not north, I know that.

Q Don't you know that it was, part of the car was north of the north crossing and part of it was south? A No sir; it was not.

Q That the car lay across the crossing? A There was some of it in on the crossing, but it was not north.

Q Now, had part of the car crossed the place where people walk across the street from the north side of 153rd Street? A No sir; it had not.

Q Did you hear the other witnesses say that it had? A Yes sir.

Q You still stick to this assertion? A There was, the front end of my car was in on that street, I don't know how many feet it was in on it.

Q Now, as a matter of fact, after the accident you were a little bit excited and scared, weren't you? A Yes sir.

Q You didn't take notice of just where the crossings were? A No sir; not until I was standing beside the policeman.

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Q What is that? A Not until I was standing beside the policeman on the sidewalk.

Q You knew you had killed a man, didn't you? A Yes sir.

Q That was on your mind, wasn't it? A Yes sir.

Q You were not measuring distances or noticing where the car was? A I was not.

Q Until the conductor asked you? A Yes sir.

Q Well, the conductor was right there and he could see for himself? A He came over and wanted to talk to me.

Q Did he ask you where the car is -- he could see the car there, couldn't he? A Yes sir.

Q That is all I am asking you about. All these other witnesses have testified that that car was partly, at least, north of the north crossing of 153rd Street. Now you tell me it was not. Is that a mere matter of opinion of your own? A As far as I can remember.

Q You were at the time in a confused state of mind? A Yes sir; I was.

Q You were running at a pretty good rate of speed, you say? A Yes sir; I was running at a pretty good rate of speed.

Q Up to the time of the accident? A Yes sir.

Q That is a down grade there? A Yes sir.

Q From 150th to 153rd Street? A Yes sir; a slight in-

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cline there.

Q What speed did you have your controller on, do you remember? A I don't remember; I might have had it on five point, that is half speed.

Q What is full speed? A Nine points.

Q How fast does a car go at full speed? A I could not tell you.

Q Don't you know? A No sir.

Q This car you had run for some time? A I ran it from five o'clock the evening before.

Q You had run it before that, didn't you? A I think it was a new car.

Q Had you run it since you were there in March? A I might have; it came from Yonkers.

Q Don't you know? A I don't know that I ever had it before; we didn't always have the one car.

Q You don't know whether you had it before or not? A No sir; I don't think I did because it was only there about two weeks or so.

Q You had made several trips with this car. What time did you go on duty -- you had run it from five o'clock the day before in the afternoon, until this accident? A Yes sir; all but one hour.

Q You had made how many round trips? A I made about seven.

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Q Seven round trips? A Yes sir.

Q You had carried a great many passengers and made a great many stops during that period? A Yes sir.

Q Especially in the evening up to midnight? A Yes sir.

Q I had ascertained, I suppose, by experience how far or how long, within what space you could stop the car with your brakes? A Yes sir.

Q In other words, you found out how to handle that car and how she acted, didn't you? A Yes sir.

Q How much space did it require, when you were running at a speed of five points say, to stop it? How many feet would she run if you threw the controller over and put on your brakes as hard as you could? A I would stop it in about 12 or 13 feet.

Q Now, I ask you, if that be so, and you were running fast as you told your own counsel, why didn't you shut off the speed and put on your brakes in time to come to a full stop where the full stop sign was? A Well, the full stop sign is in the middle of the street, I would have stopped only for this thing occurred before I came to it.

Q You say the full stop sign is in the middle of the street? A Yes sir.

Q What street? A 153rd Street.

Q You don't deny that you had gotten to the north end of the street? A Yes, but I would not have gotten further if I had

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not had the accident -- my car rolled.

Q You did not strike this man and the horse until you got past the full stop sign, did you? A Yes sir; I did.

Q Where did you strike it? A My car rolled after I struck that.

Q Where were you when you struck the first obstacle you struck, where was it? A I don't know, I can't tell exactly. As soon as I seen it I stopped.

BY THE COURT:

Q That was south of the south crossing? A Yes sir.

BY MR. HART:

Q Was it north of the south crossing? A No sir; south.

Q Was it between the two crossings of 153rd Street that you struck the first obstacle? A It was south of the crossing.

Q Of what crossing? A 153rd Street.

Q The south crossing or the north? (No answer.)

Q You understand the street has two crossings? A Yes sir.

Q This is the north side of 153rd Street and the south side of 153rd Street? A Yes sir.

Q Were you past the south side of 153rd Street before you struck anything? A No sir.

Q Where were the objects that you struck? A On the

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south side.

Q How far from the south side? A Well, they might be --

Q I don't want to know what might be, but your best memory of where they were? A They might be eight or nine feet from it.

Q South of the south crossing? A Yes sir.

Q Do you mean to say that you were going with such force and speed that you carried this horse with your car, and the ash cart, from eight or ten feet south of the south crossing clear across 153rd Street to ten or fifteen feet north of it where the officer found it? A I don't know what length I came to; I knew when I hit that my car rolled. I was thrown back.

Q As a matter of fact you don't know where they were struck at? A I knew I stopped there.

Q You did not drive this horse and that man and the car more than ten or fifteen feet altogether, did you?
(No answer.)

Q Let me ask you this question: How many feet did your car travel after you struck the horse and the man?
A When I struck the horse it appears I was thrown back against the glass and that is all I know.

Q Have you no idea how far you went after that? A No sir; I could not tell you.

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Q Did you leave the tracks, did the car leave the tracks? A Yes sir.

Q After you struck them? A Yes sir; it left the track.

Q Your trolley pole went off? A Yes sir.

Q You don't think it is possible for the car to have travelled in that condition, carrying that horse with it, to say nothing of the other obstructions, clear across 153rd Street, the car off the tracks, the trolley off and everything? A The car ran against the horse.

Q What is that? A The car ran against the horse and he leaped.

Q I know, after it struck him he leaped up in the air, after your car struck him it crossed 153rd Street above the north crossing? A Well, it might have.

Q I don't know what it might have done. It seems to me it might have done anything, but I want you to tell me about it? A After I struck him I don't know anything more about it.

Q As a matter of fact you don't know just where you struck the horse, do you? A Well, all I know about it is that I stopped there.

BY THE COURT:

Q That you would stopped there? A Yes sir.

Q That is what you were accustomed to do? A Yes sir.

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Q That is all you know about it? A Yes sir.

BY MR. HART:

Q Did you see that "Full Stop" sign? A I know the signs; I know every sign on the road.

Q You could tell if you shut your eyes about where you were? A Yes sir.

Q So you struck this object before you came to the Full Stop? A Yes sir.

Q Wasn't there a curve there? A Yes sir.

Q You knew exactly where you were? A Yes sir.

Q You knew that you were approaching a full stop station? A Yes sir.

Q And you intended to stop? A Yes sir.

Q Why didn't you stop? A I had this accident before I stopped.

Q Did you have a headlight on that night? A Yes sir.

Q How far does that headlight throw the light? A According to the kind of a headlight, some go further than others.

Q Well it is this night I am talking about, this one?

A I could not tell you.

Q Indicate here in the court room how far it would throw the light so that you could see ahead? A It throws it approximately (illustrating).

Q Now would it enable you to see a horse on the

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street car track ahead of you? A About a half a car length.

BY THE COURT:

Q Would it be twenty or forty feet? A About twenty feet, your Honor.

Q About twenty feet ahead? A Yes sir.

Q Is that the usual length that it sheds the light?

A Yes sir.

BY MR. HALE:

Q And you could stop the car within 12 or 15 feet?

A Yes sir; if I had it under control.

Q If you had it under control? A Yes sir.

Q You had your car under control? A When this thing came in my way I did not.

Q Now, if that be so, and you could see 20 feet ahead and saw this horse and you could stop your car within 12 or 13 feet, why in the world didn't you do it? A I done all I could.

Q Now, did you do all you could? Here was a car that you had been running, you an experienced motorman had been running all night at least, and you could stop that car within 12 or 13 feet, and you could see a horse 20 feet ahead of you, -- when you saw this horse ahead of you and a man, why didn't you stop your car? A Well, I did all I could.

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Q But you told me you could stop it within 12 or 13 feet? A Well, I might have.

Q Then why didn't you? A I don't know.

Q You didn't do all you could? A I did do all I could.

Q What is that? A I did do all I could.

Q You didn't throw your controller over? A Well, I don't remember, because I was knocked about when I seen this thing.

Q You put your controller on before you struck the horse, didn't you, -- I mean you put your brakes on before you struck the horse? A I tried to.

Q Didn't you have time to get it around? A No sir.

Q You only had to swing it three times? A Yes sir.

Q You had struck that horse before you got the brakes tightened? A I suppose I did and the horse was under the car.

Q How far ahead did you see this horse and man? A I seen it right before my car.

Q How close. Show me now? A About where you are (illustrating).

Q About where I am to you? A Yes sir.

Q I don't suppose that is more than eight or nine feet. Do you mean to say that you did not see this horse and this man Koneman until you were within eight or nine feet of him?

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A I did not.

Q You did not? A No sir; if I had I would not run against him.

Q Was it dark all around you? A Yes sir; it was dark.

Q You were running at a high rate of speed into darkness? A I was not running at a high -- running the same way as I would run every other night.

Q But you run faster, don't you, some nights? A We have to make that trip in an hour.

Q You ran very slowly up to 148th Street? A No sir; I never run slowly; I always run the one way.

Q The first part of the trip north you didn't run fast, did you? A I ran the same as I would always run.

Q Well I don't know how you always run. I ask you if you did not run it slowly the first part of your trip north? A No sir; I ran the same as I always do.

Q You don't mean to tell me that you did not increase your speed as you got further north, do you? A No sir.

Q Where did you increase it then? A I stopped at 149th Street, there is a switch there, and I stopped at 150th Street, there is another switch there; then I started again the same as usual.

Q The same as usual? A Yes sir.

Q Now, as usual, what do you do? A Well speed off the controller, the start --

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Q You could speed it up pretty fast? A Yes sir..

Q Did you ever use the high speed? A I have not.

Q Now, under what conditions do you use high speed?

A Well, perhaps if there is nothing in the way.

Q Day or night? A Well, day and night.

Q What time of day or night do you usually use it, under what conditions do you use high speed? A If you have a big headway.

Q When -- what do you mean by big headway? A If the headway is before you you can use it.

Q It is a fact that during the hours of the morning when you are coming north, when traffic is lessened -- less than it is at some other time, you use your high speed, isn't that so? A No sir.

Q Well then, when do you use it? A You may use it a block or two and throw it off.

Q You use your high speed more when there is a small amount of traffic than when there is a great deal? A Yes sir.

Q And you haven't got so many stops? A No sir.

Q Not so many wagons in your road? A No sir; and your time is short to make up.

Q There is only six minutes difference, isn't there?

A You are not held accountable for it. No motorman is held accountable for it in the daytime that I know of.

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Q But he is in the night time? A Yes sir.

Q You know that about daybreak the wagons begin to go around and wagons of different sorts? A Yes sir.

Q You meet them frequently, don't you? A Yes sir.

Q A pretty good time to look out for them isn't it?
A Yes sir.

Q Even though it is a little dark? A Yes sir.

Q You haven't any very distinct recollection of just what you did after you saw Koneman and the team of horses eight or nine feet ahead of ~~ix~~ you, have you? A Well I know I applied my brake; I was knocked against the glass.

Q Did you ring the bell? A I always ring the bell at night.

Q Did you ring your bell? A Yes sir.

Q Let us see what you did. Within nine feet you rang the bell and t/wisted your brake? A Yes sir.

Q You are not sure whether you threw over your controller or not? A No sir; I am not.

Q How is it you can remember doing one of these things and not the other? A Well, I remember that.

Q Why do you remember that? A Well, I don't know, I am only telling you what I remember.

Q Didn't you think it is more important to throw off your power than it was to clang your gong? A I did all I could.

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Q Let me ask you to answer this question: As a motorman in charge of a car, a motorman of experience, didn't you think it was more important to shut off your power with your controller than it was to ring the bell? A I hadn't time to think of anything.

Q You ring the bell with your foot, don't you? A Yes sir.

Q If you hadn't time to think of anything, how do you know that you rang the bell? A Well, it is a thing that always any motorman does and he never forgets it as a rule.

Q Now that is the reason that you feel sure that you did it, -- there are certain things which you do automatically, aren't there? A Yes sir.

Q You get very used to them? A Yes sir.

Q If you want to stop your car over goes the controller and around goes the brake? A Yes sir.

Q If you come to a crossing you step on the bell?
A Even the brake gets a twist or two before the controller is thrown over.

Q You generally do these things almost without thinking, don't you? A Yes sir; if you have time.

Q That is why you feel sure you did it on this occasion? A I know I rang my bell and twisted my brake.

Q What is the first thing you did? A I tried -- I don't know --

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Q What was the first thing you did if you remember, ring your bell or twist your brake? A I rang my bell.

Q You rang your bell first? A Yes sir.

Q And twisted the brake? A Yes sir.

Q Didn't you say a few moments ago that you did not really get your brake on until after the collision? A Yes sir.

Q It was too late? A Yes sir; I was thrown back.

Q With your light throwing ahead 20 feet, and a team of horses, and a meat wagon ahead of you, to say nothing of the ash cart, have you got any reason that you can give to the jury why you did not see these objects in time to stop your car? A Well, it was dark; I done all I could to stop my car when I seen them.

Q It wasn't dark where your light was shining, was it? A My light doesn't shine very much.

Q You say it shines enough so that you could see a horse 20 feet away, I am taking your word for it? A I suppose it does.

Q If that is true, can you tell the jury why you did not stop your car? A I tried to stop it; I am telling you I tried to stop it.

Q You say you struck the man before you stopped it? A My car ran.

Q Why allow yourself to go eight or nine feet before

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you put it on if you saw it 20 feet away? A If I seen it 10 feet away I would have put it on.

Q Was your light burning? A I suppose it was.

Q Could you have run on with your car without its lights? A Well, I would have reported it, would have told about it.

Q If you want to say you were driving that car through the darkness at that speed without any light? A I often ran a car without a headlight.

Q At night? A Yes sir.

Q Didn't you consider that a very dangerous thing?

A I would tell the starter; I had nothing more to do with it.

Q Didn't you consider that you were putting a pretty cheap price on human life when doing a thing like that?

A I had to do what I was told.

Q You were not compelled to kill people because the railroad company didn't supply you with necessities? A No sir; I don't know what to do.

Q Didn't you feel that you had some individual responsibility? A Yes sir; I had to be cautious.

Q Now, you have told your counsel that you saw this
will
object to that way. Now, you tell me what was the nearest
to the ground, in other words, what did you strike first?

A I don't know what I struck first.

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Q What is that? A I think it was the man.

Q You think it was the man? A Yes sir.

Q You mean the ash cart by the truck, don't you?

A The wagon.

Q The meat wagon? A I didn't see any meat wagon.

Q What was it that you you told your counsel you saw?

A The man behind the two horses.

Q What was he doing, trying to get off the track?

A Turning his team off.

Q To the left? A Yes sir.

Q How close were you to him then? A Well I was away -- I couldn't tell you. I seen the horse nearly on top of him; I might be 12 or 13 feet of him.

Q Twelve or thirteen feet from him? A Yes sir; I might be more.

Q You told me a few moments ago it was seven, eight or nine feet, now which is it? A Well, I can't tell you exactly when I seen this man I thought he was in danger and I am not sure what happened.

Q You are not sure? A No sir; I done all I could to not kill the man.

Q After you saw him I don't doubt that you did? A Yes sir.

Q All that you could think of doing? A Yes sir.

Q Why didn't you have greater care in seeing that there

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was not an object ahead of you with your headlight? A I always took good care; it was the first accident ever I had.

Q But if you had looked up, your light was burning as you say, you believe it was, you could have seen at least 20 feet with it? A I suppose I could.

Q If you had seen this object 20 feet ahead of you, at the speed you were going, you could have stopped your car within 12 or 13 feet? A I don't know that I could when I seen him before me.

Q You were able to see 20 feet away? A Yes sir; I suppose I was.

Q If you had stopped your car then as you say you were able to stop there would have been still seven or eight feet between you and this man? A When you see a man before you and think he is not able to get out of the way you are not the same as you would be.

Q You think he is not able to get out of the way?

A If you think that.

Q Isn't this what occurred: You saw that man 20 feet away, you thought you would take a chance, that he would probably get out of your way, and the last thing you saw he was not going to get out of your way and you could not stop the car? A No sir.

Q That is not the case? A No sir.

Q Did you ever take a chance like that? A No sir; I

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never did; I always tried to avoid an accident.

Q Do you know what time it was when you got to 149th Street? A Yes sir; it would be about --

Q Did you look to see what time it was? A No sir; I did not.

Q What is that? A No sir; I did not.

Q Where was it that the city lights went out? A About somewhere, about 151st Street.

Q You say somewhere about there; do you mean it might have been 150th or 151st or 149th or 148th Street? A No sir; it was before I had this accident, I know that.

Q And after you left 149th Street? A Yes sir.

Q That made it darker than it was before, didn't it? A Yes sir.

Q Did you make any change in your speed? A I suppose I did.

Q Now, Mr. McDermott, I don't want your suppositions; if you remember anything, we want that? A Well, I don't remember.

Q Do you mean -- we want you to tell us everything in your favor possible, we want frank answers from you. We don't want suppositions or guesses? A I am telling you as straight as I can.

Q You are not compelled to answer if you don't know. If you don't know, that is answer for me because that is the

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only true answer you can make. Now, as a matter of fact, you did not alter your speed from 149th Street, did you?

A I did.

Q What is that? A I did.

Q When? A Well, there is a bad place in the wire there, and I know I altered my speed on that account.

Q Where is that? A Around 151st Street.

Q Well, after leaving 151st Street, you did not alter your speed? A No sir.

Q You were running, as you told your own counsel, at a high rate of speed? A I did not say I was running high.

Q You were running fast? A The ordinary way at night.

Q At the ordinary rate for that time of night at that point on the road? A Yes sir.

Q Well, that is faster than you would run in the day-
if
time? A Well, there was nothing ahead of me it would be
the same.

Q What is that? A If there was nothing ahead of me it would be the same way as in the daytime.

BY THE COURT:

Q You were running at the rate of five points? A Yes sir.

Q That is about half rate that it is possible to go? A Yes sir.

Q Now, from your experience on that car -- tell the

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jury from your experience in determining speed how many miles you go at nine points. Give us your judgment? A I go about 14 miles an hour -- I don't know, your Honor.

Q That is at nine points? A Yes sir.

Q Do you ever within the confines of the City of New York go nine points? A Yes sir.

Q An hour? A Yes sir.

Q Whereabouts? A Well, I went nine points often when I was working for the New York City Railway.

Q The Metropolitan? A Yes sir.

Q Between what points? A Well, from 158th Street down to 125th Street and Eighth Avenue I often did.

Q At what hours of the night or morning? A After 12 o'clock.

Q Midnight? A Yes sir.

BY MR. HART:

Q After 12 o'clock? A Yes sir.

Q At night? A Yes sir.

Q Did you ever use nine points in the Union railway service? A Yes sir; often.

Q After what hour? A All hours, day and night.

Q You don't want to say to this jury that you remember distinctly as to just how many points you were using this night at this time? A Well, I used five points.

MR. HART: That is not my question. I move to

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strike it out.

THE COURT: Strike it out.

Q You don't mean to say that you clearly have a distinct recollection, in your own mind, of the particular point where you held your controller before this accident, do you?

A I could not tell you.

Q You are just reasoning from probabilities? A Yes sir; as far as I know.

Q All you know is that you were running at what you think is about half speed? A I believe because there was a bad wire there --

Q Full speed is how much? A Nine points.

Q How many miles an hour? A Supposed to be about fourteen.

Q So that you were running about seven miles an hour?

A Yes sir.

Q That is about twice as fast as a man walks, is that the speed you want us to understand you were running? A No sir.

Objected to; objection overruled; exception.

THE WITNESS: No man would walk or run as fast as a car going five points.

Q Five points is pretty fast, isn't it -- I don't know, I am not a motorman -- but if it is the half speed of fourteen? A Yes sir.

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Q Seven miles an hour, it isn't very fast? A No sir.

Q You could walk three miles an hour or four miles an hour, couldn't you? A Yes sir.

Q If you tried hard you could walk four miles an hour? A Yes sir.

Q Was your car running more than twice as fast as you walk it? A Yes sir; I believe it was.

Q What is that? A It was, I am sure.

Q You are sure? A Yes sir.

Q Could you have run as fast as your car was going?

A I couldn't tell.

Q What do you think? A I think I could.

Q You think you could? A Yes sir.

Q Not very far though? A No sir; I could catch it if I wanted to.

Q You could have caught that car at the speed it was going at? A Yes sir; if I wanted to.

Q Then you would have a pretty easy run, you don't have to strain very much to make your time? A Yes sir; we do at some points on the road.

Q Where is that? A From 169th Street.

Q Where? A To about Wendover Avenue.

Q Don't you try to make any speed south of that? A No sir.

Q Now, as a matter of fact, you ran quite slowly up

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to 149th Street, didn't you? A We always run slowly to 161st Street because it is the most dangerous part of the road.

Q From 128th to 161st Street -- where was your next full stop south of 153rd Street? A 156th, Street.

Q But south of that? A South of it?

Q What was the full stop before 153rd Street? A 150th

Q Did you stop there? A There was a switch there and I had to stop.

Q Did you stop there? A Yes sir; there is a switch there and you have to stop for those switches.

Q You have to stop at 153rd? A Yes sir, the rules call to stop.

Q You didn't have a switch there? A No sir, no switch there.

BY THE COURT:

Q Where you see these signs of full stops, do you, regardless of the condition of traffic, stop at that point day or night? A Yes sir.

Q If there were nothing in the way, nobody desirous of getting on or off the car, and nothing ahead for a long distance, would you, under such conditions as that stop the car because of that sign "Full Stop"? A At a switch like 153rd Street after 12 o'clock at night we might only slow up, not to make it stop.

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Q Unless somebody wanted to get on or off the car, or unless there was some other object, notwithstanding the fact of that sign hanging midway in the street you would go ahead?

A Well I would surely stop there, but not a dead stop.

RE DIRECT EXAMINATION BY MR. HEINZELMAN:

Q Mr. McDermott, I show you a sort of a plan? Can you understand it. Now, this is Third Avenue? A Yes sir.

Q Here is 152nd Street and here is 153rd Street?

A Yes sir.

Q This is the north side of 153rd Street and this is the south side? A Yes sir.

Q Will you take my pencil and mark on Third Avenue where the Full Stop sign is? (Witness indicates.)

Q Run your line clear across the space marked Third Avenue? This is 152nd Street? A This is the way the street is going at 153rd Street (indicating); this is east.

Q This is east? A Yes sir.

Q And this is west? A Yes sir.

Q When you come in there this street starts over here (illustrating)? A Yes.

Q Then I call your attention to the intersection of 153rd Street and Third Avenue on the east side. Now, that is the east side? A Yes sir.

Q So that is the north side of 153rd Street, on the

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west side, is about parallel to the intersection of 153rd Street and Third Avenue on the easterly side? A Yes sir.

Q South side? A Yes sir.

Q In other words the southerly side of 153rd Street on the downtown side of Third Avenue is parallel with the northerly side of 153rd Street? A There is a saloon there.

Q Now, on Third Avenue near 153rd Street -- this is 152nd Street and this is 153rd -- you make a line across Third Avenue showing where the Full Stop sign was? A (Witness indicates.)

Q In the centre of the street? A Yes sir.

Q South of 153rd Street? A Yes sir.

Q Now, how near, give us your best recollection, were you to that sign when you felt something strike your car?

A I was there (indicating).

Q Then you had passed the Full Stop sign? A No sir; this is the way I am going (indicating.)

Q That is at 152nd Street, is that right? A This is 153rd Street (indicating); this is going south; this is going north.

Q Hold the paper this way. Now, you are going up Third Avenue? A Yes sir.

Q You strike 152nd Street? A Yes sir.

Q You keep on going and you get to 153rd Street? A Yes sir.

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Q Is that clear to you? A Yes sir.

Q You say that Full Stop sign is in between, right in the centre? A Yes sir.

Q Between the four corners? A Yes sir.

Q Now, here is Third Avenue. Show me on this piece of paper where you first felt something jar your car? (Witness indicates.)

Q There? A Yes sir.

MR. HART: I object to that because I think it is very inaccurate.

THE COURT: This is simply to illustrate the testimony of the witness and for no other purpose because its accuracy is not claimed.

MR. HART: I object to it because it is not correct.

THE COURT: I am admitting it only for the purpose of illustrating and explaining the testimony of the witness; for no other purpose.

(The paper is marked Defendant's Exhibit A.)

THE COURT: It is not claimed to be accurate, but it is only to explain the evidence of the witness.

MR. HEINZELMAN: The sign "Full Stop" is here and the witness says that mark indicates about where he was when he felt the jar under the car.

Q Now, Mr. M. Dermott, did you ever have any motive or any intention to run your car at any extraordinary rate of

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speed? A Only to make my trip in an hour.

Q You were not behind time? A No sir.

Q When you arrived at 149th Street, were you on time?

A Yes sir.

Q Now then at 150th Street, were you on time? A I left at 3:50 at 128th Street.

Q What time was it when you got to 149th Street if you were on time? A I don't count the time until I am at 159th Street, that would be ten minutes.

THE COURT: He told the jury in answer to the District Attorney's question that he was on time.

BY MRX HEINZELMAN:

Q Did you say you were on time. Tell the jury what you mean by that? A I was not behind time.

Q What regulation of the company leads you to say you were on time? A The regulation of the company is to make the trip in one hour from the Bronx Park station, Bedford Park to 128th Street and back. The way that we used to figure it out was ten minutes to 159th Street from 128th Street; ten minutes more to Tremont Avenue and ten minutes more to Bronx Park station and the same way coming back. To be at these points every ten minutes was to be on time.

Q Now, you left 128th Street on time? A Yes sir.

Q That was a street then? A No sir.

Q 3:40? A Yes sir.

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Q Where were you at 3:50? A This accident happened before that.

Q Where were you at 3:50? A I was standing on the sidewalk.

Q Standing on the sidewalk? A Yes sir.

Q When the accident happened? A Yes sir.

Q Now then at 150th Street there is a full stop? A Yes sir.

Q At 153rd Street there is a full stop? A Yes sir.

Q At 156th Street there is a full stop? A Yes sir.

Q At 161st Street there is a full stop? A 160th Street.

Q There is a curve there also, isn't there? A Yes sir; there is a square.

Q There is a decided curve? A Yes sir.

Q Quite a curve? A Yes sir.

Q Considerably more of a curve at 160th Street than there is at 151st? A Yes sir.

Q And 160th Street is also a fire stop? A Yes sir.

Q Now, at three o'clock in the morning when there is no traffic do you reduce speed at all at those stops? A Yes sir.

Q You do reduce it? A Yes sir.

Q But you don't come to an absolute standstill? A No sir; unless a fire stop.

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Q Now, when you come to a curve, it being a pronounced curve or a slight curve on a down grade, what is the custom in relation to the speed of the car? A Well, to go slow or you will knock off the pole.

Q Otherwise you would knock off the pole? A Yes sir.

Q Now, did you knock off the pole, or was the pole knocked off when you went around the curve at 151st Street?

A No sir.

Q It was on the down grade as you say? A Yes sir; a little.

Q Now, you testified that nine points would indicate full speed when you have your controller? A Yes sir.

Q Indicating nine points that would be the full speed of the car? A Yes sir.

Q On this particular occasion did you run your car on the nine point notch? A I do many times at night.

Q When this accident occurred? A I don't believe I did because there is a bad wire there.

Q What is that? A There is a bad wire there.

Q And it is down grade? A Yes sir.

Q You would not put your lever on the nine point notch going down grade, would you? A Well, I never did that.

Q Now, to your very best recollection, tell us about what notch it was at? A It might be the fifth.

Q What is that? A It might be about half speed.

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Q half speed? A Yes sir.

Q You have told us then that at half speed you could stop your car in about -- A Well, about, I might stop my car in less than a car length.

Q In less than a car length? A Yes sir.

Q So that if you had seen anybody before you within a car's length, did you have the car under such control that you could have stopped it within a car's length? A Well, if I could have stopped it I would not have run into this man.

Q It would have required greater momentum? A I would want to get more time, to stop it at that time.

Q Here is the point. If I understand you, Mr. McDermott, you were standing looking ahead? A Yes sir.

Q As you looked ahead you saw an ash cart? A Yes sir.

Q Your attention was attracted to that, is that correct? A Yes sir.

Q There was something between you and the ash cart?

A Yes sir; there was.

Q Which you did not see at a certain stage as you were going along? A Yes sir.

Q When you did see this something, which was a man and two horses, how close were you to them? A I was beside them almost.

Q What is that? A I was almost beside them.

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Q Almost beside them? A Yes sir.

Q As near as you can now recollect, were both horses within the track? A Yes sir.

Q Where was the man? A The man was behind them.

Q Behind the horses? A Yes sir.

Q In the track? A Yes sir.

Q Inside of the rails? A Yes sir; before my car.

Q You say you did not see them? A I seen the ash cart first.

Q The ash cart first? A Yes sir.

Q Now, when you did look and see the horses and the man what did you do, if you can tell us? A I tried to stop my car, that is all I did.

Q Was your car going at such a high rate of speed that you could not stop it, or was there some other reason?

A Well, I did all I could to stop it.

Q That is your best recollection now? A Yes sir.

Q Can you recollect whether or not you placed your hand upon the controller or did anything with the controller? A I remember twisting my brake.

Q You remember twisting your brake? A Yes sir.

Q Did you ever see a car which had the brake or the end of the brake against the wheel, close to the wheel, and the power turned on? A Yes sir.

Q How is that? A I did.

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Q You have seen cases of that kind? A Yes sir.

Q And the wheels continue to revolve? A I do.

Q Notwithstanding the shoe of the brake would be against the wheel? A Yes sir.

Q But the wheel would continue? A Yes sir.

Q To revolve? A Yes sir.

Q You told us that after you twisted the brake the car still continued? A Yes sir; it rolled --

Q And kept on rolling? A Yes sir.

Q My friend has said something about doing things automatically, mechanically, without necessarily centring your mind upon it, was that what took place on this particular occasion, what you had to do, was it done automatically or did you try to reason and do it according to your mind and your reason? A Well, the first thing came into my mind I tried to do what I could to stop the car.

Q The first thing that came into your head? A Yes sir.

Q What was the first thing? A To twist my brake.

Q Did anything come into your head about turning off the power? A I don't remember.

Q You can't remember that? A No sir.

THE COURT: We will take a recess, gentlemen, now until two o'clock. Meantime, don't discuss this case or form or express any opinion until the matter is finally submitted to you. Keep your minds open and free.

R e c e s s .

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A F T E R R E C E S S .

T H O M A S M C D E R M O T T, the defendant, resumes the stand.

BY MR. HART:

Q At this point where the Full Stop sign hangs, there is the junction of three streets, isn't there? A Yes sir.

Q What is this avenue down here? A Third Avenue.

Q Elton Avenue? A Third Avenue and 153rd Street.

Q On each side? A Yes sir.

Q It is because of that junction that brings the traffic there that you are required to come to a full stop?

Objected to; objection sustained.

MR. HART: I will ask him as to his understanding.

Q What was your understanding of the purpose of the stop at the junction of these streets?

MR. KRINZELMAN: Objected to as immaterial.

Objection sustained.

Q You are required to stop on the south side of these streets, the south side of 153rd Street? A At the stop mark.

Q The rule was you had to stop at the crossing of the street, wasn't that the idea? A Yes sir.

MR. KRINZELMAN: Objected to on the ground that it is immaterial, irrelevant, and that there is no evidence that

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the witness knew what the rule was.

THE COURT: He is assuming that he knows the rule. If there is vice in that claim perhaps Mr. Hart can modify his question in such a way as to overcome it.

MR. HART: The question is not directed to the rule itself but to this point -- regardless of any rules where a dangerous situation exists the defendant is required to use care considering the condition and circumstances.

Q I ask you if you didn't know that it was necessary to stop before you crossed 153rd Street? A Naturally when I was coming down the other way I always stopped.

THE COURT: Didn't you know it was because of the danger on account of traffic from three or four streets coming together to stop before you came to 153rd Street?

MR. HFINZELMAN: I object to that as immaterial and irrelevant.

A The stop mark was there, I believe, on account of it being a grade coming down south.

Q Didn't you think it was also due to the fact that 153rd Street crosses there and Elton Avenue joins Third Avenue there?

Objected to; objection sustained.

Q Didn't you know that it was your duty to stop on the south side of 153rd Street? A Yes sir; on account of the sign.

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Q You did? A Yes sir.

BY MR. HEINZELMAN:

Q Was it your purpose and intention to stop at the south side of 153rd Street when you got there? A Well I might not if there was nothing in my way and no passenger getting off, I might not make it a dead stop.

Q But slow up? A Yes; unless it was the daytime I would make a dead stop.

Q A dead stop in the daytime and slow up at night?

A Yes sir.

J O H N J. L I N D L E Y, a witness for the people, being recalled

BY MR. HART:

Q Mr. Lindley, are you able to state approximately the distance that the car travelled after it struck the obstruction?

MR. HEINZELMAN: I object to that as it is not rebuttal, and second, this all has been gone into on the direct.

THE COURT: Objection overruled; exception given you.

A Well, I say about six feet.

Q About six feet after the impact? A Yes sir.

BY MR. HEINZELMAN:

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Q You took quite an interest in this thing, didn't you? A Not particularly, no.

Q How? A Not particularly.

Q You are the gentleman that used three fingers in his mouth and whistled? A Yes sir.

Q Went around in among the crowd? A No sir, I did not go among the crowd; there was no crowd there.

Q Let me see. There was a horse under the car?

A Yes sir.

Q You went to see the man under the car? A Yes sir.

Q You waited until the policeman came? A Yes sir.

Q You told the policeman what was the matter? A No sir.

Q What did you say to the policeman? A I don't remember what I said.

Q You are a newspaper reporter and that was an accident and you had a scoop there, didn't you in the parlance of the newspaper people? A It was too late for me to use it in my paper; I had no further interest than simply as an ordinary citizen.

Q Did you hear officer Mendelsohn testify? A No sir; I did not.

Q Well, Mr. Mendelsohn, if I recollect his testimony -- as I understand you to say, you whistled and stood there until a policeman responded? A Yes sir.

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Q Officer Mendelsohn says that he was standing on the street corner and heard a crash, looked up there and went up?

A Yes, sir.

Q Do you know officer Mendelsohn? A I know him now.

Q Did you have any conversation with him? A No, sir, except to give him my name; he asked me if I was hurt. I said "No"; he wants to know if I was a witness and I said yes.

Q While you were on the car did you give any instructions to stop? A No, sir.

Q I suppose the bell rope was hanging along the side of the car? A Yes, sir.

Q All the way down? A Yes, sir.

Q In good order? A Yes, sir; as far as I know.

Q If you chose to pull that rope you don't know of anything to stop you from pulling it? A No, sir.

Q As a matter of fact you did not think of pulling it?

A No, sir, I did not.

BY MR. HART:

Q Was there any change or alteration in the speed from the time you left 128th street until the collision? A Yes, sir.

MR. HEINZELMAN: I object to that. We are getting into expert testimony.

THE COURT: I think it is not in reply to anything that was brought out, Mr. Hart. I think we understand

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what has been brought out through Mr. Lindley, that it went, as the Court recalls it, at an ordinary rate of speed until it reached 159th street and then that the car went fast, very fast.

MR. HART: I withdraw the question.

THE PEOPLE REST.

THE DEFENSE RESTS.

MR. HEINZELMAN: Will your Honor permit me to resume ^{now} my motion to take this case from the jury and direct the jury to acquit the defendant on the ground that the evidence before the jury is not sufficient to warrant a conviction.

Motion denied. Exception.

Mr. Heinzelman sums up for the defendant.

Mr. Hart closes the case on behalf of the People.

During the closing address of Mr. Hart Mr. Heinzelman states: "I object to the statement of the Assistant District Attorney that he would join in a recommendation to mercy."

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THE COURT'S CHARGE.

MALONE, J.:

Gentlemen of the Jury: As both counsel have stated to you this is a most important case, important to this defendant and important to the people of this state.

It is a case of homicide.

Homicide, in its largest sense, is a generic term, which means every mode by which the life of one man is taken by the act of omission or commission by another. It may be a lawful killing; it may be an unlawful killing; it may be justifiable or it may be excusable.

It may be lawful when done against an enemy in war; it may be lawful when done under proper warrant in execution of a mandate of a Court.

It may be justifiable when done necessarily in self-defense.

It may be excusable when done through accident and misfortune.

There are two classes of homicide, murder and manslaughter, the distinction between murder and manslaughter being that in murder there is malice, either express or implied. In manslaughter there is none. In other words murder is the intentional killing of another, whereas manslaughter is the killing of a human being without

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any intention on the part of the slayer to kill.

This is not a case of murder, and this prisoner is not indicted for murder. He is indicted for the crime of manslaughter, and manslaughter in the second degree.

This prisoner is guilty of the crime of manslaughter in the second degree or is guilty of no crime.

Now, gentlemen, you have listened with patience and attention to the evidence that has been given here. You have listened to the summing up on the part of the counsel for the defendant and counsel for the People. The case has been tried upon a high plane in the estimation of the Court. Everything that could have been done for this defendant has been done on the part of his counsel, who has shown great zeal and assiduity, great fidelity to the interests and to the responsibility that the Court has reposed in him.

Counsel for the People has presented every fact that it was possible for the People to present in a manner which evinced capability and fairness.

Now the responsibility comes to you and to me and we desire here the judgment of not one of you gentlemen but the combined judgment and wisdom of you all. When you came into this box you took an oath to perform your duty faithfully between this defendant and the People of this State. You are not concerned with the consequences of

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your finding, because in the administration of the law your duty is plain and simple, and it is to find the facts and to find them from the evidence and from nothing else. You, in other words, are to declare the facts and nothing else. You said to both counsel, when you were examined and your consciences searched, that you would not determine the issues involved here until you had heard everything, and that when you went into your room your minds would be open to discuss the evidence and to determine what verdict you would render. If your minds are in that receptive condition then we may now proceed to the evidence in the case.

First I shall state to you what the defendant is accused of. He is accused of manslaughter in the second degree and so far as the section of the law is applicable I will read it to you:

"Manslaughter in the second degree is homicide when committed without a design to effect death, by any act, procurement or culpable negligence of any person, when, according to the provisions of the chapter it does not constitute the crime of murder in the first degree nor manslaughter in the second degree." In other words, before you can find this defendant guilty of manslaughter, as charged in this indictment, you must find that he was guilty of culpable negligence which resulted in death.

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The People must first satisfy you that the death occurred and that it occurred through the act of omission or commission of this defendant. That is what the law calls the corpus delicti which must be established, and to the consideration of that evidence was introduced here. There is no controversy or contention on the part of the defendant that it has not been established that one Koneman was killed on the morning of the 27th of July, 1907, and that his death was caused by being hit by a car under the control and direction of this defendant. The question is have the People established to your satisfaction, beyond a reasonable doubt, that this defendant by his culpable negligence in the management and control of that car caused that death -- because that burden has been assumed by the People and the attorney for the People must satisfy you upon every material fact in the case which is necessary to constitute it that the defendant is guilty; otherwise it is your duty to return a verdict of not guilty. Has he done it? The burden rests with him and rests with him from the beginning to the conclusion of the case.

The law has defined negligence, and I invite your attention to it because it is so apposite and accurate that I desire to give it to you in the words of the statute itself. The law defines the term neglect, negligence, negligent and negligible as importing a want of

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such attention to the probable consequences of an act or omission as a prudent man ordinarily bestows in acting in his own concerns.

Culpable is a word of description rather than of definition. It is reprehensible negligence, it is guilty negligence, it is gross negligence, it is negligence which is highly criticisable.

In a case of great consequence to the people and to the defendant tried many years ago in this Court, one of the most venerated of my predecessors charged the jury as follows upon this subject. Recorder Smyth in the case of the People against Boddenseik said:

"Culpable negligence is the omission to do something which a reasonable and prudent man would do, or the doing of something which such a man would not do under the circumstances surrounding each particular case. It is a want of such care as a man of ordinary prudence would use under similar circumstances." That was in accordance with the definition contained in Subdivision 1 of Section 718 of the Penal Code. He also says "In order to constitute the crime of manslaughter in the second degree, which is applicable to the definition of the offence charged in this indictment, the jury must find that the defendant by his act or culpable negligence procured the killing of the deceased. The jury must not only find that the evi-

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dence establishes, before they can convict, the presence of mere ordinary negligence on the part of the defendant, but they must find it in such extreme degree as the use of the term culpable negligence imports in the sections of the Code referred to. If the evidence leaves the jury in doubt as to whether such a degree of negligence exists as the statute itself contemplates they must find its presence not proven and acquit the defendant." That is, if you entertain a fair and reasonable doubt as to the establishment of such a degree of negligence as the Code contemplates by the use of the word culpable. The jury must find beyond a reasonable doubt that the defendant by his procurement or culpable acts, through unlawful negligence or reckless means occasioned the death of Louis Koneman; otherwise they must render a verdict of not guilty. If the defendant did exercise such ordinary and usual care and caution as men generally do in the performance of their business affairs and are accustomed to exercise, the jury must find that the act charged in the indictment was misadventure and not a crime and the defendant must be acquitted.

The case and those rulings of that
were sustained
great Jurist, by the Court of Appeals of the State and are
the law and I so charge them to you.

With reference to some evidence in this case as to

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some duties that were to be observed by the defendant -- the rules of the company, the requirements of the company as to the length of time for trips, I charge you in the language of Chief Judge Davis, Presiding Judge Davis of the Supreme Court of this City, in the case of the People against Melius, as follows:

"A defendant's duty may be in some cases as between himself and the company controlled by written rules, but even where there are written rules in such case it would be as between the employe and the company his sufficient excuse for obeying them, although obedience to them was not a protection to the passenger; but when the question arises as to the obligation to perform a duty towards the passengers and save their lives from exposure or danger then if the written rules were of a character to restrain him from doing something which ought to have been done and is required by law to be done, the written rules would scarcely be protection when the People charged him with culpable negligence. Now, to make myself more clearly understood if a written rule had forbidden him taking any steps to go back and signal the approaching train it was still his obvious duty to do so to save the lives of passengers, and the law would say it was culpable negligence not to do what was an apparent necessity to save the lives of passengers. The law requires the exercise

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of that degree of care and vigilance which the character of the impending danger demands. A man's duty is always measured by that standard. If there be neglect of duty under circumstances where a jury can say such negligence was wrongful, to use the language of the statute, then it becomes a crime if in consequence of that wrongful negligence some human being is killed.

Now, what are the facts in this case as adduced by the proof the People have put in evidence here. On the morning of the 27th of July, 1907, this defendant in charge of a trolley car, operating between 128th street and Bedford Park, was between 151st and 153rd street going at a very rapid rate of speed if you believe the evidence of officer Mendelsohn -- he testified that he observed the car at 151st street and it was at that point going at a very rapid rate of speed; that in his judgment, and it was part of his duty to concern himself about the rate of speed at which vehicles went through the public streets, he would say that it was going at a rate of something over twenty miles an hour; that a moment after seeing the car at that point, 151st street and Third avenue, he heard a crash and went to the point and discovered that Louis Koneman and a horse were killed by the operation of this car. The People further show, or have introduced evidence to the effect that a passenger on that car, Mr.

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Lindley, I think his name was, was sitting in one of the front seats, and that between 149th and 153rd street the car did not stop; that the car was going fast and very fast. You have heard the testimony of both of them, you are to judge their testimony and to weigh it.

The evidence of the defendant is that it was going at a rate of seven or eight miles an hour; it was going at about half the rate which the car was capable of going at. That is the only evidence that the Court recalls on the part of the defendant upon the rate of speed at which the car was going. The People have introduced evidence, - if you are to believe the evidence -- that this defendant was a motorman of some experience; that the headlight upon one of these cars would show objects ahead for about 20 or 30 feet as the Court recalls the testimony of the defendant and that is conceded; that at this particular point on this particular morning it was very dark; that the city lights had gone out; that the first that he observed he was about 9 feet behind this object that he struck, this man that was killed.

Now, the People urge upon you the argument, and it is for you to say with what force it comes that if this defendant had exercised that degree of care that a motorman intrusted with human lives should properly exercise that he should have seen Koneman and his horses 20 feet

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away. I charge you, gentlemen of the jury, that Koneman and his horses were lawfully upon that street and upon that part of that street; that this car was lawfully upon that street and within the tracks on that street; that a high degree of care devolved upon the shoulders of the motorman in charge of that car because of the impending danger consequent to life.

I charge you, gentlemen of the jury, that even though he rang his bell, that even though that had been done he could not recklessly and negligently run over anybody in front of him upon that track. But the evidence is for you. You are to scrutinize the evidence of the defendant because he is vitally interested in the result of this proceeding; he is a party in interest. The People urge upon you that there is no motive on the part of the witnesses for the People in testifying otherwise than accurately and as the facts would warrant.

This is an important duty that devolves upon you. It is important for this defendant and it is important for the People of the state that cars that are operated be operated by careful, attentive and vigilant men. Life and property are dependent upon the requirement of a strict observance of such a rule that women, infirm men and little children shall not be run down by inattentive, careless motormen.

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The burden rests upon the People to establish the guilt of the accused. You are to give him the benefit of every doubt. You must be satisfied beyond a reasonable doubt, but if the People have satisfied you to that extent then you owe a duty to the People of this State in sustaining the law that is^{is} effective for the greatest good for the greatest number of the citizens of the community.

Sympathy should not affect your verdict. You should give his testimony every bit of weight that you conscientiously can because the defendant is presumed to be innocent until that has been overcome and the contrary has been shown, but if the People have established to your satisfaction that this defendant did not exercise that proper amount of care and attention in the control of that car, and if that inattention and carelessness was inattention and carelessness within the definitions that the Court has given you, then it is your duty to so find by your verdict.

I charge you gentlemen of the jury that if you be satisfied that it be a fact that it was a very dark night or morning, and that the city lights went out, that a higher degree of care rested upon the defendant than if it was light there and the lights had not gone out.

I charge you, gentlemen of the jury, that notwithstanding any regulations of the company that if this defendant carelessly operated that car and did not give to

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the deceased an opportunity to get off that track and that he could have avoided running him down then he has come within the definition of culpable negligence.

Mr. Heinzelman, I have charged all of the requests that you have handed up to me, except the first one.

MR. HEINZELMAN: I ask your Honor to charge the jury, as matter of law, that there is no evidence in this case that the defendant operated the car at an unlawful rate of speed.

THE COURT: If there is any of your requests that I have not called to the attention of the jury I shall be very glad to do so. I think I have charged them all.

MR. HEINZELMAN: I ask your Honor to charge the jury that if the act in question is prohibited by law, it is not unnecessarily an unlawful act which would prevent the resulting killing from being a mere misadventure, and a mere violation of the speed ordinance is not such an unlawful act as will render an accidental homicide committed while so doing a criminal offence.

THE COURT: It must be culpable negligence on the part of the defendant. I so charge you as a proposition of law.

MR. HEINZELMAN: I ask your Honor to charge that if the killing was unintentional --

THE COURT: I have charged all your requests except.

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the first. I think I have substantially covered them in my charge.

MR. HEINZELMAN: I ask your Honor to charge the jury that suspicion that the defendant was culpably negligent in the management of the car, however strong, will not justify the jury in convicting the defendant, and the jury has no right to speculate on probabilities but must render their verdict from their inferences drawn from the entire evidence before them.

THE COURT: That is the law. You are not to speculate or to act upon suspicion, but you are to determine your verdict upon the evidence and only the evidence.

MR. HEINZELMAN: I ask your Honor to charge the jury that if the defendant acted according to his best reason he is not guilty of culpable negligence and he must be acquitted.

THE COURT: That I so charge.

MR. HEINZELMAN: In order to convict the defendant the evidence must be such as to exclude, to a moral certainty, every theory but that of his guilt and the facts proved must not only all be consistent with the theory of the defendant's guilt but they must, each and every one of them, be absolutely inconsistent with the theory of misadventure and the exercise of care to the full extent of the defendant's mental ability.

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THE COURT: I so charge you, gentlemen. He must be, if found guilty at all, found guilty beyond every reasonable doubt, and if the People have established to your satisfaction that he was careless in the management of that car and culpably careless in the management of that car and you are satisfied to a moral certainty that the People have so established, then it is your duty to find a verdict of guilty; otherwise a verdict of not guilty.

MR. HEINZELMAN: Further I ask your Honor to charge the jury that while the law requires that the defendant is to use care to the end that persons upon the track may not be injured it also requires such persons to exercise an equal amount of care to prevent their being injured.

THE COURT: I charge you, gentlemen, that even though this deceased heard the bell and did not act upon the signal, that this defendant would not be justified in running him down, and if he did run him down then he was guilty of culpable negligence within the law.

MR. HEINZELMAN: I ask your Honor to charge the jury as I have requested.

THE COURT: I decline to charge as requested.
Exception.

MR. HEINZELMAN: I ask your Honor to charge that if the jury believe that the evidence upon any essential point in the case admits of the slightest doubt consistent

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with reason the prisoner is entitled to the benefit of that doubt and should be acquitted.

THE COURT: I have so charged already and I will charge so again.

MR. HEINZELMAN: I ask your Honor to charge the jury that if the circumstances testified to could exist and the defendant could still consistently with reason be believed innocent, he may be acquitted.

THE COURT: I so charge.

MR. HEINZELMAN: I ask your Honor to charge that if the conduct of the defendant at or immediately prior to the time of the occurrence is susceptible of two opposite explanations, one that of culpable negligence and the other not culpable negligence, in such an event the jury is bound to render the verdict most favorable to the defendant.

THE COURT: I so charge you, gentlemen. I thought I had already charged that but I charge it again.

MR. HEINZELMAN: I thank your Honor.

(The jury returned a verdict of guilty with a strong recommendation to the mercy of the Court).

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