

START

979

CASE

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	<u>DIRECT</u>	<u>CROSS</u>	<u>RE-D.</u>	<u>RE-C.</u>
George F. Lyon	23	25		
Charles S. Allen	26			
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Charge 417

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COURT OF GENERAL SESSIONS OF THE PEACE,
City and County of New York, Part IV.

-----X
THE PEOPLE OF THE STATE OF NEW YORK,

vs.

JAMES A. HOWARD, Impleaded with
JOHN F. BANNON.

Before:
HON. OTTO A. ROBALSKY, J.,
and a Jury.

-----X
New York, March 30, 1909.

Indicted for Subornation of Perjury.

Indictment filed March 10, 1909.

A p p e a r a n c e s :

For the People:

ASST. DISTRICT ATTORNEY ISIDORE J. KRESSEL,

For the Defendant:

MESSRS. WILLARD G. STANTON, FRANKLIN GREER and
CHARLES A. STUDIN.

James E. Lynch,
Official Stenographer.

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MR. GREER: If your Honor please, we renew the motion that we made yesterday morning, and particularly that on which we claim that the case is improperly upon the calendar. I would like to argue that at some length.

THE COURT: No, I shall not hear any more argument in the matter. I rendered my decision yesterday, and I do not propose to have it again discussed this morning.

MR. GREER: Well, that is the reason why I hesitated to begin, but we wish to renew the motion this morning?

THE COURT: Yes, motion denied.

MR. GREER: If your Honor please, I will note an exception.

MR. KRESEL: May it be noted, if your Honor please, on the record, that the indictment which the District Attorney moves for trial is the one numbered 71,321?

MR. GREER: If your Honor please, I wish it noted on the minutes at this time that the defendant objects to trial of this case at this Term, and to-day, for the reason that it is improperly on the calendar and there being no such indictment as the People against James A. Howard, but that we are here in answer to an indictment headed or entitled, "The People of the State of New York against James A. Howard and John F. Bannon", and as that case is not on the calendar, we object to the trial of James A. Howard at this time.

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MR. KRESK: Well, that is the third time we have had this motion made. May we take it for granted now that it will not be repeated again?

THE COURT: I overrule your objection.

MR. GREER: And we take an exception, and I wish also to renew a motion made on a former occasion and ask for an adjournment, for the reason that the defendant has not had time to seek your counsel with whom he has been negotiating, and has been attempting to retain, as those whom he sought to obtain had engagements taking their immediate attention, and could not go into the trial at this time, and hence it has been impossible for the defendant to retain such counsel, and to complete the motion, I would add the names of Martin W. Littleton and Stephen C. Baldwin, as being those whom this defendant has been unable to retain, because of the case being forced upon trial at this Term.

THE COURT: There is no affidavit from either gentleman that he has been retained as counsel, or that either gentleman contemplated being connected with this case.

MR. GREER: I take an exception.

(A jury was then duly examined and sworn).

THE COURT: Gentlemen of the Jury, do not discuss this case among yourselves, nor permit any person to talk

with you about it, nor form nor express any opinion as to the guilt or innocence of the defendant, until the case shall have been finally submitted to you.

We will take an adjournment until 10:30 o'clock to-morrow.

(The further trial of the case was thereupon adjourned until Wednesday, March 31st, 1909, at 10:30 o'clock A.M.)

New York, March 31, 1909.

TRIAL RESUMED.

Asst. District Attorney Isidore J. Kresel opened the case on behalf of the People as follows:

May it please the Court, Mr. Foreman, and Gentlemen of the Jury: It is not a very pleasant task for a person in my position to prosecute a member of my own profession, and it has not been with a great deal of pleasure that I have taken up the task, I assure you. Much more unpleasant is it, that the crime with which this particular member of my profession is charged, is the crime of subornation of perjury, which, in its very nature, attacks justice at its very foundation.

I say this, gentlemen, rather as an explanation, than as an oratorical opening, of what few remarks I have to say to you, so that, as we go along in this case, which

promises to be a bit lengthy, you will bear with me, and bear with my learned opponents, as we travel through it, and give us the very best attention which you can give us.

Now, subornation of perjury, as defined by the Penal law, and as defined when this indictment was filed by the Penal Code, is, the wilful procurement by one person of another person to commit the crime of perjury. It therefore becomes necessary to learn what constitutes the crime of perjury. Under the Penal Code, when this indictment was filed, and under the Penal Law, as it is now called, perjury is the wilful swearing by one person to some material fact, when that person knows that what he is swearing to is false. And so the Grand Jury have charged that this defendant, James A. Howard, in the month of October, 1908, wilfully procured one Michael A. Sullivan to give false testimony in a certain case.

The case wherein Sullivan was to give the false testimony was entitled "Bridget Corrigan as administratrix of the goods, chattels and credits of one James Corrigan, against Adrian H. Joline and Douglas Robinson, as receivers of the New York City Railway Company."

Now, that action grew out of the following state of facts: On the 17th of May, 1908, one James Corrigan, while crossing Second avenue going east, from the west side of Second avenue to the east side of Second avenue,

was struck by a north bound Second avenue car and killed.

I wish you would bear in mind the dates. That was in May, 1908, the 17th of May, on a Sunday morning.

Now, you are men of experience and you know that the first thing a person does when a thing like that happens, the survivors of the person, they immediately see if they can recover any damages, very naturally, and shortly thereafter, we find that Mrs. Corrigan, as administratrix of her husband's estate, files an action, by James A. Howard, this defendant, as her attorney, to recover from the receivers of the New York City Railway, I think it was \$25,000, for the death of her husband.

At the time when this accident happened, one Michael A. Sullivan was standing on the north-west corner of 81st street and Second avenue. This accident happened at 81st street and Second avenue. Sullivan saw part of what had occurred. In fact, he was one of the men who took the body of Corrigan from under the car.

On the 20th of May, three days after this accident happened, Sullivan made voluntarily a statement to the New York City Railway, of what he knew of the accident. On the 28th day of May, the Coroner of this county held an inquest to find out the cause of death of James Corrigan, and at that inquest, Michael A. Sullivan appeared as a witness, and was sworn and testified and gave his version of

what he had seen of the accident.

Now, without attempting to point out to you the main points of what Sullivan said in his voluntary statement to the company, and in his testimony before the Coroner, it will suffice to say that the testimony, and those statements did not show that the company was in any way liable for the occurrence to Corrigan.

MR. GREER: I object to that statement of the District Attorney, as it is stating a positive conclusion of law, and something that is absolutely not in issue.

THE COURT: Read it.

(The stenographer repeats).

MR. KRESSEL: It is certainly in issue, because if the testimony given by Sullivan was not material, then there was no perjury.

THE COURT: Well, of course, the statement as presented by you does necessarily state a conclusion.

MR. KRESSEL: Not at all, if your Honor please. The jury is not bound by any conclusions of law that I may state.

THE COURT: No, it is a conclusion of fact, as well as a conclusion of law, that they were not liable. Are you going to show in this case, that, according to the testimony given by this witness originally, it will tend to show that the company was free from contributory neglig-

ence?

MR. KRESEL: Certainly, sir.

THE COURT: Well, you may state to the jury the facts tending to support that proof.

MR. GREER: Will your Honor hear me a moment on that? This trial is not to determine whether the Railway Company was negligent or whether the deceased was in any way --

THE COURT (Interposing): You fail to apprehend the point made by the District Attorney, Mr. Greer. In order to show that the testimony given was material to the inquiry, in the action instituted and tried in the Supreme Court, and that the defendant wilfully induced another to commit perjury, it will be necessary for the People to show the circumstances concerning that case.

MR. GREER: But, if your Honor please, the District Attorney may not show that --

THE COURT: (Interposing): The testimony will have to be material, and unless it is material, why, there is no case.

MR. KRESEL: There is no perjury.

THE COURT: There is no perjury.

MR. KRESEL: And therefore there can be no subornation of perjury.

THE COURT: I overrule your objection.

MR. GREER: I take an exception.

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MR. KRESSEL(Continuing): Now, gentlemen, you must not mind these interruptions. I suppose they are necessary. I want to go back to what I said. Now, for instance, in the case against the company, it was material to show that this man, James Corrigan, as he was crossing the avenue, looked to see whether a car was approaching, and it was material to show how far away that car was from the place where it finally struck Corrigan, when he started to cross the avenue, because if it was quite a distance away, and it struck him as he was crossing, it must have gone at a terrific pace; and it was material to show, when Corrigan was about to cross over the track on which the car was moving, how far that car was away, when he started to cross. If it was near to him, then he should not have started to cross; it wa contributory negligence on his part. If it was very far away from him, and it struck him just as he was coming, it must have gone at a terrific pace.

All those facts were material.

Now, in his statement, voluntarily given by him in his own handwriting to the company, Sullivan said, for instance, as to the man looking to see whether a car was approaching, that he could not say whether Corrigan looked to see where the car was.

MR. GREER: I object to reading this testimony at

this time, because there is nothing to indicate that the defendant knew or had anything to do with the giving of that statement.

MR. KRESEL: I am not reading any testimony. If your Honor will look at page 3 of the indictment, at the top of the page, your Honor will see what it sets forth.

THE COURT: I overrule the objection.

MR. GREER: I take an exception.

MR. KRESEL (Continuing): Sullivan said in his statement given to the company, that he could not say whether, when Corrigan was crossing the avenue, he looked to see whether the car was approaching. In that statement, when he was asked how far the car was away when Corrigan just left the west curb of Second avenue, Sullivan said he could not say. When Sullivan was asked in that statement to say what position Corrigan occupied with reference to the north bound track, where the car struck him, when the car did strike him, he said that just as Corrigan was about putting his foot on the west rail of the northbound track, he was struck.

Another thing it was material to show, how far this car, after it did strike Corrigan, how far it went, because, if it went a great distance, you could see for yourselves that the car must have gone at a great rate of speed. On the other hand, if it was stopped within a short dis-

tance, it would show that the car did not go at a great pace. So that, in that statement, Sullivan said that the car went, after it struck Corrigan, 15 feet. Another thing it was material to show, what part of the car struck Corrigan. If it was the centre of the front of the car then it showed that Corrigan was right in the middle of the track when he was struck. If it was the right hand corner of the dashboard, which would be the easterly, then it would show that he was almost across the track when he was struck. On the other hand, if it was the left side of the dashboard, it would show that Corrigan had not gotten on the track yet, but had just put one foot there; and so Sullivan was asked in the statement, what part of the car struck Corrigan, and Sullivan said it was the front dashboard, on the left side.

Now, that was on the 20th of May, 1908, three days after the accident. On the 28th of May, the Coroner held his inquest, and along come Sullivan to testify. Sullivan said in his testimony there, that when Corrigan reached the northbound track, which was the track on which he was struck, the car was about 10 to 15 feet away from him, and further said it was very close to him, which was about the same thing that he had said in his statement. When he was asked how far the car dragged Corrigan, in other words, how far it had proceeded after it struck him, he

said before the Coroner that it went six or eight feet. When he was asked what part of the dashboard struck him, he said the north-west side of the dashboard; exactly what he had said in his statement; and when he was asked the position of Corrigan with respect to the track when he was hit, he said that he had just one foot on the track; exactly what he had said in his statement.

Now, the action brought by Mrs. Corrigan against the New York City Railway, through Mr. Howard, was commenced by the service of a summons and complaint on the 15th of June, 1908, about, well, just about a month after the accident had occurred.

On the 23rd of October, 1908, that action came on to be tried in the Supreme Court before Mr. Justice Goff and a jury. Mr. Howard, the defendant, appeared as attorney, and a gentleman, another lawyer named Fishel, appeared with him, and the receivers of the Railway Company were represented, I think, by Mr. Wellman, Francis W. Wellman.

Michael A. Sullivan appeared as a witness. Michael A. Sullivan was put on the stand as a witness by Mr. Howard on behalf of the plaintiff. Michael A. Sullivan testified in that action, that he saw Corrigan as he was walking along the avenue, about to cross, that he looked down to see whether a car was approaching --

THE COURT (Interposing): Who looked down, Corrigan?

MR. KRESEL: Corrigan. Michael A. Sullivan testified that when Corrigan left the west curb of Second avenue, the car was then three-quarters of a block away, where, in his statement, he had said that he could not say how far it was away. On the trial, Michael A. Sullivan said that when Corrigan reached the north-bound track, the car was then fifty feet away, while, in his statement and before the Coroner, he said the car was between 10 and 15 feet away. On the trial before Judge Goff, he said that after hitting Corrigan, the car proceeded a car and a half length, or 75 feet, while, in his statement and before the Coroner, he said that it proceeded 15 feet, or 6 to 8 feet, or 10 feet. On the trial before Judge Goff, he said that the part of the car that hit Corrigan was the centre of the bumper, meaning that semi-circular iron part in front of the dashboard, the centre of the bumper, while, in his statement and before the Coroner, he said that it was the north-west corner, or the left end of the car that struck him; and before Judge Goff he said that when the car struck Corrigan, he was in the middle of the track, the northbound track, while, in his statement and before the Coroner, he said that Corrigan had just about put one foot on that track when he was struck.

Now, those discrepancies in the statements under

oath by Mr. Sullivan were taken up seriatim by the learned counsel who then represented the receivers, and were brought out in evidence. Sullivan was asked how he reconciled this statement with the other statement. The case went to the jury. The jury returned a verdict for the plaintiff for, I think, \$10,000, perhaps a little more. The receivers made a motion before Judge Goff to set that verdict aside, and Judge Goff did set it aside. The matter then came to the attention of the District Attorney, and an investigation was instituted to find out how Mr. Sullivan came to change these very material statements. As a result of that investigation, Mr. Sullivan was indicted, charged with the crime of perjury. Further investigation showed that, on the Sunday before the trial before Judge Goff was commenced, Mr. Howard, the defendant here, a man named Harry Merter, who, as I understand it is claimed, was associated with the defendant, -- well, we will perhaps see what the association was between them -- a brother of Merter, and a man named John F. Bannon who was also associated with the defendant Howard, went up to the house of Mrs. Corrigan to see the witnesses, and at Mrs. Corrigan's house they saw Michael A. Sullivan.

Now, that was before the trial, about a week or eight days, I think, before the trial. When Sullivan came in there, Howard said to him, "Now, Mr. Sullivan, I want

you to tell me what you know about this case of Corrigan." Sullivan said he did not want to talk. "Well", says Howard, "what's the matter, why don't you want to tell me?" "Well", says Sullivan, "what am I going to get out of this?" Howard said, "Why, I thought you had made your arrangements with Mrs. Corrigan." "No," says Sullivan, "I have not made any arrangements." "Well," said Howard, "if we win, the case, you will be taken care of."

THE COURT (interposing): "You will be paid" what?

MR. KRESEL: "You will be taken care of." So Sullivan said "All right, I will tell you what I know about the case," Then he went on to tell Howard exactly what he had testified to before the coroner, and what he had stated in this statement given to the receivers. Howard said to Sullivan, "Now, when Corrigan left the west curb of Second avenue, how far was the car away from him then?"

THE COURT: When Corrigan left the west what?

MR. KRESEL: The west curb of Second avenue, "How far was the car away from him?" Sullivan said, "Oh, about 25 feet." "Oh, no," says Howard, "that won't do; we can't win the case that way. You have got to say that the car was away at least three-quarters of a block, because if the car was only 25 feet away when he started to cross the avenue, he should not have tried to cross until that car had passed. On the other hand, if it was

RECORD



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three-quarters of a block away, he would have reason to believe that if the car was going at the regular rate of speed, he might cross the avenue long before that car reached him." "And so," says Howard, "it won't do, we cannot win the case by your saying 25 feet. You have got to say it was three-quarters of a block." Then said Howard to Sullivan, "When Corrigan reached the west rail of the northbound track, how far was the car away from him then?" "Well," said Sullivan, "I don't know exactly, but I think it was about 15 feet away from him." "No," said Howard, "that won't do, that won't do. You have got to say it was at least 50 feet away from him, because it does not take long for a man to walk from the west curb to the westerly rail of the northbound track, and the car, if it was three-quarters of a block away when he started to walk, could not have been a less distance than about 50 feet away when he reached that track."

So he says, "You have got to say it was 50 feet away." He then said, "Well, did Corrigan look, as if, when he was walking across, to see whether a car was approaching?" "No," says Sullivan, "I can't say that he did." "Well," you have got to say that he did, because if he did not, we cannot win this case." Then he said "How far did the car travel after it struck Corrigan?" "Why", said Sullivan, "it traveled about 10 feet, 10 or 15 feet."

He said, "No, you must not say that, and you must not put it in feet either; say it was about a car and a half length," he says, "it will look better if you put it in those words, a car and a half length, instead of putting it in feet, but if you are pressed, as to how many feet, say about 75 feet." "Oh," said Sullivan, "how the deuce am I going to reconcile what you want me to say here with what I have already said under oath, and in the statement that I gave to Mr. Driscoll?" "Well," says Howard, "there are two ways. First, say that you have racked your brain and that your recollection is now better than it was at that time; second, say that you have gone over the ground, you have been over to 81st street where this accident happened, and you have looked it over and you have come to the conclusion that the distances are different from what you said at that time," and he said, "If, on cross-examination, you are up against it, you are cornered, just take refuge in saying, and stand by it, that you are now testifying to the best of your recollection." And, gentlemen, when the testimony of Sullivan in that trial is read to you, you will see how faithful he was to the instruction given to him. Whenever he was cornered upon cross-examination, as to how he reconciled his statement that he had made under oath before the Coroner, with what he was then testifying, why, he repeated in so many words,

"I am now testifying to the best of my recollection," and you could not budge him an inch from that.

Well, that, as I said to you, was the Sunday morning before the trial commenced. You know, down in the Supreme Court, a case is not tried the first time it gets on the calendar. This case of Corrigan was no exception to the rule. The case was on the calendar for a week before it was reached. During that week, Mr. Sullivan was in constant attendance at 215 Second avenue, which was the office of James A. Howard.

Then, two or three days before Sullivan was actually put on the stand to testify, Mr. Howard went over the facts with Mr. Sullivan at his office at 215 Second avenue; and, by the way, I forgot to mention that on this occasion, Sunday morning, in Mrs. Corrigan's house, as Howard was instructing Sullivan what to say, he drew a rough diagram of the tracks and the distances at which the car was supposed to have been at these various instances. That diagram was subsequently given by Mr. Howard to a clerk of his named Brown, and he being somewhat of a draughtsman, revised it and made a nicer diagram, putting down the distances that the car was supposed to be from where it struck Corrigan, at the time when he left the west curb, at the time when he reached the southbound track, and at the time when he reached the northbound track, and so on, and that diagram was used on the trial before Judge Goff. But, about two or three days before Sullivan was put on the stand, Sullivan was drilled up in 215 Second avenue, and there they went over the same thing, "You must not say this," and "You ~~must~~ have to say this," and "You must not under any circumstances say it was 75 feet; you must say a car and a half length," and they went over the ground.

Sullivan was indicted, I think, in January of this year, and got out on bail very shortly thereafter. further investigation to find out how Sullivan came to make these contradictory statements develop the facts as I have related them to you, up to the present time. Evidence was brought to the attention of the District Attorney that this drilling has been done at Second avenue, and had been done at Mrs. Corrigan's house.

The matter was laid before the Grand Jury, and an indictment, two indictments were filed against the defendant Howard, joining with him as co-defendant one John F. Bannon.

It was not long after Bannon's arrest on these indictments, that Mr. Bannon came in to the District Attorney and said that he was willing to make a clean breast of his participation in this crime.

I shall call Mr. Bannon as a witness for the People, and he will tell you his story. He will tell you that he was present at Mrs. Corrigan's house on this Sunday morning, that he heard the instructions given by Mr. Howard to Sullivan, that he participated in the giving of those instructions, that he assisted Howard both in the preparation and at the trial of the case.

Now, I shall also call Sullivan because, after Bannon confessed, and after Howard's arrest, Sullivan came

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in and has made statements to the District Attorney, freely confessing that he has committed the crime of perjury, that he was suborned to commit this crime by the defendant Howard. He told what he was to get for it, and told exactly how it came about that he did this.

Now, each of you was asked before you were accepted as a juror, whether, in case a witness should be called who should confess that he had committed a crime, whether you would put faith and credit in what testimony that witness gave.

THE TENTH JUROR: I was not asked that.

MR. KRESEL: Well, that was perhaps an oversight on the part of my learned friend, but I want to say this, gentlemen, that whatever your personal opinions may be, and of course you will follow the instructions of the learned Court on the law, but I say to you that I shall not ask any of you to believe a word of what Michael A. Sullivan, or what John F. Bannon may say on this witness stand, unless I shall corroborate what they say by other testimony; and you may take me at my word on that. But, if, when I come to sum up this case to you, if it should go to you, gentlemen, there remains in your mind any doubt as to whether, on any material fact, I have not corroborated Sullivan or Bannon or any other witness that I may call, who has previously been convicted of

crime or now confesses, why, you may take me up on it and rake me over the coals. But, gentlemen, if I prove the facts that I have outlined, if I prove to you that this man James A. Howard, a member of the legal profession in this county, a man admitted to practice in the courts of this state, did wilfully and deliberately procure and induce this man Sullivan to go down there, and, before a Court and jury, take his solemn oath to tell the truth, and then tell these deliberate falsehoods, then I think you must agree with me that James A. Howard will deserve the condemnation that any right-minded man would pronounce on him; and, as we go along, gentlemen, do not sit there taking everything in that you hear and give no sign that you are paying attention, but ask questions. That is what you are there for. You are there to learn the facts. Now, do not be bashful in coming forward, but ask questions if you want to know anything, ask; it is your duty; it is your prerogative, and it is my business to help you.

Now, with that understanding, I shall call my first witness.

The suggestion is made on behalf of the defendant that the witnesses in this case be excluded, and to that I have no objection.

THE COURT: Well, let them retire to the jury-room.

MR. KRESEL: Of course, there are two witnesses here, the court clerk and the stenographer, I do not think you have any objection to their remaining?

MR. GREER: No.

MR. KRESEL: If your Honor please, I offer in evidence the original summons and complaint in the case of Bridget Corrigan, as administratrix of the goods, chattels and credits of James Corrigan, deceased, plaintiff, against Adrian H. Joline and Douglass Robinson, as receivers of the New York City Railway Company, defendants.

(No objection. Marked People's Exhibit 1).

MR. KRESEL: I also offer in evidence the original answer to this summons and complaint, a copy of which was served on the defendant James A. Howard, as attorney for the plaintiff, on the 1st day of July, 1908.

(No objection. Marked People's Exhibit 2 in evidence).

MR. KRESEL: It is conceded on behalf of the defendant that the summons and complaint in this action was served on the receivers of the New York City Railway Company on the 15th day of June, 1908, and the copy of the answer was served on the defendant as attorney, on the 1st day of July, 1908.

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G E O R G E F. L Y O N, being called as a witness on behalf of the People, and having duly affirmed, testified as follows:

DIRECT EXAMINATION BY MR. KRESEL:

Q Mr. Lyon, on the 23rd of October, 1908, and for some time prior thereto, were you the clerk of Trial Term, Part IV of the Supreme Court of New York County? A I was.

Q And are you now the clerk of that court? A I am.

Q Were you in Trial Term, Part IV, of the Supreme Court, New York County, on the 23rd of October, 1908, when the case of Bridget Corrigan as administratrix of the goods, chattels and credits of James Corrigan, deceased, against Adrian H. Joline and Douglass Robinson, as receivers of the New York City Railway Company, came on for trial? A I was.

Q Who was presiding in that court on that day?

A Judge John W. Goff.

BY THE COURT:

Q Justice? A Justice, I beg your pardon, yes, sir.

BY MR. KRESEL:

Q And do you know John W. Goff to be a Justice of the Supreme Court, New York County? A I do.

Q And was such Justice on that day? A He was.

Q And was that action tried before a Court and jury?

A It was tried before a Court and jury on the 23rd of October, and finished on the 26th, the following Monday.

Q Started on a Friday? A Started on Friday afternoon, or about noon, or in the morning, just before noon, and was finished on Monday, October 26th.

Q Now, on the 23rd of October, 1908, was one Michael A. Sullivan called as a witness for the plaintiff in that action?

A He was the second witness called.

Q He was called for the plaintiff? A Called for the plaintiff, yes.

Q And before Sullivan gave any testimony, was he sworn?

A He was duly sworn.

Q Will you repeat the oath that was administered by the Court to Michael A. Sullivan on that trial? A "You solemnly swear that the evidence you shall give to the Court and jury in this issue joined between Bridget Sullivan" --

Q Bridge Corrigan, you mean? A Yes, "Administratrix, plaintiff, against Adrian H. Joline and another, Receivers, defendants" -- I am a little mixed up -- "You solemnly swear that the evidence you shall give to the Court and jury in this issue joined between Bridget Corrigan, Administratrix, against Adrian H. Joline and another, Receivers, defendant, shall be the truth, the whole truth and nothing but the truth, so help you God".

Q And at that time did Micheel A. Sullivan, when the oath was being administered, raise his right hand? A No, sir, they swore him by the Book.

Q Swore him on the Bible? A Yes, sir.

Q And the oath being so administered to him, did the said Michael A. Sullivan say that he would tell the truth, the whole truth and nothing but the truth? A Yes, sir.

Q And thereafter, was he examined? A Yes.

Q And gave certain testimony? A Yes, sir.

CROSS EXAMINATION BY MR. GREER:

Q Who was the trial counsel for the plaintiff in that case? A James A. Howard was counsel of record, but there was an attorney who conducted the case as counsel. I don't know who that was.

Q Does that appear on your record? A I have not his name here, no.

MR. KRESEL: There will be no question about that? I think it was a Mr. Fishel?

THE WITNESS: Yes, it was Mr. Fishel.

MR. STUDIN: Mr. Fishel actually tried the case.

BY MR. KRESEL:

Q Well, there was a Mr. Fishel actually tried the case for Mr. Howard? A Yes.

Q You know Mr. Howard, this defendant? A Yes.

Q He was there present at the time the case was actually tried? A Yes, he sat behind Mr. Fishel. We are only required to put the name of the attorney of record in.

Q I understand that, Mr. Lyon, that is all.

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C H A R L E S S. A L L E N, being called and duly sworn
as a witness on behalf of the People, testified as fol-
lows:

DIRECT EXAMINATION BY MR. KRESEL:

Q Mr. Allen, are you one of the official stenographers
attached to the Supreme Court, New York County? A No, Mr.
Kresel. I acted for the official stenographer there.

Q You were what? A A substitute.

Q A substitute? A Yes.

Q And on the 23rd of October, 1908, were you taking the
minutes of the proceedings at the Trial Term, part IV, of
the Supreme Court, New York County? A I was.

Q And where was it that you were taking the minutes, in
the County Court House? A In the County Court House.

Q That is situated in the County of New York? A Yes.

Q Did you take the minutes of the trial wherein Bridget
Corrigan, as Administratrix, etc., was plaintiff, and Adrian
H. Joline and Douglass Robinson as Receivers, were defendants?

A I did.

Q And did you take those minutes in stenographic form?

A I did.

Q And thereafter did you transcribe those minutes in
typewriting? A Yes, I dictated them to the graphophone and
had them transcribed.

Q Into the graphophone and then they were transcribed?

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A Yes.

Q Now, this action was tried before Mr. Justice Goff and a jury, is that correct? A Yes.

Q And did one Michael A. Sullivan appear as a witness?

A He did.

Q And did you take a stenographic record of the testimony given by Michael A. Sullivan at that time? A I did.

Q Now, will you please turn to your record and read to this jury, if you will, the testimony on the direct that was given by Mr. Sullivan? A Shall I read the whole of it?

Q If you will, please. It is not long. Well, perhaps it would be better, if there is no objection, that I read from the transcript, and you follow me on your notes, and if there is any correction you call my attention to it.

MR. KRESEL: Is there any objection to that?

MR. STUDIN: Unless the stenographer will have any difficulty in reading, I would prefer --

THE WITNESS: The only thing is there are about 45 pages and it will take me an hour and a half to read it.

BY MR. KRESEL:

Q Well, go ahead and read it. A (Reading) "Michael A. Sullivan, called as a witness on behalf of the plaintiff and sworn, testified on direct examination, by Mr. Fishel" -- he was first asked by the court officer, "Where do you reside? A. 208 and 210 East 82nd street." "By Mr. Fishel:

"Q Where do you reside? A 208 and 210 East 82nd street, a double house."

THE COURT: Gentlemen, I have a suggestion to make to you. Is it really necessary to have the entire testimony of the witness read? Why not read such parts of the testimony as you claim are the basis of the perjury?

MR. KRESEL: If your Honor please, I have read over this testimony last night, and I have marked out portions which I desire to have read, and which I deem to be material, and I deem the entire direct examination to be material. Therefore, I desire to have it read.

THE COURT: Well then, let him proceed.

MR. STUDIN: We are perfectly willing, if your honor would prefer --

THE COURT: Of course, if you read the direct, they are entitled to the cross.

MR. STUDIN: We are willing, in order to save time, to concede that the transcript as given, as we have it, is correct, and have it marked in evidence, if you want.

MR. KRESEL: Well, I have not seen your transcript.

MR. STUDIN: Well, ask the stenographer whether this is correct.

BY MR. KRESEL:

Q You have seen my transcript, haven't you, Mr. Allen?

A Yes.

Q Is that a correct transcript? A Yes.

MR. KRESEL: Is there any other objection?

MR. STUDIN: I think not, subject to correction, we will mark it all in evidence.

MR. KRESEL: Then I offer in evidence so much of the minutes of the case of Bridget Corrigan against Joline and Robinson, tried in the Supreme Court, New York County, on the 23rd of October, 1908, as comprises the testimony of the witness Michael A. Sullivan.

THE COURT: As to what?

MR. KRESEL: As comprises, I said.

THE COURT: Oh, as comprising.

(No objection. Marked in evidence: People's Exhibit 3).

MR. KRESEL: There is in this second volume, one page, as we will call it, that goes in as well. You will find it at page 163. We will mark that too.

(Marked People's Exhibit 4).

MR. KRESEL: That will be all, Mr. Allen.

MR. STUDIN: Just one moment. I would like to have the balance of the entire testimony marked for identification.

THE COURT: If you want to offer it in evidence, yes, I think the suggestion is well taken.

MR. KRESEL: In other words then, it is correct that all the other testimony comprising these two People's Exhibits 3 and 4, other than the testimony of Michael A. Sullivan, is marked for identification.

THE COURT: Yes, as a correct transcript of the stenographer's original notes.

MR. KRESEL: Yes, sir, that it is a correct transcript.

MR. KRESEL: (Reading) "Michael A. Sullivan, testified as follows: "Q Where do you reside? A 208 and 210 East 82nd street, a double house. Q What is your business? A I am employed in the water Department, the Department of Water Supply, Gas and Electricity. Q Were you so employed there last May, on the 17th? A Not at that time. Q You are now? A Yes, sir. Q Have you any badge or anything to indicate that? A Yes, an inspector's badge (displaying a badge). Q On the 17th day of May last at about half past eleven, were you in the vicinity of 81st street and Second avenue? A Yes, sir. Q Did you see an accident which happened there? A Yes, sir. Q Did you know who was the victim or who was injured in the accident? A Not at that time. Q You have known since? A Found out since. Q Where were you standing when the accident happened? A At the northwest corner of 81st street.

Q And Second avenue? A And Second avenue. Q The northwest corner? A Yes, sir. Q Do you remember the party who was injured passing by you? A Yes, sir. Q Just tell the Court and jury what you saw him do, if anything, as he passed by you? A Well, I was standing on the northwest corner of 81st street and Second avenue with a gentleman friend of mine, a Mr. Monahan, a friend of mine, and this man -- I found out his name afterwards to be James Corrigan -- he passed by us and walked over as far as the track, looked down and he walked to the next track, apparently looking down again, switched his head in that way (indicating). Q You saw him turn his head in that direction? A In that direction and the first thing I saw him the car hit him about the centre of the north bound track".

MR. KRESEL: Is it necessary to put in counsel's remarks? They are very interesting but not material.

MR. GREER: No.

MR. KRESEL: (Continuing reading) "Q Are you able to tell us when Mr. Corrigan passed you or when he stepped off the curb into the street - did you see any car at that time? A There was a car coming up the block, a north bound car, I should say about three quarters of a block. Q Down toward 80th street? A Yes, sir. Q Did you see Mr. Corrigan then cross over?"

MR. KRESEL: That was objected to.

MR. KRESEL: (Continuing reading) "Q Just tell us whereabouts was the car when he stepped on the track, whereabouts was the car at the time? A I should say about up three parts of the block. Q Can you put it in feet at all? A Three parts of 200 feet, I guess.

Q I am speaking about the track on which he was injured; I want to know when he stepped on that track whereabouts was this car coming north then -- how far away from him?

A To the best of my knowledge it would be about 50 feet away from him then. Q Did you observe the motorman on

that car? A Yes, yes, yes. Q Just tell us whether or not you saw him -- what did he did --"

MR. KRESEL: It says "What did he did". I suppose it should be "What did he do?" (Continuing reading)

"Q Just tell us whether or not you saw him -- what did he do about stopping the car before Mr. Corrigan was

hit? A Well, when he hit Mr. Corrigan the man was looking in an easterly direction. Q The motorman? A Yes,

sir. Q Did you see him doing anything with the brakes? A When he saw that he had the man hit he done

his best, I guess, to stop the car. Q How far did the car proceed northerly after the man was hit? A North-

ward? Q Yes, uptown? A Well, I should say about a car and a half's length. Q Did you hear any bell

sounded? A No, sir. Q Was there any sounded to the best of your knowledge, on that car? A I did not hear any. Q Were there any other cars or vehicles on that north bound track except this car at the time Mr. Corrigan started to cross it? A I did not see any. Q And you were looking in that direction, were you not? A I was looking in a southeasterly direction. Q After you saw this man hit by the car what did you do? A Well, we took him out from under the car, Monahan and I took him out from under the car. Q Where was the car at that time, above 81st street? A Above of course where he walked over, a car or a car and a half's length. We took him out from under the car and laid him beside the track and got a cover and put it over the man. Q Did you see what part of the car struck Mr. Corrigan? A Yes, sir. Q What part? A The front part of the car, the semi-circular part in front. Q Where did I understand you to say that Mr. Corrigan was on that track when he was hit? A I should say he was about middle ways on it. Q About the middle of the two car tracks? A Yes, sir. Q Did anybody take any statement from you as to this accident? A Yes, sir, the Metropolitan Street Railway Company took a statement from me, one of their claim agents, I guess. Q Were you examined at the Coroner's Inquest in relation to it?

A Yes, sir. Q. When was that, if you remember?

A I don't remember the exact days, it was about a week or ten days, may be more, after his death. MR. FISHEL: That is all."

MR. KRESEL: Now, that comprises his direct examination. Now, we come to the cross.

(Reading) "CROSS EXAMINATION BY MR. WELLMAN:

"Q Is your memory pretty good? A Pretty fair.

Q Pretty fair? A Yes, sir. Q How old are you?

A I am about 34 years old. Q What is your business?

A I explained to the Court before. I am an inspector in the Water Department. Q In the water Department?

A Yes, sir. Q Never had anything to do with a Railroad Company? A Yes, sir. Q What were you in that?

A I have been a railroad clerk all my life. Q Any connection with the surface railroads, the Metropolitan?

A No, sir, I have been with one concern over eight years, the Lehigh Valley Railroad, Pier 2, North River.

Q Then you are accustomed to railroad terms and are pretty accurate in your statements about things you see in connection with railroads? A Well, I was not connected with a surface railroad. The business I was connected with was separate altogether. It is as different as chalk and cheese to street railroads. Q But it gave you the habit of being accurate in your observations?

A To the best of my knowledge I always try to be so.
Q You feel you are pretty accurate -- you say you are a
railroad man and it is not hard for you to place objects
accurately in your mind? A To the best of my knowl-
edge. Q And after having them placed you have got a
pretty good memory and you keep them there? A I try to.
Q Does your memory get better as time goes on or do you
think you remember better at first? A I don't know.
I think what I see first I remember the same thing right
along. Q Your memory has changed pretty materially in
this case, has it not? A I don't think so. Q You
testified before the Coroner? A Yes, sir. Q How
long after the accident? A I don't remember the date.
I have said about --"

THE COURT: (Interposing) Just a moment, the
Coroner's stenographer is here and he is a public official.
Is it necessary for him to be here now?

MR. KRESEL: Mr. Baker need not wait. I will let
him know downstairs. I thought that arrangement had
been made for me to that effect.

MR. KRESEL: (Continuing reading) "Q You testified
before the Coroner? A Yes, sir. Q How long after
the accident? A I don't remember the date. I have
said about ten days or may be two weeks afterwards.
Q What I am trying to get at is whether you think your

memory was better then or has it cleared up as the months have gone by? A That I don't know. Q Has anything happened to clear it up in any way, has anything happened between the time you testified before the Coroner and the present time to clarify the atmosphere, so to speak?

A My memory is just as good now -- Q No, what I asked you was: Has anything happened in the meanwhile to clarify it?

A That I do not know. Q Let me suggest something. You have been around to the plaintiff's lawyer's office how many days? A Once in a while.

Q Don't you remember the story you told the first time you went there -- A I always told the same thing. I saw the man killed. Q You went there from time to time, quite a number of times? A I did not. The past few

days since I have been subpoenaed is the only time I have been to see the lawyer. Q How many times were you there?

A Every day since last Monday. Q Since last Monday?

A Yes, sir. Q And before that? A No, not before that. Q Where is that office? A Somewhere on

Second avenue. Q Don't you know the number? A Second avenue and 13th street, I don't know the exact number, that is what I am meaning to say. Q Do you know Mr.

Bannon? A No, sir. Q Have you never seen him?

A Not to my knowledge. Q Never heard of him? A I know a Mr. Bannon but he is dead now. Q I am speaking about

a live Mr. Bannon? A No, I do not. Q Never saw him?
A To my knowledge I did not.

"MR. WELLMAN: Will you stand up, Mr. Bannon?

(A person seated at plaintiff's counsel's table
arose.)

"THE WITNESS: I did not know that was his name.

"Q Now, how about it? A Oh, yes, I know that
gentleman. I did not know his name was Mr. Bannon.

Q How many times have you talked with him about the
testimony? A I have not talked with him at all. I
have talked with Mr. Howard.

"MR. WELLMAN: Will you stand up, Mr. Howard?

(Another person seated at plaintiff's counsel's
table arose.)"

MR. KRESEL: I suppose it will not be denied it was
the defendant here?

MR. GREER: No.

MR. KRESEL: It is conceded, if your Honor please,
that the person mentioned here and described as "Another
person seated at the plaintiff's counsel's table arose"
was the defendant Howard.

(Continuing reading) "Q, I understand you to say
that, as the man passed you, you were on the crosswalk,
is that right? A I was not on the crosswalk. Q On
the sidewalk? A Yes, that's where I was. Q And be-

fore he stepped off the track, he took the pains to look down and see, apparently to see? A I think he looked down when he stepped off the sidewalk. I didn't say he looked down then. Q Didn't you? A No, sir. Q I have you as saying 'As he passed by me', you said you were on the sidewalk? A That is what I said. Q 'As he passed by me he looked down'? A I want to say as we got towards the track he looked down. Q I know you said that. I have you here as saying he walked toward the track and turned his head again? A No, no.

"MR. WELLMAN: I should like to have that portion of the witness's testimony read.

"(Thereupon the stenographer read the testimony as follows: 'Q Just tell the Court and jury what you saw him do, if anything, as he passed by you? A Well, I was standing on the northwest corner of 81st street and Second avenue with a gentleman friend of mine, a Mr. Monahan, a friend of mine, and this man -- I found out his name afterwards to be James Corrigan -- he passed by us and walked over as far as the track, looked down, and he walked to the next track, apparently looking down again, switched his head in that way (indicating)'. 'Q Then the time he looked down --"

THE COURT: (Interposing) Well, the witness was evidently correct there, and Mr. Wellman was in error.

MR. KRESEL: Evidently.

MR. KRESEL: (Continuing reading) "Q. Then, the time he looked down the first track? A. That is what I testified to. Q. That would be the track going down and then he looked again as he came to the uptown track?

A. Yes, sir, he turned his head that way (illustrating).

Q. It was on the uptown track he was struck? A. Yes,

sir. Q. So you practically saw him look around in the direction of this car twice before he was struck?

A. I don't know whether he looked at that car twice.

Q. Well, in that direction, I say. Now, just look for a minute at this paper which I show you, which appears to have the signature of Michael A. Sullivan on it, and tell me whether or not you are that gentleman (handing paper to witness)? A. (After examining) That is my writing.

Q. Is that whole paper in your handwriting? A. Yes. I made that report to the gentleman who came to my house.

Q. You filled in all the part except which is printed?

A. Yes, sir. Q. When did you write that out and sign it? A. One of your representatives went to my house two or three nights in succession, and the third night I was in and I gave him that statement voluntarily.

Q. You wrote it out in your own handwriting? A. I certainly did. Q. Tell me why you place your answer to

this question (reading) 'Did the person look to see if

the car was approaching before stepping on the track?

And did you write in your own handwriting 'That I cannot say'?

A I might have at the time. Q You see your memory is not any better now than then; how do you reconcile these two statements?

A I reconcile the fact that I was in a hurry that night. I had to make that statement to him. I wanted to go to a meeting that

night and I was in a hurry. Q You were in a hurry when you wrote out all the details on both sides of this paper?

A I wrote as quick as I possibly could.

Q was it true when you wrote 'That I cannot say', that is, in answer to the question whether the person looked to see whether the car was approaching?

A What do you say? Q was that answer that you wrote there 'That I

cannot say' in answer to the question 'Did the person look to see if the car was approaching before stepping on the track', was that answer true then?

A It might have been. Q You cannot say then? A Yes, I could.

Q Well, why don't you say you saw him look twice, once when he got to one track and the second time when he got to the other track?

A I told you I was in a hurry when I made out that statement, when I wrote it. He told me it was a mere statement for the Railroad Company.

Q You have gone into the details here in this statement?

A I answered every question I saw there. Q Do you re-

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call you wrote in the last statement in such a hurry 'I have given all the information I possibly could in the above statement as I can testify it is a true statement'. You wrote that in your own handwriting? A I certainly did. Q It was true at that time that you could not tell? A It may have been. Q What? A It may have been. Q Not what it may have been? A I am testifying to the best of my knowledge right here. Q At that time you could not tell, you could not remember whether he looked or not, is that right? A I am testifying to the best of my knowledge right here. Q Please answer my question. At that time you could not tell when you were preparing a statement of it? A I told you I am testifying to the best of my knowledge right. That's all I know. Q At that time when that question was asked you, when he looked to see whether or not any car was coming -- A (Interrupting) The question was not asked me. Q But you wrote that? A That is different to asking. Q There is a question printed here and against it you have written 'That I cannot tell'. At that time you could not tell? A That I cannot tell you now. Q I am asking you whether you could tell then or not? A I am testifying to the best of my ability, to the best of my recollection. Q Weren't you then writing to the best of your ability. A I might have been. Q You

know whether you were trying to tell the truth or falsify?

A I am trying to tell the truth to this Court to the best of my ability. Q I want to know if you told the truth in this paper to the best of your ability?

A I don't know. Q Tell the jury what you tried to do? A I try to tell the truth all the time. Q Were you trying to give it accurately in this paper? I am not speaking of all the time. I am speaking about when you wrote this paper yourself? A Yes, I wrote the

paper myself. Q Were you trying to tell the truth in every detail? A I don't know but what I was. Q When you admitted at that time that you could not remember whether he looked or not -- A (Interrupting) I told you I am testifying now to the best of my recollection.

Q I am asking you about then? A Any further questions than that I cannot answer. Q Do you decline to tell me whether you could at that time remember whether he looked or not? A All I am testifying is to the best of my ability. Q I am not asking you as to your testimony now. I am away back last May. I say, when that question was asked you or when you were writing the answer on the paper and you said that you could not say, could you say? --

MR. KRESEL: Then there was an objection to the question, and the question was put again.

MR. STUDIN: read the objection.

MR. KRESEL: All right. (Reading) "Mr. Fishel:
I object, if your Honor please, on the ground that this
does not really contradict the witness at all. He has
not testified that the man looked. He says he saw his
head turn in that direction.

"Objection overruled. Exception.

"Q The question is then, when you wrote these words
'That I cannot say', they were true words, and you cannot
say? A I cannot testify now whether they were true
or not. I am testifying to the best of my ability.

Q Can you give us any reason why you now remember that
he looked, assuming that you could not remember whether
he looked then? A Can I give you any reason? Q Yes?

A Nothing has changed my mind on the subject. Q Now,
I understood you to state that he was struck in the middle
between the two rails of the tracks, did you? A As far as
I can remember that is where he was struck. Q Let us

have no misunderstanding. There is one rail and here
is the other rail, five feet apart, about, and he was
struck in the middle between those two rails? A Isn't
there a rail between them? Q There is the middle rail,
where there is a slot? A That is what I am saying.

Q And that is where he was struck? A He had about
taken a step on the track when he was hit. Q Do you

remember this question being printed and your putting
this answer in your own handwriting -- I will read them
to you and then I am going to ask you if you see any
difference between the two -- 'Q How far was the car
away at the time the person stepped on the first rail
of the track?' -- As I understand you to say you say now
it was 50 feet? A Something like that. Q About 50
feet? A Yes. Q Has anything occurred recently
to make you able to fix that distance at about 50 feet?
A No, sir, I said 'about'. May be more, may be
less. How much less than 50 feet, because if it were
49 feet less, that might be interesting? A I say,
about 50 feet. Q You say now 'may be less'. How
much less? A I do not see how it could be much
less. Q About 50 feet? A Yes, sir. Q Will
you tell me what you meant when you answered this ques-
tion which I will read to you 'How far was the car
away at the time the person stepped on ~~the~~ first rail
of track? A As he put his foot forward on track he
got hit by car.'

"MR. FISHER: I object to that as not proper cross-examination, and it does not contradict this witness in the slightest particular. Objection overruled. Exception. Q I will read it to you again, 'How far was the car away at the time the person stepped on first rail of the track?' A As he put his foot forward on track, he got hit by car.' How do you reconcile that statement in your handwriting with your statement here to the jury a moment ago, that it was fifty feet? A My statement is the same as the other. I am testifying to the best of my ability. As far as I remember, the car was a little distance away. Q Not a little distance. We had that all out before. You said it was fifty feet? A What did I say? -- Q (Interrupting) How do you reconcile the statement 'As he put his foot forward on track, he got hit by the car' -- with your statement that it was fifty feet? A He got hit on the track, didn't he? He was not anywhere else when he got hit. Q Is that the explanation you want to give? A That is the best I can give. Q That is the best you can do for that? A (No response). Q Why, if he was fifty feet, didn't you say in answer to this question: 'How far was car away the time the person stepped on first rail of track?' 'About fifty feet away'? A I have told you that I did not pay much attention to that statement.

Q You did not pay much attention to it when you wrote what I have read to you? 'I have given all the information I possibly could in the above statement, as I can testify it is a true statement'? A To the best of my ability, yes, sir, at the time. Q At the time you did the best you could. I have asked you several times why it is you change it now? A I am not changing it. I say, the man was hit on the track. Q This question is 'How far was car away at the time the person stepped on first rail of track', and you say 'As he put his foot forward on track he got hit by car'? A He must have been struck on the track. He couldn't have been struck if he was off it. The car could not have hit him off the track. Q What part of the car struck him? A That semi-circular part of it in front, what is called in railroad terms, the bumper. Q What part of the bumper? A Well, about the center part of it, I guess. Q What? A The center of the bumper. Q And that would bring him right over the slot when he was struck? See what you say here in the next question. You were asked 'How far was the car away at the time the person stepped on first rail of track?' and you replied 'As he put his foot forward on track, he got hit by car'. Now, the next question is 'What part of car struck the person?' and you have written the answer 'The front dashboard on the

left side of the car, the car being north bound?

A That's right, the dashboard or bumper. Q The left side of the car is what you put here (indicating paper)

A Just as he stepped on the track he was struck on the left side of the car. Q On the left side? A The

bumper or dashboard. It is the same thing. Q Just now you were telling us it was the middle of the bumper?

A I say near the middle as possible. It was nearer the middle than the side. Q Why did you write here 'He

was hit just as he stepped on, and it was on the left side of the car'?

A Those are railroad technicalities, I am not on to. Q What, A Those are technicalities that I am not on to. Q Railroad technicalities?

The left side of the dashboard is a railroad technicality? A I said near the center. I say now --

Q Is the left side of the dashboard a railroad technicality? A Which is the dashboard or bumper -- Q I

am talking about the left side as against the middle; is that a technicality, the left side against the middle?

A No, I would not say that it is. Q You know perfectly well if he was struck as he stepped on the track, the car

could not have been fifty feet away? A I am testifying it was fifty feet away. Q And what I am trying

to get at here is, why you did not say so here (indicating paper). Now, tell us, will you? A Well, I have told

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you all I know. Q Why didn't you do it here (holding up a piece of paper) ? A (No response). Q You said to-day

that the car went about a car length and a half ?

A Maybe more and maybe a little less. Q How many feet

would you say that was ? A I couldn't tell you. Q You

have some idea. Perhaps you have not any idea of feet?

A If you tell me what the length of the car was, I can --

Q How many feet was it ? A I testified to a car length

and a half. Q If you can give us a car length and a

half, you must have some idea of feet ? A Well, it

might be 75 feet. Q What ? A 75 feet. Q If you

can give us a car length and a half, you must have some idea

of feet ? A Well, it might be 75 feet. Q What ?

A 75 feet. Q Your memory grows then with time -- mag-

nifies -- distance magnifies with time ? A I don't

know. Q Three feet gets to be fifty feet ? A No.

Q 75 feet ? Let us see what it was when you made this

statement May 20th, 1908, three days after the accident --

three days, wasn't it ? A I don't know, the 17th it

happened on, yes. Q Let us see when you were asked the

question, three days after, what you wrote in your own

handwriting: 'How many feet did the car move after the

person was struck ?' and your answer is 'I should say

fifteen feet, maybe more.' You wrote that, didn't you ?

A After the person was struck ? Q You see the impossi-

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bility of it, if it went 75 feet -- A (Interrupting)
I mean by that, 15 feet -- I meant when the man's head
was caught under the wheels and when it stopped. That is
what I meant. Q You meant that? A Yes. Q You
were asked the question 'Was the person dragged by the
car? If so, how far', and your answer is written 'I
should judge about five to ten feet'. You had answered
that question -- A (Interrupting) That is what I
meant by the whole thing, that his head was dragged. Once
he was caught under the wheel, he was dragged ten or
fifteen feet. Q But you have just answered it 'I
should judge about five to ten feet'? A Yes. Q Then
you were asked the question 'How many feet did the car
move after the person was struck' -- he was struck, you
told us a moment ago, by the northwest part of the dash-
board ' A Yes. Q Now, you were asked 'How many feet
did the car move after the person was struck' and you say
here 'I should say fifteen feet, maybe more'? A That
claim about the car and the feet -- when I testified at
the Coroner's -- Q When did you testify at the
Coroner's inquest, where did you get that? A Where did
I get that? Q Yes. A I did not read that. Q Do
you know what is in them, the minutes of the Coroner's in-
quest? A No, I do not. Q Have you ever seen
the minutes since you testified? A I have never seen

them. Q Let me read you something that is in them. You told us this morning that the car was fifty feet away when this man stepped on the track? A I certainly did. Q Do you recollect whether or not this question was put to you, and did you make this answer: 'Then when he stepped on the rail of the track, he and the car were very close together? Yes, they were.' 'Within a few feet?' 'I should think there might be ten feet between them. That car was going pretty fast --'

A I testified that it was going pretty fast. Q Did you say 'I should think there might be ten feet between them'? A I might have. Q Was it true? A That I don't know. I am testifying now there was fifty feet.

Q Did you say before the Coroner that there was ten feet between them? A I might have said it. Q And if you said it, was it true? A I am testifying now, I told you to the best I know how -- Q Was it true when you said it, if you did say it? A It might have been.

Q Were you asked at the Coroner's, what part of the car hit him, and did you answer 'The dashboard on the northwest side of the car'? A Yes. Q Was that true? A To the best of my knowledge it was. Q Then what you said here was true, wasn't it, that he was struck just as he stepped on the track? A That is not the question you asked me. You are asking me about the dashboard now.

Q Is not what you said here, what I read to you just before recess true? A He was struck on the track.

Q (Reading) 'As he put his foot forward on the track he got hit by car' -- that is true, isn't it? A There was one step taken when you are in the middle of the track--

Q I ask you and I want you to answer yes or no, isn't it true when you wrote here in your own handwriting three days after this accident in answer to the question 'How far was car away at the time the person stepped on first rail of track' and your answer 'As he put his foot forward on track he got hit by car' -- A (Interrupting) He

was in the middle of the track. Q Is it true as I read it to you, as you wrote it? A I am testifying now that he got hit in the middle of the track. Q Is it

true as I read it to you? A I am telling you what I am testifying to now. Q I want an answer yes or no, if

you will give it? A I am testifying -- Q We all know what you are testifying to now. I am calling your attention to what you wrote there, and am asking you if that is true 'As he put his foot forward on track he got hit by car'? A He was in the middle of the track

when he got hit by the car. Q Is that the only answer you can give? A That is my answer. Q Was it true

when you said before the Coroner there was ten feet between him and the car -- A (Interrupting) I am testi-

ying he was fifty feet. Q You are not answering

MR. FISHEL: (Interrupting) I must insist that my friend use the exact language he used at the Coroner's, if he wishes to contradict the witness. Q (Reading) 'Then when he stepped on the first rail of the track he and the car were very close together?' 'Yes, they were'. 'Within a few feet?' 'I should think there might be ten feet between them. And the car was going pretty fast'.

MR. FISHEL: Is that the correct reading? I do not think it read that way before.

MR. WELLMAN: Now, you look over it as I read:

Q (Reading) 'And when he stepped on the first rail of the track, he and the car were very close together?' 'Yes, they were'. 'Within a few feet?' 'I should think there might be ten feet between them. That car was going pretty fast.' Was that true? A It might have been. Q Then there might have been ten feet between them? A I am testifying now there was fifty feet between them. Q Why did you change it from ten to fifty feet? A Because I was not a judge of distance. Q You were not a judge of distance "---

THE COURT: What page of the testimony is that?

MR. KRESSEL: Thirty-six.

MR. KRESSEL (continuing reading) "Q You were not a

judge of distance? A Yes. Q How old are you? A I was told you before I was 34 years old. Q Is that your honest reason for changing that, when you said before the Coroner it was ten feet, and now when you come to think it over, you say it was fifty feet? A My impression was it was fifty feet. Q You thought then it was ten feet, and as you come to think it over you say it is fifty feet? A I am testifying -- Q You either do not understand my question or do not want to answer it -- A I thoroughly understand your question. I am testifying they were fifty feet apart. Q Now, you tell me you thoroughly understood my question? A I certainly do. Q May I have an answer to it? The question is, you then thought when you were before the Coroner, it was ten feet, but coming to think it over, and not being a good judge of distance, you now think it was fifty feet? A I am testifying now there was fifty feet between the man and the car at the time he got on the track and the time -- Q (Interrupting) When you testified to ten feet before the Coroner, did you think it was true then? A Might have been. Q Did you think it was true? A I don't know. Q What is your best impression? A My impression is the car was fifty feet away from the man at the time. Q When you said ten feet before the Coroner, months ago,

did you think it was true ? A It may have been.

Q How many times did you say you have seen the attorney here ? A Four or five times within the last five days, since I have been subpoenaed.

MR. WELLMAN: I offer, if your Honor please, this statement which has been identified by the witness.

MR. FISHEL: No objection."

MR. KRESEL: And if there is no objection, I will offer this statement too.

MR. STUDIN: We object to that statement on the ground that it is incompetent, immaterial and irrelevant. We are not bound in any way by any previous statement that this witness may be claimed to have made.

MR. KRESEL: Well, it may well be that I am offering it out of order.

THE COURT: I think you are.

MR. KRESEL: Because I can certainly offer it at a later stage of the trial, but I thought there would be no objection to it, because it appears now on the record there --

THE COURT: At present it is out of order.

MR. KRESEL: Do you press the objection ?

MR. STUDIN: Well, we do not press it on the ground that it is out of order, but that it is incompetent, immaterial and irrelevant testimony.

MR. KRESEL: It is certainly competent to show what this witness testified to before he got in with the defendant, what he said before.

THE COURT: I think probably you had better offer it at the proper time; but the statement would certainly be competent. It is a declaration made by the witness, as I understand, shortly after the accident?

MR. KRESEL: Three days after the accident.

MR. STUDIN: I do not understand how that is binding upon this defendant, how this defendant is charged with the responsibility for it.

THE COURT: Well, it is claimed by the People --

MR. KRESEL: (Interposing) Well, if I do not prove that the defendant knew about this statement then it is not competent.

MR. STUDIN: Then you withdraw your offer at this time ?

MR. KRESEL: Well, I do not withdraw it, but the learned Court rules that it is now out of order; therefore I cannot introduce it.

Now, we are stopped from that time on. Then they go on and read this statement in evidence. Now, do you want to read the rest, beginning at page 43 ?

MR. STUDIN: Well, we will not at this time.

MR. KRESEL: You will not do it at this time ? All right.

THE COURT: The District Attorney, gentlemen, is obliged to appear before the Grand Jury in a matter in which he has charge, and that occasions a recess until 3 o'clock.

MR. KRESEL: I do not think I shall call another witness now, with your Honor's permission.

If your Honor please, it is conceded on behalf of the defendant that Bridget Corrigan was, prior to the time that the summons and complaint in this action were served, duly appointed administratrix by the Surrogate's Court in this County of the estate of her deceased husband, James Corrigan.

Now, we take an adjournment until 4 o'clock ?

THE COURT: Yes.

Do not discuss this case, gentlemen, among yourselves, nor permit any person to talk with you about it, nor form nor express any opinion regarding the guilt or innocence of the defendant, until the case shall have been finally submitted to you.

Recess until 4 o'clock P.M.

After recess. Trial resumed. (4 P.M.)

THE COURT: Gentlemen, the District Attorney is before the Grand Jury, and there is no telling how long he

will be there. Do not discuss this case among yourselves nor permit any person to talk with you about it, nor form nor express any opinion regarding the guilt or innocence of the defendant, until the case shall have been finally submitted to you.

You may retire outside temporarily, if you wish.

After recess. Trial resumed.

M I C H A E L H E R L I H Y, being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. KRESEL:

Q Mr. Herlihy, what is your business? A Motorman.

Q You must speak louder, these gentlemen have to hear you.

A Motorman.

Q You are a motorman? A Yes.

Q By whom are you employed? A The Second Avenue Railroad Company.

Q Were you employed on the Second Avenue Railroad Company on the 17th of May, 1908? A Yes, sir.

Q Were you operating a car on the 2nd avenue road on that day? A I had a man breaking in on that day with me, under my instructions.

Q You had a man breaking in? A Yes.

Q Who was the man that you were breaking in? A A man by the name of John Lawson.

Q When you say that you had a man breaking in, do you mean a man that you were teaching the business of motorman to?

A That is it.

Q How long had you had him under instructions?

A I had him about seven days.

Q Seven days you had had him yourself? Now, on the morning of that day do you remember being on a car, north bound car, second avenue? A Yes.

Q About what time was it? A It was about 11.45.

Q About 11.45 in the morning? A Yes.

Q Were you on the front platform? A I was.

Q Where was Lawson? A He was operating the car.

Q On the front platform? A On the front platform.

Q As you got near 81st street and 2nd avenue, will you tell the Court and jury what happened? A When I got about the middle of the block between 80th and 81st street, I noticed a downtown car coming South.. It stopped at the downtown corner of 81st street and 2nd avenue.

Q That is, it stopped at the southwest corner of 81st street and 2nd avenue? A Yes.

Q That was a south bound car? A Yes.

Q Go on. A So the man I had breaking in, he slowed up, to a speed of about four or five miles an hour, and just as we were about in the act of passing the other car --

MR. GREER: If your Honor please, I want to enter a

general objection to the testimony of this witness as incompetent, and not binding upon the defendant.

THE COURT: Well, it might be incompetent at this time, that is, because the District Attorney is not proceeding in the regular order of proof, but I assume that this testimony will be connected with the case in main?

MR. KRESEL: It certainly will, and I do not understand how I am introducing my evidence out of order. I first proved the bringing of the action; then I proved what testimony Sullivan gave, and I am now proceeding to prove the falsity of that testimony, and then I shall prove the subornation. It seems to me I am putting in the evidence in the proper order.

THE COURT: I did not know what testimony this witness would give.

MR. GREER: Will your Honor hear me just a moment on that point? Now, the question at issue here is not whether the testimony given on the trial is true or false, but the only issue is, did this defendant suborn, did he persuade or induce a certain witness to give testimony --

THE COURT (Interposing) This charge is properly divided into two sub-divisions; first, the perjury must have been committed by some one before this defendant could have wilfully induced another to commit that offense;

therefore it is incumbent upon the District Attorney to show that perjury was committed by some witness, and that that witness was induced and procured by the defendant willfully to perjure himself on material matters. I overrule your objection.

MR. GREER: May I have an exception to all of this witness' testimony?

THE COURT: Yes.

BY MR. KRESEL:

Q Will you proceed now, Mr. Herlihy. A As I got to this point, within about three or four feet of the rear end of the other car, the front of our car was within --

BY THE COURT:

Q Will you kindly talk up and raise your voice, so that the last gentlemen will hear you? As you got where?

A As I got within a point of about three or four feet, passing the rear end of the other car, I noticed a man come from behind the other car, and just in an instant our car, the left front of our car, struck him on the right shoulder, and he fell down, outside of the rail. So that moment I grabbed the handles of the controller, the handles, and put on the reverse, reversed the power, and the car stopped within about fifteen feet from that point.

BY MR. KRESEL:

Q Your car stopped within fifteen feet from what point?

A About fifteen feet of the point where it struck this man.

Q From where the man was struck? A Yes.

Q Now, you say that the first that you noticed, the man was, as he was coming from behind the rear end of the south bound car? A Yes.

Q Is that correct, A That is the first I seen of him.

Q Was he walking east or west at that time? A He was going east.

Q East? From the west side of 2nd avenue to the east side, is that correct? A Yes, sir.

Q Was he walking on the south crosswalk or on the north crosswalk, or between the crosswalks? A He was a little above the south crosswalk.

Q He was a little above the south crosswalk? A Yes.

Q That is, between the south and the north crosswalks?

A Yes, sir.

Q And you say that when you first saw him he was four or five feet? A He was about four or five, about four feet from the front of ~~XXXX~~ our car, at the time I got a glance at him.

Q Now, you say that Lawson was operating the car?

A Lawson was operating the car at that time.

Q Was he attending to his business, or was he looking towards the east? A Yes, sir, he was attending to his business, and looking straight ahead of him.

Q Now, as you saw this man approaching the track on which

your car was moving, what was he doing? A He was walking in, with his head down, and seemed to me as if he had his hands in his pants pocket. I noticed his elbows were up like this (indicating), from the glance I got of him.

Q His hands were in his pockets (illustrating) and his head down? A Yes.

Q Did you see him look south, from which direction your car was approaching? A No, he kept looking straight down at the street. He did not look one way or the other.

Q Now, when this man was struck by your car, with reference to the north bound track on which your car was moving, was he on that track? A No, sir, he was just about to step in.

Q Just about to do what? A He was just about to step in at the time he got struck.

BY THE COURT:

Q On what rail, the westerly rail? A On the westerly rail of the north bound track.

BY MR. KRESSEL:

Q The westerly rail of the north bound track? A Yes.

Q Just then he was struck? A Just at that point he was struck.

Q What part of your car struck him? A The left front corner of the dashboard.

Q The left front corner? A The left front corner of the dashboard.

CROSS EXAMINATION BY MR. GREER:

Q How long, Mr. Herlihy, have you been instructing motor-men ? A I was about six months, I guess, at the time, five or six months.

Q On that morning, on what time did you go on duty ?

A I think it was something around half past seven or twenty-five minutes to eight, something like that.

Q At what place ? A Second avenue and 96th street.

That is where we started out from.

Q You started out at 96th street on 2nd avenue ?

A Yes.

Q And your trip extended over what route ? A I think we were going to the Bridge at that time.

Q Going to the Bridge ? A Down 2nd avenue and down Christie street, down to the Bridge and back up Forsyth, into 2nd avenue, and up 2nd avenue again.

Q You had Lawson with you the whole of that time ?

A Certainly.

THE COURT: He had what ?

MR. GREER: Lawson, the young motorman.

THE COURT: I thought you had said "You had lost time".

Q Now, do you remember just what time you left the Bridge on this last trip that you made ? A No, I couldn't recall that

Q Well, did you make a note of the time upon your leaving

the southern terminus of your trip ? A No, I didn't make any note of it.

Q Do you ever make a note of the time when you start on your trip ? A No, sir, I have nothing to do with that.

Q You have nothing to do with that ? A No, sir.

Q But there is some one that makes a note of the time that you start out at either terminus ? A Well, I think the conductor keeps track of that time.

Q Have you had any conversation with the conductor in reference to that, yes or no ? A No, sir.

Q Now, do you know whether you were on time or behind time starting from the bridge ? A We don't run on time on 2nd avenue.

Q You do not have any specific time to start ? A Just run on headway. That is all we run cars on 2nd avenue.

Q This was on Sunday morning about 11 o'clock or half past eleven ? A About 11.45, the time the accident happened.

Q And you don't know what time you started from the Bridge ? A No, I couldn't exactly say.

Q You say you can't exactly say. Can you approximate the time ? A No, I could not.

Q Was it 11 o'clock or after 11 o'clock ? A I couldn't tell you.

Q Do you know what time it takes to make the run from the

Bridge to 81st street , A Well, I think it would take about fifty minutes.

Q About fifteen minutes ? A About fifty or fifty-five minutes.

Q Oh, about fifty or fifty-five minutes ? A Yes.

Q Do you know that to be true ?

MR. KRESEL: He said it was about.

Q Do you know that it is about ? A I say it is about that time.

Q What do you mean, it may be forty minutes or it may be an hour ? A I say it might be about fifty or fifty-five minutes. Sometimes it might be an hour, according to what freight we get, or the like of that, according to what stops we make.

Q Well now, on Sunday morning, is there any difference in the headway at which you run on Sundays than on any other day?

A Yes, the headway is a little longer on Sunday morning.

Q The headway is longer ? A Yes, there don't be so many cars out.

BY MR. KRESEL:

Q Not as many cars ? A No, sir.

BY MR. GREER:

Q What was the headway at which you were running that particular Sunday morning? A I think it was something around eight blocks headway we had.

Q Then, if you were on time, there would be no car ahead of you nearer than eight blocks away? A No.

Q Nor there would be no car behind you nearer than eight blocks away? A Well, there may, but that is supposed to be the headway, eight blocks.

Q Say it is supposed to be, so there may have been cars nearer than eight blocks away? A Yes.

Q Do you know what time the car, running at an ordinary rate of speed, makes that eight blocks headway? A I don't know. I never tested that.

Q Is there anything in your instructions in regard to the time -- A (Interrupting) No, sir.

Q (Continuing) Between cars? A No.

Q On Sunday morning? A No.

Q Or on any day? A On any day.

Q The cars downtown run on the same headway as the cars uptown, do they not? A They are supposed to.

Q Where do you live, Mr. Herlihy, A 1717 Lexington avenue.

Q Near what street is that? A Between 107th and 108th streets.

Q Between what? A Between 107th and '8th streets.

Q Do you know where Mr. Lawson lived at that time?

A No. I think he lived in 47th or 49th street at that time.

Q About 49th? A 47th or 49th I think he told me at

that time.

Q Was Mr. Lawson on the car at the time of this accident?

A Yes, sir.

Q Sure of that? A Certainly.

Q You were on the car, A Certainly.

Q You did not leave the car at 80th street? A No, sir.

Q Sure of that, Mr. Herlihy? A Yes, sir.

Q Well now, when you reached 80th street, was there any car ahead of you in a shorter distance than eight blocks, to your knowledge? A Well, I can't remember that now.

Q Was there any behind you in a shorter distance than eight blocks? A I can't remember that.

Q Before reaching 80th street, do you know where you met the last downtown car? A I can't remember that.

Q Do you pay attention to the downtown cars as you meet them? A We are not supposed to pay no attention to the downtown cars, on the headway, or what way they are, only while we are passing them.

Q Pay no attention to them whatever? A Only while we are passing them, just to see that the passage is safe.

Q But you pass all of the downtown cars, don't you?

A Certainly.

Q Then, what do you mean by saying that you are not supposed to pay any attention to downtown cars? A I understood you were saying if I was trying to find out what the headway

they were running on was, or what time they were running on, or what --

Q I ask you if you remember when you passed the last downtown car? A I don't remember that.

Q Prior to reaching 80th street, A I don't remember where I did meet it.

Q You do not know? A No.

Q You did know at that time, didn't you, A What time?

Q At the time of this accident, you did know, didn't you?

A I don't know anything about any car, at the time of the accident, only this car that I mentioned awhile ago.

Q Oh, you only know about that particular car that stood at 81st street? A Yes, sir.

Q You did not pay any attention to any other cars going downtown that morning? A I didn't pay no attention in regard to the headway of them, --

Q Well -- A (Interrupting) Or the time they were running, or what point --

Q Well, did you notice the position of cars as you met them, A At the point I passed them at --

Q Did you notice the position of the cars as you met them? A Which cars?

MR. KRESEL: Throughout the route, do you mean?

Q Throughout the route, and in the vicinity of 80th street

A I did not meet no car at 80th street.

Q You did not meet any at 80th street? A No.

Q Did you meet one at 79th street? A I met one at 81st street. That is the only one I remember about.

Q You do not remember meeting one at 79th or 78th street, do you? A I can't say where I did meet them.

Q In fact, you did not pay any attention to any cars except that one at 81st street? A Certainly I paid attention.

Q Well, you said a moment ago that you did not?

A Well, I am telling you I did not pay no attention until, or at what point I meet them at.

BY MR. KRESEL:

Q You pay attention to them when you pass them? A Yes.

Q And see that you pass them safely? A Yes.

BY MR. GREER:

Q Now, do you remember the last car you passed before this accident? A No, I do not.

Q May have been eight blocks down, or it may have been three blocks down? A I don't know.

Q You have no idea about that? A No, sir.

Q But you do know there was a car standing at 81st street, on the southwest corner? A Yes.

Q You cannot be mistaken about that? A No, sir.

Q What was the number of that car? A I don't know the number of it.

Q You don't remember? A I don't remember it.

Q Do you know the name of the conductor of that car ?

A Yes.

Q You do know the name of him ? A Yes, sir.

Q Did you know the name of him on that morning ?

A Yes, sir.

Q Do you know the name of the motorman on that car ?

A Yes, sir.

MR. KRESEL: Don't you want the names ?

MR. GREER: No, I am cross-examining, if you will permit me, Mr. Kresel.

Q When did you learn for the first time the names of the motorman and the conductor on that downtown car ? A I know them during the time they are on the road.

Q You knew them before that morning ? A Yes, sir.

Q And have known them since ? A Yes, sir.

THE COURT: Well, does not that necessarily follow, if he knew them before, he has known them since ? Why waste questions.

Q Did you take the name of, or make a note of the name of the conductor on the morning of the accident ? A Of which conductor ?

Q The conductor of the downtown car ? A No, sir.

Q Did you make note of the name of the motorman ?

A No, sir.

Q At the time of the accident ? A No, the conductor made

a report of it, though.

Q But you do know who was the motorman and who was the conductor on that downtown car ? A Yes.

Q Do you know what the conductor's number was ? A Which conductor ?

MR. KRESEL: On which car ?

Q On the downtown car , A No, I don't know his number. I don't remember.

Q You do not know what the motorman's number was on the downtown car ? A No.

MR. KRESEL: But he knows the names, he says.

Q You attended at the trial in the Supreme Court, and was a witness there ? A Yes, sir.

Q Was the motorman or the conductor of the downtown car, a witness sworn at the sit in the Supreme Court , A They were there, but I don't know, I don't believe they were put on the stand.

Q Well now, how fast were you running when you passed -- did you stop at 80th street ?

MR. GREER: I will strike out the first part of that question.

A I don't remember.

Q Did you stop at 80th street ? A I don't remember whether I did or not.

Q How fast were you running between 80th street and 81st

street ? A Something around five or six miles.

Q It might have been more than six miles ? A No, it was not.

Q Was not more than six miles ? A We were just slowing down at that time.

Q You are sure of that , A Yes.

Q How do you know ? A I remember it.

Q You did not see this man until you were right at 81st street, did you ? A No, sir.

Q Right on to the man before you saw him ? A Right at, within about four feet of him.

BY MR. KRESEL:

Q Speak up loudly. A Within about four feet of him at the time I got a glance at him.

BY MR. GREER:

Q And you only were running not to exceed six miles an hour ? A At that time we were passing the other car at the point the man was struck, we were going at the rate of four or five miles an hour.

BY MR. KRESEL:

Q You had slowed up ? A Yes, slowed down.

BY MR. GREER:

Q When did you begin to slow down ? A About something around the middle of the block.

Q What speed had you been making up to about the middle of

the block, do you know? A Well, we might have been going about eight or nine miles an hour.

Q Did you have the brake on when you were passing that car? A Yes, sir.

Q You had the power on, did you? A The power was off.

Q The power was off? A Yes.

Q And the brake was on? A The brake was on.

Q Where did you put the brake on? A Well, about twenty five or thirty feet away from there, put it on in such a position as to slow down the car.

Q You had the brake on twenty-five or thirty feet from the crossing, or from the other car? A From the other car.

Q Before you reached the car? A Yes.

Q Before you reached the downtown end of the car?

A Yes, sir.

Q How long are those cars, how long was the car -- the downtown car -- do you know the length of it? A They are all about the one length, I guess.

Q What is the length? A Something around 35 or 36 feet, I guess.

BY MR. KRESEL:

Q How long? A Something around 35 or 36 feet.

BY MR. GREER:

Q So you put on the brake 25 or 30 feet south of the

south end of the downtown car ? A Yes, sir.

Q Where did you shut off the power ? A Shut off the power around that point, around maybe --

Q (Interrupting) About the same point ? A Maybe --

MR. KRESEL: He had not finished his answer.

BY MR. KRESEL:

Q May be what ? A Maybe a few feet further down.

BY MR. GREER:

Q Shut off the power before you put on the brake ?

A How shut off the power before you put on the brake ?

Q Shut off the power before you put on the brake ?

A Yes, sir.

Q Then at that time when you shut off the power and put on the brake, the car was running of its own momentum, was it ? A Yes, the car was rolling along then.

Q Simply rolling along ? A Yes.

Q With the brake on ? A The brake was not on hard, just had it on in such a position as to allow it to roll at the speed that we wanted it.

Q How far away from the front end of your car was this man when you first saw him ? A About four feet.

BY THE COURT:

Q Between 80th and 81st street, is there an up-grade or down-grade ? A It is kind of a little bit up-grade, your Honor.

51 75
BY MR. KRESEL:

Q A little bit up ? A Yes, sir.

Q Not much ? A Not much.

BY MR. GREER:

Q You say the man was about four feet away from the front of the car ? A Yes.

Q When you first saw him ? A Yes, sir.

Q And at that time he was coming from behind the downtown car ? A Yes, sir.

Q Was he, or had he crossed the downtown track ?

A Certainly.

BY THE COURT:

Q Do you know that, whether he had or not ? A He crossed the downtown track behind the other car.

Q Did you see him do that, Mr. Herlihy ? A I didn't see him until he was just coming from behind the other car.

THE COURT: You see what cross-examination leads to ? It leads to an expression from the witness of purely incompetent and guess work testimony. This witness testified that the first he saw was the man emerge from behind the downtown car and that he was within four feet of the car propelled by Lawson. Now, you ask him whether or not he had seen this man cross the track, and of course --

MR. KRESEL: (Interrupting) No, your Honor, he did not ask him whether he saw him. He simply said, did he

cross, and the witness concluded that he had, and said yes.

THE COURT: Yes.

MR. GREER: Well, that is just what I want to find out.

THE COURT: Well then, ask him if he knows that of his own knowledge, or is he drawing that as a conclusion from the fact that the unknown man at that time had passed the track of the downtown car ?

MR. GREER: I asked, if your Honor please, I asked the witness definitely where the man, or how far he was away from the front of his car when he first saw him.

THE COURT: He said about four or five feet.

MR. GREER: Yes. Now then, I want to locate the man in relation to the car. He says that he was four or five feet away from the front of his car.

THE COURT: Well, to be accurate, three, four or five feet.

MR. GREER: Yes, three, four or five feet.

BY MR. GREER:

Q Now, when you saw the man the first time, had he crossed the south bound track ? A When I saw the man, he was just emerging from the south bound track, right behind, directly behind the car.

Q He had then already crossed the south bound track ?

A He was just coming in the space between the two tracks.

Q Yes, had crossed the south bound track? A Yes.

BY THE COURT:

Q But at that time he was not in front of the car, was he? A At that time he was between both tracks.

BY MR. KRESEL:

Q In the space between the two tracks? A In the space between both tracks.

BY MR. GREER:

Q What is the width of the space between those tracks?

A Well, I think it is something around five feet, about five feet.

Q What direction was he from where you were standing when you first saw him? A What direction was he?

Q What direction was he, was he directly west, was he northwest, or was he north of you? A He was kind of northwest from me.

Q Northwest? A Yes.

Q And at a distance of three, four or five feet? A Yes, something about that

Q Could it have been more than five feet? A No, it was not.

Q Could it have been less than three feet? A If anything, it was about three feet.

Q About three feet? A Yes, three or four feet. I am not

sure. I could not -- I did not measure it, indeed.

Q Where was your car standing, or where was, or about what was the position of the front end of your car when you first saw the man ?

MR. KRESEL: He has testified to that. He said three, four or five feet away.

MR. GREER : Now, Mr. Kresel, if you will take the stand, I will cross-examine you. I would prefer you should not answer.

THE COURT: Proceed with your questions.

MR. KRESEL: I submit that question has been answered once before.

THE WITNESS: That is what I think.

BY MR. KRESEL:

Q Well, go on and answer it again. A The front of my car was a little above the south crosswalk at the time that I seen this man coming from behind the car.

BY MR. GREER:

Q A little above the south crosswalk ? A A little above the south crosswalk.

Q Now, going at the rate of -- you say you stopped in fifteen feet, is that your testimony ? A Yes.

Q Could it have been more or less than fifteen feet ?
A No, it was not more.

Q It could not have been more ? A No.

Q What is the distance in which a car can be stopped going at the rate of four miles an hour ? A Well, it would take about twenty-five feet, I should think.

Q But you stopped at this time in fifteen feet ? A Yes, sir, by using the reverse.

BY MR. KRESEL:

Q By using the reverse power ? A Yes, sir.

BY MR. GREER:

Q Well then, when you say a car can be stopped in about twenty-five feet, going at four miles an hour, what do you mean ? A I mean stopped with a brake, without the reverse.

Q With a brake ? A Yes.

Q Without the reverse ? A Yes, we are not allowed to use the reverse only in case of necessity, in case of emergency.

Q Well now, when your car struck Mr. Corrigan, did it throw him forward to the side, or did it throw him up into the air ? A He dropped down in a heap, almost where he was struck. It may have brought him a couple of feet.

Q Did he fall on the track or between the tracks ?

A He fell between the tracks, clear of the track, that he was about to step in on.

Q And the front part of your car passed him ? A The front part of my car passed him, and that was the last I seen of him until I seen the man stretched between the tracks afterwards.

Q Did the front truck pass over his body ? A No, Sir.

Q Sure of that ? A Certainly.

Q The last you saw of him he was lying on the ground between the two tracks ? A The last I saw him, when he dropped between the two tracks, our car proceeded along, then, until it stopped within about fifteen feet from that. Of course I lost sight of him then.

Q When you saw the body next, where was it lying ?

A It was lying about, partly in the middle of the street, between the south crosswalk and the north crosswalk.

Q And in relation to your car, how was it situated ?

A The front of my car was almost up to the north crosswalk. It had the street blocked, where we stopped.

Q Almost to the north crosswalk ? A Yes.

Q Within ten feet of it ? A No, it was about four or five feet of it, something around that.

Q Where was the body in reference to your car ? A The body was lying right at the middle of the car, and on the middle of the street also.

Q The middle of the street and the middle of the car ?

A Oh, in the middle of the car, opposite the pony wheels of the rear truck.

BY MR. KRESSEL:

Q Opposite the pony wheels of the rear truck ? A Yes.

BY MR. GREER:

Q Then you did not see the body while it was under the

car, did you? A No, sir.

Q It had been removed before you saw the body again --

BY THE COURT:

Q (Interposing) Just a moment. Where are the pony wheels of the rear truck, to the front or rear? A To the front.

BY MR. KRESEL:

Q You mean the smaller of the two sets of wheels? A Yes.

Q And as to the rear truck, they are in front of the larger ones? A Yes, sir.

BY MR. GREER:

Q You did not see the body until after it had been removed from beneath the car? A I seen the body at the time he was lying there, when they were just about to pull him out from under it, from under the car.

Q Did you move the car backwards before you left the motorman's station? A At the time of the accident, some man come up, that is, when our car stopped, some man come up to us and got to the gate on the left side and he told me to back up the car about that much (indicating).

BY MR. KRESEL:

Q Indicating about a foot? A I backed it up about a foot, for to release the man that was under the wheels.

BY MR. GREER:

Q And you backed it up about a foot? A Backed it up

about a foot.

Q No further than a foot ? A No further.

Q You did not back it half the length of the car, did you?

A No, sir.

Q Sure about that ? A Sure of that.

Q Then, did you leave your station on the front platform and go outside to where the body was lying ? A I walked off the platform and stood right beside the gate.

Q On the east side or west side ? A On the west side.

Q Then what was done with the body after that ? A The body lay there then until the ambulance come, some time after, and after the ambulance doctor come I think the wrecking wagon come along then, the wrecking crew took it over to the sidewalk to one side. I don't know where they took it.

Q It was taken to the sidewalk after the ambulance had gone away ? A Well, I am not sure whether it was after the ambulance doctor seen the body before it was removed or after it was taken to the sidewalk. I am not sure about that.

Q What did Lawson do at the time of this accident ?

A He was around there for some time after the accident, and I lost him in the crowd. And I don't know what happened him after that.

Q Did you tell him to go away ? A No, sir.

Q Was he on the front platform when you backed up the car ? A Yes, sir.

Q Did he step down off the front platform when you had backed up the car and they took the body out? A He stayed on the platform while I was backing up the car, just about a foot then both of us got off.

Q Well now, Mr. Herlihy, isn't it a fact that you struck that man on the north crosswalk? A No, sir.

Q You cannot be possibly mistaken about that? A No mistake about it.

Q Now, isn't it a fact that you were running at about a rate of ten or twelve miles an hour when you struck the man? A No, sir.

Q Now, isn't it a fact that when the body was taken out from under the car, that it was about fifteen or twenty feet north of the north crosswalk? A North of the north crosswalk?

Q North of the north crosswalk. A The body was lying right about in the middle of the street, between the two crosswalks.

Q And it was not north of the north crosswalk at any time? A No, sir.

MR. KRESEL: North of the north crosswalk?

Q North of the north crosswalk at any time? A No, sir.

Q Did you notice where the body was taken to the sidewalk?

MR. KRESEL: How is that material?

A I don't remember what part of the sidewalk, whether it was on the uptown side or the downtown side.

Q You do not know where? A I remember they put it in a blanket and took it away towards the west side.

Q You do not know whether it was taken north of 81st street or south of 81st street? A No, I don't know.

Q How many times have you been a witness in negligent suits brought against the New York City Railway? A Well, I can't very well remember that.

Q A great many times? A No, sir, not very many, indeed.

Q Fifty times? A No, sir.

Q Twenty-five times? A No, sir.

Q Ten? A I don't believe I was, sir, no.

Q You may have been ten times a witness? A What is that?

Q You may have been ten times a witness? A I don't think so.

Q For the Railway Company? A I don't remember.

Q From approaching 81st street, did you ring your gong?

A Yes, sir.

Q Sure you did? A Sure of it.

Q Do you always ring the gong in approaching a crossing?

A Yes, sir, always ring our gong passing a car approaching us on the other side.

Q But not when you are crossing a street, unless there is

a downtown car there? A Always rings our gong. It is a rule of the Company, and we always does it, ring our gong approaching a street or passing an opposite car.

Q You are positive you rang your gong? A Yes, sir.

Q You have talked about this case a great many times, haven't you? A The only people I talked to was the District Attorney, here.

Q Did you talk with him a great many times? A Once, I think.

Q Only once? A Only once.

Q Once you were a witness before the Grand Jury?

A Yes, sir.

Q Do you know Mr. Quackenbush, who is sitting here?

A Yes, sir.

Q Have you gone over your testimony with him? A Yes, sir.

Q Frequently? A Only once.

Q Only once? A Yes, sir.

Q Was that before the trial in the Supreme Court? A No, but before this case coming up now.

Q Yesterday? A It was about a week ago, I think.

Q Is that the only time you talked with him about it?

A That's the only time.

Q Did you talk with other members of the staff of the general counsel of that Railway Company? A I talked with the attorneys in the case at the time it was tried in the Supreme Court.

Q Mr. Wellman, did you talk with him about it? A Yes, sir.

Q And Mr. Brouters? A Yes, sir.

Q You went over your testimony very carefully with them?

A Just, I told them the same as I made out a statement af- 86
ter the accident happened, the very same way.
RE-DIRECT EXAMINATION BY MR. KRESEL:

Q I forgot to ask you, Mr. Herlihy, how long you have
been a motorman? A About ten years, sir.

BY THE TENTH JUROR:

Q Is it customary to stop on the farther side of the
street?

MR. KRESEL: You mean going north, on the north
side, and going south, on the south side?

THE TENTH JUROR: Yes.

A We generally stop on the far, off side all the time, in
the direction we are going on. That is, I mean stopping for a
passenger, picking him up or letting him off.

Q Do you remember where the south bound car had stopped?
Had it come to a full stop as you approached 81st street?

A It stopped there. We were about in the middle of the
block. / Then it had come to a full stop? A Yes, sir.

Q Do you know where the rear end of that car was?

A Yes, sir, it was covering the crosswalk.

Q Covering the south bound or south crosswalk?

A Yes, the platform was projecting over it like that (in-
dicating), so this man crossed behind it, had to walk up a
little from the crosswalk to go around to cross over, just
about a couple of feet.

Q How wide is that street, I mean the cross street, how
far is that between?

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MR. KRESEL: You mean 81st street?

Q Yes, 81st street? A I think it must be about, may be from 35 to 40 feet.

J O H N L A W S O N, being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. KRESEL:

Q Mr. Lawson, what business are you in now? A Piano player.

Q Where do you live? A 419 East 64th street.

Q On the 17th of May, 1908, were you on a Second avenue north bound car with Mr. Herlihy? A Yes, sir.

Q On what part of the car were you then? A I had the car under my control.

Q You had what? A I was running the car.

Q So you were on the front platform? A Yes, sir.

Q Now, do you remember running over a man? A Yes, sir.

Q Where was Mr. Herlihy at that time? A He was standing at my left side.

Q On your left side? A Yes.

Q On the front platform? A Yes.

Q Whereabouts was it when this accident happened?

A 81st street.

Q 81st street and Second avenue? A Yes.

Q Now when you saw the man that was hit coming along,

what did you do? A I put on the brake all I could, and then the motorman standing at my side, he reversed the power and the car stopped about 10 or 15 feet after I put on the brake.

Q Which way was the man walking? A He was coming from the west side, going over to the east side.

Q To the east side on Second avenue? A Yes, sir.

Q What was he doing as he was walking, did you notice?

A Yes, he had his hand something about like that (indicating) and his head was down like that. All I saw him was about two or three steps when the car hit him. I did not see much of him.

Q About how far away was he from the front of your car when you first saw him? A About, he was just going behind, there was another car standing there waiting, and he was passing behind that other car, while I was coming along, and I didn't see him before I was about nearly in the half of that car that was waiting there, do you see?

Q Yes, there was a car on the downtown track?

A Yes, sir, there was a car standing there.

Q At 81st street? A Yes, sir.

Q And Second avenue? A Yes, sir.

Q And on which corner was it standing? A On the downtown corner.

Q The downtown corner on the west side? A Yes, sir.

BY THE COURT:

Q The southwest corner? A Yes, sir, on the west side, yes, downtown.

BY MR. KRESEL:

Q The downtown corner on the west side? A Yes.

Q All right, we will call that the southwest corner. About how many feet was this man that was afterward struck, away from the front of your car when you first saw him?

A How many feet?

Q About how many feet? A Half of the other car, about 15 feet I should judge.

Q What? A About 15 feet, 10 or 15 feet.

Q What? A About the half of the other car.

Q What, 10 or 15 feet? A He was about 10 or 15 feet away from me, from my car before I saw him.

Q Before you saw him? A Yes, I only saw him take about three steps.

Q Well, that is what I say, when you first saw him, do you understand? A Yes.

Q You say he was coming from behind the south bound car? A Yes.

Q Now how far away from the end of the south bound car was that, was your car when he was coming from behind it?

A I was in the middle of the other car when the other car was standing there, I was right about passing. I was passing the

half of the car, and then he come right behind that car and then I saw him.

Q Now, where was he when you struck him with reference to your car? A He was struck by the corner of the car.

Q What corner of the car? A The corner on the west side.

Q The west corner? A Yes.

Q The left hand corner? A Yes, the left hand corner.

CROSS EXAMINATION BY MR. GREER:

Q Now, Lawson, you are sure that when you first saw Corrigan, the head of your car had not gone further than the middle of the south bound car? A About the middle of the south bound car, yes.

Q You say, "about"? A Yes, sir.

Q Could it have been north of the middle of the south bound car? A No, if it was anything, it was a little more south. I can't say that for sure.

Q Your car had passed the head of the south bound car? A Yes, sir.

Q And you are sure that it had not proceeded further than the middle of this south bound car? A Yes.

MR. KRESEL: When, what? I do not understand, if your Honor please. I may be thick.

Q Now, when you first saw that man, your car had passed the head of the south bound car? A Yes, sir.

Q And had proceeded not further than the middle of that car? A About that length.

Q If anything, not so far as the middle of the car?

A No.

BY THE COURT:

Q What is your answer? What is your answer to the last question? A That that car was not passed more than half of the other car that was standing there.

Q That is your car had not passed that? A Had not passed the car that was waiting.

Q Only half of it? A Only half of it, yes, sir.

BY MR. GREER:

Q Now, how far was the man when you first saw him from the rear of the south bound car? A How far he was when I first saw him?

Q When you first saw him? A He was right behind it. I could not see him.

Q If he had reached out his hand he could have touched it? A He could have brushed it with his clothes, he was that close to the car.

Q To the rear, to the bumper of the south bound car?

A Yes, sir.

Q Then you saw him before he had left the downtown track, did you? A No, sir.

Q Oh, you did not see him until he had fully crossed the downtown track? A Well, I could not see him before.

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The car was waiting there. I couldn't see him before he come behind the other, or nearly across the other track and was in front of the back of that car.

BY MR. KRESEL:

Q You could not see through the car? A I could not see through the car.

BY MR. GREER:

Q Then he was not on the downtown track when you first saw him? A He was coming behind the car.

Q What do you mean by that, he was coming behind the car? A He was crossing there, crossing the track and coming behind the car.

Q Well, if he was crossing the track, he was not on the track when you saw him? A I didn't see him on the track. I saw him coming behind the other car.

Q Well, the track was behind the other car? A Well, but I couldn't say that he was on the track. I suppose he was.

Q Well, where was he when you first saw him?

A When I first saw him?

Q Yes. A He was behind the other car.

Q He was behind the other car? A Yes.

Q Then he was on the downtown track? A Well, he had to be on the downtown track when he was behind the other car.

BY MR. KRESEL:

Q Otherwise he could not get behind, could he? A No, sir.

BY MR. GREER:

Q Then, when you said a moment ago that you did not see him on the downtown track, that was a mistake? A I did not see him there. I saw him coming behind the other car.

THE COURT: He means he did not see him enter on the downtown track.

BY THE COURT:

Q Is that what you mean? A I did not see him before he had crossed the track, but he was just coming from behind the other car.

Q You did not see him before that? A No, sir.

BY MR. GREER:

Q Well, did you see him? When you first saw him was he behind the downtown car? A Yes, he was about behind, he was coming, I saw him just when he was going behind the corner of the downtown car. Then my car was coming along.

Q The east corner of the downtown car, he was just coming by there? A Yes, the east corner, the corner nearest my car, yes.

Q And then he had entirely crossed the track when you first saw him? A Well, he --

BY THE COURT:

Q (Interposing) The downtown track? A No, he was com-

ing behind the other car, and then he had, I suppose he had one leg on the downtown track and then another one out between the tracks.

BY MR. GREER:

Q He was very near the car? A Near my car?

Q Near to the downtown car? A Yes.

Q He could have brushed it with his clothes? A Yes.

Q Well now, who was with you on that front platform?

A Mike Herlihy.

Q What was he doing in connection with running the car?

A He was instructing me.

Q Did he have charge or control in any way of the momentum of the car? A When I was running it, no.

Q You were running it? A Yes.

Q You had entire charge? A I had entire charge of the car, yes.

Q He did not have hold of the brake? A No, no.

Q Did he have hold of the controller of the car? A No, no.

Q You had entire charge? A Yes.

Q Well now, did you have the brake on when you were approaching 81st street? A Yes, I had the brake on, because there was another car waiting, and I had to slow up.

Q Where did you first --

MR. KRESEL: Let him finish.

A (Continuing) And I had to slow up my car because I had to pass that car.

Q Where did you put the brake on? A I put it around one twist, so I could stop if I put it around one more time.

Q Where did you do that? A Before I started to pass the other car.

Q Before you came to the car? A Yes, sir.

Q How far were you away from the car when you put on the brake? A When I saw the car I put on the brake. I suppose I was about half a block or something like that.

Q About half a block away from the car when you put on the brake? A Something like that, yes.

Q Did you put the brake wholly on? A No, no.

Q Just gave it one turn? A Yes, just so I slackened the speed of my car.

Q Did you turn the power off? A Yes, I did, yes, sir.

Q Before or after you put on the brake? A Well, when I put on -- I don't leave the car run with the brake on and more power on it.

Q Well, did you turn the power off before you put on the brake or after you put on the brake? A Before I put on the brake.

Q Before you put on the brake? A Yes, I didn't put on the brake hard. I just put it on so I was sure I could stop my car.

Q So, in the middle of the block, you had turned off the power? A Yes, before I passed the other car I had turned off the power and put the brake on.

Q And you put the brake on after you turned off the power? A Yes, sir.

Q Then, from the middle of the block on to 81st street, the car was running entirely under its own momentum? A Yes, sir.

Q With the brake partly on? A Yes, you know, just tightened the chain, because the brake don,t work, because I give the brake a twist around. It is only tightened, the chain.

Q Is that a down grade to 81st street? A I don't know. I was not up there since.

BY MR. KRESEL:

Q You were not? A I was not up there since, and looking if it was a down grade or not.

BY MR. GREER:

Q And you don't know whether it was a down grade or up grade? A No, sir.

Q Well now, just what was the position, where was this man when he was struck by your car? A He was standing with one foot at the rail, and he was struck right at the corner of the car.

Q With one foot on the rail? A Yes, sir.

Q Did he make any effort to draw back? A Not one movement.

Q Or spring forward? A No, sir, he did not. He was walking like that (indicating) and he had, all he done, the car struck him and he fell down like somebody pulled the leg away on him.

Q Well now, where was he in relation to the crosswalk when that happened? A He was north of the crosswalk.

BY MR. KRESEL:

Q North of which crosswalk? A North of the downtown crosswalk, because the other car was standing blocking the crosswalk, so he could not be at the crosswalk.

BY MR. GREER:

Q How far north of the downtown crosswalk? A Well, about three or four steps, I suppose, five steps. I did not look after, how far it was.

BY THE COURT:

Q On the uptown side of the track? A No, at the downtown crosswalk.

Q Yes, at the downtown crosswalk, but where the north-bound cars were running? A Yes, sir.

THE COURT: I have made a little diagram here. It might be well to have some form of diagram for the witnesses, so that they will know as to the various crosswalks.

BY MR. GREER:

Q Now, after, when you saw the man for the first time, what did you do, if anything? A I rang my bell.

Q Did you put on the brake? A No, I rang my bell. I rang the gong.

Q You rang the gong? A Yes.

Q That is, when you saw the man? A Yes.

Q For the first time? A Yes, sir.

Q That is the first time you rang the gong? A No, I rang the gong before I passed the car, because there was somebody standing waiting to leave my car pass. They were standing up at the other sidewalk, on the uptown sidewalk, there were standing three people to leave my car pass, because I suppose they was afraid to cross until I had passed.

BY MR. KRUSEL:

Q So you rang your gong? A Yes, sir.

BY MR. GREER:

Q Now, after you rang the gong, what did you do, what is the next thing you did? A I put on the brake, because I saw the man, he did not stop.

Q Well now you put on the brake entirely? A Yes, yes, sir, as much as I could.

Q As much as you could? A Yes, sir.

Q And the power was off at that time? A Yes, sir.

Q Well now, what was the next thing that you did?

A I didn't do anything else. The other motorman, he reversed the power, you know, he just shoved one hand back and he reversed the power.

Q He reversed the power? A Yes, sir.

BY MR. KRESEL:

Q You mean Herlihy? A Yes, sir.

BY MR. GREER:

Q After that, then what did you do? A Well, the car stopped and I looked over --

Q Well, did the car stop before it struck the man?

A No, no, it first struck the man and then it stopped about ten or fifteen feet after.

Q Well now, did you put the brake on fully before you struck the man? A No, no, just when the car hit the man I put on the brake. I did not see; it all happened in a minute like this (illustrating).

BY MR. KRESEL:

Q There was not much time, was there? A No, sir, no, sir.

BY MR. GREER:

Q After you struck the man, then you put on the brake?

A Well, just when the car was right to the man, I saw that the car struck the man and I put on the brake all I could, and Mike Herlihy, he reversed the power.

BY MR. GREER:

Q That was after the man was struck?

MR. KRESEL: He did not say after the man was struck. He said just as he was about being struck.

THE WITNESS: Just then.

Q Now, what was the next thing that happened? A Well, the car stopped and I looked over one side of the gate that was closed, on the left side, and I saw the man was lying there with his head underneath the rear small wheels,, the pony wheels, we call them.

Q The man's body was lying underneath? A Yes, with his legs outside, you know. His legs was outside the car, and his leg was underneath the rear wheels.

Q Then what happened? A Then people hollered "Pull back the car, get the car back so we can get him out."

Q Then what did you do? A I went home.

Q You went home? A Yes, sir.

Q At once? A No, no, Mike Herlihy, he starts to back the car. Then I left the car and there was no cops around, so I went home and told my wife I was going to get locked up, because I had an accident. She was in the family way at that time.

Q And after that you know nothing about the case?

A Then after, when I told my wife that, I went up to the depot --

Q That is all.

MR. KRESEL: Wait a minute.

RE-DIRECT EXAMINATION BY MR. KRESEL:

Q What did you do? A I went up to the depot and after that I went over to the East 88th street Police Station.

Q And you were arrested? A Yes, sir.

Q And then you were discharged? A Yes, I went down to court some days after.

RE-CROSS EXAMINATION BY MR. GREER:

Q Did you talk over this case with Mr. Kresel?

A With this gentleman?

Q Yes. A No, he was asking me up before the grand Jury.

Q He was quizzing you before the Grand Jury? A Yes.

Q Did he quiz you since that? A No, sir.

Q You had no talk with him since that? A No, sir.

Q Do you know Mr. Quackenbush, general counsel of the New York City Railway? A I saw him. That's all I know about him.

Q Did you go over this story you have told here?

A The day after I made an affidavit up in the company's office.

Q Well, did you talk with Mr. Quackenbush about the case? A No, I did not talk with him.

BY THE COURT:

Q You said that you saw the man who was injured and who subsequently died, when he was about 10 or 15 feet away from your car, is that right? A Yes, sir.

Q Will you explain to the jury at that time relative to what position he was from your car? A He was with his side to my car.

Q He was not on the north bound track, was he, at the ~~the~~ time? A On the uptown track?

Q Yes. A No, sir, he was right behind the corner of the other car. He was coming like that, he had his coat open and he had his head down like that, and that's the way he was coming, (illustrating). That's all I saw of him.

Q And that that distance from where your car was to the south bound track was 10 or 15 feet? A Yes, sir.

Q On the other side of the track? A Yes, sir.

S A M U E L O L I N S K I , being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. KRESEL:

Q Mr. Olinski, on the morning of the 17th of May, 1908, were you on Second avenue? A Yes, sir.

Q Near what street? A 81st street and Second avenue, the southwest corner.

Q On the southwest corner? A Yes, sir.

Q What were you doing there? A I was just after buying a paper, right at the paper stand there.

Q Did you see the accident there? A Yes, sir.

Q Will you tell the Court and jury what you know about

it? A I was standing on the southwest corner of 81st street and Second avenue, and I was just after getting a paper and started just about going across the street. I had not reached there. I just stood on the corner. As I was standing there I heard the sound of a gong ring, and I just come up like that with my head (indicating) and I saw this man, I was standing on this corner just like that (indicating).

Q Which way were you facing? A I was just facing like that (indicating).

Q Were you facing uptown or downtown? A Just about like that, and straight across.

Q Across Second avenue? A Yes.

Q That is, you were looking east? A Yes.

Q Then you saw that man do what? A He passed right aside of me and walked just like that, all the way down, with his head down about like that, right across (illustrating).

Q Which way was he walking, east or west? A He was going east, northeast.

Q Well, did you watch him as he crossed the avenue?
A Did I watch him? I just saw him, I watched him walking all the way, yes, sir, as far as the tracks.

Q Well, go on and tell us what happened, as he was crossing the track, what happened? A He walked right into the car, the side of the car hit him on the left hand side, and at the corner there, not the front, but the side of the

corner there, the edge, that railing like, it hit him and knocked him under in that shape (indicating), and his head went in under the track, and the front wheels, the front part of the rear wheels.

Q You mean the front wheels of the rear truck? A Yes.

Q Now, did you see a car, a downtown car? A The only time I noticed the downtown car was about at that drugstore, it had not reached 80th street.

Q That was after the man was struck? A After the man was struck, yes, sir.

Q You say you heard a gong? A Yes, sir.

Q Well, when the gong was sounded, you mean a car gong? A Yes, sir.

Q Did this man who was struck stop when the bell rang?

A No, sir, he walked right ahead.

Q Now, with reference to the crossings, on East street, there was a south crossing and a north crossing; with reference to those crossings, where was it that the man was hit?

A Right between the north crossing and the south crossing, right about over the manhole in the centre of the street.

Q That is, he was not on the south crossing when he was hit? A No, sir.

Q And after the man was hit, how far did the car proceed? A Up to about near the corner there.

Q The north corner? A Just about to stop, it blocked

the road.

Q Stopped between the two crossings? A Yes.

Q And blocked the street? A Yes, sir.

CROSS EXAMINATION BY MR. GREER:

Q Just where were you standing on the southwest corner, Mr. Olinski? A Right on the corner near the curb.

Q Were you on the curb line of 81st street and Second avenue, on the corner? A Yes, sir.

Q Of that curb line? A Yes, sir.

Q And facing east? A Yes, sir.

Q Was there anything particular about the appearance of this man that attracted your attention to him when he walked by you? A The only thing I noticed him, that he kept walking from the minute I noticed him --

Q (Interrupting) Well, when he passed by you, standing there on the curb, he left the curb, did he? A Yes, sir.

Q To your right or to your left? A To my left.

Q To your left? A Yes, sir.

Q You were standing on the immediate corner? A Yes, sir.

Q As I show you this tablet here, here are the curb lines?

A Yes, sir.

Q 81st street and second avenue? A Yes.

Q You were standing on that corner? A Yes.

Q And looking east? A Yes, sir.

Q He passed to your left? A Yes, sir.

Q Did he step off the curb line of 81st street, or off the curb line of Second avenue? A He stepped off the line on 81st street.

Q And passed around you? A Not around me, just went that way (indicating) on the left hand side.

Q You were standing right on the corner, were you?

A Yes, sir.

Q Reading a newspaper? A No, sir.

Q Well now, what was the first that attracted your attention to this man? A Well, just the way he was walking with his head down. That is about the only thing drew my attention.

Q Anybody else around there at that time? A I don't know. I didn't notice.

Q You did not see any other men there? A I didn't notice. I was too excited.

Q Well, you were not excited until you saw the man struck? A I didn't take any notice to see if there was anybody. I did not bother to notice.

Q Before the man was struck, you saw him? A Yes.

Q You saw him just as he brushed by you and stepped off the curb? A Yes, that is when I noticed him, yes, sir.

Q You were not excited then, were you? A No, sir.

Q Was there anything about the man, anything about his appearance that attracted your attention to him especially?

A No, sir, only what I said.

Q But you did not see any other man there at that time?

A I didn't take any notice.

Q Now you were looking east, directly east? A Yes, sir.

Q And while you were standing there, you say you did not see any car standing on the downtown track? A No, sir.

Q You are sure of that? A Yes, sir.

Q If there had been a car there you would have seen it, wouldn't you? A I think I would.

Q And that was before the man left the curb, that was before the man left the curb, you saw no car standing on the downtown track, in front of you? A There was no car in front of me when the man passed me, no, sir.

Q When he passed you and left the curb? A No, sir.

Q Just where was the man when you first heard the gong sound? A He was when I heard the gong sound, he was on the south rail. That is the rail on this side (indicating).

Q On the uptown track? A On the downtown track.

BY MR. KRESSEL:

Q You mean the west rail? A Yes, the track here (indicating).

BY MR. GREER:

Q He was on the west rail? A On the right hand track going down.

MR. KRESEL: That is the west rail of the south bound track.

Q He was on the west rail of the south bound track?

A Yes, sir.

Q When you first heard the gong sound? A Yes, sir.

Q You cannot be mistaken about that? A I am pretty nearly sure of it.

Q Well now, when you heard, or did you see the car coming before you heard the gong sound? A No, sir, I did not notice.

BY MR. KRESEL:

Q You did not notice? A No, sir.

BY MR. GREER:

Q Sure about that? A Yes, sir.

Q when the gong sounded, then you observed the car?

A Yes, sir, I just happened to look up like that (indicating).

Q And that was the first time you saw the car? A Yes, sir.

Q And you saw it distinctly? A Yes, sir.

Q There was not anything that was between you and that car? A No, sir.

Q And that was the uptown car that was ringing the gong? A Yes, sir.

Q Well now, did the gong continue to ring? A Well, it

rang, I should say, fully half a dozen times in succession.

Q Yes, a rapid clatter? A yes, sir.

Q And the man kept walking straight on? A Yes, sir.

Q In what direction? A Right the same direction, this way (indicating).

Q Directly east? A Yes, sir.

Q From the time he left the curb by your side, he walked directly east? A Yes, sir.

Q You cannot be mistaken about that? A I am sure of it.

Q And he was going east when he was struck? A Yes, sir.

Q And he was struck by the north end of the north bound car?

MR. KRESEL: He did not say that.

MR. GREER: I want to know what he did say.

A I said he was struck on the left hand side of the corner there, not the front.

Q The north corner? A Not the front of it. The side of it.

Q The northwest corner of the car, wasn't it, did the northwest corner of the car strike him? A Not the front of the car, no, sir.

Q But the side of the car? A Yes, sir.

Q Now, who told you to say that? A Nobody. I seen that

myself.

Q Sure nobody told you to say that? A No, sir, possibly.

Q Nobody told you that it was not the front of the car that struck him? A I never seen a soul to tell it to.

Q You have talked with Mr. Kresel about it? A No, sir, never seen the man before.

Q You were not a witness before the Grand Jury?

A I was never before the Grand Jury in my life. It is the first time in my life.

Q Have you talked with the attorneys for the New York City Railway about it, didn't you? A I did the last time I was up there.

Q That was the time of the trial? A Yes, sir.

Q Never talked with him before the trial? A No, sir, they only told me to tell what I saw.

Q Told you to tell what you saw? A Yes, sir.

Q Well, you were going to tell that any way, weren't you? A Yes.

Q Do you know why they told you to tell what you saw?

A Do I know why? No, sir.

Q You were going to tell what you saw? A Yes, sir.

Q You had no reason to tell what you saw? No, sir.

Q Did not they tell you to say that the side of the car struck him? A No, sir, they did not.

Q Well now, what was it did strike him, was it the front end of the car or was it the side of the car?

A The side of the car, that corner there (indicating); it was the side that hit him.

Q How far from the front of the car was that?

A I don't know. I never measured the car.

THE COURT: How far from what?

MR. GREER: How far from the front of the car;

I want to know how far that was from the front of the car.

A (Continuing) The corner of the side of the car.

Q It was the front corner, wasn't it? A No, not the front of the car. I did not say the front of the car.

Q Not the front corner? A No.

Q It was not the rear corner, was it, of the car that struck him? A I did not say the front part of the car hit him; I said the side of the car, the corner, just like this edge here (indicating).

BY THE COURT:

Q You mean the edge, the left edge? A Yes, sir, the side that comes out there, about I should judge about that wide there (indicating). That is on all cars, well the corner of that side hit him.

BY MR. GREER:

Q And that was the front corner of the car, you say?

THE COURT: He said it was the side of the car that struck him, and what he terms now the edge of the car, the left edge.

BY MR. GREER:

Q And at the moment that he was struck, he was still continuing east, is that true, or the moment before he was struck? A I don't know what you mean.

Q He was going in an easterly direction, continuing east? A When he got struck he got knocked under the car.

Q Well, just a moment, before he was hit --

THE COURT: He said he was going in an easterly direction, from the west to the east side of the street.

A He was going with his head down that way (indicating).

BY MR. GREER:

Q Directly across the avenue? A Yes, with his head down all the way, and never stopped.

Q What is that? A Just kept his head that way all the way from the time I noticed him until he got hit (illustrating).

Q He did not turn downtown at all? A No.

Q Did not even turn his head in that direction?

A No, sir.

Q Even after the gong rang, he did not turn his head in that direction? A No.

Q Did not turn his head in a northerly direction?

A No.

Q He did not start to walk in a northerly direction?

A He did not even stop walking. He kept right on.

Q Directly, in a straight line? A Not in a straight line. I says this way (indicating), going east.

Q Was not on the crosswalk? A No, sir.

Q How far was he from the crosswalk? A As far as I can say, he was in the centre of the street.

Q Oh, in the centre of the street? A Right over that manhole is where he got killed.

Q Well then he did not walk directly east from the time he left you on the curb? A Why he left me, I said he walked this way, right east (indicating).

Q What do you mean by this way, that might be east or might be north? A (No answer)

BY THE COURT:

Q Now, here is a lead pencil; show us on that paper? (Handing paper) A Here is Second avenue and that is 81st street. I was standing right about there (indicating).

THE COURT: I observed that while the witness was testifying, he motioned with his hand that the man walked in this direction (illustrating). It seems according to the testimony, and the description shown, that he walked in a diagonal direction. You had better ascertain that fact.

MR. KRESEL: Well, Mr. Greer is examining. You go

right ahead and examine him on that subject.

BY MR. GREER:

Q So, when you testified a moment ago that the man, when he left you on the curb, you were standing on the corner?

A Yes, sir.

Q Of 81st street and Second avenue? A Yes.

Q On the curb, the corner of the curb, the man passed you to your right, or to your left, did you say? A To my left.

Q And then proceeded to the east? A Yes, sir.

Q Did he go directly east across the avenue or did he go diagonally? A He went diagonally.

BY THE COURT:

Q You know what diagonally means, do you? A The way I meant, from one corner, the other way (indicating), not across.

Q Well now, show that on that diagram; here is red ink; use that. (Handing paper)

(The witness indicates on paper)

MR. KRESSEL: The witness has indicated with a red line what he means. If there is no objection we can put that in evidence.

MR. STANTON: Not now.

BY MR. GREER:

Q Well, now, have you indicated there the position that the man was in when he was struck by the car? A I did not

hear what you said?

Q Indicate there by a mark the position that the man was in when he was struck by the car?

MR. KRESEL: Now, these two are supposed to be the rails of the north bound track?

THE COURT: Yes.

BY MR. KRESEL:

Q Now, indicate where it was that he was struck by the car? A just about there (indicating).

BY THE COURT:

Q Now these lines here are supposed to represent the tracks upon which the north bound cars were operated, these two lines. This line here represents the sidewalk; these lines represent the tracks upon which the south bound cars were operated, "D" representing down and "U" uptown. Now show to the jury just where the man was struck? A Just about there on this track here (indicating).

BY MR. GREER:

Q Where this mark is? A On the first track.

BY THE COURT:

Q Mark it? A On the up track, on that side (indicating).

BY MR. KRESEL:

Q Well, just put a mark where you say? A (The witness indicates).

Q About there? A Yes.

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BY THE COURT:

Q Between both sidewalks? A No, sir, between the two rails.

Q Then I understand between the two rails? A Yes, sir.

Q But do you know what the south crossing is?
A The down crossing.

Q The down crossing? A Yes, sir.

Q And then there is a crossing called the north crossing? A Yes, sir.

Q Now, how far was it between the crossings that the man was struck? A It was nearer to the south than it was to the north.

Q Nearer to the south crossing than to the north?
A Yes.

BY MR. KRESEL:

Q Between the two, but nearer the south? A Yes, sir.

BY MR. GREER:

Q Well now, when he was struck, describe just the effect it had upon his body; was he thrown in the air, was he thrown to one side or was he thrown directly forward? A He was thrown sideways like, and his head went in under. That was the only thing that went in under. The rest laid on the other --

Q (Interrupting) He was thrown to the side? A On the side like, and his head was in under, and his feet and

body was on the other track, that first track, on the left hand side going down.

BY MR. KRESEL:

Q You mean the downtown track? A On the downtown track.

BY MR. GREER:

Q His feet and body were lying on the downtown track?

A Yes, sir, ~~at~~ on the first, on the left hand side track.

Q He was not between the two tracks? A His body was between the two tracks, yes, sir.

Q His body was lying between the uptown track and the downtown track? A Yes, sir.

Q And his head was across the west rail of the uptown track? A His head was in under -- on the left hand side track, on the uptown track.

Q On the rail? A Yes.

Q The westerly rail of the uptown track? A Yes, sir.

Q And was beneath what part of the car? A Fell in between the two trucks.

Q Between the two trucks? A Yes, sir, and the front wheel of the rear trucks was the one that ran him over.

Q Well now --

BY THE COURT:

Q (Interposing) What is that, the front wheel of the rear truck ran him over?

MR. KRESEL: The front wheel of the rear truck ran him over.

BY MR. GREER:

Q Did the front truck run over his body? A No, sir.

Q Never touched him? A He was nowhere near it.

BY THE TWELFTH JUROR:

Q Was his body found between the downtown truck and the uptown truck? A It was between the two trucks. He was not touched by the front truck at all. He fell in between, and the front wheel of the rear trucks was the wheel that ran him over.

BY THE FIFTH JUROR:

Q The front truck on the car had passed before he fell in between? A Yes.

MR. KRESEL: Yes, the north end did not hit him.

A (Continuing) Knocked his head just in under, and it was the front wheel of the rear trucks.

BY THE COURT:

Q Now what part of his body did the front wheel of the rear truck pass over? A His neck.

BY MR. GREER:

Q Well, when you saw that happen, what did you do?

A I went right over there, right beside of him, just as near as I am from here to that table (indicating).

Q Was anybody else there at that time? A Yes, sir.

Q. When you got there? A. When I was there there was some woman there. I don't know who she was. She was a woman that fainted.

Q. There was a woman there? A. Not there. She come there when that accident happened.

Q. Well, when you got over to the track, where this man's body was lying, who was there beside yourself? A. Well, the motorman and conductor jumped forth and a lot of women and there. There was a good big crowd around there then.

Q. Well, you were not the first man there, were you?
A. Well, I am telling you I didn't notice. I was too excited to notice who was around.

BY MR. KRESEL:

Q. You had not seen many people killed before, had you?

A. I don't want the experience.

BY MR. GREER:

Q. Now, tell us about that woman that fainted; where was it that she fainted? A. I did not bother with her.

Q. Well, you say she fainted. Where was she then?
A. She did; she was carried upstairs in a house somewheres. I didn't know the woman.

Q. Well, did you see the woman at all? A. Yes, she was a big fat woman.

Q. Where was she when you saw her the first time? A. Well, about ten feet from where I was, from that man.

Q About ten feet from where the man was lying dead?

A Yes, on the off track.

Q On the east side of the avenue? A The west side.

Q The west side of the avenue? A Yes.

Q She fainted away? A Yes, sir.

Q When what was the next thing you observed? A I went away.

Q You did not wait until the body was taken out from under the car? A No, sir, I went away and I waited around until the officer come around.

Q Where did you go? A Right, I was -- I went back on the same corner where I was before, right near the fruit stand, I was standing.

Q You did not wait there until the man was taken out from under the car? A Yes, sir, I did.

Q Did you assist in taking him out? A I did not, no, sir.

Q Did you see the car back up, off his body? A Did I notice?

Q Yes? A I did not notice.

Q You did not notice that? Well, you were there until his body was taken out from under the car? A I was there, but I was not near him. I was on the sidewalk then, when they were taking the car off, because the officer was pushing everybody away and did not let nobody near at all.

Q Well now, was that while, was that before the man's body had been taken out from under the car that the officer was driving everybody away? A He was taken out and put away, kind of, off the track, then the officers come around.

Q Did you stay there until the officers came? A I was on the sidewalk.

Q Did you go to the sidewalk before the officers came? A Yes, sir. I was on the sidewalk before the officer came.

Q The officer then did not drive you on to the sidewalk? A No, sir, he did not.

Q But you went to the sidewalk before the body was taken out from under the car? A Just as soon as I looked at the body, I went away from it and I ~~stayed~~ stayed there at the sidewalk by the fruit stand.

Q What corner was that? A It was on the southwest corner of 81st street and Second avenue.

Q Well now, about how long was it until the officer came? A I don't know. I couldn't tell that.

MR. KRESEL: How is that material?

Q Have you any idea how long it was? A I couldn't say.

MR. KRESEL: I do not intend to call the officer. I do not see the materiality of how long it was before he came.

BY THE COURT:

Q You gave your name to the officer? A No, sir. An

inspector came up after me. I was telling it to a man there, how it happened. I says "The motorman made a very nice stop". That's about all I said.

THE COURT: Well, strike out what he said to the man.

MR. KRESEL: that is all. Your Honor asked him whether he gave his name to the police officer, that's all.

BY THE COURT:

Q Was that that day? A Yes, sir.

BY MR. GREER:

Q Whom did you give your name to? A The inspector.

Q At the time of the accident? A Right after the time of the accident.

Q How soon after the accident, while you were standing there? A No, I was there on the other side.

Q Right on the east side of Second avenue? A Yes.

Q When the inspector got your name? A Yes.

Q Had they removed the body at that time? A Yes, sir.

Q Removed it from under the car? A The body was taken then and the car had already gone. When he come over and heard me telling it to a man, about the accident.

Q Where do you live? A New Haven, Connecticut.

Q you were here at the trial of the civil action in the Supreme Court? A Yes.

BY MR. KRESEL:

Q You were a witness there? A Yes, sir.

BY MR. GREER:

Q Were you then living in New Haven? A Yes, sir.

Q Were you brought down by the Railway Company as a witness? A Yes, sir.

Q Had your fare paid down from New Haven? A Yes, sir.

Q How long were you in New York at the time of the trial?

MR. KRESEL: I object to that. That is not material. What do you want to prove?

MR. GREER: I want to prove the interest and prejudice of this witness.

THE COURT: I will allow it. Overruled.

MR. KRESEL: How long did he remain, is that what you mean, in New York,

Q At the time of the trial? A As long as the trial lasted I stayed here, until the trial was settled, then I went home.

BY THE COURT:

Q How long was that? A I think about, well, I come on a Monday and I stayed until Friday. Then they told me I could go home and come back Monday morning. I went home Saturday night and come back Monday morning. Then I went home Monday afternoon again.

BY MR. GREER:

Q Did the Railroad Company pay your fare down?

A Yes.

Q And back to New Haven? A Yes, sir.

Q Who paid your fare down to New Haven this time?

A The company's man paid my fare.

Q The Railway Company? A Yes, sir.

Q Are they paying for your lodging here? A Yes, sir.

Not the company. I went with some man upstairs, brought me over to a hotel last night.

Q Who was that?

MR. KRESEL: A man from our office.

A I don't know his name. There is the gentleman sitting over there (indicating).

MR. KRESEL: Do you want his name?

BY THE TENTH JUROR:

Q Have you ever been employed by the Street Railway Company? A I was here about a month ago.

Q Well, but previous to this accident? A Never in my life, never worked for any Railroad.

BY MR. KRESEL:

Q Are you now employed by them? A No, sir.

THE TENTH JUROR: May I ask whether or not he has received any money from the Railway Company?

MR. KRESEL: Surely.

BY THE TENTH JUROR:

Q Have you received any money aside from your mere lodging for these services? A Not a penny.

Q Directly or indirectly? A No, sir.

BY MR. KRESEL:

Q And when you say you were employed by the Railway Company, where did you go to get your employment? A I went up to 50th street and I think it is Eighth avenue.

Q Did anybody from the Railway Company send for you to give you employment? A No, sir, I went up myself, and I worked 35 days as a motorman for nothing. I didn't get any money for it.

Q You did what? A I was learning to be a motorman 35 days and I didn't get any money for it.

Q You did not get any money for it and then you left?
A I got disgusted with it and left.

Q You got disgusted with the job and then left?
A Yes.

BY MR. GREER:

Q How much were you paid by the Railway for the week you were down here? A All my expenses, the time I lost and my railroad fare.

BY THE COURT:

Q Well, that is what the juryman asked you, for the loss of time? A (No answer)

BY MR. KRESEL:

Q Tell how much it was, if you remember? A How much did they give me?

Q Yes? A What my day's business allowed me.

Q How much was it? A I don't exactly know how it was. I think it was for the week, they gave me for all my expenses, thirty some odd dollars.

Q For the week with all your expenses you got thirty some odd dollars? A Yes, sir.

BY MR. GREER:

Q It was not \$5 a day? A No, I think it was thirty some odd dollars they gave me for all my expenses.

Q Didn't they pay you at the rate of \$5 a day? A No, I was down here seven days pretty nearly. That ain't five dollars a day.

Q Well, that would be about \$5 a day, \$35? A No.

BY THE COURT:

Q Is that including your lodging? A All my expenses, even my horse's expense. I had my horse and wagon up there and they included everything, thirty some odd dollars.

BY MR. GREER:

Q And out of that thirty some odd dollars you paid all your own expenses and railroad fare? A Yes, sir.

Q Sure of that? A Positive.

BY THE COURT:

Q What is the railroad fare from here to Connecticut?

A \$1.50 each way.

BY MR. KRESEL:

Q \$1.50 each way? A Yes, sir.

THE COURT: Do not discuss this case among yourselves, gentlemen, nor permit any person to talk with you about it, nor form nor express any opinion regarding the guilt or innocence of the defendant, until the case shall have been finally submitted to you.

We shall take a recess now, gentlemen, until 8 o'clock to-night.

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March 31, 1909. 8 p. m.

(Trial resumed)

MICHAEL A. SULLIVAN, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KRESEL:

Q Sullivan, where do you live? A 208 and 10 East 82nd Street.

Q How long have you lived there? A A year and a half.

Q What business are you in? A I work for the city, sir, in the Water Department.

Q How long have you worked for the Water Department? A Since October of last year.

Q Prior to that time what was your business? A Prior to that I worked for the Lehigh Valley Railroad as a clerk.

Q How long were you working for them? A Pretty near seven years.

Q Married? A Yes sir.

Q Now, do you know a man named Cornelius Moynahan? A Yes.

Q On the morning of the 17th of May, 1908, were you in company of Moynahan? A Yes.

Q Where were you? A I met him at the corner of 80th Street and Second Avenue.

Q And did you walk any distance with him.

THE COURT: 18th or 80th? A Sir? 80th Street.

Q (Repeated) Did you walk any distance with him? A Yes sir, walked as far as the corner of 81st and Second Avenue.

Q Did you stop there? A We stayed there conversing for some time, yes sir .

Q What corner of 81st Street and Second Avenue were you on?

A On the northwest corner.

Q The northwest corner? A Yes.

Q Well now, did you see a man hurt in an accident there?

A I did.

Q Will you tell what you saw of that accident? A Well, Meynahan and I were standing on the corner and I had my hand on the letter box at the corner and a man passed behind me. He walked across the street and got hit by the car and got killed.

We took his body from underneath the car, Meynahan and I.

Q Well now did you notice whether as this man who was killed walked towards the track on which the car that killed him was operating, whether he looked either way? A I didn't notice at the time.

Q Now did you see the man that was killed as he approached the north bound track? A I saw him walk across the street.

THE COURT: No; answer the question of the

District Attorney.

Q Did you see him approach the north bound track? A Yes.

Q Now how far had he gotten on the north bound track when the car struck him? A On the north bound track, he was struck on the north bound track.

Q Yes; how far had he gotten on to that north bound track when the car struck him? A He had just put a step on it.

Q Just made a step on it? A Yes.

Q What part of the car struck him? A He was struck by the front of the bumper, the side you know of the bumper; the bumper is ~~the~~ semi-circular and the side nearest to him struck him.

Q Was that the west or the east side of the car? A It would be the west side of the car.

Q The west side of the car? A West side of the bumper.

Q And this car was going north; the car that struck him was going north? A A north bound car that struck him.

Q And with regard to the direction in which the car was moving, was it the right hand side of the car or the left hand side that struck him? A I should say it was the left hand side of the car.

Q And what part of the bumper struck him? A Well, it was the side of the bumper; you know the side of the car that was nearest to him.

Q Yes. A It was the west side of the bumper.

Q The west side of the bumper? A Yes.

BY THE COURT:

Q Will you explain to the jury what you mean by the bumper? A The semi-circular front part of the car, sir, where the iron is; the big heavy iron; it is called the bumper.

BY MR. KRESEL:

Q That is called the bumper? A That is what I understand.

Q Now you say that the deceased man was struck by the left end

of that bumper? A Yes.

Q Now you say you went over when you saw the accident and you and Meynahan took the man from under the car? A We took the man from under the car, yes.

Q How far had the car proceeded from the place where it struck this man after it had struck him? A Well I think it went pretty near a car's length.

Q Pretty near a car's length? A Yes.

Q Did you know the man that was struck? A Not at the time. I never did know him. Didn't know him after; I never saw him after.

Q Now what day was it when this accident happened? A On a Sunday morning, the 17th of May.

Q About what time in the morning? A Eleven forty-five.

Q Did you give your name to anyone that morning? A I gave my name to the conductor of the car; my name to a policeman and I gave my name to a man whom I believe was an inspector for the Car Company afterwards.

Q Subsequent to this accident did anybody come to see you about the case? A Mrs. Corrigan came to me about a few days after and said there was a coroner's inquest.

Q Well, before Mrs. Corrigan came to see you was there anybody to see you? A Mrs. Corrigan; not that I know of.

Q Was there anybody to see you from the car company? A Yes sir, a man named Driscoll came to see me.

Q A man named Driscoll? A Yes sir.

Q And you had a conversation with Driscoll? A He asked me to make a statement --

Q Don't tell us what the conversation was; you had a conversation with him? A Yes, he said he wanted --

Q Now don't tell us what he said, and while he was there did you make a statement, a written statement? A I made a written statement.

Q Did you make that statement in your own handwriting? A Yes, (Statement marked People's Ex. 6 for identification)

Q I show you People's Exhibit 6 for identification; is that the statement that you speak of? A That is the statement.

Q Now when was it that Mr. Driscoll came to see you? A Well he was to the house a few times and I was not in.

Q When was it that you made the statement to him? A I believe it was five days after the accident happened, to the best of my knowledge.

Q Will the date on this refresh your recollection? A Yes; I guess that was three days after.

Q 20th of May was it? A 20th of May; that is the day I made the statement.

Q Now subsequent to making the statement you say that Mrs. Corrigan came to see you? A Yes.

Q And you had a conversation with her? A Yes.

Q Subsequent to her visit did you appear before the Coroner in this county? A I did, yes.

- Q And did you testify there? A Yes.
- Q Now do you remember when it was you testified before the Coroner? A I don't remember the date; about a week later I think.
- Q Was it in the month of May, 1908? A Yes; I guess it was in May.
- Q Do you know this defendant Howard? A Yes.
- Q When was the first time that you met him? A The first time I met him was on a Sunday morning about eight or ten days previous to the trial of this suit against the Metropolitan Street Railway.
- Q When you speak of the suit do you mean the action of Mrs. Corrigan against -- A Yes.
- Q Against the City Railway Company? A Yes; against the railroad company.
- Q And you say that you met the defendant about eight or ten days before that trial? A About that.
- Q And you say it was on a Sunday? A On a Sunday morning.
- Q Sunday morning and where was it that you met him? A At Mrs. Corrigan's house.
- Q Where was that? A I believe they then lived in 80th Street.
- Q In the County of New York? A Between Second and Third Avenue.
- Q How? A They lived in 80th Street between Second & Third Ave.
- Q That is in the County of New York? A Yes.
- Q How did you come to go to Mrs. Corrigan's house on that occasion? A Her brother came after me and told me

- Q Now her brother came for you? A Yes.
- Q Don't tell us what he said. A Yes.
- Q Who was her brother? A A man named Minnogue.
- Q And did you accompany Mr. Minnogue to Mrs. Corrigan's house? A I did.
- Q When you got there whom did you find? A I saw Mr. Howard and a man --
- Q When you say "Mr. Howard" you mean this defendant? A Yes, Mr. Howard and I saw a man named Remington and a man named Mason and a Mr. Bannon.
- Q And a Mr. Bannon? A Yes.
- Q Now had you ever seen this man that you speak of as Remington before that occasion? A No.
- Q Had you ever seen this man that you speak of as Mason before that occasion? A Yes, he had spoken to me before.
- Q You had seen him before? A Yes sir.
- Q Had you seen him with reference to this case? A Yes; he came to me about the case.
- Q I mean the Corrigan case? A Yes.
- Q And did you know who this man Mason was? A Sir?
- Q Did you know who this man Mason was? A He said he was a representative --

THE COURT: No; strike it out; the Jury will disregard the statement.

- Q Did you know who he was? A I did not know who he was.

Q Except from what he told you? A Yes.

Q When you got into Mrs. Corrigan's house what was the defend-
ant Howard and the others doing; what were they doing? A They
were apparently waiting for me.

Q They were waiting? A Yes.

Q They were sitting there? A Yes.

Q Now you came in and besides those that you have mentioned
namely Mr. Howard the defendant, Remington, Mason, Bannen,
yourself and Minnegue, who else was present? A And Mrs.
Corrigan.

Q Mrs. Corrigan? A That was all that was in the room.

Q Now tell us Mr. Sullivan just what occurred on that occasion
in Corrigan's house? A Well, Mr. Howard and Mr. Mercer
or Mr. Remington rather, since I have heard he is Mr.
Mercer; both asked me what I knew about the case and I told
them substantially what I told in the written statement
and at the Coroner's inquest.

Q Well now tell us if you will what you said to him. You say
substantially what you said in the written statement and at
the Coroner's inquest; please tell us what you told him about
the accident? A I told him --

Q In detail, if you will. A I told him we were standing
at the northwest corner of 81st Street and Second Avenue.

Q Yes. A And that this man whom we afterwards learned was
named James Corrigan, passed behind us and started across

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the street and that the car was coming along at a very fast pace and just as he was about to step on the second track that he was struck by the car and thrown in front of it and that he was caught by the front wheel of the rear truck and that his head was cut off and we picked his body up and took it from under the car, laid a carpet or cloth over it that we got somewhere, and awaited the arrival of the policeman.

Q Well, after you told that to Mr. Howard did he then put any questions to you?

MR. STANTON: What did Mr. Howard say?

THE COURT: Is there any objection.

MR. STANTON: Object to the form of the question.

What did Mr. Howard say?

MR. KRESEL: I think it might be well if the counsel would rise when he addresses the court in the first instance and in the second place I should like to know who is going to conduct the examination of witnesses. I am a little man and I cannot stand three men at one time.

MR. GREER: You have an assistant, Mr. Quackenbush I believe.

THE COURT: No quarrelling please. The proper procedure is to have somebody designated to make objections and examine witnesses. On the last question I sustain the objection.

Q What did Mr Howard say to you? A Mr Howard said the number of feet I had given was not good enough to make a case against the company.

Q The number of feet you had given about what? A About the distance that the man was away from the car at the time he was hit.

Q Well, had you given him any number of feet? A I had given him about 30 or 35 feet, yes.

Q What had you told him? A I had given him about 25 or 30 feet; I believe that is what I had given him.

Q You had told Mr Howard what about the 25 or 30 feet? A I had told him that the distance between the car and the man as he approached the second track was between 25 and 30 feet, and he said that was not strong enough to make a case.

Q Yes. A He and Mercer agreed on that.

MR. STUDIN: I move to strike that out.

THE COURT: Strike it out.

Q What did he say after he said it was not strong enough to make a case; what else did he say? A He said it should be at least 50 feet.

Q At least 50 feet? A Yes.

BY MR. STUDIN:

Q Who said that? A Mr Howard.

BY MR. KRESEL:

Q Now, did Mr Howard ask you anything about the distance

between the car and where Mr. Corrigan was at the time that he stepped ~~away~~ ^{the} off/west curb? A Yes.

Q What did he ask you about that? A He asked me about how far away the car was when he stepped off the curb. I told him I thought it was--

THE COURT: Step off the west curb?

MR. KRESEL: The west curb.

A (Continued:) I told him I thought it was about 40 feet and he said it was not sufficient. It should be more than that to make a case.

Q Yes. A Said it should be at least three quarters of the block.

Q Three-quarters of the block away? A Yes.

Q Well, what else did he ask you? A Well, he made a diagram of the scene of the accident with a pencil and paper and he gave three distances that should be testified to.

Q He spoke to you about three distances? A Yes, sir.

Q That you should testify to? A Yes, sir.

Q Now, what were those distances? A One was three-quarters of a block; the other was 75 feet.

Q Wait a minute; let us get the three-quarters of a block first? A That was when he stepped off the curb.

Q Well, what did he say to you about that? What did Howard say to you about that? A He said it should be three-quarters of a block away, the car should be, at the time

he stepped off the curb.

Q Well, what were you to say about it? A What was I to say? That it should be three-quarters of a block away, I was to testify about that.

Q What did he tell you you were to do; what did Howard tell you you were to do on that point? A He said I should-- that the car--that I should testify that the car was three-quarters of a block away when he stepped off the west curb.

Q When Corrigan stepped off the west curb? A Yes, sir.

Q That was one of the distances? A Yes, sir, that was one of the distances.

Q What was the next distance? A The next distance was when he approached the nearest rail, the near track, it should be 75 feet away.

Q When you say it should be, what do you mean? A He said that the distance should be testified to as 75 feet.

Q Who should testify to? A I should.

Q All right. Do we understand you to say that Mr Howard told you you should testify on this trial, the Corrigan case, that when Corrigan approached what rail? A The first track, the southbound track.

Q The southbound track, the car was then 75 feet away from you? A 75 feet away.

Q Now, that was the second distance, was it? A Yes, sir.

Q You spoke of a third one; what was the third distance?

A The third distance was when he was approaching the other track, the northbound track, it should be about 50 feet away.

Q What did Mr Howard say about that? A He said I should testify it was about 50 feet away.

BY THE COURT:

Q What do you mean by "approaching the northbound track"? A When he was past the southbound track and was approaching the northbound track.

Q The easterly track of the northbound track, do you mean? A The westerly track.

BY MR. KRESEL:

Q The westerly rail? A The westerly track; the northbound track is on the east side of the avenue.

BY THE COURT:

Q The second statement was when he approached the nearest track you should testify the car was 75 feet away from the southbound track? A Yes, the southbound track.

Q You meant by the southbound track the downtown track? A The downtown track.

Q Well, the downtown tracks--there are two, as I understand. There are two tracks.

MR. KRESEL: Well, tracks as distinguished from rails, sir; when you speak of the track you mean both rails.

BY MR. KRESEL:

Q Is that so, Mr Sullivan? A Yes, that is what I understood.

Q Now, what was the third distance? A The third distance was 50 feet.

Q What did Howard say you were to testify about fifty feet? A That when the man approached the northbound track, the car should be about 50 feet away.

Q That is, you were to testify that you saw that the car was 50 feet away from where it struck Corrigan at the time that Corrigan approached the northbound track? A Yes.

MR. STUDIN: I object to that as leading.

THE COURT: Overruled.

Q Now, did you say to Howard--did you tell Mr Howard on that occasion anything about Corrigan's looking up and down the track? A On that occasion; yes, I was asked if he looked up and down.

Q Who asked you? A Mr Howard.

Q Yes? A And I told him I did not know whether he did or not, and he said I should testify positively that he looked up and down.

Q Up and down where? A Up and down the street or avenue; the avenue, not the street, the avenue.

Q Then was there anything said as to the distance that the car proceeded after it had struck Corrigan? A Yes.

Q What was said about that? A That it should be a car length and a half a length with it.

Q A car and a half length? A Yes.

Q When you say that it should be, what do you mean by that? A That I was to testify to that effect.

Q Who said that? A Mr Howard.

Q Now, when you speak--when you say Mr Howard told you that you were to testify to the various things, testify where?

A At the trial between Mrs Corrigan and the Street Railway Company.

Q At that time when you were having this conversation with Mr Howard in Mrs Corrigan's house, were you under subpoena in that action? A No.

Q You had not been subpoenaed then? A No.

Q Before talking to Mr Howard about the case on this occasion had you spoken to anybody from Mr Howard's office?

A No, with the exception of Mason.

Q Mason? A Yes.

Q Now, on this occasion was there anything said by Mr Howard or did you say anything to Mr Howard as to what part of the car struck Corrigan? A Yes, I was asked what part of the car, and I told him that it was the side of the bumper nearest the man.

Q Nearest what man? A Nearest Corrigan.

Q Yes. Well, what was said about that by Mr Howard?

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A He said that was a bad feature in the case; that we had better make it the middle of the bumper.

Q The middle of the bumper? A Yes.

Q Now, you were speaking of a diagram? A Yes.

Q Who had the diagram? A Howard took up a piece of paper and made it.

Q In your presence? A Yes.

Q In Mrs Corrigan's house there? A Yes.

Q And what did he do with that diagram as he talked to you about the case? A He marked the three distances on it that I was to testify to.

Q Those three distances that you have spoken of?

A Yes, sir.

Q When Howard was telling you these various things that you were to testify to, what did you say to him? A I told him that I had already testified in the Coroner's inquest, and that would be at variance with the distances I gave there.

Q What did he say about that? A He said that was easily explained.

Q What did he say how you were to explain it? A The way I was to explain it was, I had gone over the ground again, looked it over, had racked my brain, and found I had made a mistake in the measurements, in the distances that I gave.

Q What else did Howard say to you about your examination on the trial? A He said to be sure to stick to that testi-

mony.

Q Well, did you agree to do that? A I did not at first.

Q What did you say? A I said I could not explain the difference in the number of feet that I had given at the Coroner's inquest and in the statement I had made to the railroad. I could not reconcile it.

Q When you speak of the statement you had made to the railroad, what statement do you mean? A The statement you put in there, that exhibit you just put in, that written statement.

Q Did you say anything to Mr Howard about that statement?

A Yes, sir.

Q What did you say to him about that? A I said that I had given a statement to the Railroad Company, that I had testified pretty much the same at the Coroner's inquest and those distances were at variance that I had given, or that I was supposed to testify to. He said that was easily explained; that I could go back and look the ground over and that I had racked my brain and I had made a mistake in the distances I gave.

Q Now, when you first came in Mrs Corrigan's house, and when as you said, Mr Howard asked you to tell him what you knew about the case, and you went on to tell him those distances, were those the true distances? A As far as I knew

the statement I original made and the evidence I have given in the Coroner's inquest were substantially true, as far as I know.

Q And these distances that you gave to Mr Howard at first in Mrs Corrigan's house and the statements that you made to him then as to what you had seen of the accident, were those statements made by you to him true? A They were correct, as far as I knew.

Q And did you tell him that? A Yes, sir.

Q Well, then, you say that you at first refused to consent to testify ~~until~~ ^{as} you were requested? A Yes, sir.

Q And asked him about these variances and after the explanation he had made to you how you were to get around that, did you finally say that you would testify? A Yes.

Q Was there anything said about money? A Didn't say anything about money to me; they didn't say anything about money to me.

Q Was there anything said about what would happen in case a verdict was recovered? A They said I would be taken care of.

Q Who said that? A Mr Howard.

Q And after this talk about what would happen if a verdict were recovered, did you then say that you would testify as he told you to? A Yes.

Q Now, when was the first time that you were subpoenaed

to appear as a witness in this action of Mrs Corrigan's; how soon after? A I was subpoenaed, I believe, the following Saturday night.

Q Have you ever been at 215 Second avenue? A Yes, sir.

Q Do you remember what day it was when you testified in the trial down in the Supreme Court? A I believe it was on a Monday; the trial opened on Friday, and I believe I testified on the Monday following.

Q The Monday following; what month was that? A I think it was October.

Q October, 1908, is that right? A I think so.

Q Yes. Now, with reference to that date, that Monday when you testified, how long before that was the first time that you were subpoenaed? A I got subpoenas for a whole week.

Q For a whole week before that? A Yes.

Q Had you been at 215 Second avenue during that week preceding the trial? A Yes.

Q And how often had you gone there? A About once a day.

Q Once a day. Now, this 215 Second avenue that we speak of, what place is that? A Mr Howard's office.

Q Mr Howard's office, and that is in the county of New York? A Yes, sir.

Q Now on these ~~one~~ occasions when you went to 215 Second avenue, Mr Howard's office, did you see Mr Howard? A Not every day.

Q Some of the days? A A couple of times only.

Q Now, a day or so before you went on the stand; I mean the week before you went on the stand, you say you went on the stand Monday? A Yes.

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Q On a day in the preceding week did you have a talk with Mr. Howard about your testimony? A Yes.

Q And where did you have that talk with him? A At 215 Second avenue.

Q And was anybody else present but Mr. Howard and yourself?

A There were other people there, but I did not pay any attention to them; he and I were together.

Q In the room where you and he were? A No; there was not any one else there; he sat at his desk.

Q All right. On that occasion when you went there -- oh, what happened there? A Why, he produced a better diagram than the original one. He said to me "The feet are marked off and the distances marked off," and he told me where I was to testify to those distances again.

Q You went over your testimony? A Yes, sir.

Q He showed you a different diagram? A Yes.

(Diagram marked People's Exhibit 7 for Identification).

Q I show you People's Exhibit 7 for Identification, and ask you whether that is the diagram he then showed you? A Yes, that is the diagram.

MR. KRESSEL: I offer it in evidence.

(This People's Exhibit 7 for Identification marked People's Exhibit 7 in evidence).

Q Now on this occasion when Mr. Howard showed you this diagram you say he went over the distances with you? A He

went over the distances again, yes, sir.

Q What did he say about them? A He said to be sure to testify to those distances correctly.

Q Well, tell us again what he said. It is necessary to repeat what he said to you? A Well --

Q What were the three distances and what did he tell you about them? A The three distances were when the man stepped off the curb the car was three-quarters of a block away.

Q Three-quarters of a block away from where he was hit finally? A Exactly.

Q Go on? A When he approached the southbound track he was supposed to be 75 feet away.

Q The car was supposed to be? A Yes, the car was supposed to be.

Q Instead of saying, "supposed to be", tell us what he said to you? A He said, "That is the distance you have got to testify to."

Q All right; that the car at that time was 75 feet away from the place where it struck him? A Yes.

Q What else did he say?, A And when he approached the northbound track the car was -- I should testify the car was 50 feet away.

Q From the place where it struck him? A From the place where it struck him.

Q And on that occasion did he go over the other points

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with you, about the bumper? A Yes, the bumper was also mentioned, "be sure to make it the centre of the bumper and not the side of it."

Q Was there anything said about whether Corrigan looked up and down the avenue? A Yes.

Q What did he say about that? A He said to be sure to testify he looked up, both up and down the avenue.

Q Now at that time when he was talking to you about your testimony did he have any other paper before him besides this diagram? A He had some papers with questions and answers on.

Q Questions and answers?

MR. STUDIN: I move to strike that out on the ground that the paper itself is the best evidence.

MR. KRESEL: I am going to account for it.

MR. STUDIN: I move to strike it out.

THE COURT: I overrule the objection.

MR. KRESEL: I have not stated the contents of it, what the questions and answers were, or anything of that sort.

Q Did you get any paper with questions and answers? A I did not get the paper, but they were marked; I could see them marked.

Q Did you see the paper? A Yes, I saw the paper.

Q Did you read it? A No, I did not read it.

Q As Howard was talking to you on this occasion in his office about what you should testify to, did he use that paper?

A Yes.

Q And you say it was questions and answers? A That is what I saw on that.

Q Now you say that you went on the witness stand in the Supreme Court in the case of Bridget Corrigan as administratrix against the receivers of the City Railway Company and testified? A Yes, sir.

Q Did you? A Yes, sir.

Q And who called you as a witness? A Howard; James A. Howard.

Q Was Mr. Howard in court when you testified? A Yes.

Q Was he there throughout your testimony? A Yes.

Q And in that action did you testify as you were told to testify by Mr. Howard? A Yes.

MR. STUDIN: One minute, I object.

THE COURT: Sustained. Strike it out, and the jury will disregard it.

MR. KRESSEL: It is necessary for me to go over it with this witness?

THE COURT: If they make the objection -- he testified, didn't he -- well, I think you will have to do that, Mr. Kresel.

MR. STUDIN: His testimony is in evidence.

MR. KRESEL: May I have that testimony.

THE COURT: Is it necessary to re-read the testimony given by this witness on the trial?

MR. STUDIN: We do not ask it at all. His testimony appears here.

THE COURT: It is in evidence, Mr. Kresel.

MR. KRESEL: I want to revert for a moment, Mr. Sullivan.

THE COURT: Just a moment. Read the last question.

(The last question read by the stenographer as follows: Q And in that action did you testify as you were told to testify by Mr. Howard?)

MR. KRESEL: Your Honor sustains the objection?

THE COURT: I did, yes.

MR. KRESEL: Because of the form of it?

THE COURT: Isn't it after all a matter for the jury?

MR. KRESEL: You did testify on that trial?

BY MR. KRESSEL:

Q You did testify on that trial? A Yes, sir.

THE COURT: What he did testify to was given in evidence by the stenographer.

Q Now, I want to revert for a moment to the interview Sunday morning in Mrs. Corrigan's house by you. Have you told us all of the conversation that you can now recall on that occasion? A Yes.

Q Was there anything said between you and Mr. Howard as to what you should do in case of your cross-examination on the trial? A Well, there was; he said that if I got cornered, that I did not remember -- to testify that I was testifying now to the best of my knowledge, and if I got cornered, that I didn't remember.

Q On this occasion at 215 Second avenue when you went over your testimony with Mr. Howard, did Howard say anything to you about Mr. Moynahan? A He asked me if I thought he would testify the same as I did. I told him I didn't know whether he would or not.

Q Now when you got down to the Court house and before you went on the witness stand, did you see Mr. Howard? A Yes.

Q After you got through testifying did you see Mr. Howard? A Yes.

Q Did he say anything to you about your testimony? A Yes.

Q What did he say? A He said I had done very well.

Q That you had done very well. After testifying did you stay around the court room, or what did you do? A I stayed around the court for awhile.

Q Then what did you do? A I went home.

Q Several days thereafter did you go to Mr. Howard's office? A A few days after I was down there.

Q And did you see Mr. Howard? A Yes.

Q Did he say anything to you about the case? A He said they had recovered a good verdict.

MR. STUDIN: I object to what happened after the trial.

THE COURT: Why?

MR. STUDIN: Something that happened after the alleged act?

THE COURT: Any declaration made by the defendant to this witness is germane to this inquiry. Objection overruled.

Q What did he say to you, Mr. Sullivan? A He said he had recovered a good verdict against the Railway Company; that was mainly owing to out -- Moynahan's evidence and mine.

Q He told you that? A Yes.

Q Now you were indicted by the Grand Jury of this county on the charge of perjury for the testimony that you gave in the Corrigan action? A Yes.

Q Before your arrest on that charge did you see Mrs. Corrigan? A Yes.

Q The night before your arrest did you see Mrs. Howard? A Yes.

Q Was anybody with him when you saw him? A Mr. Bannon.

Q And where did you see them? A At my house.

Q They came to your house? A Yes, sir.

Q Where were you then living? A Where I live now, 210

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and 8 East 82nd street.

Q And you had a conversation with Mr. Howard then?

A Yes, sir.

Q Tell us what the conversation was? A He said that Moynahan was arrested for evidence he had given at the trial of Mrs. Corrigan versus the Street Railway Company, and he said he understood there was a warrant out for my arrest, but not to be afraid; all I had to do was to stick to my testimony and it would be all right.

Q Did he say anything as to what he thought the likelihood was of convicting you? A He said he thought there would be no chance of it.

Q If you stood pat? A Yes.

Q What else did he say, if you can recall, in case of your arrest, did he say anything what you were to do? A Yes, if I was arrested he said he would take care of it in court.

Q He would take care of you? A Yes.

Q Now when you were arrested did you communicate with Mr. Howard? A I certainly did.

Q And did he come to you?, A Yes.

Q The night after your arrest did you see Mr. Howard again? A Yes.

Q Was Mr. Ramon with him on that occasion? A Yes.

Q Where was it that you saw him at that time? A After my arrest I met him, after I was let out of the Tombs I met him.

Q Where? A Right here in court.

Q You mean the court house here? A In the court house here.

Q And did you have a conversation with him then?

A Yes.

Q What did he say then? A He said my arrested was a shame and there was nothing would come out of it, only just stick to the testimony I had given at the trial of the case.

Q At that time did Howard show you any paper? A The night afterwards he showed me a paper.

Q The night after? A Yes.

Q Where? A Up in my house.

Q And did he take that paper away with him after he showed it to you? A He did.

Q Did he say anything about your signing a paper? A He wanted me to sign a paper, yes.

Q Did you sign it at that time? A No.

Q Who appeared as your attorney after your arrest?

A Mr. Stanton and Mr. Greer.

Q These two gentlemen here (indicating)? A Yes, sir.

Q And who got you to sign an affidavit finally? A I signed it in the office of Stanton and Greer.

Q Who was present when you signed it? A Mr. Howard, I guess, Mr. Stanton and Mr. Greer; I think the three of them there.

Q What did they tell you about why they wanted you to sign this affidavit? A That a motion was made to inspect the minutes of the Grand Jury in my case, and it was necessary for me to sign that affidavit.

Q And you signed it, did you? A I certainly did.

Q Did you read it? A No, sir, I read a portion of it.

MR. KRESEL: Have you the paper here?

MR. STUDIN: I think we have a copy of it. Of course the original is on file.

MR. KRESEL: Now in that affidavit -- gybthe way, let us have this marked for Identification. Better have it marked in evidence. You have no objection to it?

MR. STUDIN: Why, if you are trying to impeach this witness--

MR. KRESEL: Not at all.

MR. STUDIN: Then I object at this time.

MR. KRESEL: You do?

MR. STUDIN: Yes, on your part.

MR. KRESEL: All right, you can have it back.

Q Now when did you first come to see the District Attorney? A Sir.

Q When did you first come to see the District Attorney? A On the 19th of August; I mean the 19th of March.

Q 19th of March, and who did you see? A Saw District Attorney Jerome.

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Q And who was with you at the time when you saw him?

A Mr. Bammon.

Q Mr. Bammon? A Yes, sir.

Q John F. Bannon? A Yes, sir.

Q The same man that you spoke of that came to see you with the defendant Howard? A Yes, sir.

Q You had a conversation with the District Attorney, did you? A Yes, sir.

Q And what did he say to you?

MR. STUDIN: I object.

MR. KRESEL: There is an objection to that?

THE COURT: I sustain the objection.

MR. STUDIN: To what the District Attorney said.

Q And subsequently did you make a statement to the District Attorney? A Yes, sir.

CROSS-EXAMINATION BY MR. STUDIN:

Q Mr. Sullivan, do you remember distinctly the events that took place on the day that Mr. Corrigan was killed, do you not? A Well, as near as I can remember I --

Q Now you and Moynahan were together there at the corner of 81st street and Second avenue, were you not? A Yes.

Q What time of the day was it?

THE COURT: Pardon me a moment, before you proceed, there was some testimony in this case that the deceased

passed from the north-west corner in an easterly direction over to the north-easterly corner --

MR. KRESEL: I did not get your Honor's question.

THE COURT: Is the evidence in the case the deceased passed from the north-west corner in an easterly direction towards the north-east corner.

MR. STUDIN: No, that has not been brought out before.

MR. KRESEL: There is no evidence now to that effect

THE COURT: Wait one moment; some of the witnesses testified, at least this Olinsky said he stood on the south-west corner and this man was on the south-west corner.

MR. KRESEL: Exactly.

THE COURT: " This witness says he was on the north-west corner. You have not asked this witness where Corrigan was.

BY MR. KRESEL:

Q I will put the question to him; when you first saw the deceased man on which corner was he? A North-west corner; he passed behind me.

Q Passed behind you? A Yes, sir.

Q Which way was he going? A In an easterly direction.

Q He was going east? A Yes.

BY THE SECOND JUROR:

Q How fast was he walking? A At an ordinary gait.

Q How far is it from the curb where he was struck to where he was struck? A Well the distance in fact, I believe the width of the street is 40 feet, but the avenue is wider than that. I should say he was about 40 feet from where he was struck when he passed me. He was about two-thirds of the way across, and he went across the avenue.

BY THE TENTH JUROR:

Q He was a stranger to you? A Never saw the man before in my life.

Q What attracted your attention to him? A The very fact of looking in that direction.

Q Was he on the cross-walk as he went east? A Yes, sir, went on the cross-walk.

Q Was he on the cross-walk all the time? A He was on the cross-walk, as far as I saw.

Q Why did you continue to look at him? A I was looking in that direction, in a south-easterly direction.

BY MR. KRESEL:

Q You were not watching him particularly at that time?

A No, I had no more idea he would be killed than you.

MR. STUDIN: Now, does your Honor want to ask a question?

THE COURT: I want to have this clearer.

MR. STUDIN: I do not think your Honor will get it cleared up, as it is a direct contradiction.

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BY MR. STUDIN:

Q Was Corrigan on the north track all the time -- on the north curb all the time? A I couldn't tell you that.

Q Did you see him on the south curb at all? A No, sir.

Q Where was he when you first saw him? A He just passed behind me.

Q On the north side? A Yes.

Q Then he left the north side of the street, going easterly across Second avenue? A That is what I saw him do.

Q And he did not leave the south side of the street at all?

A He may have left previously to that, but I did not see him.

Q Did you see this witness Olinsky there? A No.

Q You didn't see him at all, did you, Sullivan? A I did not, sir.

Q No, and you and Mr. Moynahan were on the uptown side of the sidewalk? A I said we were on the north-west corner.

Q That is the uptown side? A It certainly is.

Q Did you see a car coming downtown? A I did not see any car; There might be one, but I did not see it.

Q You didn't see it there? A No, sir.

Q Did you see Corrigan come out from behind the car before he was struck? A I did not.

Q You did not see the car at all, did you, Sullivan?

A There might have been a car there.

Q I am not talking about might have been; did you see a

car there? A Not at the time.

Q You did not see Olinsky there either, did you? A No.

Q Where was the car coming uptown when you first saw it?

A When I first saw it, well, what first attracted my attention, to tell you the truth, was seeing the man hit.

Q That was the first thing that attracted your attention, was seeing the man hit? A Yes, sir.

Q You had not seen the car before that? A I saw the car coming up the avenue.

Q You saw the car down at 80th street, didn't you?

A Yes.

Q When you saw the car at 80th street, Corrigan had just passed you, hadn't he? A Corrigan, no; it was up past 80th street a good distance.

Q No, but just about when the car was leaving 80th street, Corrigan passed behind you and Moynahan?

MR. KRESEL: He didn't say that.

MR. STUDIN: I object to that. I do not know if your Honor heard that or not. He said it under his breath.

MR. KRESEL: I say it now not under my breath. I repeat that the witness did not say that.

MR. STUDIN: I am trying to find out what he said.

(Previous question and answer repeated as follows:

Q When you saw the car at 80th street, Corrigan had just passed you, hadn't he?

A Corrigan, no; it was up past

80th street a good distance.)

MR. KRESEL: That is exactly what I objected to. The witness had said the car had passed a good distance up from 80th street before Corrigan had passed it.

MR. STUDIN: You have not answered that question.

THE COURT: What answer do you wish now? The answer is completed, as I understand it. The witness, as I understand, after he first saw --

THE WITNESS: -Was just leaving 80th street?

Q Yes? A It was more than that; it was past 80th street a good distance.

Q How far? A Well, I should say it was more than half way up the block.

Q About half way up the block? A More than half way; I guess.

Q How far was it from 81st street? A A couple of houses.

Q From the south curb of 81st street? A The south curb it was a couple of houses down from 81st street.

Q A couple of houses down from the south curb of 81st street? A Yes.

Q How far was it in feet? A Well, I should say a couple of houses would be about 40 or 50 feet, 40 or 50.

Q 50 foot houses? A No, they are not 50 feet, I think they are 25.

Q That is 50 feet below 81st street, is that correct,

Sullivan? A That would be about all, at the time we left the curb.

Q At the time he started to cross the curb? A Yes, sir.

Q How far is it between the two curbs? A I never measured the distance.

Q You said 40 feet a minute ago? A But I think it is 40.

Q So then when Corrigan stepped down off the curb, that car was at least 90 feet below the uptown curb, is that correct?

MR. KRESEL: What is that?

THE COURT: Below the uptown curb, where Corrigan went.

MR. KRESEL: How does he make it 90 feet?

MR. STUDIN: 40 across the street and 50 below 81st street. That makes the 90 feet.

THE COURT: That is, you are taking a right angle?

MR. STUDIN: What is that?

THE COURT: Are you getting the distance of the right angle?

MR. STUDIN: No, the car was 50 feet below the south crossing of 81st street.

THE COURT: Yes.

MR. STUDIN: From the south to the north crossing is 40 feet more, making 90 feet.

THE COURT: Not necessarily.

MR. STUDIN: To where Corrigan was struck.

THE COURT: Assume this is the northbound track, the car was 50 feet from the southerly curb of 51st street.

MR. STUDIN: Yes.

THE COURT: Is that what you mean? The witness was on the north-west curb, according to this witness's testimony.

MR. STUDIN: Yes.

THE COURT: On this side of the street.

MR. STUDIN: Yes.

THE COURT: Do you say the distance from where Corrigan stood to where the car was was 90 feet?

MR. STUDIN: The distance from where Corrigan was struck to where the car was when Corrigan started to cross the street was 90 feet.

MR. KRESEL: The witness has not yet testified where Corrigan was struck.

BY MR. STUDIN:

Q Where was he struck? A He was struck on the crosswalk of the uptown track.

Q Of the uptown track; is that correct? A Yes, sir.

Q The distance from where Corrigan was was about 90 feet?

A No; there is three sides to a triangle, and two of those will be the length of where the car was and up to where Corrigan was struck; that would be one side, if you take the base of the

triangle it would be about 40 feet from where Corrigan was to where Corrigan left the curb, and from where Corrigan was struck.

THE COURT: Where Corrigan was struck would have to be a straight line, would it not, from the place where the car was first seen to the place where the accident occurred.

MR. STUDIN: I am trying to ascertain, let us go over all the ground again; see if we can get the thing right.

Q How far below the south crossing of 81st street was the car when Corrigan started to cross the street? A I said it was about two houses down, didn't I?

Q Yes. Now you thought that was about 50 feet? A I think so still.

Q Then it is 40 feet from the south to the north crossing where Corrigan was struck. Corrigan was struck on the north crossing, you say? A Yes, I will say so still.

Q So it is 90 feet at least in your judgment from the point where the car was when Corrigan started to cross the street, to where Corrigan was struck, on the uptown crossing? A That would be right, I guess.

Q You think it would be at least 90 feet, is that correct? A It might have been more, might have been less.

Q Might have been more? A It might have been less.

Q You are not accurate at all, is that correct? A I didn't measure it.

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Q You didn't measure it at that time? A No.

Q And it might have been 50 feet more? A I don't think so.

Q It might have been? A It couldn't have been, because it was only two houses down.

Q It might have been 25 feet more? A It might have been less, too.

Q I am asking might it not have been 25 feet more? How far did the car drag -- A What?

Q How far did the car drag Corrigan after it hit him?

A Dragged him about 5 or 10 feet after it hit him.

Q Yes? A Well, it hit him first and went about three-quarters of a car length and then when his head got caught it went about 5 or 10 feet.

Q How far was it from the point where the car hit Corrigan until where the car stopped? A I think pretty near a car length.

Q A car length? A pretty near. I don't think it would be a full car length.

Q On that Sunday morning when you went down to Mrs. Corrigan's house you told Corrigan, you told Howard, that the car had gone about a length before it stopped, and he said, "You have got to change all that and make it a length and a half" Did he? A He said at least a car length and a half would be necessary.

Q Was that true or wasn't it true that it had gone a car

length and a half? A It had gone, I think pretty near a car length.

Q Had it gone over a car length? A I don't think so.

Q You are sure of that? A I cannot positively swear to it. I did not measure it, but I don't think it went more than a car length.

Q Do you remember when you were a witness before the Coroner? A Yes, sir.

Q That was a week or ten days after the accident? A Somethink like that.

Q Had you seen Howard up to that time? A I had not seen Howard any.

Q Had you spoken a word to him up to that time?

A No, sir.

Q Then Howard had nothing to do with your testimony before the coroner? A Howard, I don't believe, was engaged in the case at the time.

Q Correct, but it is absolutely sure that Howard had nothing to do with your testimony before the coroner, did he? A I didn't see him. I don't see how he could.

Q No. At the time you were before the coroner you were telling the truth, is that correct? A As far as I know.

MR. STUDIN: Have you the minutes there?

MR. KRESEL: Well, I have them.

MR. STUDIN: I mean there is no question about the coroner's minutes. Turn to page 27.

Q I will ask you whether you testified before the Coroner, "Still you think the car was stopped in about its length? A Its length, possibly a little more. I could not swear exactly.

Q And it may be a little less? A Yes. Q Your best judgment is about a length? A About a length, or about a length and a

half at the most." Was that true when you testified before the Coroner? A Yes, it may have gone a little more or less, I say.

Q Then you didn't change your testimony on account of anything Howard told you as to the length or distance the car went after it hit Corrigan; yes or no; did you? A Yes.

Q How is that? A I didn't have to change, because I testified a car length more or less.

Q Then you didn't change your testimony in that respect?

A Not in that point.

Q Because of anything Howard told you; is that correct?

A Well, I don't see how it can be otherwise.

Q Then when you testified a moment ago that you changed your testimony upon that point because of something Howard told you, you testified to something that was untrue, didn't you, Sullivan?

MR. KRESEL: He didn't testify to that.

MR. STUDIN: He said he changed his testimony upon that point.

MR. KRESEL: He didn't say that he changed his testimony upon that point.

MR. STUDIN: I appeal to the record or to his Honor's recollection.

MR. KRESEL: We will appeal to the record. He talked about a car length and a car and a half length, but he did not say he had changed his testimony.

MR. STUDIN: He said Howard told him he had to give another car's length.

THE COURT: My record is this, "I was to testify
Corrigan was dragged one and a half cars lengths."

MR. KRESEL: That is right, and that he had talked
Howard before he was told that that was a car's length.
I do not dispute that.

Q Then you did not change your testimony because of any-
thing Howard told you upon that point? A No, I guess not.
I testified to a car length.

Q Now, did you hear a gong sounded on that occasion?
A I did not.

Q There was no gong sounded at all? A There might
have been, but I didn't hear it.

Q You didn't say that you did not hear a gong sounded
because of anything Howard told you, did you? A I didn't
say anything about it.

MR. KRESEL: Wait a minute; I did not question this
witness about any gong.

MR. STUDIN: Their claim is we made up a case.

THE COURT: Is that assignment of perjury alleged
in the indictment?

MR. KRESEL: No, it is not.

MR. STUDIN: That is one of the things Sullivan said
on the trial.

MR. KRESEL: I am not objecting to that; I am only
making--

THE COURT: I see no reason for questioning this witness, except on matters affecting his credibility. There are several assignments of perjury alleged in the indictment.

MR. KRESEL: That is not one of them.

MR. STUDIN: The jury is entitled to know.

THE COURT: Is the length of the car alleged?

MR. KRESEL: Yes, I think that is alleged. I want to make sure.

MR. STUDIN: And I think the speed of the car is alleged.

MR. KRESEL: No, the speed of the car is not alleged.

THE COURT: "That after it struck the said Corrigan it proceeded about one and a half times its own length before it stopped."

MR. STUDIN: I think it is proper cross-examination to bring out.

THE COURT: You may proceed, I say, for the purpose of attacking his credibility.

Q Did you hear the gong rung, Sullivan? A I said always I did not, sir.

Q Howard did not ask you to change your testimony on that point? A Never said a word about it, I don't think.

Q Kindly answer my question. Did Howard ask you to say anything about that? A I don't believe he did.

Q Absolutely nothing, was that car going very slow?
very fast? A Very fast I testified to.

Q Exceedingly fast? A I testified very fast.

Q Do you think it was going over four miles an hour.
Kindly answer the question? A I have answered it, sir.

Q I ask you whether you think that car was going over
four miles an hour? A I could not tell you how fast it was
going; I said very fast.

Q What is your opinion? A I am no judge of speed.

Q Were you a judge of speed before the Coroner? A I
don't know. I don't think I testified to anything before the
Coroner. I said it was going very fast; that is all.

Q Do you think it was going four miles an hour? A I
don't know how fast it was going.

Q Was it going faster than cars usually go? A It
was going very fast I testified to.

Q Did Howard ask you to testify that car was going very
fast? A He did not.

Q Did Howard ask you to testify that the car was going
very fast? A He did not.

Q He said nothing about that. That was your voluntary
testimony? A I had given a statement to the Railroad Com-
pany, and it is in there that I testified that the car was
going, or at least I wrote myself the car was going very fast.
I testified at the Coroner's inquest it was going fast. I

testified at the trial and I still say it was going very fast.

Q Now, then, let us take up the question of where Corrigan was when the car struck him. What did you say Howard asked you to say about that? A He said when he approached the track he was struck on, I should make it 50 feet.

Q No, no; that is not the question. What part of the car hit Corrigan? A Oh--

Q And where was Corrigan as between the tracks, when he was hit? A Well, I testified--

Q I did not ask you that. I asked you to state what Howard told you to say? A He told me it should be the center of the bumper.

Q In other words, Howard told you to say that Corrigan was somewhere near the center of the track at the time that the car came? A He said when he struck it should be he was struck by the center of the bumper.

Q Yes. Now then (turn to page 25 of the Coroner's record, Mr Kresel), you recollect stating before the Coroner,

"Q But a man stepping on the track would be just--if he was struck by that corner, he would be struck just as he was stepping on the

track? A I think he had just one foot on the track. Q On

the west rail? A I think more towards the slot rail. I

think he had one step taken." Did you testify to that before the Coroner? A I did.

Q Then at the time Corrigan was hit he was towards the

slot rail, wasn't he? A A little bit, one foot towards it.

Q How is that? A As far as I could see he had one foot towards it.

Q He had already taken one step across the westerly track, hadn't he? A One step; he had just put one foot on the track.

Q He had taken one step on the westerly track and was over towards the slot rail, wasn't he, Sullivan? A A little bit.

Q Then you did not have to change your testimony on that point because of anything Howard told you? A I did.

Q In what respect? A Because the man was there to this side, and if the man was hit by the center of the car he would not be there.

Q He was pretty close to the center; he was near to the slot rail?

MR. KRESEL: What is that?

THE COURT: What is the slot rail; explain to the jury.

A The little rail where the plough of the car goes down.

BY THE COURT:

Q How far was Corrigan from the slot rail or middle rail?

A He had just put one foot on the track when he was hit, as far as I could see.

Q One foot on the westerly track? A In the direction

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of the slot rail.

Q On the westerly rail of the northbound track, is that

right? A That is right.

BY MR. STUDIN:

Q Was he nearer the slot rail or the westerly track?

A He had ~~any~~ only taken one step, and that is as far as I can say.

Q You testified before the Coroner, "I think more towards the slot rail." Did you testify to that? A I believe I did, yes.

Q It was the truth then, wasn't it? A Certainly it was. As far as I remember I told the truth before the Coroner.

Q Howard had nothing to do with your testimony before the Coroner? A He was not engaged in the trial.

Q No, he had absolutely nothing to do with it. You said a few moments ago, Mr Sullivan, that at the time you went down there to Mrs Corrigan's on that Sunday morning you told Howard and the rest of them when you made your first statement that you thought the car was 30 or 35 feet away at the time that Corrigan started to cross the uptown track? A Yes.

Q Is that correct? A The uptown track?

Q Yes. A No.

Q What did you say about it? A I think it was 30 or 35 feet away when he started to cross the southbound track.

BY THE TENTH JUROR:

Q How many feet--did he have both feet on the ~~uptown~~

northbound track when he was struck? A No, he had only one step taken on it; was just about to put his foot down.

Q Do you know what foot it was? A The right foot.

Q Where was the other one? A Just about to step right on the track.

Q He just simply had his right foot on the westerly rail? A Yes.

MR. KRESEL: Of the northbound track.

MR. STUDIN: He had it over the rail, I think, more towards the slot rail, is what he said.

THE COURT: Yes, more towards the slot rail. Have you gentlemen got here the distances between the slot rail and the respective rails?

MR. KRESEL: I have not, sir, but I can get them.

MR. STUDIN: Can you ask Mr Quackenbush?

MR. KRESEL: No, I shall get that evidence to-morrow, so as to have it. I will have it measured.

BY THE COURT:

Q 25 or 30 feet? A 25 or 30 feet is what I originally said.

BY MR. STUDIN:

Q Your testimony is, as I understand it, Mr Sullivan, that as Mr Corrigan approached the uptown track, the car was between 25 and 35 feet away from him? A Yes.

Q Is that right? A Yes.

Q And Howard told you to lengthen that to 50 feet, did he?

A Yes, that is what I said.

Q Now you told him at that time you were not a good judge of distances, did you? A I told him I didn't measure it.

Q And you told him it might have been a little more; do you recollect that? A I said, maybe more or less.

Q Yes, you said more or less. Didn't he ask you whether it might have been 50 feet and you said, "I cannot say."

A He said it should be 50 feet.

Q Didn't you say it might have been 50? A I did not.

Q You had not measured the 35 feet, had you? A No.

Q And it might have been a little more? A Might have been more and maybe less.

Q You repeatedly say throughout your testimony in the direct-examination that you are no judge of distances? A I still say the same.

Q You stick to that story, don't you? Now, then, as a matter of fact, what you estimated might have been 35 feet, as a matter of fact might have been 50 feet, mightn't it? A I said 25 or 30 feet, and I do not think it could be any more.

Q But you are no judge of distances, you say? A No, I am not a very good judge.

Q As a matter of fact, you boast of the fact you cannot judge distances very well, don't you? A Well, I said I was not much of a judge of distance; I admit it.

Q So this 35 feet might have been a little more than 35?

A I don't see how it could have been much more.

Q Well, it might have been as a matter of fact. Sullivan, your story is Howard asked you in that one particular to add 50 feet; is that correct? A More than that, I guess.

Q We do not want any guessing? A I said 25 or 30 feet, and he said it should be made 50.

Q He asked you to add 15; is that is your story?

A He asked me to add 15 or 20 feet.

Q He asked you to add 15 or 20 feet. Now, Sullivan, do you remember the date you were arrested in this matter?

A I do.

Q Since your arrest have you ~~any~~ spoken to any employees of the New York City Railway Company? A Yes. I spoke to some of them.

Q How many of them? A Well, to a couple of them.

THE COURT: Pardon me a moment. There is a question I want to have clear here.

BY THE COURT:

Q When Corrigan stepped off the northwest corner, do you know how far away that car was? A I said about two houses down the avenue, sir, from the corner.

MR. STUDIN: That is 90 feet.

BY THE COURT:

Q Two houses below 81st street? A Yes, sir.

THE COURT: Yes, I have it here, two houses.

BY MR. STUDIN:

Q Now, then, right on that point, how far was Corrigan from the point where he was struck when that car was down there 90 feet? A How far was he from the point where he was struck?

Q Yes. A Why I said 90 feet, two houses.

Q Answer my question. How far was Corrigan from the point where he was struck when that car was down there 90 feet?

MR. KRESEL: The witness is trying to answer. Please repeat the question.

Q (Question repeated by the stenographer as follows:

Q Now, then, right on that point, how far was Corrigan from the point where he was struck when that car was down there 90 feet?) A He was about 15 or 20 feet away from there.

Q How is that? A 15 or 20 feet away from there.

BY THE COURT:

Q 15 or 20 feet away from whom? A Away from the car; away from where he was struck, sir.

BY MR. STUDIN:

Q Your statement is the car was down there 90 feet just as Corrigan passed you on the curb and you were standing by the mail box? A Yes, I had my hand on the mail box.

Q You don't mean to tell the jury it is only 15 feet from that point where the mail box was over to the westerly track or the slot rail of the westerly track? A I say he had passed us and left the curb.

Q How far past you was he? A Five or six feet past us, maybe ten.

Q Now, then, come back to the question; how far was the car down the street when Corrigan passed you? A Well, I should say it was/a couple of houses.

MR. STUDIN:
BY THE COURT:

Q You say that was where he was after Corrigan got five or six feet beyond you. The car was coming up very fast all the time towards you, Sullivan? A Yes.

Q How far was Corrigan--was the car down the street when Corrigan passed you at the letter box? A I should say it might be three houses down when he left the curb.

Q Three houses? A Yes.

Q In other words, you think that while Corrigan was passing off the curb five or six feet down into the street the car, which was moving very fast, went only the length of one house, which is about 25 feet? A Well, I don't know about that; I don't know.

Q Well, I am asking you whether that is what you are testifying to? A I told you that the car was about three houses down when he was on the curb, and then as he walked across, naturally we both came near one another.

Q All this time were you talking to Moynahan? A We were both looking at him.

Q Were you talking to Moynahan?

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A We were conversing, yes.

Q You were talking to Moynahan. Where was Moynahan?

A He was standing near me.

Q Well, which side of you was he? A He was on the street side.

Q He was between you and the street?

A He was standing right with me on the street.

Q Was Moynahan to the north or to the south of you?

A He was to the west of me.

Q He was to the west of you?

A Yes.

Q And were you facing him?

A I was looking in a southeasterly direction.

Q Moynahan was to the west of you; weren't you talking to Moynahan? A I was.

Q And were you looking at him when you talked to him?

A Sir?

Q Were you looking at him when you talked to him? A I was looking in a south-easterly direction.

Q Answer my question. Were you looking at Moynahan when you spoke to him? A No.

Q Did you have your back to Moynahan and talking to him that way? A He was standing pretty near me.

Q I ask you whether you were facing him? A Not exactly.

Q How were you with respect to Moynahan? A We stood almost at right angles.

Q How is that? A At right angles.

Q Then Moynahan was not to the westerly side of you?

A Yes, he was.

Q Moynahan was looking over in that direction (indicating)? A Moynahan was looking pretty much the same direction as me.

Q You were both looking in the same direction? A Yes, sir.

Q And Moynahan was facing the west?

MR. KRESEL: He didn't say he was facing the west.

A I don't recollect where he was facing exactly.

Q Where were you facing? A In the south-easterly direction.

Q Looking at Moynahan all the time? A Yes, sir.

Q And looking at the car all the time? A Yes, sir.

Q And looking at Corrigan all the time? A I saw him pass over and saw the car coming along.

Q Were you looking at Corrigan all the time? A Yes, sir.

Q What else did you see that morning besides having a conversation with Moynahan who was looking west, and you were looking west in the same direction; besides the car and Corrigan?

MR. KRESEL: He did not say he was looking west.

THE WITNESS: I said in a south-easterly direction.

Q What else did you see that morning besides the car and Corrigan? A What else did I see?

Q Yes? A I saw him hit and get killed.

Q I mean during the time that that car moved up from the second -- from the third to the second house, and Corrigan moved five or six feet out into the street; what else did you see? A Corrigan went along in the street.

Q I know, but besides that car name one single thing that you saw besides that? A I saw the car killing him.

Q That happened afterwards. I mean at that moment of time what else did you see? A Nothing in particular.

Q You did not see anything else? A I was not looking at anything else.

Q Was there anything about that car to attract you part-

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icularly? A No.

Q Anything about Corrigan to attract you particularly?

A No.

Q Now, the fact is then, Sullivan, and this is the fact, that you do not recollect precisely how far down the street the car was, do you? A I tell you I think it was about three houses down, when he left the curb.

Q As he started off the curb it was about three houses; is that correct? A That is what I think.

Q Now that was three houses below the downtown crossing?

A Yes.

Q And about 75 feet when he left the curb? A Yes.

Q And it is 40 feet across, so that would make it 115 feet from the point where it struck him, when Corrigan left the curb, is that correct? A I don't know how many feet it was exactly.

Q I am asking you about 115 feet; is that correct? A I don't know whether it is or not.

Q You don't know? Well, you testified a moment ago that you knew? A I told you it was about three houses down when the man left the curb.

Q Well, take it at that; houses are 25 feet wide up there?

A About that.

Q Now, Sullivan, let us come to the interviews you have had with the New York City Railway Company. Have you had any

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interviews with Mr. Quackenbush? A One.

Q Who is Mr. Quackenbush. A He is attorney for the New York City Railway.

Q He is their general attorney, I believe, is he not?

A I understand he is.

Q At whose request did you go to Mr. Quackenbush's office?

A Went there myself.

Q Nobody told you to go there? A No, sir.

Q Nobody, A Nobody told me, sir.

Q How did you know to go down to Mr. Quackenbush's office?

A Well, I will tell you why I went down there.

Q That is what we are interested in knowing? A I will tell you.

Q Go ahead? A I will tell you why I went there; when I saw what a bunch of crooks I was up against I said to myself, "The best way is to go and see this business out."

Q Now then, how did you know that Quackenbush was the man to see? A How did I know?

Q Yes? A I only went and had an interview.

Q Why did you go to Mr. Quackenbush? A I had a perfect right to go there, hadn't I? A You must have had some reason for going to that specific man. A I had no reason.

Q You work for the Water Department, don't you, Sullivan?

A Yes.

Q Did you ever get an intimation that unless you squared

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yourself with the New York City Railway Company by making the kind of statement they wanted you to you would be discharged?

A No, I didn't get an intimation to that effect.

Q What was your intimation? A I was intimated that I would be dropped.

Q Who told you you would be dropped if you didn't square yourself with Mr. Quackenbush?

MR. KRESEL: No. Let him state what was said to him.

Q Who told you --

MR. KRESEL: I object to the question because it incorporates something the witness has not said. The witness has not said it was intimated to him he would be dropped if he did not square himself with the New York City Railway Company.

THE COURT: Repeat the question.

(Previous questions and answers repeated by the stenographer as follows: Q Did you ever get an intimation that unless you squared yourself with the New York City Railway Company by making the kind of statement they wanted you to, you would be discharged? A No, I did not get an intimation to that effect. Q What was your intimation? A I was intimated that I would be dropped. Q Who told you you would be dropped if you did not square yourself with Mr. Quackenbush?)

THE COURT: I sustain the objection.

MR. KRESEL: I have no objection to saying what was said.

BY MR. STUDIN:

Q Who made any intimation to you? A The leader of my district.

Q Your political leader; is that correct? A Yes.

Q Who is that? A Well, I would rather not mention his name.

Q All right, if you don't want to mention his name we will not press it. Now, then, what did your political leader tell you? A Well, he did not tell me anything right away, but he said -- he asked me what I had been doing in the court lately. I told him that I was a witness in a case against the New York City Railway Company, and he said that if I had given any false testimony there --

Q What did you say to that? A I said we had stretched a number of feet that we originally testified to.

Q Now did you tell your leader the first thing? A I certainly did. "Well", he said, "your job is in danger on account of it."

Q That is what your leader told you, is it? A That is what he told me.

Q Yes. Now, is your political leader on terms of friendship with anybody in the New York City Railway Company?

MR. KRESEL: If he knows

A Not that I know of.

Q Did he tell you who had intimated to him that you were going to lose your job unless you went to see the New York City Railway Company?

MR. KRESEL: I object to that, because the witness has not stated that. He has not said it was intimated he would be dropped if he did not go to see him.

BY THE COURT:

Q Did he say your job was in danger? A Yes, he did.

Q Is that all he said? A Yes, that is all he said.

BY MR. STUDIN:

Q What did he say? A He said my job was in danger.

Q And after your political leader told you that your job was in danger, did you go down to see Mr. Quackenbush? A No, not then I didn't.

Q Well, did your political leader mention Mr. Quackenbush's name? A No.

Q Who was the person that told you about Mr. Quackenbush?

A John F. Bannon.

Q Bannon told you of Quackenbush? A He told me that he was the attorney for the New York City Railway.

Q And did Bannon tell you that Mr. Quackenbush was the man to see? A No.

Q What did Bannon tell you about Mr. Quackenbush? A He simply told me as I told you -- well, that he was the attorney for the New York City Railway Company.

Q Had you asked Bannon who was the attorney? A No.

Q Had you told Bannon the trouble you were having with the Water Department? A I spoke to him about it.

Q And you told Bannon you were afraid of losing your job? A I didn't exactly say that.

Q Well, what did you say exactly? A I said that there was somebody giving me a pounding.

Q But you were as a matter of fact, afraid of losing your job, weren't you, Sullivan? A Well, not exactly.

Q Not exactly, but almost. Let us put it that way. Is that correct? A Sir.

Q You were almost afraid of losing your job? A Well, something about it.

Q Something about it, and then Bannon told you to go and see Mr. Quackenbush, did he? A He didn't ^{tell} me to go and see him.

Q He mentioned Mr. Quackenbush to you? A I went voluntarily to Mr. Quackenbush.

Q But Bannon mentioned Mr. Quackenbush's name? A He certainly did.

Q That is the first thing you heard about him? A Yes, sir.

Q How did you know the person to see was Mr. Quackenbush instead of the receivers of the road, or some other people?

A I thought he was the attorney of the company and he would be

the best man to see.

Q You thought he was the man to see about this matter?

A I thought he was the best man to see.

Q You went down and saw Mr. Quackenbush? A I saw him myself personally.

Q That was after you were arrested? A On the 19th of March.

Q Was it after you were arrested? A Yes.

Q And you were out on bail? A Yes.

Q Up to that time you had been represented -- who had represented you as attorney? A Stanton & Greer.

Q Stanton & Greer. Did you ever come back to Stanton & Greer after you saw Mr. Quackenbush? A No.

MR. KRESEL: I guess not.

MR. STUDIN: How is that?

MR. KRESEL: I guess not.

Q Have you been in fear of your job since you saw Mr. Quackenbush? A I don't know. I am liable to lose it on account of it at any time.

Q I am asking you if you are fearful of losing your job, if you are as fearful of losing your job this time as you were before? A Every bit, just as much.

Q So you don't think Mr. Quackenbush helped you at all?

A I don't think so.

Q Now do you know whether anybody connected with the Water

Department has had a conversation with anybody connected with the New York City Railway Company about this? A I cannot tell you whether they have or not.

Q Well, have you heard anything to that effect? A I heard a little about it, yes.

Q Somebody pretty high up in the Water Department has had a conversation with somebody pretty high up in the New York City Railway Company, haven't they? A I heard something to that effect.

Q And you think since that conversation your job is pretty safe, don't you? A I don't.

Q But you think they talked about your job, don't you? A I guess they did.

Q In fact you know they did, don't you, Sullivan? A I couldn't swear to it; I was not present.

Q Now up to the time that you had this little talk with Mr. Quackenbush you had never said anything to anybody against Mr. Howard, had you? A No, I didn't say anything.

Q After you had your talk with Mr. Quackenbush, you began to make statements against Howard, didn't you? A I made no statement, only one.

Q How is that? A I made only one statement.

Q After you had your talk with Mr. Quackenbush you became a witness for the People in this case; is that correct? A That is correct.

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BY THE TENTH JUROR:

Q What did you mean by the answer that you gave, "When I found out I was up against a bunch of crooks, I thought I ought to go somewhere else." A I will tell you what I meant. The four men that sat at the table with me that morning on May 17th, three of those had gone to the District Attorney's office and put me in a bad hole.

Q How? A They had gone to the District Attorney's office and told all they knew; three of those men.

Q What did you expect to gain by going to Mr. Kresel? A I did not expect to gain anything. I wanted to set myself right.

Q How could you do that by going to him? A I could find a way to do it; that is what I expected.

BY THE COURT:

Q Why didn't you go to the District Attorney's office?

A I did go there when he told me.

BY MR. STUDIN:

Q Who told you? A Mr. Quackenbush.

BY THE COURT:

Q Who are the bunch of crooks that you refer to? A Merter.

THE COURT: I withdraw the question.

MR. STUDIN: I don't think we ought to be bound by his answers.

Q Is Merter, Remington? A That is the man, sir.

Q Remington has been under indictment? A I understand he has been under three or four indictments.

Q Was that prior to your arrest? A Yes, sir.

Q Did Remington give evidence against you which resulted in the finding of an indictment against you? A I don't know whether he did.

THE COURT: Who did, Mr. Kresel? I am not familiar with it. I think the jury wants to be enlightened.

MR. KRESEL: Well, to state frankly, I did not put that case in before the Grand Jury. Mr. Strowbridge did, Sullivan's case. Have you Sullivan's indictment?

MR. STUDIN: I have a copy of it here.

MR. KRESEL: Well, according to this, the witness's name, subject to correction of course, I will read this: J. S. Quackenbush, George N. Brothers, Frederick A. Baker, George Lyons, Michael Herlihy, Helfin Lawson (I guess that first name is wrong), Isaac Alexander and Officer Henry Scherr.

BY THE COURT:

Q Were you under indictment before you visited Mr. Quackenbush's office or afterwards? A Before that, sir, before I went to Mr. Quackenbush.

Q You had already been under indictment? A Yes.

BY MR. KRESEL:

Q Before what? A Before I went to Mr. Quackenbush's

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office I was indicted.

Q You were indicted before you went there? A Yes, sir.

THE COURT: How could Mr. Quackenbush have been a witness against this man?

MR. KRESEL: If your Honor desires to know I will tell your Honor just what Mr. Quackenbush was called as a witness for; to prove the bringing of this action.

THE COURT: I see.

BY THE COURT:

Q Had you known at the time you visited Mr. Quackenbush's office who the witnesses had been who testified against you?

A No, sir, I did not know any of them.

MR. STUDIN: Now, have you that statement which the witness originally made, Mr. Kresel?

MR. KRESEL: To the company?

THE COURT: Yes.

MR. KRESEL: I have had it marked for Identification. I have not yet offered it in evidence. I shall as soon as his cross-examination is completed. I have it here if your Honor desires to see it.

BY THE COURT:

Q I want to put one question here. How far was the car away when Corrigan stepped on the uptown track? A I should say it ~~was~~ would be only about 15 feet, sir.

Q 15 feet? A About 10 or 15 feet.

Q 10 or 15 feet? A Yes.

Q That was the statement that you made originally?

A Yes, sir, that is the statement I originally made.

Q Are you sure about that? A That is what I think it was away from him, sir, about 10 or 15 feet.

Q You say that Corrigan was struck on the north crossing? A Yes, sir.

Q Northerly crossing? A Yes, sir.

Q Now Second avenue has some elevated posts? A Yes, sir.

Q And had at that time? A Yes, sir.

Q Is there any elevated post or any pillar near the north-bound crossing, near the northerly crossing? A Oh, yes, they are right along the avenue there, sir.

Q Well, now, where was the car with reference to one of those pillars at the time that the deceased put his foot on the westerly rail of the north-bound track? A I do not know the exact position of the pillar, sir.

Q Well, had the car reached the southerly crossing at that time? A When he stepped on the track?

Q Yes? A It was coming across the crossing.

Q It was coming across the crossing. You are sure about that? A I am, sir.

Q What if anything did the defendant Howard say to you regarding the distance of the car at the time that Corrigan had put his foot on the westerly rail? A That it should be 50

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feet away when he approached that track.

Q Did he mention feet or houses? A Feet.

Q Sure about that? A Yes, sir.

BY MR. STUDIN:

Q When Corrigan put his foot on the track you just said the car was crossing the downtown crossing, did you say that, Sullivan? A I say, was about to cross the crossing.

Q Now there are 40 feet between the two crossings, aren't there? A There are.

Q So when Corrigan was putting his foot on the track the car was at the other crossing? A Coming across the crossing.

Q About 40 feet? A Oh, no.

MR. STUDIN: Well, I will leave it that way; we will not go into that any more.

BY THE COURT:

Q What part of the car had passed the southerly crossing?

A The car was about -- I guess the car had pretty near completely passed it.

Q Pretty near completely passed it? A Yes.

BY MR. STUDIN:

Q Sullivan, after you were arrested, you testified that Howard told you it was a shame, is that correct? A He said words to that effect, yes, sir.

Q He told you it was a shame and he told you not to be

afraid of anything too, didn't he? A Yes, sir.

MR. KRESEL: That James A. Howard would stand beside him.

MR. STUDIN: Now, Mr. Kresel --

MR. KRESEL: Isn't that his testimony?

THE COURT: Proceed, Mr. Studin.

Q Your statement here is that you committed deliberate and wilful perjury in this action before the Supreme Court upon Howard's promise that you would be taken care of? A Words to that effect, yes, that I would be taken care of.

Q Those were his exact words? A Well, I didn't do that -- I done it more for sympathy for the woman.

Q Then you didn't give this testimony because of anything Howard told you? A I gave it, but the testimony I gave was more for sympathy for the woman than anything else, but Howard showed me how to do it, the number of feet --

MR. STUDIN: I move to strike it out.

THE COURT: I will allow it to stand.

Q Had you asked Howard for any money? A No, sir.

Q Nothing was said about money? A He didn't offer me any money. He said I would be taken care of.

Q He said you would be taken care of and that was one of the reasons you committed perjury? A No, it was more or less through sympathy.

Q Sympathy for whom

A For the woman and three children.

Q Did the woman ask you to commit perjury? A No, sir.

Q Howard was the only man? A It was Howard put it into my head how to do it.

Q And he said you would be taken care of? A Yes, sir.

Q You would be willing -- had you ever met Mrs. Corrigan before? A Only once.

Q You never met her before her husband was killed?

A No.

Q You had not anything in common with her? A No.

Q She is not related to you? A No.

Q She has never done anything for you? A No.

Q None of her family has ever done anything for you?

A Not that I know of.

Q And still through sympathy for a perfect stranger to you in the city you were willing to commit the serious crime of perjury? A Well, I will tell you --

Q Is that your position? A No, sir; Howard told me that this explanation that the number of feet would not make any difference.

Q Well, I am asking -- A If I knew it was wilful and corrupt perjury I wouldn't do it for anybody.

Q If you knew it was wilful and corrupt you would not have done it? A No.

Q Didn't you know you were committing perjury? A He said the extra number of feet can be accounted for.

Q Did you know you were committing perjury? A I did not.

Q You did not think you were committing perjury when you were giving testimony, did you? A No, I did not.

Q No; that is correct; and you told Howard that the story which you were telling him was substantially what had happened, didn't you? A No; but I asked Howard how I could explain the difference in the number of feet, and he said that could be easily explained.

Q And you did not think you were committing perjury, did you? A Well, I will tell you; I did not like it at all.

Q Did you think you were committing perjury? A I did, yes.

Q You did think you were? A I did when I was asked to give 50 and 75 feet and three-quarters of a block.

Q Now you think you were committing perjury. Now, come back to the other question. Were you willing to commit the serious crime of perjury out of sympathy for a person who was a perfect stranger to you; that is to say, Mrs. Corrigan?

A I done all I have done in the case through sympathy.

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Q And you were willing to do that for a perfect stranger?

A I done all I done through sympathy.

Q Let me ask you this, Sullivan. If you were willing to commit the crime of perjury for a perfect stranger like Mrs Corrigan, how much perjury would you commit to save your own neck from State Prison? A I wouldn't commit any perjury.

Q You would not commit any perjury for yourself? A If at the time--if at the time I knew it was as serious as it was I would not have done it.

Q But your statement now is in order to save you own neck from State Prison you would not commit any perjury?

A No, sir, I have not--I have stuck to my original story and that was the truth and the whole truth.

Q You have not changed your story? A I have not changed my original.

Q Now, Sullivan, you made an affidavit in a motion in this matter, didn't you? A I did.

Q You said you read parts of that affidavit? A That is all I did read, was the bottom part.

Q Which part did you read? A I read the last sheet of it, I think.

Q Well, let us see what the last sheet says. You read the last sheet of it? A Yes, sir.

MR. STUDIN: This is a copy. Do you object to it on that ground?

MR. KRESEL: If you say it is a copy I will take your word for it.

BY MR. STUDIN:

Q Was that affidavit true or false? A He told me it was only a motion to inspect the minutes of the Grand Jury.

Q Did you testify to a truth or a falsehood in that affidavit? A I did not ~~x~~read it all.

Q I am talking about the last page. Was that true or false? A As far as I know, I think it was true.

MR. STUDIN: I offer it in evidence.

MR. KRESEL: I offered to put it in evidence before and you objected.

MR. KRESEL: I object to your impeaching your own witness.

MR. KRESEL: You go ahead and impeach him, then.

(This affidavit marked Defendant's Exhibit A in evidence.)

BY THE TENTH JUROR

Q Did you at any time refuse to become a witness at that trial? A No.

Q Didn't you on one occasion say--intimate--that you would if you ~~would~~ were taken care of? A No.

BY THE COURT:

Q When you appeared before the Coroner's jury and gave testimony and when you made the statement, did you believe--

were you then sympathetically inclined towards the widow?

A The statements were true, as far as I know.

Q I mean at the time you made the statement were you sympathetically inclined towards the widow? A Yes.

Q And when you appeared in the Coroner's court were you also sympathetically inclined toward the widow? A I was, sir.

Q Who subpoenaed you to attend the Coroner's court?

A Mrs Corrigan brought up a subpoena to my house.

BY MR. KRESEL:

Q Who did? A Mrs Corrigan.

THE COURT: In the statement here I notice you were asked--

MR. KRESEL: If your Honor please, that statement is not yet in evidence. May I offer it now, that your Honor may use it.

I offer the statement People's Exhibit 6 for identification in evidence.

(Statement marked People's Exhibit 6 in evidence.)

BY MR. STUDIN:

Q You made the affidavit this statement was true? A I think what I read of it was true, but I didn't say anything.

Q This affidavit was sworn to on the 9th day of February, 1909; is that correct? A Yes.

Q That was after your arrest? A Yes.

Q "City, County and State of New York, ss: Michael A. Sullivan, being duly sworn, deposes and says (reading People's Exhibit 6 in evidence). "That on the 2d day of February, 1909, at about 11 o'clock in the forenoon, deponent was arrested while at his place of employment and taken to the office of the District Attorney." A Did you say 11 o'clock, sir?

Q Yes, in the forenoon? A That cannot be right. I was arrested at 8 o'clock in the morning.

Q Well, it is not important. "Deponent was arrested while at his place of business and taken to the office"--up to that point it is correct? A I don't know; I didn't read it. There is a big discrepancy between 8 and 11 o'clock.

Q "On the 2d day of February, 1909, at about 11 o'clock in the forenoon, deponent was arrested while at his place of employment and taken to the office of the District Attorney and there deponent was interrogated and admonished to tell the truth." (Continuing reading:) "Commissioner of Deeds, New York City." You remember the day you signed that, don't you?

A Yes, I signed it down in Mr Stanton's office.

Q You had not read it before you signed it? A I did not read it all. I read a portion of the last page. I did not even read all the last page. He told me it was an order to inspect; at least a motion to inspect the minutes of the Grand Jury, and he said it was just a formal.

Q Who told you that? A Mr Stanton.

BY MR. KRESEL:

Q And you believed it? A And I believed it.

BY MR. STUDIN:

Q Are you in the habit of signing papers without reading them? A Sometimes.

Q Did you sign the statement to the railway company without reading it? A I wrote it myself.

Q You are absolutely sure what that contained? A Well, I wrote it all myself.

Q Now, Sullivan, who obtained bail for you; didn't the political leader? A Well, he's a friend of mine, yes.

Q And you got your bail through this political leader?

A No, not exactly.

Q Well, didn't he? Wasn't he concerned in that?

A No, the man that secured bail for me is my cousin.

Q Didn't the political leader have something to do with it? A He might have had.

Q Don't you know as a matter of fact whether he did have?

MR. KRESEL: Are you responsible also for the political leader?

MR. STUDIN: The railway company may be.

A Well, he didn't go bail for me.

Q Who did? A Mr Shannon went on my bail.

Q Did this political leader we have been speaking of before this affidavit have anything to do towards going bail

for you? A No, Mr Shannon was asked for bail by my cousin.

Q Did this leader try to get bail? A He was not asked to.

Q I am asking whether he tried to give bail? A He was not asked to.

MR. STUDIN: I cannot make the witness answer the question.

THE COURT: Answer the question.

THE WITNESS: No, he did not.

Q Did he have anything to do with getting bail for you?

A No, sir.

Q Now, did you ever tell anybody that money had been offered you in connection with this case by the railroad company?

A No.

Q Did you ever make such a statement to Mrs Corrigan before the trial? A No.

Q What did you say about that? A I said that I was told to come down to the office there.

Q What office? A Mr Quackenbush's office.

Q Was anything said about \$175? A No, sir.

Q What amount was mentioned? A There was no amount mentioned.

Q Well, what amount did you tell Mrs Corrigan had been mentioned? A I didn't tell her anything like that.

Q Did you ever mention to Mrs Corrigan the fact that you

were receiving money for your actions in this matter? A Never said a word about it.

Q Never said a word about it? A No.

Q You did tell Mrs Corrigan you had been asked to go to Mr Quackenbush's office? A Yes, sir.

Q In that conversation was anything said about your being paid? A No, sir.

Q Nothing of that sort passed your lips at all? A No. She said I would be well recompensed, that is all, for my time.

MR. STUDIN: Did you offer the statement in evidence?

MR. KRESEL: I have.

MR. STUDIN: I suggest if you have offered it it should be read.

MR. KRESEL: When I come to sum up or if it is necessary, I will read it. You can read it.

MR. STUDIN: I will pick out certain questions I want to ask.

"Where were you at the time, tell your exact position?"

A Standing at the northwest corner of 81st street and Second avenue." A That is what I said.

Q There is no doubt you were at the northwest corner?

A No doubt.

Q And there is no doubt Corrigan came along the north side of the street? A He came behind me.

Q On the north side of the street? A Yes.

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Q "No question of that? A He came past me." Howard didn't ask you to say that? A No.

Q Howard did not ask you to say Corrigan was on the uptown side and not the downtown side? A No.

Q That was your own voluntary statement? A I don't know where he came from, but he just passed me.

Q And did you say, "What did the motorman do to prevent the accident? A Nothing, but put his brakes on when he saw he had hit the man and turned off his power. Q Was the car

moving at a slow, ordinary or fast speed before the person was struck? A Going very fast." You testified to that. Howard did not ask you to say that, did he? A No, sir.

BY MR. KRESEL:

Q Mr Sullivan, did you retain Messrs Stanton & Greer to represent you in your action? A I certainly did not, sir.

Q Did you pay them anything? A No, sir.

Q Did you promise to pay them anything? A I did if they took care of my interests.

Q If they what? A I did make a promise to pay them some money.

Q Now, when this political leader of yours told you that your job was in danger, did you say anything to Mr Howard about that? A I spoke to him about it, yes.

Q What did Howard say about it? By the way, Howard was the man you spoke to first about it. You didn't speak to

Quackenbush about it? A No.

Q At that time you and Howard were still together?

A Yes, sir.

Q What did Howard say about your job? A He said he didn't think they could do it.

Q Didn't think they could do it? A No.

Q Didn't think they could do what? A Didn't think they could remove me.

Q Didn't think they could remove you? A No.

BY MR. STUDIN:

Q Who is "they"? A Well, the Department.

BY MR. KRESEL:

Q Your department? A Yes.

Q Now, you were questioned as to the reason why you went to Mr Quackenbush's office? A Yes.

Q And not to the office of the Receivers, and as I understood your answer it was because you understood Mr Quackenbush was the attorney? A That is right.

MR. STUDIN: And Bannon told him to go, I understood.

Q And Bannon told you to go? A Bannon had been there and he said you had better go and see Mr Quackenbush.

Q What? A You had better go and see Mr Quackenbush.

Q When you went to see Mr Quackenbush did you have a conversation with him? A A little.

Q Now, will you tell us what conversation you had with

him? A He told me to go to the District Attorney's office

Q What did you tell him you wanted to do? A I told him I wanted to tell the whole truth about this matter.

Q And he told you to go to the District Attorney's office? A That is what he told me.

Q And you went up? A Yes, sir.

Q On the same day? A That very afternoon.

Q And you saw Mr Jerome? A I did, sir.

Q About this interesting affidavit, did you read in this affidavit before you signed it--oh, by the way, who gave you this affidavit to sign? A Mr Stanton.

Q Mr Stanton? Was Mr Howard there? A I believe the three of them were there when I signed it.

Q Mr Howard, Mr Greer and Mr Stanton? A I think so.

Q Did you read in that affidavit as follows: "That such answers are in no sense framed by another and rehearsed for said trial." Did you read that? A No.

Q Did Mr Stanton tell you why it was necessary in an application for an inspection of the minutes of the Grand Jury in your case, that you should set forth that you were not coached to tell this story and that nobody had rehearsed it with you?

MR. STUDIN: One moment, we are not bound by anything Mr Stanton said or what Mr Stanton told this witness.

MR. KRESEL: Mr Howard was the man who told him he would take care of him and he got him Greer and Stanton and he was there at the time.

THE COURT: Objection overruled.

Q Did Mr Stanton tell you why it was necessary to allege in an affidavit on a question of inspection of minutes that your answers were not framed by another and not rehearsed for such trial? A He did not say anything about that.

MR. STUDIN: We object to that on the ground it is incompetent and immaterial and pure hearsay, by which we are not bound.

Overruled. Exception.

THE COURT: As I understand, Mr Howard was present at the time.

MR. STUDIN: I don't understand so.

BY MR. KRESEL:

Q Was Mr Howard present? A He was there when I signed it.

THE COURT: I overrule the objection. Exception.

BY MR. KRESEL:

Q Did Mr Howard tell you why it was necessary in this affidavit in an application for an inspection of minutes for you to state as follows, that each of those questions were all deponent's own knowledge as he remembers the circumstances, nor was deponent quizzed prior to the Coroner's inquest or the

trial." A He did not say anything about that.

THE TENTH JUROR: May I ask a question?

THE COURT: Yes, you may ask as many questions as you desire, or any other juror.

BY THE TENTH JUROR:

Q Have you seen the affidavit since you saw it or signed it? A No.

Q Not at all? A I have not seen it.

Q Has Mr Kresel talked with you about it? A Somebody told me that I had signed an affidavit: that they rung it in on me down there; Mr Bannon did.

THE COURT: Strike out what Mr Bannon said.

MR. STUDIN: We will investigate Mr Bannon.

THE COURT: The jury will disregard the reference concerning Mr Bannon.

BY THE TENTH JUROR:

Q Have you been asked the same question that Mr Kresel has just asked you, about this affidavit, before to-night?

A No.

J O H N F. B A N N O N, duly called as a witness on behalf of the People, being sworn, testified as follows:

DIRECT-EXAMINATION BY MR. KRESEL:

Q Mr Bannon, where do you live, please? A 117 West 90th street, New York.

Q How old are you? A Twenty-six.

Q Are you married? A No.

Q Do you know this defendant Howard? A I do.

Q How long have you known him? A Since October 5th,
1908.

Q How did you come to meet him? A I replied to an
advertisement which appeared in the morning World. I have the
letter that he sent to me to call on him, dated October 3d, 1908.
I met him on the 5th of October, the following Monday.

Q Where? A At 215 Second avenue.

Q And what happened then? A I was brought in the
back room and made some statement where I had formerly worked
and I was employed.

Q Engaged as what? A As an investigator.

Q Investigator? A Yes.

Q What were you getting? A \$15 to start.

Q \$15 a week? A Yes.

Q Now, that you say was in October, the 5th of October,
1908? A The 5th of October, 1908.

Q Do you know a Mrs Corrigan? A I do.

Q Were you ever at her house? A Yes.

Q Did you go there alone? A Yes.

Q When you got there did you meet any one? A I went
alone the first time. I saw Mrs Corrigan ten days before the
trial of her case.

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Q Did you ever go there with Mr Howard, the defendant here? A Yes.

Q When was that? A That was on the Sunday prior to the beginning of the trial; I say about the beginning of the trial, I mean when the jury was taken.

Q And who went with you? A Mr Howard, Mr Mason and Mr Harry Remington, whom I have since found out to be Mercer.

Q Who is what? A Who I have since found out to be Mercer--Mercer Brothers.

Q Who was Mason? A Mason was Theodore Mercer.

Q Where was he employed? A He was employed at 215 Second avenue.

Q Howard's office? A Yes.

Q Now you say you went there on a Sunday? A On a Sunday.

Q What time, during the day? A It was at 9:30 in the morning.

Q When you got to Mrs Corrigan's ~~REAR~~ house whom did you find there? A Found Mrs Corrigan and her brother Michael Minnogue.

Q What happened when you came in? A I came in and sat down. First we went to the kitchen, back entrance; then we were taken into the parlor. We sat down at a little parlor table. It was probably about two feet square.

Q Yes, proceed, go on. A Sat down at that table and

Minnogue was asked where was the witness who you were to see.

Q Who asked him? A Mr Howard or Mr Mercer. I am not sure about that point.

Q Asked Minnogue where who was? A Asked Minnogue where the witness Sullivan was.

Q Yes? A And Minnogue, he was sent around, Minnogue was sent around to Sullivan, who lived at 212 East 82d street. We sat down there.

Q By the way, where was Mrs Corrigan's house? A At three; I cannot recall the number now.

Q What street? A I think it was 231 East 81st.

Q Go on? A And proceeded to sit down awaiting the arrival of Sullivan, and the conversation was general. Sullivan came in. Minogue went around for Sullivan. He came back in about fifteen minutes with Sullivan. He came into the room and the conversation was started by both Merter and Howard asking Sullivan would he tell what he knew of this accident.

Q What accident? A At the accident to Mrs. Corrigan's husband, James Corrigan, and Sullivan first refused to talk. He asked what there was in it for him, and he was told that by both Howard and Merter that they understood that that would be fixed up; that he would be well taken care of from the result of any verdict obtained. The next thing in point of time was the sitting down at the table. Sullivan finally consented to talk and tell what he knew. They sat down at the table. Sullivan was sitting opposite Howard. Merter was seated on his left. Mason was seated over in one corner of the table. Minogue and myself were seated at a lounge catercornered to that table. They asked some questions of Sullivan. I cannot recall what they were, and then Howard drew a diagram, a rough diagram, and they got down to distances, leading up to the time that Corrigan was killed. The distances stated --

Q Who stated it? A Sullivan. The distances stated at that time were that the car was 50 feet away, I believe. I am not sure about the distances. He stated 50 feet away at the time

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Corrigan first started crossing the track, crossing the street; that is, when he left the curb. Then when he was about to reach the track or step on the track that the car was then only 15 or 20 feet away. He was told then that those distances, for the good of the case, would not be right.

Q Who told him that? A Both Mertes and Howard; that he would have to say -- he would have to say -- give three different distances to make a prima facie case, and the distances were to be three-quarters of a block; then about 50 feet -- then about 100 feet at least, and then about 50 feet.

BY THE COURT:

Q Three-quarters of a block? A Three-quarters of a block. Then the second time 100 feet, and the next was 50 feet, about 50 feet south of the south curb line.

BY MR. KRESEL:

Q Now what was the distance, that three-quarters block distance, what was that to be? A The three-quarters block distance was to be at the time that Corrigan just stepped off the west curb.

Q Now what was said about that? A That he would have to say --

Q Who would have to say? A That Sullivan would have to say.

Q Say where? A At the trial.

Q Testify at the trial? A He would have to testify

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at the trial to make out this prima facie case.

Q That what? A That at the time that Corrigan stepped from the west curb of Second avenue, the car was then three-quarters of a block down south.

Q Yes? A That as he proceeded in an easterly direction and reached the west rail of the southbound track the car was then about 100 feet south, and as he was about approaching the west rail of the north track, the car would then have to be a little south of the south crossing, or about 50 feet, and then as he proceeded on and was about to take one step over the westerly rail, so as his next step would be right into the channel rail or the slot, he was told he would have to state, to make a good case, that he was either hit by the centre of the bumper or he was hit as he was leaving the track. To all these suggestions Sullivan would nod his head in the affirmative. He did not say anything. Then he asked him how he would reconcile, if he went through that testimony, "How will I reconcile the statement made before the Coroner --"

BY MR. KRESEL:

Q That is what Sullivan said? A That is what Sullivan said. He was told then by both Howard and Merter that if he was asked anything that he was doubtful of giving a truthful answer to, that all he would have to say was, "I am testifying now to the best of my recollection." And that would cover it, and another thing they told him to say that if that question -- if they insisted on asking that question, to say that ~~also~~

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testimony given before the Coroner he had gone up to the scene of the accident and looked over the scene, and that is what changed his mind regarding the distances.

Q Was there anything said about the distance the car went after striking Corrigan? A Yes, the distance suggested to the witness Sullivan after Corrigan was hit, the car was to have gone a distance of three house lengths or 75 feet, or he could use the term that it went a length of itself and a half a length again.

Q Was there anything said about Corrigan looking to see whether a car was approaching? A There was a question arose about the answer that Sullivan said he made regarding this statement that he had made to an investigator who called shortly after the accident and where he had said, "I cannot say," in answer to the question, "Did you see the man look to see if the car was approaching?" He was told to say --

Q Who told him? A Both Mertes and Howard. They done all the talking in all the case.

Q Yes. A That if that question arose that he should say that he saw the man with his head facing in a south-easterly direction, but as to whether he saw the car or not, that would be the inference for the jury.

Q What were you doing at that time? A I was sitting there taking it in. I was only new there. This case had been on the calendar when I went into the office. I did not really

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know the facts of the testimony of the accident.

Q When was the case tried? A The case was tried on October and I think it was started on the 21st.

Q On the 23rd? A Yes, sir.

Q And you entered the employ of Howard on the 5th?

A Yes, sir, I spent a whole week in the office entering cases. The first day I was employed there I was sent to Winfield, Long Island, on a case of murder --

MR. STUDIN: I object.

MR. KRESEL: Don't tell us that; they don't like it.

Q Did you take part in the conversation there? A No, because I did not know the facts, to take part in the conversation. I was often asked during the conversation the use of different railroad terms, I having been familiar with them from having worked with the railroad company, such as channel rails and slot and bumper, and things like that.

Q Have you ever worked with any railroad company?

A Yes, sir, I worked for the New York City Railway Company.

Q How many years? A Eight years; a little over eight years.

Q When did you leave their employ? A On the 1st of June.

Q Of what year? A 1908.

Q Were you then out of employment? A No, I went out myself on private investigations.

Q For whom? A For the different lawyers who formerly worked with the New York City.

Q Then you went with Mr. Howard? A With Mr. Howard, pursuant to the advertisement in the paper.

Q By the way, how long did you remain in Mr. Howard's employ? A I remained there up to probably a month ago. I have been in his employ -- I never received any salary since January.

Q Well, he was in trouble. Now were you in court at the time of the trial of the accident of Mrs. Corrigan against the City Railway Company? A Oh, yes, I answered the calendar every day up to the day of the trial and then I heard the witness Sullivan testify.

Q You did hear him testify? A Yes, that is the only one I heard -- oh, yes, I heard a part of Moynahan's testimony, the witness Cornelius Moynahan.

Q Now at any time since the trial of that action, did you accompany Mr. Howard to Sullivan's house? A Yes.

Q When was that? A I cannot recall the date; that is, I will tell you -- it was two days after Sullivan -- two days after Moynahan had been arrested or a day after, or in other words, the night before Sullivan was arrested.

Q And what conversation was there had there? A The conversation had -- the purpose of our visit was that Howard had drawn an affidavit that he wanted Sullivan to sign, saying that

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he had --

Q Did you see the affidavit? A Yes.

Q Did you --wait a minute, did Howard show it to you?

A Yes, I read it. I had the affidavit in my possession, in fact.

Q What became of it? A Sullivan did not sign it.

Q Who took it away with him? A Howard has it, I think, or had it.

MR. KRESEL: Will you produce the affidavit?

MR. STUDIN: The affidavit he signed?

MR. KRESEL: The affidavit he wanted him to sign.

Will you state what there was in the affidavit?

MR. STUDIN: One moment. I object. There is no proof we have the affidavit or ever had one, as far as I can see. In the first place it was not an affidavit. It was not ever signed.

THE WITNESS: It was drawn in affidavit form, I should say.

THE COURT: A paper drawn in affidavit form.

BY MR. KRESEL:

Q Mr. Howard showed it to you? A Yes, sir, and I had it in my possession.

Q What did he say to you? A He said to have all the witnesses sign affidavits and they were all the same.

Q What did he say about the affidavit he wanted Sullivan

to sign. A Well, he wanted Sullivan to sign this affidavit, saying that he had taken no part in any conversation at any time.

Q That who had taken no part? A That Howard had taken no part; that he had made no suggestion, and to have Sullivan say whatever was contained in that affidavit or in the statement he made before Judge Goff in the Supreme Court, was the truth, and the whole truth.

Q And that he, Howard, had made no -- A That he had made no suggestions or told him what to say, yes.

Q To Sullivan? A Yes. And that covered all the other affidavits.

Q Well, did you show that affidavit to Sullivan? A No, I did not.

Q What did you say to Howard about that? A I told Howard that I would not ask Sullivan to sign that affidavit, because I did not think he would do it.

BY THE COURT:

Q What did you do with the affidavit, with the proposed affidavit? A It was ~~back~~ given back to Mr. Howard.

Q By whom? A BY me.

BY MR. KRESEL:

Q Did you then accompany Howard to Minnogue's house?

A Yes.

Q And did Mr Minnogue sign the affidavit? A Mr Min-

nogue signed the affidavit.

Q Who asked him to sign it? A Mr Howard and myself.

Q Well, now, was there any talk at Sullivan's house about his indictment? A There was no--nothing in particular--no particular talk, simply that Howard made the remark that he need not worry; all that he would have to do would be to stand pat on what he had said, and he made the remark, ^{"If} "You go to jail, I will go with you."

Q He said that, did he? A He said that to Sullivan. That was in a friendly way that he said it; that he need not fear any trouble in this case.

Q Just one question with regard to these affidavits; what did Howard say about them? A Why he said he thought he should have these signed so as to leave him on the safe side; that was the purpose of the drawing of all the affidavits. The only two that signed them were Mrs Adelson and Michael Minogue.

Q Who was Mrs Adelson? A Mrs Adelson was a witness, the woman witness in the Corrigan case. There was a statement that Howard gave me one time I recall in his office; I do not know the contents of it, but he asked me to sign it. It was a short statement. It was not sworn to. He asked me to sign it. I cannot recall it.

Q Did you sign it? A Yes, as an employee of his.

Q What was it about? A I think it was covering about

the same thing.

Q As Sullivan's? A That is, that he had not done any talking.

Q Who had not done any talking? A Howard had not done any talking.

BY THE COURT:

Q Had not done what? A Had not done any talking to the witnesses.

BY THE TENTH JUROR:

Q Do you say you did not read that statement? A Yes, I read that part of it. I did not read the first part of it, because it was the ordinary statement I had read probably a dozen times.

Q ~~It~~ It stated that you had not heard Howard ask?

A That he had not spoken-- that he had not spoken to the witnesses in this Corrigan case.

Q That you had not heard him speak? A That I had not heard.

Q ^{Though} ~~That~~ you had? A I had heard him, yes. I didn't swear to the affidavit though, and I was in the capacity of an employee there.

MR. STUDIN: I will introduce this paper anyhow.

MR. KRESEL: All right.

CROSS-EXAMINATION BY MR. STUDIN:

Q You claim you were up at Corrigan's house at the time

that Sullivan put up this story? A Yes.

Q And somebody went and got Sullivan? A Yes.

Q And before Sullivan said anything about his testimony and before he had said anything at all, he made the statement, "What is there in it for me?" Is that right? A Yes.

Q And somebody said, "You will be well taken care of."

A Yes.

Q Who said that? A He--oh, afterwards, after saying, "What is there in it for me?" he said he would lose probably a lot of time by it and Mercer, I recall distinctly, said to him, said he was a city employee and would not lose anything, but as far as any benefit he could give to the case in resulting in a verdict in favor of the plaintiff, that he would be well taken care of.

Q Then before Mercer, Howard or anybody else knew what Sullivan was going to testify or knew anything about his testimony, Sullivan came in and said, "What is there in it for me?" And he said, "You will be well taken care of too." That is your story? A Yes, with that addition I gave you.

Q With the addition. That is the substance of it?

A Yes, sir.

Q Do you mean they were offering bribes? A No, I did not say that.

Q You did not mean that at all? A No, sir.

Q They were not offering out any inducements? A No

inducement at all. They said just exactly as I stated, "He will be well taken care of."

Q Sullivan then came in and told his story. You sat around the table, did you? Do you remember what Sullivan said?

A I don't recall now, no.

Q You don't remember what Sullivan said? A No, not all of it.

Q Well, do you remember the important part of it?

A Yes, about the distances.

Q Well, what did he say? A He told substantially what he told at the Coroner's inquest.

Q Were you at the Coroner's inquest? A No, I was not, but I had read the minutes.

Q You had read them before that? A No, not before that, but since that time.

Q Now, then, what did he say? A He said, regarding the distances, I mean--

Q I mean the whole thing. What did he say? A I said I could say regarding the distances.

Q That is all you remember? A Yes.

Q All right. Now let us see what you remember on that. How far did Sullivan state in the beginning that the car had dragged Corrigan after it hit him? A Three to five feet.

Q He said that? A Yes, sir.

Q No doubt about that? A Yes, sir, to the best of my

recollection, I am talking now.

Q Of course that is all you are testifying to. Did he say the same thing in the Coroner's minutes? A Yes, sir.

Q Sure of that? A Yes, sir.

Q When did you read the Coroner's minutes? A It was some time after the case or during the case, I don't know which.

Q ^{Why} ~~When~~ did you read the Coroner's minutes? A For no reason.

Q No reason at all. Who gave them to you? A Simply I was employed by Howard. I thought I would familiarize myself with the full case.

Q In those minutes you read that the car had dragged Sullivan three or five feet? A Corrigan you mean; that is to the best of my recollection.

Q Yes. Now I will read the Coroner's minutes to you on page 37: "Q Still you think the car was stopped in about its length? A Its length. Possibly a little more. I could not swear exactly. Q And it may be a little less? A Yes.

Q Your best judgment is about a length? A About a length or about a length and a half at the most."

MR. KRESEL: That is not what he said.

THE WITNESS: I beg your pardon. You asked me how far he was dragged. That was how far the car went after the accident.

Q How far did Sullivan say the car went after it struck

Corrigan? A As I told you before, from three to five feet, he said.

Q The car went three or five feet after he was struck?

A That was only the distance he was dragged.

Q I am not asking that. I am asking how far the car went before it stopped, after it hit Corrigan? A I think he said then in answer to that, 15 feet.

Q Fifteen feet. Then he asked him to change it, did they? A Yes.

Q To a car and a half? A The length of the car and half itself again.

Q And as a matter of fact, you say he testified to that before the Corrigan, didn't he? A No.

Q I just read this to you from the Corrigan's minutes. Now what is your explanation of that? A He may have said-- I answered that question. You asked me what he testified to, how far the man had been dragged, and I said from three to five feet.

Q I asked you nothing of the sort. You said that Sullivan came up and stated that the car went from three to five feet after it hit Corrigan before it stopped? A I did not. I said it had dragged him three to five feet. He said in his statement it went probably 15 feet, but I am confused in the statement he made to the railroad investigator that I have seen.

Q We are not talking about that. I am asking about what

he said on that Sunday. How far did he say the car went on Sunday after it hit Corrigan before it stopped? A That I cannot recall, what he said that day.

BY THE COURT:

Q Have you ever read the statement made by Sullivan to the railroad investigator? A Yes.

Q When? A I cannot say. I think that was done in court when they tried the case. Mr Fishel I think had it.

BY MR. STUDIN:

Q You remember that? A Yes.

Q Have you seen it since then? A No.

Q What else did Sullivan say about distances? A Why, the car at the time that he was about to step on the track, the car was then 15 feet away.

Q At the time that who was about? Corrigan? A That Corrigan was about to step on the track, approaching the north-bound track, the car was then about 15 or 20 feet away.

Q 15 or 20 feet? A Yes.

Q Absolutely sure of that? A I am pretty sure, to the best of my recollection.

Q Of course. Didn't he say 30 or 35 feet? A I couldn't tell you that. I told you--

Q You didn't hear 30 or 35 said at all? A No, I did not.

Q Did you hear 40 or 45? A No.

Q It might have been said? A It may have been said and I did not hear it.

Q By Sullivan before he received any instructions from Howard. It might have been said.

Q Then you say Howard said, "Stretch it a few feet."

A No, he did not use those words at all.

Q What did he say? A Not only Howard, but Mercer.

Q I am talking about Howard? A They were both talking.

Q They did not say the same thing at the same time?

A Mercer would make the suggestion and Howard would follow them up.

Q Mercer was doing it? A Not all of it. Mercer would make some of the suggestions and Howard would follow them up. Howard done all the talking. He was the lawyer. There was suggestions made by ~~Mercer~~ Mercer and Howard would follow up the suggestions with some of his own.

Q What did Sullivan say about the gong? A About what?

Q About the gong, ringing the gong? A I don't recall whether he said anything about ringing the gong.

Q What did he say about the speed ~~of~~ the car was going at?

A He said it was going at a high rate of speed.

Q Howard did not tell him to say that? A No.

Q No question about that? A No, Sullivan said the car was going at a high rate of speed.