In the Court of Appeal for Ontario

Appeal from the Judgment of the Honourable Mr. Justice Middleton

BETWEEN:

WILLIAM FLEMING,
(Respondent) PLAINTIFF,

AND

THE TORONTO RAILWAY COMPANY,
(Appellants) DEFENDANTS.

Appeal Case

McCARTHY, OSLER, HOSKIN & HARCOURT,
Solicitors for Appellants.

C. & H. D. GAMBLE,
Solicitors for Respondent.

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IN THE COURT OF APPEAL FOR ONTARIO.

BETWEEN:

WILLIAM FLEMING,
(Respondent) PLAINTIFF,

AND

THE TORONTO RAILWAY COMPANY.
(Appellants) DEFENDANTS.

STATEMENT OF CASE.

This is an action brought by William Fleming, claiming $5,000.00 damages for injuries sustained by him whilst a passenger on a car of the defendant company. The case came on for trial before the Honourable Mr. Justice Middleton and a Jury, judgment being entered in favor of the plaintiff, upon the findings of the Jury, for $1,200.00.

From this Judgment the defendant company now appeals to the Court of Appeal for Ontario.

IN THE HIGH COURT OF JUSTICE.

Writ issued the 3rd day of December, A.D. 1910.

BETWEEN:

WILLIAM FLEMING,
PLAINTIFF,

AND

THE TORONTO RAILWAY COMPANY.
DEFENDANTS.

STATEMENT OF CLAIM.

(As amended by Order of Latchford, J., of 30th March, 1911.)

1. The plaintiff was at the time of the accident hereinafter mentioned a watchman for Joseph Russell, of the City of Toronto, and resides in the said City of Toronto, and the defendant is a corporation operating an electric railroad through the streets of the said city.

2. The plaintiff on the 10th day of August, 1910, became a passenger to be carried for reward on the defendant's railway on a King street car going east.

3. The car upon which the plaintiff was riding stopped at Sherbourne street, and upon starting again from Sherbourne street there was an explosion, and shortly after the front part of the car took fire.

4. The car proceeded at a very high rate of speed and many of the passengers becoming alarmed, as the fire was spreading, in order to save themselves, jumped from the car, and the plaintiff being on the end of a seat was forced out of the car by the passengers seeking to escape and thrown to the ground.

5. The plaintiff lit on his head and side; his right eye, cheek and shoulder were badly injured; two ribs were fractured; his right hip and knee were badly injured and he received other injuries and severe shock.

6. The plaintiff has up to the present time been unable to attend to his work and has incurred medical and other expenses.

7. The plaintiff's injuries are permanent.

8. The plaintiff charges and the fact is that the accident was due to the negligence of the defendants. Such negligence consisting in the defendants not having properly inspected the controller, or if so inspected, not having it put in proper order and in leaving the said controller out of repair or not in proper condition to be in operation, and in having the cars overloaded and thus giving the controller too much strain, and in the motorman turning the power of the controller on too suddenly when overloaded; neglecting to turn off the power after the controller blew out, and in the motorman deserting his post and leaving the car to run away, and in the conductor and motorman neglecting to pull the pole off the wire and thus stop the car, and in the defendants permitting the car in question to be operated by an inexperienced and incompetent motorman, and in the failure of the motorman to apply the brake, and in the defective form and design of the car, and the crowding of the same, both of which impeded the conductor in the discharge of his duties, and in using a circuit breaker of inferior design and defective condition, and in using a defectively constructed controller.

The plaintiff claims:

1. $5,000.00 damages.

2. The costs of this action.

The plaintiff proposes to have this action tried at Toronto.

Delivered this 17th day of December, A.D., 1910, by Messrs. C. and H. D. Gamble, 28 Scott street, Toronto, Plaintiff's Solicitors.

PARTICULARS OF AMENDMENT OF STATEMENT OF CLAIM.

The particulars under the amendment to the Statement of Claim as ordered by the Honourable Mr. Justice Latchford are as follows:

The defective form and design of the car consists in having the seats too close together; in having a running board on the outside of the car instead of a passage in the centre of the car, and the defect in the general arrangements so that the employees cannot pull down the trolley pole in an emergency or when required.

Insufficiency of provision for electrical transmission in portions of the equipment circuits; insufficiency of provision for insulation between

portions of the equipment circuits; insufficiency of provision for insulation in the circuit breaker when open; insufficiency of provision for fire protection in case of trouble in the equipment circuits; defective insulation of and insufficiency of provision for electrical transmission in portions of the equipment circuits; insufficiency of provision for shutting off the power when the circuit breaker failed to serve its purpose at the time of the accident.

The particulars in reference to the controller are as follows:

Defective insulation and too low conductivity in the circuit.

DELIVERED the 21st day of March, 1911, by Messrs. C. and H. D. Gamble, 28 Scott street, Toronto, Solicitors for the Plaintiff.

STATEMENT OF DEFENCE.

By Statute R.S.O., 1897, cap. 207, Sec. 42, 55, Vic. cap. 99, ss. 1, 4, 17 and 18, Public Acts.

The defendants say they are not guilty.

DELIVERED this 5th day of January, 1911, by McCarthy, Osler, Hoskin and Harcourt, of the City of Toronto, in the County of York, Defendants' Solicitors.

JOINDER OF ISSUE.

The plaintiff joins issue upon the defendants' statement of defence.

DELIVERED the 13th day of January, A.D., 1911, by Messrs. C. and H. D. Gamble, of the City of Toronto, in the County of York, Plaintiff's Solicitors.

JURY NOTICE.

The plaintiff requires that the issues in this cause be tried by a jury.

DATED at Toronto this 13th day of January, A.D., 1911.

C. & H. D. GAMBLE,
Solicitors for Plaintiff.

To Messrs. MCCARTHY, OSLER & Co.,
Solicitors for Defendants,
Home Life Building,
Toronto, Ont.

EVIDENCE AT TRIAL.

Evidence taken before the Honourable Mr. Justice Middleton and a Jury, at the Court House, in the City Hall, in the City of Toronto, the 25th day of September, 1911.

Mr. H. D. GAMBLE, K.C., for the Plaintiff.
Mr. D. L. MCCARTHY, K.C., for the Defendants.

WILLIAM FLEMING, sworn. Examined by Mr. GAMBLE:

Q. Mr. Fleming, what age are you? A. 69 next February.

Q. And at the time of this accident, how were you employed? A. By the week.

Q. Where? A. At Mr. Russell's—Johnnie Russell's.

Q. Then how much a week were you getting? A. $10 weekly.

Q. What day did this accident happen? A. On the 10th August, 1910.

Q. What time of the day was it? A. About half-past five in the evening.

Q. On what car was it? A. On a King street car going east.

Q. Was that an open car? A Yes.

Q. Was there any trailer attached to it? A. Yes.

Q. Where were you sitting in the car? A. On the end seat; it was a single seat.

Q. That was at the time of the accident? A. Yes.

Q. What sort of a car was it; had it all the seats facing all one way, or were they facing each other? A. I believe they were all facing the one way, towards the motorman.

Q. How much space was there between your knees and the back of the next seat; how much space had you there? A. No space, scarce anything at all, hardly any at all.

Q. The seats were close together? A. Yes. The single seat I was on was narrow.

Q. Were there any people in the seat beside yourself? A. Yes, two ladies on the left hand side of me.

Q. Were there many people on the car? A. Yes, there was quite a few on the car when I got on the car.

Q. And at the time of the accident? A. At the time of the accident, yes, there was a lot of people on the car.

Q. Will you tell me what took place on the west side of Sherbourne street. Before you got to Sherbourne street, there was another lady in the car, I think? A. Yes.

Q. In your seat? A. Yes.

Q. And she got out there? A. She got out, and I moved up to her place ready to get off.

Q. What passed after that; what happened then? A. After the car started up across Sherbourne street, it started up with a tremendous force there and a tremendous jerk occurred next and the explosion of something attached to the car. I couldn't say what it was, but I believe it was the

fuse blew out; there was three or four reports, bang, bang, at any rate, as loud as it could be, and it got a tremendous lot of people out on the street.

Q. Was there any light or fire? A. Yes, after the report of the noise, I saw the car began to smoke, and the next thing it turned to flame, turned to fire.

Q. What did the people in the car do then? A. I saw five ladies behind the motorman disappear from the car.

Q. Where did they go? A. They went on to the street.

Q. While it was in motion? A. Yes, while it was running.

Q. What about you? A. Well, after the ladies went off the car, two ladies says to me, "Old man, you better get off; you want to get out, or you will get burnt, and they commenced to crowd around, and as soon as the fire was coming up around where the ladies were sitting, outside the car, she shoved the lady next to me and they forced me right off the car, and the two of them came off the car over me onto the street and the car was still going.

Q. Did you notice whether the brakes were put on or not? A. No, I don't know; it was still going when I left the car, still moving when I left the car.

Q. Then, what injuries did you suffer? A. Well, when I was knocked off——

Q. How did you light on the ground? A. Well, they forced me right out on the one side, on my right side, right on to my right side.

Q. And then what happened? A. Well, I had my eye all cut, and a big gash cut here on the side of my head, and the blood trickled down, came down my face.

Q. Of course that accident is not accountable for the blindness of your eye, is it? A. Oh, no.

Q. You had that before? A. Yes, I had that before.

Q. And what else? A. I hurt my right shoulder, it was badly hurt, and I had ribs broken on my right side, and my right knee badly fractured, and my hip is badly fractured, and my right foot.

Q. When you used the word "fractured" perhaps you are using a technical term that you don't understand. Was it actually broken off; was your leg broken, do you mean? A. No, sir, but it is badly used up. I call it fractured when I cannot walk on it long.

Q. There were no bones, so far as you know, actually broken in your hip or knee? A. No, sir.

Q. Then what became of you? A. Then I had a doctor there, and I don't know the gentleman, but he brought some plaster and they strapped my eye up.

Q. Where was that done? A. On the street, on the east side of the Sherbourne St. crossing.

Q. Where you fell off? A. Yes.

WILLIAM FLEMING—CROSS-EXAMINATION.

Q. Do you know where they placed you; they did not leave you on the ground? A. No; they placed me on a gentleman's lounge he had there for sale.

Q. Do you know what his name was? A. I don't know his name. They carried me and laid me on the ground that was against the window on the sidewalk.

Q. Having patched you up a bit, what did they do next with you? A. Well, I told them my knee——

Q. Never mind what you told them; what did they do with you? A. They wanted me to go to the hospital, and I told them I wanted to go down to see Mr. Russell, and they said, "No, I could not go."

Q. You did not go down to Mr. Russell? A. No, they took me in the ambulance.

Q. Then evidently you were taken home? A. Yes, I was taken home to my son's.

Q. What in? A. In a taxi-cab.

Q. You got out of the ambulance and were taken home in a taxi-cab? A. Yes.

Q. And you went home in a taxi-cab? A. Yes.

Q. Were you confined to your house at all? A. Yes.

Q. Did you have any doctor? A. Yes, I had Dr. McPherson there.

Q. And subsequently Dr. Webster? A. Yes.

Q. How long were you before you could leave the house? A. I was five weeks in bed.

Q. How long do you think it would be before you were able to leave the house? A. I was in there, I would say, about 15 or 16 weeks before I was able to leave the house, to go away anywhere on my leg again.

Q. Then were these injuries painful to you? A. Yes.

Q. Are you able to work now? A. No, sir, I am not.

Q. What was the difficulty? A. I ain't able to get around on my knee, and my hip, that is troubling me, and my right foot is all the while cold, pretty near all the time; it seems as though the blood don't circulate in it at all.

CROSS-EXAMINED by Mr. McCarthy:

Q. You had an accident some time ago, I believe? A. Yes, but not while I was working for Russell.

Q. You had an accident, hadn't you? A. Yes.

Q. To your legs? A. On my left thigh.

Q. You haven't done any hard work since that? A. Yes.

Q. What work were you doing for Russell? A. I was nightwatch.

Q. That means—what work was Russell doing at the time? A. He was doing work for Mr. Davidson down back of the brick factory.

Q. What was the nature of the work? A. I was just walking up and down keeping the stuff in place there that the men were working on in the daytime.

Q. How long had you been at that kind of work? A. I could not tell you exactly how long I have been at that job.

Q. I mean that kind of work? A. Oh, I have been at it all summer.

Q. You have been longer than that at that kind of work? A. Yes, I have been off and on at that job.

Q. As a watchman generally? A. Yes.

Q. You haven't done hard work since you met with that accident? A. Oh, yes, I have.

Q. I mean the one where you hurt your thigh? A. No.

Q. That was how long ago? A. That was the 10th of August, last summer.

Q. I mean the accident where you hurt your thigh? A. That is 25 years ago or more.

Q. When did the work with Russell stop? A. I don't know.

Q. Do you know when Russell's job was finished there? A. I don't.

Q. Did you work regularly for Russell as night watchman in all his work? A. Yes. When I was working down at the brick yard, he used to get me to go on nightwatching for him any time he wanted me, on and off.

Q. So that when Russell had a job he would use you as night watchman from time to time? A. Yes, from time to time, when he needed me.

Q. You live with your son? A. Yes.

Q. Now, I suppose, Mr. Fleming, that the doctors can tell us more about your injury than you can yourself? A. Yes, I guess so.

Q. They should be able to know better than you? A. Why certainly.

Q. You say you haven't done any work since? A. I ain't earned a dollar since, or able to do anything. I only wish I was.

Q. You have been ill, though, from other causes since the accident? A. Yes, I have been sick with pneumonia this summer.

Q. How long were you laid up with pneumonia? A. Seven weeks.

Q. How did that leave you—pretty weak? A. Yes, it certainly did.

Q. Were you better at the time you got pneumonia than you are now, do you think? Were you feeling stronger before you had the attack of pneumonia than you are to-day? A. No, I don't know that I was.

Q. Now, you told me, or you told my learned friend, that you were sitting on the outside of an open car and there were two ladies sitting inside of you? A. Yes.

Q. You crossed over the intersection of Sherbourne Street in the ordinary way? A. Yes.

Q. And when you got to the other side you say there was a jerk, followed by an explosion? A. Yes, the car started up at a tremendous speed, and there was a big jerk occurred and an explosion took place.

Q. And the two ladies who were sitting inside said, "Old man, get out or you will be burned," and you tried to keep them quiet, and with that they shoved you out? A. Yes, they forced me off the car—they did, sir.

RE-EXAMINED by Mr. GAMBLE:

Q. In reference to the injury that you had to your other hip, your left hip, how many years ago was that? A. It is about 25. Over that —about 28. I don't know exactly, but I never suffered nothing from it at all much, just a little bruise on the thigh.

Q. Were you always able to make your own living from that time on? A. Yes, always worked right along.

Q. Have you any family? A. Yes, I have six children now. I lost one last summer.

Q. How many had you to support during that time? Had you a wife? A. No, I have no wife now.

Q. Had you a wife? A. Yes, I had a wife then, when I got hurt.

Q. When did she die? A. She died 21st March last.

Q. Did you support your wife and family since that accident 25 years ago? A. Yes, I always turned my money in.

Mr. MCCARTHY: I don't know what this has to do with it, my Lord.

Mr. GAMBLE: Q. Up to the time of this accident, did you support yourself? A. Yes.

DR. THOMAS S. WEBSTER, Sworn. Examined by Mr. GAMBLE:

Q. Dr. Webster, you are a medical practitioner? A. Yes.

Q. And do you practice in Toronto? A. Yes.

Q. How long have you been in practice? A. Over 20 years.

Q. Did you attend the plaintiff for pneumonia this summer? A. No; but I knew of it.

Q. If you did not attend to him just tell me this, what is the effect of an attack of pneumonia, the subsequent effect? A. Almost invariably, a man with pneumonia, if it is not fatal, makes a complete recovery, that is, it leaves nothing behind to interfere with the man.

Q. Now, when was it you attended Fleming? A. Well, I have forgotten the exact date; it was just within a week, a day or two after his accident.

Q. Will you tell the jury what condition you found him in? A. There was an ugly looking incised wound on the right side of the face, and he had two fractured ribs, the shoulder was badly contused, but there wasn't any break or dislocation. The hip was strained, and the knee was worst of all. The knee was thrown out, so that the internal ligaments of the knee were torn, and there was a good deal of deformity there, giving him the position of knock-knee almost. The chief injury was in the knee-joint. Then he also complained of some soreness down about the ankle —these injuries all on the right side of the body.

Q. Then the injury to the face, how has that developed? A. Well, the injury to the face soon got better, and there isn't any result, any bad result.

Q. And the shoulder? That, I think, has recovered completely, too.

Q. Then about the permanency or otherwise of the injury to the hip

and knee? A. Well, the hip and knee are both stiff yet; the action of the knee is not complete, that is, he cannot bend that knee as much as the other knee, and the hip also is stiff.

Q. I notice that he walks with a stick? A. Yes.

Q. What would that indicate? A. Well, the whole right leg, hip, knee and ankle are depressed; they are permanently injured, and he walks with a cane on the right side to take the weight off that, especially off the knee. The chief trouble is at the knee-joint.

Q. Then what do you say as to the probability of his being able to work again? A. The injuries are permanent; they will not improve any more.

Q. Did you find any result in the way of shock to the patient? A. Yes, he was suffering greatly from shock in the beginning.

Q. Would that have any effect on his condition, as to permanency? A. I think he has recovered from that.

CROSS-EXAMINED by Mr. McCARTHY:

Q. Do you know how old he is? A. Except what he states himself.

Q. What would you expect of a man in his time of life? A. Well, a man of his age would not recover the way a young man or a child would recover from the same injury.

Q. What is the effect of pneumonia on a man of his age? A. Well, I have already stated that unless it is fatal, recovery is almost invariably complete.

Q. Then you mean to tell us that in a man of his age pneumonia leaves no after effects at all? A. No, almost invariably, unless there is some tubercular taint or some tubercular condition in connection with it, the recovery is perfect and complete.

Q. I am not asking you as to whether it is permanent or complete; I am asking you whether it leaves any after effects? A. No, unless there is some tubercular condition in connection with it.

Q. You say there are no evil effects from pneumonia in a man of 69 years of age? A. No; there might be an isolated case, but it is always invariably a complete recovery.

Q. Of course a complete recovery is complete, I know, but I am asking you where a man recovers from pneumonia, does it leave any evil effects at all? A. Very rarely.

Q. Do you know whether it did in this case? A. I don't think there is any bad results from that at all.

Q. When did you see him last before he had pneumonia? A. Well, I think I saw him at the time, but I would not like to be too sure. I was away, and Dr. McLeod was called in, and I think I called in once at the time he had pneumonia. Anyway, my recollection of that is so dim it would not be any value as evidence; but I have not seen him since until to-day.

Q. How is he to-day compared with what you saw; how would you

compare his state of health to-day with what it was when you saw him last? A. Oh, just about the same. He is just about the same as he was when we examined him previous to the last session of the Court.

Q. That was last May? A. I think that was in November, was it?

Q. That would be last May? A. Yes, May.

Q. You say the injury to the face was only a cut? A. Yes; he recovered from that quickly.

Q. And the shoulder was what we call a bruise? A. Yes, a sprain.

Q. He recovered from that? A. Yes.

Q. So that the only injury which he still suffers from are the injuries to the right leg? A. Yes, that is the hip, knee and ankle.

Q. You think they will be permanent? A. Yes.

Q. There is no injury to the bone, I believe? A. No; but there was ——I stated that there was an injury to the internal ligaments.

Q. I am asking you whether there is injury to the bone? A. No, none whatever.

RE-EXAMINED by Mr. GAMBLE:

Q. Which is the more serious injury, the tearing of the ligaments in that leg or a fracture? A. The rupture of the ligament is really a more serious injury than the fracture of a bone.

Mr. McCARTHY: Q. In a man of that age? A. Well, yes, because it would keep him in bed just as long. The old saying, that "a strain is worse than a break," applies to a case like this..

DR. DUNCAN A. McPHERSON, Sworn. Examined by Mr. GAMBLE:

Q. Doctor, are you a practicing physician in Toronto? A. Yes.

Q. And have been practicing here for how long? A. Since 1893.

Q. Did you have anything to do with the plaintiff after his accident on the 10th of August, 1910? A. Yes.

Q. Will you tell us what you had to do with it? A. On August 10th I was called in to see him. I arrived there in the evening, I think, about 9 o'clock, and I found him in the condition that has already been described, with quite a gash over the socket of the right eye, a sprained shoulder, a sprained hip, and at the time I could not diagnose very well whether there was a fracture of the knee or what the condition was, because it was pretty painful; there was an injury to the ankle, besides quite an injury to the right thigh in the neighborhood of the rib that I did not attempt to diagnose whether there were fractures or not, on account of the pain.

Q. You did not try to find that out at the time on account of the pain? A. No. Another reason was that I would just as leave leave them as they were for fear that pleurisy might develope.

Q. Was he cut on the face; had he a severe cut on the face at all? A. No, not very severe. It was dressed when I saw it, and I did not consider it necessary to remove it; it was very neatly dressed and I left that alone. In regard to that, he has made a perfect recovery.

Q. Then had he any other injuries that you know of? When did you discover about his ribs being fractured? A. Probably two or three days afterwards, if I remember right, he complained about some internal injuries.

Q. You weren't able to locate them? A. No. They were in the neighborhood of the injured rib; the injury was in the neighborhood of the injured rib.

Q. Then a couple of days afterwards you made an examination, and you found that the ribs had been fractured? A. Yes.

Q. What was the appearance of the right side, all along the right side? A. Well, I don't just remember any further than to state that there was no abnormal appearance, except, possibly, a little swelling of the joints, particularly the knee, and then the deformity of the knee; the knee is even now slightly deformed from an imperfect result of the action of the lateral ligaments.

Q. Then what did you find about the injury to the knee. What was the injury? A. There was pain.

Q. What was the nature of the injury? A. Well, in a day or two we diagnosed that the lateral ligaments had been torn, and, of course, I don't know that there is anything else except pain and swelling.

Q. That would account for the deformity, of the position of the leg? A. Yes.

Q. What was the matter with the hip? A. The hip, there wasn't much to be seen in the hip, no more than it was sprained; he complained of severe pain in the hip, but I did not conclude that there was any injury apart from the sprain in the hip.

Q. Then do you know whether he had suffered pain or not in connection with this injury? A. Yes, he complained of pain right up to the present day.

Q. Has he done so all along? A. Yes, to the best of my knowledge he has.

Q. Then you saw him, did you not, just before this case came on for trial the last time it was adjourned? A. Yes.

Q. I see from the note on my brief that that was on the 29th of March last? A. Yes.

Q. That would be about the date? A. Yes.

Q. You saw him then, and you saw him again to-day? A. Yes.

Q. Then, comparing the condition then and now, how do you find him? A. I don't think there is the slightest improvement; if anything, in my own mind, I would say that the right leg isn't quite as well as it was then. I don't think I could flex it as well to-day as I could then, and besides, I had more hope that it would do better than it has done.

Q. You put the X-rays on him, did not you? A. Yes.

Q. Whose suggestion was that? A. Dr. Reazin's.

Q. You put it on the wrong leg, didn't you; what was that about the wrong leg—I heard something? A. No, it was put on the right leg.

Q. I understood that somebody had examined the wrong leg for this accident. That was not you? A. No.

Q. You did not make a mistake of that kind? A. No.

Q. Then, was there a Dr. Reazin who examined him? A. No, Dr. Reazin wasn't there; but, if I remember right, the X-ray was suggested by Dr. Reazin. Dr. Reazin met me there; in fact I think I told Dr. Reazin to meet me, as I concluded the case a serious one, and in order that he would know what was going on, I wanted him to meet me there. If I remember right, that is how he came to be there.

Q. Did you find any shortening of the leg at that time, do you remember? A. Well, I did, but I did not attribute that to that present injury. There was a shortening of either one of the legs, but I could not be sure now which one of them; at least we concluded that.

Q. Was it your idea, putting the X-rays on? A. No.

Q. Whose was it? A. It was Dr. Reazin's.

Q. Why was it done? A. Because he concluded there was an injury to the hip, and if I remember right, Dr. Webster had been there before, and if I remember right, Dr. Webster had concluded that there was more of an injury to the knee than to the hip.

Q. Then you and Dr. Webster acted together in the case after that, did you? A. Yes.

Q. What did you do with the leg from the ankle to the hip? A. We put on what we call a long splint from the ankle right up to the hip.

Q. And that was done how long after the accident? A. Oh, just a few days.

Q. What do you say as to the result of those injuries to a man at his time of life as to the permanency or probability of his being able to do any work? A. In my opinion that limb will be always—he will never make a perfect recovery, especially the knee-joint.

Q. Then, if my learned friend will allow me, I will put this question; don't answer it until I see. You heard what Dr. Webster said about pneumonia? A. Yes.

Q. Do you agree with him as to what he says about kill or cure in that case? A. I certainly do.

Q. Were there any signs of the ill-effects from pneumonia when you examined him to-day? A. I did not examine him for any ill-effects of pneumonia to-day, because physically in my opinion he is better than what he was months ago; he looks better, that is physically, apart from his right limb, and I don't think the pneumonia has injured him a particle.

Q. Then there is a very important item I omitted from Dr. Webster's evidence. Have you any account against him—doctor's account? A. Yes.

Q. Have you a bill of it here? A. No, I have not.

Q. How much is it, do you know? A. Oh, I don't know, I am sure.

Q. You would not like to make that up now? A. No.

Q. Will you kindly let me put that in afterwards.

His Lordship: Put it in as soon as you get it.

Dr. Webster's account marked Exhibit 1.

CROSS-EXAMINED by Mr. McCarthy:

Q. Did you attend the plaintiff while he had pneumonia. A. Not for the first few days. The physician who attended him was Dr. McLeod. I was out of the city, and on my return I took over the case.

Q. Was it a bad attack? A. I understand it was a fairly bad attack; it was pretty well over by the time I got back.

JOHN SHEER, sworn. Examined by Mr. Gamble:

Q. What is your occupation? A. Tinsmith.

Q. Were you a passenger on the King street car at the time the accident happened to the plaintiff? A. Yes.

Q. Where were you standing? A. Standing on the back of the car, back of the motor.

Q. That is on the platform? A. Yes.

Q. Why weren't you sitting down? A. There was no room to sit down; the seats were all full.

Q. People standing up besides you? A. Yes.

Q. About what time was that? A. About half-past five.

Q. Then there was a trailer on the car, was there? A. Yes.

Q. Speaking generally of the car and the trailer, were they crowded or otherwise?

His Lordship: We have nothing to do with the trailer.

Mr. Gamble: Yes, my Lord, because the charge is that in turning on the power it strained the controller.

Mr. McCarthy: There is nothing in the pleadings about the straining of the trailer.

Mr. Gamble: There is in the particulars.

His Lordship: The car was overloaded.

Mr. McCarthy: I thought he meant the controller was overloaded.

Mr. Gamble: Q. Then you say it was crowded? A. A pretty fair load on both cars.

Q. Then will you tell me after the cars stopped—the car did stop on the west side of Sherbourne street? A. Yes.

Q. Will you tell me what occurred after that? A. It started off, and it just got east, about just over the switch on the east side of Sherbourne street and it gave a kind of a jerk and gained more speed, and then there was an explosion, and the car all filled with smoke, and they were all jumping off.

Q. The car filled with smoke and they were all jumping off? A. Yes.

Q. Many people jump off the car? A. Quite a few. There was a string of them all along the street.

Q. Down on the pavement? A. Yes.

Q. Lying down or walking around do you mean? A. There was no walking about, they fell.

Q. Do you know whether there were others injured besides the plaintiff? A. I could not tell you.

Mr. McCarthy: We have nothing to do with that.

His Lordship: If they were hurt, then they will sue for it themselves.

Mr. Gamble: Unless they have been paid, my Lord.

His Lordship: We have nothing to do with that here.

Mr. Gamble: My reason, my Lord, to show the way in which they fell.

His Lordship: The witness has told you that.

Mr. Gamble: Q. There was a string of people on the street, on the south side of King street? A. Yes.

Q. Was there anything visual, anything visible to the eye that was alarming at all? A. There was a flash when the explosion occurred.

Q. Any smoke? A. The car was full of smoke.

Q. In expressing a view as to the effect that that condition would have on people, what would you say?

His Lordship: Do not answer that question. Is this man being called as an expert?

Mr. Gamble: No, my Lord.

His Lordship: Then I do not know what the question means?

Mr. Gamble: What has your Lordship in mind as an expert?

His Lordship: You have asked him to express a view.

Mr. Gamble: As to whether it was alarming or not. I don't want to put the words in his mouth. If your Lordship will allow me to put it that way, whether it was terrifying——

His Lordship: I do not think so. You can ask him what kind of an explosion it was, to describe the explosion.

Mr. Gamble: Does your Lordship rule that I cannot ask the witness whether it was naturally alarming?

His Lordship: Certainly.

Mr. Gamble: Your Lordship will allow me to have it noted that I have asked the question.

His Lordship: I have no hesitation in ruling it out. You can ask questions as to what he heard or saw; his opinion on it I don't care about.

Mr. Gamble: I think I can give your Lordship authority for that. I think I am right, but I may have forgotten.

Q. What was, if anything, between you and the end of the car where you were standing on the platform? A. A glass frame.

Q. Windows? A. Yes.

Q. Did you see the plaintiff fall? A. I seen him fall.

Q. Did he jump off? A. I could not say that. I just seen him as he hit the pavement.

Q. How did he fall; in what position? A. Fell on his side.

Q. Did you see anybody else jumping off near Fleming? A. Yes. I could not say whether they were near him or not, but there was a lot got off before him and after.

Q. That was after the explosion and this illumination and smoke? A. Yes.

Q. Then you saw the car on fire, did you? And the firemen put it out? A. Yes.

Q. Then did you see the motorman at any time? A. I seen him after the firemen had been there; I seen him get into the motor, get into the vestibule.

Q. Where the controller is? A. Yes.

Q. Then was the brake applied? A. It did not seem like it; the car was running along free.

CROSS-EXAMINED by Mr. McCarthy:

Q. You are not very observant; you did not see the two girls sitting beside Mr. Fleming with two vacant seats there? A. Yes.

Q. If you had seen them, of course, you would have gone and occupied that seat? A. I don't know. I got on at Yonge street.

Q. Mr. Fleming told us that there were only two in his seat besides himself? A. I could not tell you.

Q. Now you were standing on the back? A. Yes.

Q. You remember stopping at Sherbourne street? A. Yes.

Q. Now when was your memory jogged about all this? Did you tell anybody about it at the time? A. Itold the people when I went home.

Q. What people? A. Mother and father.

Q. Are they the only people you have told? A. I don't think so. I told a few.

Q. What I mean is, you were telling everybody about it, that called it to your mind, of what took place? A. I can remember took place, because I seen it all.

Q. You have a good memory? A. Yes.

Q. You remember what took place on that day. How many people were standing on the back platform with you? A. Well, the seats were all full, and there was a few standing behind me, and one standing in front of me.

Q. I am only asking you about the back platform. How many people were on the back platform with you? A. There was four of us standing up and the rest sitting down.

Q. Whereabouts were you standing on the back of the car? A. Right on the edge of the car, right next—there was a fellow standing there, and I was standing next to him.

JOHN SHEER—CROSS-EXAMINATION.

Q. What do you mean by there? A. Right on the outside, and I was standing on the outside next to him.

Q. You were standing two from the outside step? A. Yes.

Q. You say the car stopped at Sherbourne street? A. Yes.

Q. And it was 5.30 in the afternoon? A. Around that.

Q. And some people got on and some got off? A. I did not notice that.

Q. Then the car started, and it went across the intersection at the usual rate, did it? A. Well it started off and then gained speed and there was a jerk.

Q. What I mean is, it went across the intersection of Sherbourne street and then you said it gained speed? A. Yes.

Q. And then there was a jerk? A. Yes.

Q. And then there was an explosion? A. Yes.

Q. What kind of an explosion was it? A. A loud report, and then a lot of fire and smoke.

Q. Just one report? A. I don't know whether there was one or more, but it was a loud report.

Q. You did not notice anything, I presume, up until you heard the report? A. I notice the car gained speed.

Q. All cars gain speed after they have stopped; they have got to gain speed again. A. Well, the car started, and it gave a jerk after it had started.

Q. And then you heard this report? A. Yes.

Q. You don't know whether it was one, two or three reports? A. No.

Q. Your memory isn't good enough for that. The plaintiff told us there was "bang, bang, bang." Did you hear that, or just one loud report? A. I heard one loud report.

Q. What did you do? A. I got over to the side of the car.

Q. To the edge of the car? A. Yes.

Q. You were on the edge all ready? A. No, I was standing the first one in.

Q. So you got over to the edge? A. Yes.

Q. Where was the conductor? A. I could not say where he was. I did not notice him.

Q. Did you get off the car or stay on it until it stopped? A. I stayed in until it stopped, it was pretty near stopped, and then I got off.

Q. What did you do when you got off? A. Went over to the kerb and stood there.

Q. Now, when you went over to the kerb did you see the conductor? A. No, sir.

Q. Did you see the motorman? A. Yes.

Q. Where did you see him? A. I seen him getting in the vestibule of the car.

JOHN SHAW— CROSS-EXAMINATION.

Q. Did you see him come out of the vestibule? A. No.

Q. Was the door opened? A. I could not say whether the door was open—yes, the door was open.

Q. You saw him go inside the vestibule? A. Yes.

Q. That was after the fire was put out? A. Well, when the firemen were there.

Q. Now, did you see anybody ellse come up before the firemen got there and break into the vestibule? A. No.

Q. You never saw that at all? A. No.

Q. You were standing there in front of the car looking at everything that took place? A. I was standing beside the car, not in front of it.

Q. Beside the car? A. Yes.

Q. Did you see any man running after the car and break into the door? A. No.

Q. Did you see anybody throw water in with pails? A. No.

Q. You never saw the motorman come out of the vestibule? A. No.

Q. And you were standing there all the time, were you? A. Yes, but I wasn't looking at the car all the time.

Q. Did you see the flames put out? A. I don't know whether I seen them put out; I seen the firemen get out.

Q. You just stood on the kerb the whole time? A. Yes.

Q. That is all you did? A. Yes.

Q. And you did not see any people break in the door; you did not see any man running after the car? A. No.

Q. And yet you were standing there all the time? A. Yes.

Q. How long was it before the firemen came? A. Oh, about five minutes.

Q. Was the car still burning when they came? A. I did not notice that. There was a lot of smoke in there.

Q. What did they do? A. I don't know what they done. I saw the firemen getting out.

Q. But you don't know what it was they did. How far did the car run past Sherbourne—where were you standing on the kerb? A. I was standing on the corner of Princess and King.

Q. How far was that past Sherbourne street? A. Oh, about 100 yards, I should judge.

Q. Where was it that the plaintiff fell off; where was the car? A. The car was about three-quarters east of Sherbourne in the block?

Q. Just three-quarters of what? A. The distance between Sherbourne and Princess street.

Q. Did you see the ladies who shoved him off? A. No, sir.

Q. You did not see him until he was on the ground? A. I seen him just as he hit the ground.

Q. How fast was the car going then? A. When he fell off?

Q. Yes? A. It was going more than four miles an hour.

Q. And it gradually came to a stop? A. Yes.

Q. You said you got off and stood on the sidewalk opposite the car, but you never saw very much that took place? A. Yes.

Q. Then you had not got very much to tell father and mother when you got home? A. Quite a bit.

MAX COLIS, sworn. Examined by Mr. GAMBLE:

Q. Mr. Colis, what is your occupation? A. Barber.

Q. Your place of business is right here where this accident took place? A. Yes.

Q. Did you see the accident? A. Yes.

Q. What state were the cars in so far as the people on them were concerned? A. Well, it was in full motion, the car was in full motion.

Q. No; I mean how many people were on the car? A. It was crowded.

Q. And the trailer, too? A. Yes, it was all crowded.

Q. Where were you standing? A. At the door.

Q. You better tell us your own story. A. As I was standing on that day at the door of my barber shop, I seen the car cross the tracks on to King and this blew up on fire and the smoke went right in to the car, so that people was crossing over one another to try to get off the car, and I saw a lady fall off and I went to get her up, and I seen this old gentleman falling down with his head on the street, so I went and picked him up and laid him down at 171 King street on a lounge there.

Q. The lounge was out on the sidewalk? A. No, by the window.

Q. On the sidewalk? A. Yes.

Q. Did the explosion sound loud? A. Yes, it blew right up.

Q. Have you been on the street car when the fuse has blown out? A. No, I was on a car sometime as on that car.

Q. Did you ever hear a fuse blow up, did you ever hear an explosion on a car? A. Yes.

Q. Did you ever hear anything like that? A. No; it was like a bullet went up.

Q. What nationality are you; what language do you speak? A. Jew.

Q. What language do you speak? A. Hebrew.

Q. By this you mean a cannon? A. A cannon, yes.

Q. It was very loud? A. Yes.

Q. Did you pick anyone else up before you picked up the old man? A. Yes, I picked up a young lady.

Q. Were there any other people on the street that had tumbled out of the car or came out of the car? A. Yes, quite a few.

Q. Stretched out on the street? A. Yes.

No cross-examination.

JOSEPH BORNISKI, sworn. Examined by Mr. GAMBLE:

Q. What is your occupation? A. I keep a barber shop.

Q. Is your barber shop anywhere near where this accident happened? A. Yes, it is right in the same block.

Q. On the south side of King street east of Sherbourne? A. Yes.

Q. Now will you tell me what you saw or heard of this accident? A. I was cutting a fellow's hair at the time, and then I heard a big bang like and then he scared me and the fellow sitting in the chair. He jumped off the chair, and then I just went outside and I saw a car on fire, the front of a car on fire, and a lot of smoke all over the car, and the car coming, passing my store, and there was a lot of women and men jumping off the car and the women was falling out.

Q. That was the people in the car were coming out of the car? A. Yes.

Q. The people in the car were coming out of it? A. Yes.

Q. Was there any smoke in the body of the car, inside the car? A. Yes.

Q. Was there a man—you were telling something about a man that was coming into your shop at the time? A. Yes, there was a man coming in at the time when the bang was and he got scared so he jumped back.

Q. When that bang went off he jumped back scared? A. Yes.

Q. Did you see the motorman at all? A. Yes, when I went out I saw the motorman running after the car.

Q. Did you see anything of him after that? A. He had been running after the car.

Q. You saw him running after the car after that? A. Yes.

Q. Where did the car stop? A. Right near Princess street.

Q. Did you see Fleming fall out? A. Yes, I saw him falling out right at the same time everybody fell out.

Q. Where was that? A. It was about three or four doors from my store, east.

Q. And your store, what is the number of your store? A. 265.

Q. Three or four doors east of 265? A. Yes.

Q. That is where Yappi's store is? A. Yes, right near Yappi's store.

CROSS-EXAMINED by Mr. MCCARTHY:

Q. You say you saw the motorman jump off the car? A. Yes.

Q. How did you know whether it was the motorman or the conductor? A. Well, I could see that he had not a box in his hand that he keeps his tickets in.

Q. Had he his hat on? A. No, he had no hat on.

Q. Was the car going at the time? A. Yes.

Q. You saw him running after it, did you? A. Yes.

Q. Did he catch it? A. I did not notice that, because I just saw the people falling out, and he was running after the car, and then I got the man, and got into the store and was doing my work again.

Q. What you first heard was a bang? A. Yes.

Q. Then you had a man in the chair, hadn't you? A. Yes.

Q. Shave or haircut? A. Haircut.

Q. So then you went straight to the door? A. Yes.

Q. And when you got to the door the car was going past? A. No, it was out of the store, and I went outside.

Q. When you got to the door of your shop, the car was coming along? A. No. I went out through the door and I looked a little bit west and I saw her coming.

Q. Then you stood there until she passed? A. Yes.

Q. You say you saw the motorman running alongside of the car? A. No. I did not see him running alongside. When I saw him he was just running after it.

Q. What part of the car was he jumping off? A. The front of the car.

Q. The vestibule? A. No, the front.

Q. Was he jumping off the place where the motorman is? A. Yes.

Q. Out of the door? A. Yes.

Q. Of the place where the motorman is? A. Yes.

Q. You saw him coming out of the door? A. Yes.

Q. Then you saw him running alongside? A. Yes.

Q. Did he get back to the door again? A. No, I did not see that. I just saw him running after it.

Q. Then you went back and finished the haircut? A. Yes, I done my work, yes.

RE-EXAMINED by Mr. GAMBLE:

Q. Had the man you saw coming off the car a fare box in his hand? A. No.

ANDREW McFARLAND, sworn. Examined by Mr. GAMBLE:

Q. Mr. McFarland, what is your occupation? A. Laundry business.

Q. Did you happen to be in the vicinity of this accident on the 10th of August, 1910? A. Yes.

Q. Then where were you just at the time—did you hear a report? A. Yes. I was at the corner of King and Sherbourne.

Q. Which corner? A. The southwest corner, in the rear of the car.

Q. Will you describe the sort of report it was, and what you saw afterwards? A. Well, it was a very loud report, and the car seemed to go along pretty fast, gained speed.

Q. Was there anything else besides the report? A. Well, there was regular jar. The car to catch up speed went very fast on the street.

Q. Did you see anything of smoke or anything of that kind? A. On the wire I saw fire.

Q. You were behind? A. Yes.

Q. You have been on cars when they have stopped when the blowing out of a fuse has occurred? A. Yes.

Q. How could you compare this noise to that? A. This was a very loud report.

Q. It was not the same as that at all? A. No; it was a louder report than that.

Q. Did you see anything of what occurred to the passengers in the car? A. I was looking right at the car, and I seen the passengers getting thrown out by the other passengers and they were all being scattered on the street, and I ran in to the second door up the street department and for the ambulance.

Q. You saw the people, as you say, crushed out into the street? A. They were all dropping out on the street as the car was going.

CROSS-EXAMINED by Mr. McCARTHY:

Q. This apparently was something you had never seen before in a street car? A. No.

Q. You never heard any report as loud as that or never saw fire before that on a car; it was something extraordinary? A. Something extraordinary.

Q. You never saw anything happen like that before? A. No.

Q. Did you say you were a laundry man? A. Yes.

Q. Were you standing with your horse? A. I was down on Sherbourne street; I was standing there; I was on the pavement.

Q. At that time of night there are a good many people collected along the street waiting to get on the cars? A. The cars stopped at the other side.

Q. Did you see any people running after the car after the explosion took place? A. I don't think so.

Q. You describe it as the car starting from the west side of Sherbourne street crossing over the intersection and then there was an explosion, and the car seemed to gain speed? A. After it crossed Sherbourne.

Q. And then after the explosion, you say there was fire on the wire, smoke in the car and fire in the car, and the people began to climb out. How far did the car go before it stopped? A. Well, it went down to near Princess street.

Q. Did you go on down? A. No. I went in to telephone for the ambulance. And then I came out and then I picked up the passengers and helped to put them in the ambulance, and Mr. Fleming, I carried him.

LILLIAN RIPLEY, sworn. Examined by Mr. GAMBLE:

Q. Do you remember the accident on King street east of Sherbourne street on the 10th August, 1910? A. I guess I do.

Q. Why would you remember it? A. I had my shoulder dislocated.

Q. Which way were you going? A. I was going east.

Q. Were you a passenger on the car? A. Yes.

Q. What was the condition of the car as to passengers, the number of passengers? A. Well, it was just between half-past five and a quarter to six and that was just the time we were leaving work, and there were several passengers on the car, in fact it was crowded; it was only what I call a single car, one seat.

Q. The seats facing one way? A. Yes.

Q. Were you on the car on which the explosion took place? A. Yes.

Q. Had you a seat? A. No.

Q. You had to stand up? A. I was on one end in that seat; there was about five or six standing, and all the seat was filled.

Q. What happened when you got on the east side of Sherbourne street? A. Well, we had not gone very far and there seemed to be a jerk, a jerk of the car, and then the explosion, and then there was a kind of flames.

Q. Any smoke? A. Yes, there was lots of smoke.

Q. What do you say as to the size of the explosion? A. Well, I don't know whether there was two or three; it seemed to continue for a while.

Q. Was it loud? A. Very loud.

Q. Then how did the people in the car behave? A. Well, they got frightened, and they made a rush for getting out, and everybody had to go out that was at the end; you had not a chance to hang on at all; it was a terrible crush all in a minute; everybody had to clear off that was on the end, they could not help it.

Q. Did you step out gracefully, or were you assisted out? A. Well, the conductor had just taken my fare, and he fell off the same time I did, but where he got to I don't know; he wasn't laying down with me.

Q. He was fired off; you crushed him off? A. I guess I did.

Q. And the people behind you crushed you off? A. Yes, that is so.

Q. Well now, what seat were you sitting in? A. I was not sitting.

Q. I beg your pardon; what seat were you standing in? A. I can hardly say; perhaps it would be the third or fourth.

Q. From the front or back? A. I would not be sure which it was, but I was not very far from the front.

Q. Now, you have travelled on the street cars a good deal? A. Yes.

Q. Did you ever hear an explosion like this before? A. No, not on the street car.

Q. Did you see any of the officials after that? A. Do you mean the conductor?

Q. Yes, or the motorman? A. Yes, I didn't see him until he came to me.

Q. Who is he? A. The conductor, and I asked him how the motorman was; oh, he says, he is all right, he got out——

Mr. McCarthy: Don't say what he said.

Mr. Gamble: Q. What did he do? A. He did not do anything, just took my name and address.

Q. Where was the car by that time? A. It had gone a good distance. I could see the smoke as I lay on the sidewalk.

Q. And the conductor was there with you? A. Yes, he was there.

Q. Then did you notice whether the brake was put on? A. I could not say.

No cross-examination.

NEIL McPHAIL, sworn. Examined by Mr. Gamble:

Q. Mr. McPhail, you were the motorman on this car at the time of this accident? A. Yes.

Q. On the 10th of August, when the plaintiff was hurt? A. Yes.

Q. Were you at that time a regular motorman? A. No, sir.

Q. What did they call you? A. Well, they call it "extra."

Q. Now, I would like to ask you to tell the jury what lessons you got in running a car? A. Well, I was shown how to run my car.

Q. You came from Buffalo here, did you? A. Yes.

Q. You had gone over to Buffalo after leaving the asylum where you were as an employee? A. Yes.

Q. And then when you went over to Buffalo, you came back to Toronto and applied for a place on the Street Railway? A. Yes.

Q. What was the first thing you did towards qualifying as a motorman? A. Well, I had to——

Q. You got on the car with the motorman who was to train you? A. Yes.

Q. How many days were you with him on the car? A. I was with him for two weeks?

Q. Two weeks? A. Yes.

Q. You were examined for discovery in this action, weren't you? A. Yes.

Q. Do you recollect how many days you said you were with him then? A. About two weeks.

Q. Would you be likely to know better then how long you were with him then than now; would I be wrong in saying 10 days? A. Well, two weeks is the amount of days we spend on, about 12 days.

Q. Now, he showed you what? A. Well, he showed me how to run my car.

Q. How did he show you that? A. Well, I had to take the brake in one hand and the controller in the other, and then he showed me, and then he showed me the first, the first thing it was, when I took hold of

the car, he showed me how to let go of my air and how to start my car.

Q. How many each of those 12 days were you with him? A. Well, I was with him about three days. We had different motormen.

Q. With the first motorman, how many days were you with him? A. Three days.

Q. How long were you with him each day A. The whole day.

Q. Did he teach you all the time he was going through the street? A. You mean teach me to run the car.

Q. Yes? A. Yes.

Q. And then he put you with one hand on the brake and your other hand on the controller? A. Yes.

Q. And you ran the car that day? A. No.

Q. How long did he do that sort of thing; how long was he teaching you? A. He was teaching me for three days, but I cannot tell how many hours each day.

Q. What car was it? A. I cannot tell you the number of the car.

Q. Was it Church street car, Bathurst street car or a King street car? A. It was a Bathurst car.

Q. Would he be teaching you while the car was full of passengers? A. Yes.

Q. You mean that? A. Yes.

Q. That he would teach you, tell you what to do while the car was full of passengers? A. Yes.

Q. All the time you were on, he was telling you what to do? A. Yes.

Q. On each day you were out with him? A. Yes.

Q. Then that was three days for that man; then the next man took you for how long? A. For three days more.

Q. On what line was that? A. I think it was on Queen street.

Q. In the same way? A. Yes.

Q. And then the next man, where did he take you? A. I think it was King street.

Q. In the same way? A. Yes.

Q. And then the next man took you where? A. On Roncesvalles.

Q. And that ended what you might call your practical education? A. Well, for the driving of the car.

Q. Now, you qualified, didn't you, as a sort of electrician too? A. No, sir.

Q. Didn't you go—that is not all the education you got for running your car? A. Yes, for the motorman.

Q. What else did you get? A. Well, I did not get anything more; and then I had to go to the electrician.

Q. How long were you at the electrician's? A. About a couple of hours.

Q. Now, Mr. McPhail, why have you changed that time since you were examined. You gave on your examination for discovery half an hour for the time you were with the electrician——

Mr. McCarthy: I don't think my learned friend can use that.

Mr. Gamble: I think it is clear that the man is not being candid.

Q. Why have you changed that from half an hour to two hours? A. That is the time I go to the electrician's shop, but I don't say that was the time I spent learning the electrician work.

Q. Then how long were you learning the electrician work? A. About two hours.

Q. Now, let me read what you said on your examination for discovery. You intended to say differently, did you? A. Yes.

Q. Then I find that you said there that you were ten days with the motorman learning the job. Now you say that is not true? A. Well, whatever two weeks is.

Q. That is question 36. Question 34 is: "You got on car first, didn't you? A. Yes, and I stayed on the vestibule with a man that was to train men, and then when he got things quiet he started to learn me how to drive my car and everything around it." A. Yes.

Q. "35. Q. And how long were you doing that? A. 10 days." A. Well, you see we have about four different motormen to learn with, and we spend three days with each one.

Q. That would make nine days? A. Four men.

Q. I beg your pardon. Anyway what you said in your examination you are correcting now by making it 12 days instead of 10. A. I never reckoned up how many days there were in the week.

Q. Now, let me read what you said about the electrician. Q. "49. And what time was it when you called to see him"—that is the question. "A: It was in the afternoon." I will go back to question 43. "Did you spend more than 10 days altogether before you got your badge? A. Yes, I spent 11 days altogether. 44. Q. Now, what did you do before you went to the electrician's? A. Well, he showed me the several running positions on the controller, and told me how to feed my car up and stop it. He showed me how to do when anything went wrong with the controller. 45. Q. Where was this electrician when you saw him? He was in the shops—Down on Front street—I don't know what they call the street where the shop is generally situated, but it is down in that direction. 46. Q. It is not what they call the car-barn, is it? A. No, sir. 47. Q. It belongs to the Street Railway Company? A. Yes. 48. Q. And what is the electrician's name? A. I don't know his name, sir. 49. Q. What time was it when you went to see him? A. It was in the afternoon, sir. 50. Q. About what hour? A. About three or four o'clock. 51. Q. What hour did you leave him? A. About an half an hour afterwards. 52. Q. You were with him about an half an hour? A. Yes." Now was that true? A. Well, I said wrongly there. I said I was for about half an hour after he showed me.

Q. Although you answered the question that you were with him, not around there, "after he showed me," but you were with him about half an hour, "yes."

HIS LORDSHIP: As I understand it, the witness says, after that he was there half an hour.

Mr. GAMBLE: Q. After the instructions of this man down there you were only half an hour? A. No, sir, it was between the time I spent with him and the time I was waiting on him.

Q. Two hours between the time you were waiting on him and the time he started to tell you? A. No, sir, I said I was there half an hour before I seen my electrician.

Q. Half an hour before you saw him, although you say you were with him about half an hour? A. Well, I mean between the two.

Q. "74. Q. You were with him half an hour? A. Yes. 75. Q. Do you think you can swear to as much as half an hour, knowing you are on your oath? A. Well, I think so." What do you say to that; how does this match with what you said now? Well, we will let it go at that. That was back in November, 1909? A. Yes.

Q. That would be about 9 months before this accident took place? A. Yes.

Q. And then when did you start to run as an extra man? A. Well, I got my badge given to me on the 22nd November.

Q. Have you got your badge? A. No, sir.

Q. It is on the 29th here; but you may be right. And then you began to run as an extra man? A. Yes.

Q. Would you run all day long? A. Well, no, sir.

Q. How many trips do you think you would get a day? A. Well, it depended on the amount of work there was.

Q. Sometimes you would not get any trips? A. I don't know about that, sir.

Q. You do know about that? A. I don't mean to say I know everybody's business; I only know my own.

Q. I am talking about you; did you get every day? A. Yes.

Q. You had a car every day? A. Yes.

Q. A trip every day? A. Yes.

Q. From the 29th November? A. Yes.

Q. Where were you on the first and second of December? A. I cannot say.

Q. Do you remember where you were on the 9th, 10th, 11th and 12th of December? A. No, sir, I never keep any account of it.

Q. Do you mean to swear now that you had a trip, a car in your charge on every day from the 29th of November up to the date of the accident? A. Yes.

Q. Do you swear that? A. Yes.

Q. Did you have a nine-hour day every day during that time? A. No.

Q. Would you have one trip, perhaps, a day and no more? A. Well, it all depends on what time I started.

Q. You might have one trip and you might have two trips? A. Yes.

Q. But you were on regular runs up to the 10th of August? A. No.

Q. Did you ever have any accident to your motor? A. No.

Q. Then on the day of the accident what had you been doing? A. I was running a car on King street.

Q. How many? A. Well, I only have the one car.

Q. This was your second effort? A. Yes.

Q. Now, I don't want the jury to get any wrong impression about you—it would not be fair—so I want you to tell me, you were not an inmate of the asylum, were you, you were there as attendant on the inmates, weren't you? That is right? A. Yes, I was attendant there, keeper.

Q. You were an employee. I thought it was fair to say that because it might injure you. Then, will you tell me, on that trip that you took down King street, you got to Sherbourne street about what time? About 5.25 you stopped on the west side of Sherbourne street? A. Yes.

Q. Then when you started, what did you do? A. Well, there was a switch open against me, and I had to give my controller one position to bring me over the switch.

Q. That is done by electricity? A. By an electric switch.

Q. After you had done that, what did you do? A. Well, I threw my power off and after I got over the intersection I started to put the power on again.

Q. Now, where was your power when this explosion occurred? A. It was only in the second position.

Q. Second was it? A. Yes.

Q. Was it the third? A. No, sir.

Q. Aye? A. No, sir.

Q. Is your memory so bad, have you forgotten all about this matter? A. Well, I don't say I have got a very good memory.

Q. What you said at question 182 was that you "proceeded slowly over the intersection and then I threw my power off; I started to build my car up in the usual way, and I got it to second or third position after I got over the intersection, and all of a sudden it blew up." Is that right? A. Well, I was about second position when she blew up.

Q. Why do you get at the third position? A. Well, I cannot leave it at the third, too.

Q. Quite properly? A. Yes.

Q. And then it blew up? A. Yes.

Q. Were you scared? A. Well, not very much.

Q. What did you do? A. Well, I threw the power off.

Q. That is on your controller? A. Yes.

Q. You threw the power off your controller? A. Yes.

Q. Anything else? A. No, sir.

Q. Did you not try to get hold of your hood switch? A. Well, I could not——

Q. You did try to get at your hood switch? A. Yes.

Q. But you could not get it? A. No.

Q. What state was it in? A. Well, the fire was all up around it.

Q. Was all up around the hood switch? A. In the vestibule.

Q. As I understand it, as you stand in the vestibule you have your left hand on your controller? A. Yes.

Q. Then up here at the side of the controller is what is called the hood switch? A. Yes.

Q. The automatic cut-out; and if you could have got at that and shut it off, if it was possible to do that, you would have been able to shut off the electricity from the car? A. Well, I cannot say that.

Q. You cannot say whether, if you got at your hood switch and opened it you would shut off the electricity from the car or not, is that true? A. Yes.

Q. You do not know? A. Yes.

Q. But you tried to open it up anyway, you tried to open the hood switch? A. Yes.

Q. Is there anything else you did? A. Well, I came to the vestibule door and I shouted to the passengers not to get off the car.

Q. Was there anything else you did to the machinery of the car before that? A. No, sir.

Q. You did not do anything else except shut off your controller and try to reach the hood switch? A. Yes.

Q. You did honestly try to do that. Then you threw—you went to the vestibule door, and what did you do there? A. Well, I opened the vestibule door going on to the street, and I got the handle rail and I shouted in to the passengers not to jump off.

Q. Anything else you did? A. No, sir.

Q. You shouted? A. No, sir.

Q. Well, you do seem to have the worst memory. Didn't you shout anything else? A. I told them not to jump off the car.

Q. Did you shout anything to your conductor? A. I told him to pull the pole off.

Q. Where did the explosion, as far as you can tell, come from? A. From the controller box.

Q. Was it a loud report? A. Well, no, sir, it was not very loud.

Q. Did you hear what the other witnesses said; you don't agree with them? A. I heard what they said; but it might not sound to them the same as it did to me.

Q. You were not very much alarmed? A. No, sir.

Q. Did you see the conductor to tell him of the explosion? A. No, not after the explosion.

Q. Did you see the people all out on the road? A. Yes.

Q. Now, if you had taken the pole off, what effect would that have had on the car? A. It might have taken the power from the car.

Q. You know that much? A. Yes.

Q. If you take the pole off it takes the power from the car? A. Yes.

Q. Then you saw the car afterwards? A. Yes, sir.

Q. What was there that was injured about it? A. I cannot say; I don't know.

Q. Don't you know whether the controller was injured or not? A. Well, it is not a motorman's business to know that.

Q. I am not asking you what your business was; I am only asking if you knew the controller was injured? A. No, sir.

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

Q. Then the car was on fire, wasn't it? A. Yes.

Q. Between the vestibule and the other part of the car? A. Yes.

Q. And the smoke was going back into the car? A. I don't know.

Q. You don't know about that? A. No.

Q. Then the car went on past the other side of Princess street, didn't it? A. Well, I cannot exactly say whether it went past Princess street or not.

Q. Someone pulled the pole off, didn't they? A. Yes.

Q. Who did? A. Well, I think it was—I cannot exactly say whether it was the fire brigade or who.

Q. But the fire brigade was there? A. Well, there was an alarm sent for them; I could not tell you whether they were there or not.

Q. Didn't you see any firemen there? A. I saw one.

Q. You know a fireman was there anyway? A. Yes.

Q. What did you find was burning? A. Well, I could not say; the fire came out from the controller.

Q. Yes, but after your pole was pulled off it did not come from the controller? A. It was still burning.

Q. And then what about the fire under the floor where the explosion came from? A. I could not tell you about that.

Q. You don't know about that? A. No.

Q. Did you not see whether there was any fire or smoke coming from there? A. No.

Q. You don't recollect seeing any fire or smoke coming from there? A. No.

Q. Then they put the fire out? A. Yes.

Q. Did you have that car again? A. Yes.

Q. Is the same controller on it? A. I cannot exactly say that.

Q. Do you mean to tell me you do not know whether it had the same controller that was on at the time of the accident? A. Of course, it might have been the same box, it might be the same machine, and it might not be. I could not tell that.

Q. You can't tell what controller you have on there? A. No.

Q. You never find that sometimes a car does not run as well as at other times; you say to some of the other fellows getting on the car, "how is she running"; you have known that? A. Yes.

Q. Don't you know what you are talking about when you are saying that? A. Well, it is a word that often passes between ourselves; we ask how things go, just like a man running an automobile, just ask him how things go to-day.

Q. You don't know what number your controller is, or the kind of a controller it is? A. No.

Q. You did not take notice to see whether that controller had been taken off the car or not? A. No.

Q. What rate would the car be running at? A. I cannot say.

Q. Now I believe you are trying to keep back information you gave before. What has put you in this attitude towards the plaintiff? A. Nothing.

Q. Now, in your Examination for Discovery at question 264 you are asked: "Then what rate were you going? A. Do you mean what rate of speed? 265. Q. Yes. A. Between 4 and 5 miles an hour." What obliterated that from your mind? A. I did not quite understand what you said.

Q. You did not understand what I was talking about? A. I did not that time.

CROSS-EXAMINED by Mr. McCarthy:

Q. Now, Mr. McPhail, when did you leave the employ of the Toronto Railway Company? A. 22nd of May.

Q. This year? A. Yes.

Q. You tell me, Mr. McPhail, that you left the employ of the Toronto Railway Company in May of this year? A. Yes.

Q. And you went where? A. Montreal.

Q. Have you been in Toronto since? A. No.

Q. Now, going back to your learning to be a motorman, you say you were for 12 days riding with four different motormen? A. Yes.

Q. On different routes? A. Yes.

Q. Had you different styles of cars from time to time? A. Yes.

Q. What were these four motormen who were directing you? A. They were regular motormen.

Q. Did they show you the inside of the motor? A. Yes, the inside of the controller box.

Q. The controller is the box which stands in front of you? A. Yes.

Q. And they showed you the inside of it? A. Yes.

Q. Did they show you what to do in case it got out of order? A. Yes.

Q. Did they instruct you about what they call the hood switch or circuit breaker? A. Well, the hood switch I generally always call it.

Q. Did they instruct you how to operate that? A. Yes.

Q. Did they instruct you how to feed up your controller? A. Yes.

Q. How were you told to feed your controller? A. I was told to feed it between two and three seconds between each position.

Q. That is, to put it on slowly inch by inch? A. Yes.

NEIL McPHAIL—CROSS-EXAMINATION.

Q. Then you went down, you say, and spent some time with the electrician in the shop? A. Yes.

Q. That was your examination? A. Yes.

Q. Then you had been taught, as I understand you, by the motormen? A. Yes.

Q. And you went down to the electrician's to see how much you knew? A. Yes.

Q. Tell us what took place down there; did he show you, or ask you questions? A. Well, he took a controller box and asked us to do certain things for him, which we did.

Q. He wanted to see how much the motormen had told you while you were under them.

Q. Just to make sure you were competent to handle a motor? A. Yes.

Q. After that you got your badge and went on the road? A. Yes.

Q. You operated as extra motorman from November 22nd until when? A. Well, for three or four months after the accident.

Q. After August? A. Yes.

Q. That would be about the end of the year? A. Yes.

Q. Just explain to us what you mean by extra motorman? I mean the motormen are divided into regulars and what else? A. Reliefs.

Q. Now, the regular man is put down for certain cars? A. Yes.

Q. And the extra man turns up at the barns and is sent out in case the regular man does not turn up? A. Yes.

Q. And we presume that the extra man, if he is prompt, gets more runs than the regular man? A. Yes.

Q. And prior to the accident had you been running pretty regularly on King street? A. Well, I cannot say I had been.

Q. How long had you been running on King street? A. Well, I forget—about the third or fourth time.

Q. How long had you been running during the time you were with the Railway? A. I ran on King street pretty steadily for quite a time.

Q. How many hours would you be running a day? A. I was doing about 8 hours and 42 minutes on it.

Q. For how long? A. Well, from the time I got my relief car in July —I didn't stay any time on King street—well, after I got a steady car I was on King for two or three months.

Q. Running 8 hours and 42 minutes a day? A. Yes.

Q. When you got a steady car; what do you mean by that? A. That was relief, a step higher up.

Q. That comes from time? A. Yes.

Q. You were running regular man on relief car? A. Well, I was running relief—I was extra man and then I got changed from extra man up to relief man.

Q. A relief man is practically a regular man, only he has a relief car? A. Yes.

NEIL McPHAIL—CROSS-EXAMINATION.

Q. Now, coming down to the day of the accident, where did you take your car that day? A. I took it at Roncesvalles barns.

Q. That is out in the west end? A. Yes.

Q. Had you taken out a car before that day? A. I think so.

Q. You had a car out that day, I understood you to say? A. Yes.

Q. What time did you take this car out? A. I took it out about 5 o'clock.

Q. Was that a relief car? A. Yes.

Q. That is about a pretty busy time of the night; they send out all the cars to pick up the crowd? A. Yes.

Q. From the time you left Roncesvalles barns up to Sherbourne street had you run your car on different positions on the controller? A. Yes.

Q. That is, you had a good many stops? A. Yes, quite a few.

Q. You would run full speed? A. Yes.

Q. Half speed? A. Yes.

Q. And all speeds? A. Yes.

Q. You had a trailer on, I believe? A. Yes.

Q. Of course, you were picking up people all the time after you left the corner of King and Yonge streets? A. Yes.

Q. And when you got to Sherbourne street—I suppose people had been getting on and off all the way along? A. Yes.

Q. And when you got to Sherbourne street—you say you were standing in the west side of Sherbourne street and you got the bell from the conductor to go on? A. Yes.

Q. Now, you said something about the point. Will you explain to the Jury what you mean by that? Sherbourne street is where the Belt Line go up? A. Yes.

Q. And the switch there operates by electricity? A. Yes.

Q. You operated on your controllers? A. Yes.

Q. And a Belt Line car had gone ahead of you? A. Yes.

Q. And that left the point so that if you continued you would go up Sherbourne street? A. Yes.

Q. So you gave your car—— A. One position of the controller and that threw the switch back.

Q. Then you ran on that one position until your car crossed over the intersection? A. Yes.

Q. The car pretty well loaded? A. Yes.

Q. What sort of a rail had you? A. Well, it wasn't very good.

Q. Was it a nice day? A. It was a nice day.

Q. You passed over the intersection; but you threw your power off, I believe? A. Yes.

Q. As soon as you got enough power to carry you over the intersection, then you threw your power off? A. Yes.

Q. Then, having got over the intersection, you then began to feed your car up again? A. Yes.

NEIL McPHAIL—CROSS-EXAMINATION.

Q. Notch by notch? A. Yes.

Q. You had fed it to the second notch when this explosion took place? A. Yes.

Q. Second or third notch when this took place? How many notches are there? A. There are 5 positions on the controller; 9 notches altogether.

His Lordship: You can feed it up to 9 notches before you get it to full speed? A. Yes.

Mr. McCarthy: Q. Now, when you speak of a bad rail, you refer to a greasy rail? A. Yes.

Q. You don't mean any defect in the metal? A. No.

Q. Now, just as you fed it then to the second position, you say this explosion took place? A. Yes.

Q. It was a loud explosion? A. Well, it didn't sound extra loud to me.

Q. You were in the vestibule, and there was glass all around? A. Yes.

Q. And the explosion was accompanied by flames, was it? A. Yes.

Q. It came from your controller box? A. Yes.

Q. And shot up in your face? A. Yes.

Q. And went right up to the roof of your vestibule? A. Yes.

Q. And you immediately turned off your power? A. Yes.

Q. Your hand being practically in the flames at the time? A. Yes.

Q. You turned off your power with your left hand and, then you say you tried to reach for your hood switch, which is on the upper left hand corner of your car, and the flames were so great that you couldn't cut off your hood switch; is that what you say? A. Yes.

Q. The hood switch was burning at the time? A. Yes.

Q. You cannot say whether the hood switch was open or closed? A. No.

Q. You didn't get your hand on it? A. No.

Q. Those hood switches work automatically? A. Yes.

Q. Then, having shut your power off, and seeing you couldn't reach your hood switch, the next thing you did, you told my learned friend, was to get down on the step and call to the people not to get off? A. Yes.

Q. And called to your conductor to pull the pole off? A. Yes.

Q. Had the flames spread at all by that time? A. They had spread quite a bit.

Q. A lot of smoke in your vestibule? A. Yes.

Q. Full of smoke? A. Yes.

Q. Did you go back to the vestibule after you called out to the people? A. Yes.

Q. Shut the door? A. Yes.

Q. Shut your door and went back to your vestibule and remained there until the car stopped? A. Yes.

NEIL McPHAIL—CROSS-EXAMINATION.

Q. Then how were you taken out? A. Well, I felt pretty weak; I got a shock of electricity, and somebody carried me out on the street.

Q. That was after the car stopped? A. Yes.

Q. Now, after you opened the door and told the people not to get off, what did you go back into your vestibule again for? A. Well, I was waiting to see the fire put out.

Q. After you called to the people—you say while the car was still going you got on the vestibule steps and called to the people not to get off, then you went back into your vestibule again. Why did you go back again? A. To stop the car.

Q. What with? A. The air brake.

Q. Did you try to get at the air brakes? A. Yes.

Q. And you couldn't? A. No.

Q. Why? A. The flame was still around it.

Q. Have you any other brake there besides the air brake? A. Well, I don't think there was a hand brake on that car.

Q. It was operated by air? A. Yes.

Q. At any rate, you wern't able to get your brake on, and the car came to a stop of its own motion? A. Yes.

Q. You know, as a matter of fact, there is a brake handle on these cars? A. Well, there is generally one of them in every car. I didn't take much notice to it.

Q. You cannot say whether there was one on this car. At any rate, you went back with the idea of trying to stop your car, and owing to the flames, you weren't able to do so, and the car came to a stop of its own accord? A. Yes.

Q. Now, having been taken out, after the car stopped, did you go back into your vestibule again at all? A. Well, I went back after a while, when the fire was out.

Q. What were the conditions of the vestibule at that time? A. Well, it was pretty much out of order, to my appearance. I couldn't exactly say what was the matter with it.

Q. Did you look inside the controller? A. No, sir.

Q. Did you look at the hood switch? A. No, sir, I didn't examine any part of the car at all.

Q. Was the woodwork burned? A. Yes.

Q. And the place was pretty well out of order as far as you could see; and the car was pushed down after that to the shed? A. Yes.

Q. In your experience as a motorman. I suppose you have had hood switches blow out with you before? A. Yes.

Q. Did you ever have anything like this before? A. No, I never had anything like this happen before.

Q. Can you give us any idea of the cause of it? A. No.

Q. Did the noise or explosion or flame originate in the hood switch or down in the controller? A. Down in the controller.

Q. And in your experience you had never known such a thing to happen before? A. No.

Q. But you have known, of course, as I say, of hood switches blowing out? A. Yes.

RE-EXAMINED by Mr. GAMBLE:

Q. Now, here is what you said on your examination: "306. Q. But what did you do to stop your car? A. I put the brake on." When were you lying, then or now? (Witness hesitates.) That will do.

Mr. MCCARTHY: I think my learned friend shouldn't read the one question against the witness like that, without reading the other.

HIS LORDSHIP: I do not think it makes much difference. If you want to read it you can.

Mr. MCCARTHY: He told us first he didn't put the brake on; now he says he did. All those questions should be read together.

HIS LORDSHIP: It is better when you are calling a witness not to make comments. I do not think that is a proper way to treat a witness. What you can do with a witness is, you can say that at some other time he made the statement that is inconsistent with the statement now made. That is the utmost you can do.

Mr. GAMBLE: I shall naturally bow to your Lordship's judgment, but I still say that I have a right to say to a witness that he is not telling the truth now, or wasn't telling it then, and I varied that by saying, "When were you lying."

HIS LORDSHIP: That is objectionable. A witness may have some explanation to make. You can draw his attention to the fact that he made an inconsistent statement at some other time, and then you can say, how do you reconcile it, can you reconcile it?

Mr. GAMBLE: He had an opportunity to do so, my Lord.

HIS LORDSHIP: I know, but you say, "When were you lying?"

Mr. MCCARTHY: Now question 307, I think, should be read: "Do you remember a few minutes ago you told me you couldn't say that you put the brake on? A. I said the brake stopped the car. I don't know. 308. Q. You don't know whether you put it on or not. Now tell the truth some time?" Then, I say, "This is an examination for discovery, getting the facts from this witness. It isn't a cross-examination." Then Mr. Gamble says, "Tell the truth sometimes. A. I have told the truth all along, sir. 309. Q. Now, did you put on the brake or did you not? A. I don't know, sir."

HIS LORDSHIP: I can well understand a man being in a position of confusion. I think it is very objectionable to characterize the witness in that way.

JAMES POOLE, Sworn. Examined by Mr. GAMBLE:

Q. Mr. Poole, you are a fireman, are you not? A. Yes.

Q. Are you a captain or colonel or K.C.B.? A. Lieutenant.

Q. Did you have anything to do with this fire on the King St. car

on the 10th August, 1910? A. We got a still alarm about it, and we went down there, and somebody had been throwing water on it, but we used the extinguisher on it.

Q. What did you find burning there? A. We found smoke coming up between the partition between the vestibule and the body of the car. That is what you call the bulk head, the smoke was coming up by what we call the bulkhead, the partition between the front and the back of the car.

Q. Then, was there any other fire or smoke anywhere? A. I raised the board with an axe onto the box that runs along the side of the car, and there was a small flame in there.

Q. That is running from the controller around to the back of the car? A. It runs like alongside of the sides.

Q. Inside? A. Yes.

Q. Inside the car? A. There is a sloping board on it.

Q. In the passenger part of the car? A. Yes.

Q. Whereabouts did you find that? A. Right close up to the vestibule, just in the corner, a small blaze of wires.

Q. Right up in the corner? A. Yes.

Q. How did you put that out? A. We just gave it a squirt with the fire extinguisher, with some water and acid mixture.

Q. Was there any other fire you found there? A. No. Somebody had been throwing water on it before.

Q. What condition was the place in—charred? A. Charred.

Mr. McCarthy: I was going to suggest that your Lordship should appoint, should you think well of it, say the engineer of the Ontario Railway Board to inspect the appliances of a car similar to this car for the purpose of advising the Court in the matter of this kind.

Mr. Gamble: I have a great deal of respect for my learned friend's views, but I have no desire to go before the Railway Board.

Mr. McCarthy: Let the Court appoint an independent man to inspect these appliances.

Mr. Gamble: I wouldn't consent to it at this stage of the proceedings. This isn't the time for an application of that sort, and it is a somewhat unusual thing.

His Lordship: Are you attacking the type of controller that is used?

Mr. Gamble: No, my Lord.

His Lordship: You say this particular motor must have been in bad shape.

Mr. Gamble: Your Lordship says, "Are you attacking the type of controller?" I say, no, I am not attacking the class of controller; I say this K.C. type of controller is a good controller.

His Lordship: But you are attacking this particular machine?

Mr. Gamble: Yes. Then the next thing is the form of car, the narrowness of the space for the people to get out. That is a matter that

anyone can see, so we don't require an engineer to tell us about that. I am only attacking the electricity so far as it is out of repair.

HIS LORDSHIP: You are not attacking the equipment.

Mr. GAMBLE: I don't know at the moment, my Lord. If it is not open to me, then I am not attacking it.

HIS LORDSHIP: In opening the case you departed considerably from your pleadings.

Mr. GAMBLE: There is an amendment to the pleadings, my Lord.

HIS LORDSHIP: I do not know, of course, what the issue is in the amendment.

Mr. McCARTHY: My point is this, my Lord, that in case there are two opinions, one saying one thing and one another.

Mr. GAMBLE: I don't think that anything like that can arise.

HIS LORDSHIP: On the questions of fact I am going to let the case go to the jury.

Court adjourned until Tuesday, the 26th inst., at 10 a.m.

Court resumed Sept. 26th, 1911.

Mr. GAMBLE: I suppose my learned friend will admit the doctor's bill, $90?

Mr. McCARTHY: Yes.

Dr. McPherson's bill marked Exhibit 2.

WILLIAM FLEMING, Sworn. Examined by Mr. GAMBLE:

Q. Mr. Fleming, you are a son of the plaintiff? A. Yes.

Q. Do you remember his accident some 25 years ago? A. Yes.

Q. What has been your father's habits and ability in regard to work since that time? A. Well, the time he met with the accident to the other leg, that is the one hurt 25 years ago, that is the left leg, why he never laid up, he never had a doctor. I never knowed him to have a doctor, and hadn't him until the present accident.

Q. During all that time was he at work? A. Yes, he done all kinds of work, railroading, well digging, and excavating and timber work, and everything.

Q. After that accident? A. Yes.

No cross-examination.

WALTER R. McCRAE, Sworn. Examined by Mr. GAMBLE:

Q. Mr. McCrae, you are in the employ of the Toronto Ry. Co.? A. I am, yes.

Q. What is your position there? A. Master mechanic.

Q. What are the duties in connection with that position? A. The supervision of rolling stock, building of new rolling stock and equipping of new rolling stock.

Q. How long have you been with them? A. I have been with the company about 16 years—about 18 or 19 years at the business altogether.

Q. You have to do, I suppose with the inspection of the cars of the

company? A. Well, I don't inspect the cars personally myself, except it is something special.

Q. What would you call something special? A. Well, putting on some new device or some new improvement, or some attempted improvement, going to be made, probably some trouble in the car.

Q. The inspection is in your department? A. Yes.

Q. You have general supervision over it? A. Yes.

Q. Then would you tell me how many inspectors you had at the Roncesvalles barn at the time that this car was there—perhaps I could help you—what was the number of the car? A. The car that was in this accident?

Q. Yes? A. 966.

Q. Now, that car, I think you told me when you were examined before, was at the Roncesvalles barn the night before the accident? A. Yes.

Q. And at Roncesvalles barn there were some 90 cars stored that night? A. I believe so—thereabouts.

Q. And that the inspectors employed in that barn consisted of one foreman, two oilers, two brakemen—by which I presume you mean brake inspectors? A. Yes.

Q. One journal oiler inspector—or journal inspector, I suppose, that would be more correct—one motor inspector, one truck inspector—now, does that cover the entire staff of inspectors? A. There is a controller inspector; there is a man on controllers.

Q. I don't see that you say that when you were giving me your account of the matter before. In question 256 you gave me a memorandum—it was a memorandum of inspectors? A. That was an oversight on my part if I didn't mention it.

Q. If you made a mistake, why, all right? A. Yes, there is an inspector of controllers.

Q. Then the duties of inspector would be to go through the different parts—take the controller inspector, for instance—to go through the controller and see that it is in proper operating order to go out the next day? A. Yes, and do any minor repairs that were to be done.

Q. How many parts are there in a controller? A. There are a great many parts.

Q. Well, give it to us, just roughly speaking? A. I don't know that I ever counted them, but I should say that there was a couple hundred parts, if it was all taken down.

Q. The controller opens—you have two doors that open the controller, or one door, is it? A. There is an outside door.

Q. That opens the controller, exposing a certain number of parts? A. Yes.

Q. The fingers and contact point? A. There is what you might call an inside door—we call it an arc divider. After you open the outside door, then you see the fingers exposed, the contact fingers.

Q. There is first of all the outside door and then another door opening again? A. Known as the arc dividers.

Q. And that exposes certain parts of the machine that require to be looked over by the inspector? A. Require the most attention.

Q. When you say require the most attention, what do you mean by that? A. They are the moving parts, the contact parts.

Q. Then the other parts of the controller do not require so much attention? A. They are permanent parts.

Q. And not likely to get loose? A. No.

Q. That is a picture photograph of the inside of a similar controller? A. Yes, that is K.C. type.

Photograph marked Exhibit 3.

Q. So that the jury can see, is the big door off altogether in that? A. Yes.

Q. The outside door has been removed altogether, and then this door has been opened? A. That piece here has been opened from here.

Q. Part A has been opened from the right and swinging on hinge B, and then has this also been opened? A. That is also opened; that is always exposed.

Q. Side C is always open, except that it has the outer cover on it.

Q. Then all these points that we see here, what do you call those? A. The contact fingers.

Q. They are marked D; how many of those are there in the controller? A. 16—16 or 15; we don't double up; it is immaterial though.

Q. What are these on this other side here? A. Those are the circles, the controller cylinder segments.

Q. That is E. There is one of those corresponding to each of the fingers D? A. Yes.

Q. Then I see on the other side, on the side C, there are a number of fingers, up at the top of the picture? A. Yes, that is the reverse cylinder.

Q. And there are how many fingers there? A. Yes, 8 on each side.

Q. 8 fingers on each side? A. Yes, and there are two sides, 16 altogether.

Q. Then with all these fingers, there are wire, connected, screwed on? A. Yes, from the footpad at the bottom.

Q. And each of those has its wire? A. Each finger has its separate wire, with the exception of where the fingers are double, where you see two fingers there is one wire.

Q. Where there are two double fingers there is one wire for both fingers? A. Yes.

Q. Then this part down here, the lower part of side D, which I will mark as F, what is that? A. The upper half of that is the cut-out switch section.

Q. The upper half of F is the cut-out switch? A. Yes. You see the two switches on there. The lower half is the terminal board, what they call the footboard.

Q. Are the wires on the footboard permanent or temporary? A. They are solid in behind, soldered in.

Q. Those on the fingers, what are they? A. Solid, too, a terminal; and then the terminal is bolted down, too.

Q. Where does the bolt go in? A. To the finger post. There is a piece of plate to which the finger is fastened, you see the screws there, screwed on this to this wooden section, then the wires are brought in and brought up here and screwed on to that.

Q. What I want the jury to understand is, and tell me if I am right, in these terminals on the fingers, the wires are screwed on by nuts? A. By screws.

Q. And not nuts. And then that on this other side, they are soldered on? A. They are soldered to the terminal at the upper side, too, at the contact fingers; they are brought in and soldered in to the terminal, and that terminal is just screwed on, that machine screws to the base.

Q. Each individual finger or pair of fingers must have a wire going direct to it individually? A. Yes.

Q. Now, how is that wire physically connected with that finger, or brace of fingers? A. That wire is first soldered into a terminal piece of metal.

Q. That is, apart from the fingers? I am talking about the immediate contact. A. The fingers, I am not speaking about the fingers now at all.

Q. Well, I am. It is the physical contact with the wire and the fingers? A. It is a permanent contact.

Q. What is it? A. It is a screw contact. The terminal is carried on the base——

Q. You don't call that permanent; I am trying to distinguish? A. It isn't a moving part.

Q. I am trying to distinguish a soldered connection, and one that is liable to be loosened and needs watching like a screw? A. Well, the terminals to which the wires are soldered are screwed to these base blocks.

Q. What other part of the controller would want looking after over a night—there is a coil down there? A. That is the magnet.

Q. Does that require examining at all to see if it is all right? A. No, not particularly, because there are permanent connections made to that.

Q. And that would not require any looking after? A. Not frequent inspection.

Q. Then is there anything that the controller inspector would have to do that you can tell us of in connection with the inspection of the controller? A. The inspection of the controller would consist of examining the moving parts, the wearing parts, as the segments, the main rows, probably, dressing up the ends of those a little, or putting on new fingers where they are required, or adjusting the old fingers.

Q. Or where there is a finger loose to screw it up tight? A. Yes, but that is an unusual thing.

Q. Where they would find one loose? A. Yes.

Q. Wires do get loose? A. Yes.

Q. And they require attention of that sort? A. Yes, otherwise we would not need, except to keep them clean and adjusted.

Q. And, as you say, to file the contact points if they cut? A. Yes. File up the segments at the end, or put new segments on as the case may be.

Q. Is that all you can think of that a controller inspector has to do? A. Yes, keeping the blocks clean, and that gate you have marked "A." Those are here. Yes, to clean those out here between each section, blow it out.

Q. To clean out what I might call the surface? A. The arc device.

Q. On the door A? A. Yes.

Q. And see generally that the connections are properly made, that there is nothing wrong with the installation of the wires? A. Oh, yes, that would come under his supervision as he makes his general inspection. He has his lights, and he looks over it thoroughly.

Q. He has his lights and he just looks through to see that all these things and the wires are all right. And then this man has to do this for ninety controllers in the night? A. Not in a night, no. He takes the cars in their turn. He would do as many cases as his schedule laid out for him to-night, and he would not do the same cars to-morrow night; he would do another number of cars.

Q. I thought you told me, but I may be mistaken, they go over the cars every night? A. They go over the cars, general inspection, but not the controllers. A man cleans a controller thoroughly up to-night, and it is not supposed that he would go back to-morrow night to fix it up again.

Q. That you would not consider necessary? A. No, it is not done, anyway.

Q. Whatever I may have thought, what you mean to say now at all events is, that the controller is inspected that way one night and might be left for how long? A. Oh, it might be—that would depend on the amount of work he had to do, the number of cars he had to go over.

Q. No; but I mean when it would be considered necessary for him to examine that controller again? A. It would not be any greater length of time than a week.

Q. And it might easily go a week? A. It might go a week.

Q. You think they could not go so long as a fortnight? A. No; he would be around to it again inside of a week.

Q. So that would give him 13 a night apparently he would have to do in that way? A. Around 15 a night he would do.

Q. Then we have the other inspections—we have got through with the controller now. We have one foreman. What does the foreman do? A. Well, I am not as familiar with that as I might be. I think if you

will call the night inspector he will tell you more about that than I can.

Q. You cannot tell me. I had an idea you controlled all these men? A. I do, too; but we have a general inspector who has charge of all the divisions, and he lays the work out for these men, instructs the foreman of the division what has to be done, and he could tell you better than I.

Q. Do you mean to say then that you cannot tell me what any of these men do? I have here in your examination one foreman, two oilers, two brakemen, one journal oiler, one motor inspector, one truck inspector? A. That is practically telling you what they do. That is the parts of the equipment those men work on.

Q. You are able to say those are the inspectors that are employed anyway? A. Yes.

Q. And that is correct. As to what the foreman does you cannot just tell me? A. Well, my idea of the foreman is that he has knowledge of anything that is to be done; he is there; he is working foreman.

Q. What inspection is there here; what is the truck inspector; what does he do.

Mr. McCarthy: What has he to do with the truck inspector?

His Lordship: There is no charge in regard to the truck inspector here.

Mr. Gamble: No, my Lord.

Q. Well, his inspection is confined to the truck, I suppose? A. That man's duty is to go over the truck.

Q. And the same may be said as to the motor inspector's duties? A. Go over the motors and examine and see that they are all right, and put in new carbons or do any repairs to any cables or anything of that kind that need it.

Q. That is in the motor? A. The motor inspector.

Q. Tables in connection with the motor? A. All the motor equipment. But I don't know that I could give you all he does, but I don't suppose it is worth while running into all he might do.

Q. It would be useful to know what you mean by motor equipment. That would not, of course, cover the controller? A. No. The motors are the motors that are in the trucks, the motors that are placed in the trucks to drive the wheels, that is the motor equipment.

Q. Is that under the body of the car? A. Under the windows, in the trucks.

Q. You will excuse my ignorance; I am asking because I want to know? A. I am not intending to be impertinent.

Q. It is under the flooring of the car? A. Yes, right in the trucks, fast in the trucks.

Q. About what space would they occupy? A. In the truck, you mean?

Q. Yes, the motors and the equipment, about what space would they occupy? A. Well, they occupy on a double truck car all the space there is between the axles and the frame of the car, on the inside of the hubs of the wheels.

Q. Then the journal oiler; that is merely a man who oils the different parts? A. He oils the wheel journals, the outside journals.

Q. Then, two brakemen, those are men who attend—— A. To the brakes.

Q. See they are all right? A. Yes.

Q. And two oilers on other parts of the cars? A. They oil the motors and gears.

Q. And that covers the inspection. You have given me the inspection as fully as you can? A. Yes.

Q. Now, you just happened to be on the street when this accident happened? A. Yes, I was at the south west corner of King and Sherbourne Street.

Q. You must have been pretty close to Mr. McFarland, who happened to be there at the same time? A. I was just a little below King, probably 20 feet south of King when the car passed over.

Q. On a bicycle or walking? A. No, walking.

Q. What was it that drew your attention to the accident? A. Why, the noise of the explosion I suppose you better call it, in the car, after it had gotten over the intersection and down King Street a ways.

Q. The explosion, or I should say, explosions, from what you told me before? A. The first one was what attracted my attention.

Q. And was that an unusual sound? There was an unusually loud explosion? A. In what particulars?

Q. Anything to see in the car, what the car appeared like? A. Oh, there was the flash, the flash from this explosion, and there was smoke from it; there was afterwards the smoke from the burning cables; the rubber took fire in the cables.

Q. The insulation and that sort of thing? A. Yes. And there was a great many people being crowded out and jumping out; there was a great deal to see after the explosion.

Q. Women screaming? A. Yes.

Q. And then we had a new class of pavement on the south side of King Street? A. Well there was some there; but there was room enough to run; I was running.

Q. Then after the first explosion, there were several others? A. Yes.

Q. And I think you told me that the car, as far as you could judge, was going about six miles an hour? A. Thereabouts, as near as I could judge it.

Q. Now, might I ask you to describe to me the manner in which that car was equipped. First of all, it was one of the cars that had the seats all facing one way and are adjustable? A. Yes.

Q. Is it true, as Mr. Fleming says, that there is very little room between a man's knees and the seat in front of you? A. There isn't a great deal of room; there is room enough for people to crowd through.

Q. There is room to press through; a man would have to move to let people get by? A. He would not go sideways, he would not walk in

front of people's knees; by getting this way he could go fairly comfortably out.

Q. It is not as roomy as the other class of car? A. No, there isn't as much room between the seats.

Q. And then it is not an open car.

Mr. McCarthy: I don't see the materiality of this, my Lord, in reference to any evidence given after the construction of the cars. I wish to take the point now that all that is in the jurisdiction of the Railway Board; they regulate all matters in regard to construction, operation, etc., of all cars.

Mr. Gamble: They don't govern actions for damages.

His Lordship: Mr. McCarthy's point is that the construction of the car is one over which the Railway.

Mr. Gamble: I submit that that is not tenable at all events, my Lord.

His Lordship: It may not be important.

Mr. Gamble: Q. Then this car had a running board along the side for the conductor to go along and get his fares, and for the people to get in and out of their seats? A. Yes, there was a running board.

Q. Now, will you just trace for me the electric current, if that is the proper expression, from the time that it leaves the trolley wire until it strikes the motors and puts them in motion. First of all, of course, it is taken off the wire with the pole? A. Yes.

Q. Will you go on and just follow that down? A. The cable comes from the base of the pole; there is a copper cable, insulated copper cable down to the vestibule.

Q. The wire takes the current past into that iron pole, into the pole itself—or is there a wire inside the pole? A. That steel pole is the conductor itself.

Q. And then the steel pole comes down and rests upon a certain platform on top of the car? A. Yes, comes onto a controller stand, and that stand rests on the trolley base.

Q. Then the trolley base is wires, or a wire? A. A wire.

Q. Which comes through the roof of the car and runs along the roof? A. No; it runs over to the edge of the weather table, where the water would drip off the upper roof and then comes down underneath and then runs along to the roof.

Q. Instead of coming along, as I thought, on the inside, it goes directly down to the side from the trolley base? A. Yes.

Q. To the left hand side of the car? A. Yes.

Q. From the trolley base, and then where does it go? A. Along underneath.

Q. Then it runs along underneath the eave? A. The eavetrough, the upper deck.

Q. And runs over to where? A. To the frame of the last window in the deck lights, the ventilator lights?

Q. Up in the room? A. Yes.

Q. Then where does it go from that? A. It passes through that frame and from there turns into the vestibule, comes out through the upper part of the bulkhead into the vestibule.

Q. Comes through the bulkhead. Perhaps you will tell us now what that is. That separates the motorman from the rest of the car? A. From the passenger section.

Q. Goes through that partition; and then what does it do? A. Goes direct to the circuit breaker.

Q. Then, assuming that the circuit breaker is closed, and the current running through it, where does it go next? A. From the circuit breaker to the controller.

Q. Direct? A. Direct.

Q. And from the controller, where? A. Then it is distributed to the motors through the rheostats.

Q. The rheostats are insulating buffers are they not? A. Yes.

Q. To prevent the current coming too fast? A. To the motors.

Q. And is that governed in any way by the controller? A. Oh, yes.

Q. It depends upon the way the controller is operated, what resistance will be given by the rheostat; is that right? A. It depends—well, the same resistance would be given; that is permanent resistance there, but the operation of the controller would cut out each succeeding step that you go up, and the controller cuts out a step of your resistance.

Q. That would mean, wouldn't it, that if a man had his hand on his controller, and he threw it right around, he would get the direct current without any resistance? A. Less what reduction in current there was due to going through the rheostat, plus the resistance of the motors not moving, being permanent when that was started.

Q. Then it is not a good thing, is it, to put on too much power at once? A. No.

Q. Now, how is the wire carried to the motors. What I mean now is, is it in one wire, or are there a number of wires? A. There are a number of wires.

Q. Go from the controller, which carries the current to the motors? A. Yes.

Q. And those wires are put in a cable? A. They are put in a box or conduit.

Q. Aren't they run into a cable as well? A. No; they run through the car in a weather-proof box.

Q. In a wooden box? A. Yes, a wooden box.

Q. That is to say, all the wires that come from the motor? A. From the controller.

Q. From the controller, and connect with the motors, are carried through a wooden box on the side of the car? A. Yes.

Q. About how far from the ground? A. The air space under that

box in the downward section would be about 4 inches.

Q. But that is the space? A. Between the bottom of the box and the floor.

Q. And I suppose that would be the same at the step? A. No; it would be a little more outside the step you go down; the step is at a lower level.

Q. There would be more space? A. Yes, there would be probably twelve inches—a foot.

Q. Then the wires are carried separately through there? A. The wires are carried in there, the insulated wire.

Q. Each wire separate; it is not made in together? A. No. Each wire is laid in separately.

Q. Then all these go to the motors? A. And the rheostat.

Q. And then do they return; is there any return current? A. There is a return current. Those wires we have mentioned in that box carry a current to and from.

Q. Then there was, as you have told us, a circuit breaker? A. Yes.

Q. On the car. Now, would you kindly explain to the jury what the circuit breaker is? A. The circuit breaker is a device that is either automatically handled by the current or by the hand, manually operated, open or shut.

Q. And the object of opening or shutting it would be, either in opening it to stop the current coming into the car? A. Yes.

Q. Or in shutting it to make the current come? A. Yes.

Q. Before I go any further. You are an electrical engineer, are you not? A. Yes, supposed to be.

Q. Will you just look at that and tell me if that is a proper drawing showing the way the current is taken from the wire and conveyed to the motors, and the return? A. Yes, the trolley circuit is all right; the red line is all right; the heavy red line.

Q. Then the others you would have to follow out? A. Individually.

Q. You can say generally whether it is right or not? A. That main circuit is correct.

Q. What is the black line? A. The ground circuit—yes, that is all right. These individual circuits cannot help but be right; the current would be broken if they weren't right.

Q. The circuit breaker is inside the vestibule? A. Yes.

Q. The return goes out on to the rail? A. Yes, this ground wire goes to the rail.

Q. Completes a circuit and goes through the power house and back again? A. Yes.

Q. You told me, I think, that there is no cable in the box; you will note that Mr. Richmond has got a cable into the controller as though the wires were all made up into a cable? A. Well, I would understand that Mr. Richmond had this made out this way to show the correctness of his work.

Q. But as a matter of fact, technically, are these wires put into a cable, laid into a cable, as they come out? A. Yes, they are in some instances, but not in ours, and not in many more. They are carried in a wooden conduit.

Plan of wires marked Exhibit 4.

Q. Now the type of controller was K.C.? A. General Electric, K.C.

Q. It is fairly represented by that photograph we had? A. Yes.

Q. And the wiring, as far as you can see, is correctly laid out in this sketch? A. Yes, without taking the trouble of checking it all over.

Q. We will give you an opportunity of doing that anyway. Then what sort of a motor equipment was this? A. Quadruple, General Electric type 1,000, quadruple equipment.

Q. The controller is immediately on the left of the motorman, isn't it, in the car? A. Yes.

Q. So that he can have his hand always on the controller handle? A. Yes.

Q. And then under his other hand, on the right hand side, is the air-brake? A. That is right.

Q. So he can have his right hand on the air brake standing in position. And how far would you say it was from the air-brake handle to the controller? A. It would be about 30 inches.

Q. That would be pretty nearly a yard? A. It is more than 2 feet, between 2 feet and 30 inches.

Q. Is there any brake on that car, too? A. Yes, to the right of the air-brake.

Q. There is another brake? A. There is a hand power brake.

Q. That is further away still? A. Yes.

Q. About how much further? A. That would be, perhaps, 15 to 18 inches further.

Q. Then when you got over to the car, after the accident, what condition did you find it in? A. When I got to the car I found it burning, that is above, at the hood switch, and the insulation of the wires, at least the circuit breaker, I should judge, and the insulation of the wires leading to the circuit breaker were burning; the circuit breaker itself, the wire, the insulation of the wire leading to the circuit breaker, both wires going in and out of the circuit breaker, and the controller and the cables in the box, where they caught fire from the flame of the controller, were on fire; in fact, the vestibule was full of flames and smoke.

Q. Where was the flame coming from? A. Mostly from the controller.

Q. Did you go in there? A. I did not go in first. I ran and got a pail of water and came and put the fire out in the controller.

Q. Then after the fire had been put out what damage—I think you gave me that before—did you find had been done to the car and its equipment? A. The controller was, you might say, completely gutted out. It was so badly burnt inside that I don't think there was anything very

much left of it, except the metal that could not burn, it was not burnt. The circuit breaker had blown open and fused across and burned the contact in the circuit breaker. The vestibule was badly scorched:

Q. What part of the vestibule? A. Oh, all the left hand side of the vestibule, and the roof from the flame. The wire, the cable in this conduit had caught fire, and the fire had travelled back until it broke out between the bulkheads under the window, and there was some smoke coming up there. I put the fire out with the water, except down between the bulkheads, where we had the firemen use the chemical on that. We got him to put a little chemical in there and put that out.

Q. So we have the damage done by fire to the cables that were in the box that you have told us of? A. Yes.

Q. And to the box itself? A. Well, the inside of it was scorched when they pried the lid; the firemen pried the lid up themselves.

Q. That is the box covering? A. Covering the cable—the cable box.

Q. Then excuse me; now you have used an expression there that would apparently contradict what you said before. Why do you call it cable box, because I thought you said you did not carry your wires in a box? A. Those are cables, not wires. I think you have a sample there, haven't you? It is not wire, it is cable.

Q. That is what I understood. Do you mean there is only one cable in there? A. That wire is a cable. There is a difference between solid copper wire and copper cable. Copper cable is a number of small wires made into a cable, and that is why I used the expression "cable" there.

Q. And that cable represents really, in one sense, only one wire? A. Only one wire.

Q. Then that box, you say, was burnt. The flame had not got through the box? A. No, it had not got through the box, except the end of the box; it got through there.

Q. Which end? A. The end nearest the controller where the fire had started. The fire started there, and then burned the rubber insulation in on these cable wires.

Q. Where else did you find any damage from fire? A. I did not find any other.

Q. You told me it was near your hood switch? A. Well, I mentioned that when I spoke of the damage.

Q. Had the wire up to that been burning, too? A. Yes, I think perhaps 18 inches from the hood switch, where it ran across from the end of the bulkhead to the hood switch, the insulation had been on fire then.

Q. That bunch is the sort of cable that you are referring to? A. Yes, that is the cable that has been in use, taken out of a car that has been re-wired. That is the condition of cable that had been used for a number of years—I could not say how long.

Bunch of cable marked Exhibit 5.

Q. This is a new cable? A. That is new cable. This is a trolley wire and ground wire, and that is the motor lead wires.

Q. The small ones? A. Yes.

Q. And that is what this particular car was equipped with? A. Yes, that is a sample of the cables of the car.

Bunch of new cables marked Exhibit 6.

Q. Then, in addition to the burning of that 18 inches of the cable, there was the hood switch you said was burning. What was burnt in the hood switch? A. Well, I suppose the fire that I saw would be from the burning rubber of the cable going into it.

Q. That would not be very extensive? A. It was quite a considerable flame.

Q. Was it? A. Yes.

Q. And then there were the flames coming out of the controller? A. Yes, they were belching out of the controller. Of course, that is where the most fire came from.

Q. And the woodwork, had you to replace any woodwork in the car? A. I think not; I think it was scraped down.

Q. Whereabouts? A. On the roof and the sides.

Q. On which side? A. The left hand side, and at the back of the motorman, where the flame had leaped over to the varnish and got into the paint. Of course, that isn't my department. I think it was just scraped down and repainted and varnished again.

Q. Then you had, however, to put in a new hood switch? A. Oh, yes.

Q. You and I got a little bit at loggerheads before. I would like to be corrected now again and put it right. A circuit breaker and hood switch I am using indiscriminately? A. Well, I do, too, unfortunately, because I heard hood switch mentioned so often by the men with reference to the circuit breaker. A hood switch is a manually operated switch only, and a circuit breaker is automatically operated and manually operated.

Q. As I understand it, the controller was so badly damaged that it had to be taken out? A. Yes, and another controller was put on.

Q. That was rebuilt and put in some other car? A. Yes.

Q. And the hood switch was also badly damaged? A. Yes, that was burnt badly.

Q. I suppose that it was capable of being put together? A. Probably some parts of it were. The magnet may have been used again, but the contacts weren't used again for they were melted away.

Q. Then what else was there that you had to replace? A. With reference to the electrical equipment?

Q. Yes? A. Just the circuit breaker and the controller.

Q. But you had to replace those tables hadn't you? A. Yes, we had to re-wire the car, it being in there so badly.

Q. Had you to put in new motors? A. No, no new motors put in, nor repairs made to the old ones.

Q. They were all right? A. They were all right.

Q. Now what caused the accident? A. Well, I would like to be able to say what caused it.

Q. I think you told me in your examination before that you considered it an unusual thing? A. Yes, an unusual thing.

Q. An unexpected thing? A. Yes.

Q. Now used in the sense we have used it? A. Well, it is unusual for me to see. I have never had any experience with so severe a trouble as that before. The trouble started in the controller there is no doubt, but there was so little proof of it left after we had a chance to examine it, it is impossible to say what started it, or where it started.

Q. Now, of course, you have seen a great many blow-outs? A. Yes. You mean circuit breaker blow-outs?

Q. Yes? A. Yes.

Q. Blow-outs automatically, and the motorman puts his hand up and sticks it back again? A. Yes.

Q. By the way I forgot to ask you. You found the circuit breaker fused over, so that the current would be still open and going into the car? A. Just so. The circuit breaker had operated all right, but the arc had carried across.

Q. But owing to the rush of the current it had fused the metal there, so that it was just as bad as if it was not opened? A. Yes. The arc was so severe, there was so much current there that it simply melted those metals away, running down, together, and made a circuit across.

Q. Then I was asking you if it was quite a different thing from the ordinary breaking open of the circuit breaker? A. Oh, yes, that would be a minor report as compared with this.

Q. Do you remember if the resistance coil in the controller was injured at all? A. The resistance coil—the motor coil I think you mean.

Q. Do I mean that? A. I would think so. Yes, it was burnt; that is the insulation on the outside had been on fire and burning, as well as the rest of the controller.

Q. Was the controller a new controller? A. No; it was an overhauled controller. It had been on that car for, I believe, a month or six weeks prior to the accident, had been put on there when the car was overhauled.

Q. You have had a history of that car, haven't you? A. Yes, from the repair sheet.

Q. This shows the inspection and repairs of car 966. That is correct? A. Yes.

Sheet marked Exhibit 7.

Q. Then, where is it that you say that shows that that controller was put on; what date was it put on and where is it shown there? A. On the 6th of June preceding the accident.

Q. What does it show—"Change controller for turning on reverse finger part, inspected motors." What does that mean? "For turning on reverse finger parts." A. The contacts had got loose on the board.

HIS LORDSHIP: Those contacts were around in the old controller? A. Yes. Probably a contact finger was not making a good contact, and it heated it up and loosened it.

Mr. GAMBLE: Q. Now, there is one thing that struck me as somewhat peculiar, and I would like you to explain it to me. Before I got that original document, you had furnished me with a copy of it, and in that copy of August 2nd I find this entry, "New axle bearings equipment inspected." A. On that same date?

Q. Yes. Now what does that mean, "Equipment inspected?" A. Is this a copy?

Q. You produced that on your examination. I will give you this? A. The equipment inspected, that would be general inspection of the equipment.

Q. Now, will you show me where you find that on the book that is now produced? A. Yes. "August 2nd, axle bearings number 4, and inspected motors by McMillan or McMullen."

Q. Inspected what? A. Inspected motors.

Q. What is the other? A. "August 2nd, axles bearings number 4."

Q. Inspected what? A. And inspected the motors.

Q. No. A. The other here, "Inspected the equipment," that is the same.

Q. That is what you mean by equipment? A. That is the same thing, motor equipment, motor and truck equipment.

Q. Equipment only covers motors, does it? A. No. If you wish to take the technical side of it, I suppose the equipment covers every side of the car.

Q. And then it was not what was inspected? A. It was confined to the motors and trucks.

Q. Why do you think—when this was being made a copy and sworn to as a copy of the report of the history of this car between those dates—why did you have equipment covering the whole car and covering the controller so put in there, when it says, equipment inspection? A. It is quite right, when this car has the motors inspected, at the same time it was under repair on the repair pits, the controller, the circuit-breaker, the lights, the trucks, the wheels and the motors would be inspected, and that is the running equipment; both mean the same thing.

Q. Pardon me for a moment. Do you remember what it was that you produced on the examination, what you were asked to produce? A. I don't remember.

Q. Because I would rather you would give me a better explanation than that, because my recollection is, that you produced this not as a history of your own of this car, but as a copy of the record that was in the books? A. Yes, which you had the trouble of going and examining yourself afterwards, and found the same.

Q. But now I find it was not a corrected copy—you understand the distinction I am making—it is not what was the history of the car? A. In so far as it was not the same words used.

Q. Not what was done with it, but what was a true copy of the record

in your office. The record in your office shows that only the motors were inspected; that is what it says? A. That is what it says.

Q. The record produced to me as a true copy of that says that the whole car, including the controllers, were inspected on that date. Now, do you understand me? A. Yes, thoroughly.

Q. Why do you think that was done? A. I think when the clerk was writing that out, copying it out on his typewriter, when he says motors he put down the equipment.

Q. Do you find that done in other places? A. I think you would.

Q. Just look at that and compare those and see if you can find another change like that—you see the importance of it, don't you. A. Here in the sheets you will see, motors inspected; that means, as I say, an equipment inspection.

Q. I don't want to waste more time over this? A. It is the same as you and I call a circuit breaker a hood switch; it is just a matter of form, getting into a habit.

Q. This man was making for you, apparently a copy, not his idea of what was being done, but a copy of a certain document, and in that copy of that certain document, instead of saying that the motors were inspected, he says that the whole car equipment, including the controller, was inspected? A. He say "equipment," which to him would mean the same thing.

Q. You say that means the controller, that includes the controller? A. The same as the motor inspection includes the motor.

Q. The motors inspected means controller inspected? A. It means the whole equipment absolutely.

Q. Surely you are not in earnest? A. Oh, yes. If this man puts down the same words for the same thing, I am here to swear to the work, that the men going through the different parts never knew when my clerk made that copy.

Q. You will pardon me just for the moment. What do you mean by going through everything when he is inspecting the motors? A. All there is to go through inspecting.

Q. Give us them? A. Controllers, rheostates, motors, brakes, trucks.

Q. I understood you to say there was a separate man who inspected the controllers? A. Yes, but you will pardon me. This work is done in the day time, that is done in the shop. You will notice the different shops where the work is done. There would be the central shop, or the division shop. That work was done in the day time.

Q. What would 2 a.m. mean? A. Where do you see that? It means the middle of the night, but where do you see it?—10.30, where do you see 2 here. That is a night inspection.

Q. I thought you said that that was confined to day inspection? A. I am speaking here of our entry, that was done by the day men.

Q. Now, you were telling me that that whole record showed the inspection? A. I did not mean to convey that. If the night men do any

work such as is marked there, that is put in this record, to have it full, otherwise, it would not be a complete record.

Q. And therefore the night men, the night performances are on this sheet? A. Not the inspection; they don't show inspection; but if they do any repair work, it is on here; there is a complete history of the repairs to the car.

Q. But the inspection, the night inspection is not on that? A. No. If the man inspected that car to-night, it would not come into my office and be entered in this book.

Q. So you have no record of the night inspection of the cars? A. Yes, I think there is.

Q. Where? A. I think Mr. Cowan will be able to produce that if he goes into the box. These two entries mean the same thing.

Q. It is not a question of what the two entries mean? A. Yes it is.

Q. It is a question of your producing this as a true copy of the record? A. Now, this record was got out, it was not got out for you, it was got out at the request of our solicitor and went to our solicitor and it was produced at my examination and put in as an exhibit. You asked for it and I sent it to our solicitor.

Q. Isn't that quibbling? A. You are quibbling.

Q. You say it was not sent to me, and then you say it was asked for by me and sent to your solicitor? A. And asked for by you afterwards and sent to you.

Q. And that is the only change, isn't it, in that record; that is the only case where there is a change in the wording, the description, the exact copy of the two documents? A. I would not say that.

Q. Where you find another one? A. What is this here that you have marked "August 26th." Well, that is the same as that. This is the usual thing when inspection takes place. It is the equipment. The clerk simply did not put down the exact wording. There was no intent to deceive because there was not any cause why it should be done.

Q. So every time we find "motors inspected" there, it means that the controllers were inspected, too? A. Yes.

Q. Now, supposing the controller had not been properly inspected, or say the night before it went out, supposing there was a weak part in that controller, a weak contact, and the power was thrown on suddenly, would that be or not be liable to get an arc? A. Well, the usual thing is to blow back that one individual contact.

Q. In blowing that contact back, it forms an arc? A. Yes, that we have frequently happen.

Q. And that night it would be so serious as to create other arcs? A. Yes, it might; but it would be unusual for a thing of that kind to happen.

Q. This was an unusual thing? A. Yes.

Q. So creating a number of arcs like that just such a result as this might have happened? A. It might; but we have had hundreds and

thousands—there is contact finger got a little loose and the arc would blow that back, and just open and circuit it.

Q. And it might be highly electrified? A. It might, and this time something happened in there, but what it was I cannot say.

Q. For instance, we have got what you told us about the circuit breaker, and that when the circuit breaker blew open it formed an arc? A. Yes.

Q. And that arc, under ordinary circumstances would have blown out? A. That is so.

Q. That is to say, the electricity, the light which we see between the points would have gone out? A. Under ordinary conditions.

Q. This current was so heavy, you say in this case, that it kept the arc going until fused, melted the contacts, so that it formed a breach? A. Short circuited it across.

Q. So in the case of a faulty connection in the controller, if an arc was formed like that by a loose joint or a loose contact point, whatever you may say, and an arc formed there, that might have been so aggravated as to accomplish just what it has accomplished? A. By some unknown conditions that arose there.

Q. It would not be unknown then, if it happened to be in bad repair or it was an old machine? A. It could not be in such bad repair in a week as to leave anything so terrible out of order as to cause this great trouble on that car; it would be apparent too quickly to the Inspector that the trouble existed, and he would repair it, and it would be unreasonable to expect it to happen in a week.

Q. That is your view? A. Well, I am on oath, and I am giving it conscientiously. As I say, we have known of these things, the blow back, the springs get weak, of course; there is a conglomeration of things that occur.

Q. Dirt? A. There should not have been.

Q. No putting a hypothetical question; if the machine, the controller, had not been properly inspected the last time it was in, and if there was a loose finger, loose contact, and a stronger current of electricity sent through, it might have caused such an arc as to cause this trouble? A. No; I would say not.

Q. I thought you said it could? A. It might be the start of the trouble.

Q. I mean the start of the trouble? A. Yes, some unseen reason being there; but I say, the great thing is that the finger would burn off, and that would be all there would be to it.

Q. Were these cables together; how many of them were there there that went through this wooden box? A. There would be 23. The ground cable is kept out of that box, it is kept below that box; there would be four to each machine, and the seven rheostat cables.

Q. How are they held together? A. They are not held together; they are simply held in that conduit.

Q. Not on the ground? A. No, on this wooden conduit, laid on the bottom of the wooden conduit, and that is kept up off the floor, one on top of the other, just as we see them there.

Q. Where the wires enter the controller, with the ground wire separated from the other wires? A. Only just with tape; they are separately covered with a separate covering of tape and brought into this terminal.

Q. The wire from the circuit breaker to the trolley base, was it injured at all? A. Just where it left the circuit breaker, burnt with the flames running out on the rudder.

CROSS-EXAMINED by Mr. McCARTHY:

Mr. McCARTHY: Does my learned friend attack the equipment of the car?

Mr. GAMBLE: I don't know what my learned friend means by that exactly.

His LORDSHIP: I suppose he means, do you suggest that these machines, General Electric K.C. Controller is not a good controller.

Mr. GAMBLE: The General Electric K.C. I say is a good class of controller. Now, if my learned friend wants to know on the other point——

Mr. McCARTHY: What I want to find out is if my learned friend has any objection to the K.C. Controller.

Mr. GAMBLE: Surely not.

Mr. McCARTHY: Do you take exception to the use of the circuit breaker?

His LORDSHIP: As a machine.

Mr. GAMBLE: I don't think so, my Lord.

Mr. McCARTHY: No objection to the motors, type 1000, quadruple equipment.

Mr. GAMBLE: No.

Mr. McCARTHY: Then is there any objection to the manner of insulation?

Mr. GAMBLE: Yes, of course, as to the carrying of the cables in a wooden box.

Mr. McCARTHY: There is nothing in the particulars about that.

Mr. GAMBLE: Yes, there is—insufficiency of structure for electrical insulations and portions of the equipment.

His LORDSHIP: How would the wooden box have anything to do with this accident? The explosion of the controller has scared these ladies.

Mr. McCARTHY: To what extent does my learned friend object to the other part of the insulation?

Mr. GAMBLE: The particulars are there. Go ahead.

Mr. McCARTHY: Q. Then take the car first. The car, you say is equipped with a Canadian General Electric K.C. motor? A. Yes.

Q. Is that modern? A. A modern type, a very modern type.

Q. Generally used in street cars in this country? A. Yes.

Q. Then the motors, the type 1000 quadruple equipment? A. They are a modern motor.

Q. Standard? A. Yes. This is one of the standards, standards on those roads that have them. There are many different types of motors, all modern, but that particular type is standard on a good many roads.

Q. Then your circuit breaker, type N.Q. General Electric? A. That is the standard type modern circuit breaker.

Q. Now, coming then to your equipment above the car. Your trolley pole, is that the modern and ordinary method of taking the current into the car? A. That is the modern way of taking it.

Q. Is there any other way you know of? A. No, except by different contact, but that is the standard system.

Q. And the practice of taking the current from the trolley base to the circuit breaker, is that the method used? A. That is the standard in wooden constructed cars.

Q. Of course, there are some steel cars? A. Where they use steel conduits above from the trolley to the circuit breaker into the controller and to the machine, but the reason this is used is because they are steel cars.

Q. What sized wire do you use in conducting the current from the trolley base to the circuit breaker? A. Nothing smaller than two 0, that sample you have there.

Q. That is, the large sample in Exhibit No. 6, is the type of wire used in conducting the current from the trolley base to the circuit breaker? A. That is so.

Q. Is that sufficient for the purpose? A. Quite, with a good factor of safety.

Q. Then from the circuit breaker to the controller, what class of wire do you use? A. That same wire to the controller.

Q. And these other wires in Exhibit 6 indicate——? A. They are sized number 4.

Q. Indicating the class of wire which you use between the controller and the motors and the controller and the rheostats.

Q. Now, the rheostats, I presume, were standard pattern? A. Yes, they are ribbed type rheostat.

Q. And the wiring of the car, that is the method of conducting the cables in the wooden duct, is that an ordinary method? A. In wooden constructed cars.

Q. Why do you use the wooden box to convey it in? A. There is no necessity of using the steel conduit in a wooden car, absolutely none.

Q. Is there any convenience in using the wooden box? A. There is for the matter of inspection, it makes it much easier to inspect; in the steel you would have to pull them right out.

Q. In the wooden box you can lift them out and see how they are? A. Yes.

Q. Now so much for the general equipment of the car. Now com-

ing back to the question of inspection, how often are the cars, speaking generally, completely overhauled? A. About—well once a year. They may run in eleven months or ten months, but always once a year, cleaned right down, wiring and everything else taken out.

Q. The whole equipment is completely renovated? A. Yes, once a year.

Q. Can you tell us from the history of this car when it was last stripped? A. It would not show me; it would show in the general overhaul book, and I have not got that; it would show in the general overhauling book.

Q. That sheet you have there, that is Exhibit 7, is only repair sheets? A. That is repairs and general inspection.

Q. And that would not show when the last general overhauling of the car was? A. No.

Q. You can get that for me? A. Yes.

Q. Then, in addition to the general overhauling—that car runs into what different barns? A. It would be either one of two barns, almost every other night, that would be Roncesvalles and King barns.

Q. It would be stored there every other night? A. Well it might not be every other night; there might be a night that it might be in another barn by chance.

Q. What I understand you to say is that whatever barn it is in there is an inspection? A. Yes.

Q. In addition to the inspection you have the repairs? A. Yes.

Q. How do you make the distinction between the inspection and repairs? A. Well the inspector looks after the troubles and the repair man repairs them.

Q. So the repair sheet indicates that the inspector has looked after the trouble, located the trouble? A. Yes; and then the repair man repairs them. If it is a controller inspection, it is his own repairs.

Q. Would the inspector and the controller appear on the history sheet? A. No, the night inspector would have that; he would know when that was done.

Q. In speaking of the inspection of that car you enumerate the number of inspections at the Roncesvalles barns? A. Yes.

Q. I think you said there were some 90 odd cars went in there? A. About 90.

Q. There was a day staff as well as a night staff? A. Yes.

Q. A day staff in the same proportion? A. No, not as many men; there is a foreman and three men on in the daytime, who would do the repair work, if the night inspectors have left anything that is of a heavy nature, and when that is done, then they turn in and inspect them and go over the cars in the barns.

Q. There is inspection both day and night? A. Yes.

Q. All those cars that are in, for instance all the cars are not out all the day? A. Oh, no.

Q. There are a good number of cars in the barn during certain hours? A. Yes.

Q. Those cars in the barn in the daytime are subject to inspection? A. Yes.

Q. That is quite apart from the night men? A. Yes.

Q. Now the night inspection is conducted as you have told us, by certain men who perform certain duties in the certain parts of the car? A. Yes.

Q. How do they indicate what work they do? A. They report in all the cars they repair any repair work done, and in some of the work I understand controller included, they mark down the car number and the day and date in which it is done. I understand Mr. Cowan has sheets of that.

Q. If a car passes through an inspector's hands at night, does he book that car out in the morning? A. He O.K.'s the cars, that goes through his hands, he having gone through that particular car in his branch of the work.

Q. And this O.K.-ing out indicates to you that the car is all right? A. Yes.

Q. And if it is not O.K.'d out, it comes to you? A. It is held in under the repair sheets.

Q. As far as the motors are concerned, perhaps we can eliminate that. There was nothing the matter with the motor? A. No.

Q. There was nothing wrong with the rheostats? A. No.

Q. Where was the first indication of trouble as far as you can see, between the controller and the rheostat? A. The trouble started in the doors, not between.

Q. Where did the trouble stop? A. On the table, do you mean?

Q. Yes? A. Just at the bulkhead of the car, between the passenger department and the motorman's cab.

Q. Back of that there was no trouble at all? A. No trouble at all.

Q. From that out the trouble was apparently with the circuit breaker and the bulkhead of the car; I mean somewhere on that line? A. Yes.

Q. So I won't need to go back of that? A. No, you don't need to, because the cable was in a good state of repair, and we don't splice wires in anything of that kind.

Q. We can eliminate anything back of the bulk-head? A. There wasn't anything there, no indication of trouble.

Q. Now, what is the life of these cables? A. Well, they are indefinite, according to the load or the capacity of the cable as compared with the load on the car.

Q. What is the ordinary life of a cable on a car such as 966. A. It is quite safe for, I would say, 15 or 20 years, when it is not overloaded.

Q. Did you inspect these cables, what was left of them, between the bulk-head and the motors? A. Yes.

Q. What condition were they in, of the cables that weren't burnt? A. There is a sample of what they were in the exhibit.

Q. Are these they? A. Yes, that would be the condition which those wires came out from the bulk-head, back to the motors.

Q. That is the condition in which they came out? A. Yes.

Q. Are they bound in tape now? A. No, simply held there now.

Q. And you think they are capable of carrying the load that was put on that car? A. Yes, quite.

Q. Now let us get back to the circuit breaker. You told us that the circuit breaker was the modern type? A. N.Q.

Q. And those circuit breakers, I suppose, are inspected with the rest of the car, are they? A. Oh, yes, the circuit breaker is opened; every time the motorman leaves the car he opens that circuit breaker by hand by knocking on the catch and releasing it. I think we have one here.

Q. Just explain the object of the circuit breaker? A. It is to open the circuit quickly.

Q. The circuit from the trolley wire to the controller? A. Yes. It is between the trolley wire and the controller, and in the event of any ground carrying on the motor, or trouble that would cause a blow-out that works automatically. When there is an overload, it snaps it out and that opens the catch.

Q. It is the safety valve of the engine, it is on the same principle? A. Yes.

Q. And with an overload away she goes? A. Yes, only in this case it opens it out completely.

Q. Now, after this accident you say when you got down there you found the circuit breaker open? A. Yes, at the off position.

Q. So that the motorman must either have pulled the handle or it worked automatically? A. Yes.

Q. But you say, notwithstanding that fact, there was still current between the contact points? A. Up to the time the pole was upon the wire, or up to the time it was taken off.

Q. How was that space between the two contact points filled in? A. By the contacts themselves; as they flew apart, the arc still continued between them burning and melting the metal, and they fell down and joined together underneath; there was a pool of burnt copper metal lay across the two, and the current travelled across there, these parts here stood up here open and shut, and they melted and lay across the bottom.

Q. Just indicate how far the contact points are apart? A. I think if you will show the machine it will save a lot of time. The current is passing over here, out here, or as the case may be, out here and out here, the two wires are together in here, and when that handle is in that position, the circuit is complete through the circuit breaker, and when the handle is not in that position the circuit is open.

Q. What was burnt? A. This copper finger. The arc was continued across, so, of course, it could not lay on the bottom, because it lay across.

Q. Now, how do you set those, what point does it break the circuit breaker? A. For this equipment here, they are set at 325 amperes.

Q. How much does it take to drive a car? A. It depends on the load.

Q. With a heavy load? A. The ordinary load up to a horse-power on that type of motor would be 145 or 150 amperes for the four-motor equipment, ordinary load.

Q. So this is set at what, do you say? A. 325.

Q. That is set at 325, so if the power gets up to 325? A. She breaks open.

Q. Is that a safe load? A. Yes. They generally put 100 per cent. higher setting on the circuit breaker than what the normal load would call for.

Q. Now, when you got there after the explosion, did you examine the circuit breaker to see if the parts were in good order? A. Well, first, my first duty was to see whether the handle was on or off, and I found it in the open position.

Q. What did that indicate to you? A. That the power could not have come through up to the controller.

Q. Did it indicate to you that the circuit breaker worked? A. Yes.

Q. Did you examine the other parts, that is the parts that were not melted, to see if it was in good order afterwards? A. I think I examined it, but I cannot speak now. I know it was melted together by the contact, and I think I am safe in saying that the upper plates, the copper contacts were gone altogether; they weren't gone, but melted across and bridging the space.

Q. Then take the controller when you got there, what was the condition of the controller? A. It was afire, blazing.

Q. What is there about a controller to blaze? A. Well, the rubber on the wires that are in it, the cables that are in there probably are the most.

Q. What is there about a controller to blaze? A. All these cables running in here—here are more cables.

Q. Then you say the rest of it, all these points that you speak of, and the segments, were they all burning? A. Well, the wood had burnt here, this wood bolted on to this, also the wood on this, and this was so badly burnt as to let a lot of these parts, copper parts, fingers and terminals, fall down together in a mass at the bottom.

Q. And that was the condition of the controller? A. Yes, so bad that you could not tell where the first trouble got started.

Q. In regard to the inspection of controllers, how often in your opinion should the controller be inspected? A. Well, once a week is often enough; it is more oftener than they are inspected on most roads. The usual practice is about once a month for a general inspection of controllers except some trouble arises.

Q. The trouble is indicated in the running, of course? A. Oh, yes, the car will give trouble there and go in off the road for inspection.

Q. And go in off the road for inspection? A. I would not say

then our inspection is an official inspection, but it is a complete inspection of all parts blowing out with the air.

Q. But what does the inspection consist of? A. I just told you.

Q. You say it is not an official inspection? A. He does not simply open up the controller and look at it and say, this looks all right; he takes these leaves out here, and the arc divider, he would take it to his bench and clean it up; he would take that leaf right off and take it to his bench and clean it up properly. That is the reason he does not get through more cars at night.

Q. If this controller had been inspected on, say the 7th of August, was there any reason to expect trouble? A. Absolutely none.

Q. On the 10th? A. No, none whatever.

Q. If there was serious trouble, would it indicate itself to the motorman running that car? A. Yes.

Q. Between those times? A. Yes, it should burn and open the circuit. It should have blown itself back, if it were a finger contact or terminal trouble, it should have given the open circuit to the motorman.

Q. So, if this car were running half an hour prior to the accident, or the morning of the accident, and run in all positions on the controller, if there was trouble would it indicate itself to the man operating the car? A. Yes, if there was trouble there, it should have indicated itself; if the car were running right up to the time the trouble occurred, it was in first class working order.

Q. You just said you are not in control of the inspection at the Roncesvalles barns? A. No, not at night.

Q. Looking at this repair sheet, does it indicate anything in regard to this car prior to August at all? A. Yes.

Q. The year of the accident? A. It indicates it had a new controller on on June 6th. There was a completely overhauled controller put on here, which to all intents and purposes would be a new controller.

Q. And on June 28th? A. That the wheels were inspected and another motor inspection, and some bolts were tightened up on the trucks.

Q. Where does it take place, this repair, in what barns; for instance, August 2nd, where was the repair done? A. At Roncesvalles division.

Q. When a car is repaired, it is put over the pits? A. Yes.

Q. Does the repair sheet show how long it was there? A. That was a car left in on August 2nd. On July 29th the car was run in at 8.07 p.m. and it went out at 2 in the morning whatever was done to it, was done by a night man. There is one changed off at 3.06 in the afternoon.

Q. I only mean for August; it doesn't show how long in August, how long the car was in on August 2nd? A. No, she was left in in the morning on August 2nd; she was left in for the day man by the night man.

Q. And evidently inspected on the night of August 2nd? A. Left in by the night man.

Q. That is what your sheet would indicate? A. Yes, and she was in all day, and went out at 5 p.m.

Q. Then you have no record of her coming in until August 12th? A. August 12th, that is the next time.

Q. Then the day of the accident, you were at the southwest corner of King and Sherbourne streets? A. Yes, a little south of King on the west side of Sherbourne.

Q. It was a King street car going east? A. Yes.

Q. And it was crossing the intersection of Sherbourne street? A. Yes.

Q. It had a trailer on? A. Yes.

Q. And pretty well filled with people? A. Yes.

Q. Where had the car got to when you noticed the explosion? A. Well, the trailer was clear, the back of the trailer was just a little passed the line of Sherbourne street. I looked up as the explosion took place on the car and that is where the trailer was; of course, it was moving.

Q. Could you see the explosion from where you were? A. I could see the flash.

Q. Of the motor? A. Quite clearly, not of the motor, but the flash up in the front of the car.

Q. You could see the flash in the vestibule from where you were on Sherbourne street? A. Yes.

Q. You heard the evidence of the motorman that the car crossed the intersection in the usual way? There was nothing unusual to attract your attention. A. I think I would have noticed it if there had been.

Q. After it left the intersection, was there anything in its speed or its actions to attract your attention? A. No. I had seen the car go across there, and a Belt Line car to go north on Sherbourne, and I knew there was a car had stopped just passed the west line of Sherbourne, because the people were hurrying up to catch it, that it was a Sherbourne street car; there was a car that pulled across, and I walked the rest of the distance; it wasn't going very fast because there was a King not very far ahead of it that crossed just a few seconds before that.

Q. You heard what the motorman said—you were in Court, were you? A. Yes.

Q. You heard how the motorman said as to how he handled his controller as he approached to cross that intersection, that is that he gave it one position to throw the switch point, and then that gave him sufficient impetus to get across the intersection, and he threw his power off? A. No, I understood him to say he put it in first position to throw the switch point and then drifted across the point, and then put it to the second or third position.

Q. Is that the correct handling of a car? A. Yes, it is.

Q. Can any exception be taken to that method of handling it? A. No. None whatever.

Q. Having seen the explosion, what did you do? A. Why, I immediately joined a number of men from the shops who happened to be there

at the time, and we ran after the car; of course, it had the start of us, and we were keeping gaining on it a little bit, and we got up just before the pole was pulled down, and then the brake was screwed on to the controller and we ran to the front, having picked up some women.

Q. You say you ran to the front, that is to the vestibule? A. Yes; but the general foreman was there a little ahead of me, so we at once started to get the motorman out of the smoke and flame of the vestibule; the thing was full of smoke and flame, and the motorman was driven down into the corner with the flame and smoke belching out at him, and he could not get to open this door again after he had gone back in; he would have to walk into the fire to open the door to get out, so Mr. Sweetlove opened this door.

Q. Which door? A. The vestibule.

Q. What condition was he in? A. He had been inhaling this sulphurous smoke and the rubber, burning rubber, and the man was almost down and out from having inhaled that stuff so much; I don't think he could have reached anything there.

Q. What did you do? A. Why, as soon as I saw the passengers were pretty well all off the car and the people were being assisted to their feet and attended to, I ran to get water to put the fire out.

Q. How did you get into the vestibule? A. I opened the door, kicked the door in—no, Mr. Sweetlove opened the door from the inside for me when he saw me down there; I called to him to open the door, and he opened the door and I got in with the water.

Q. You have described to us the condition of affairs as you found them when you got in? A. Yes.

Q. You have told us that you are unable to account for the accident except it was an electrical freak? A. Yes, for the severity of the blow and the abnormal amount of current which was centred in that circuit breaker.

Q. When you speak of the abnormal amount of current, how do you account for the circuit breaker after it was opened, being fused with the points? A. I account for that by the large amount of current that it was called to break, that is the excessive number of amperes or load it was called upon to open this circuit breaker, that is built for a maximum of 300 amperes to a maximum of 600, which is a safe load, but there was more than 600 amperes, and that would be an abnormal load.

Q. Where could that current come from. A. It came from the solid circuits that were set up in the controller; that is the solid circuit from the positive to negative in the controller.

Q. Your theory is that the origin of the explosion was the controller? A. Undoubtedly that is where it started.

Q. What started in the controller you cannot say? A. No, nor I would not attempt to say.

His Lordship: Where did all the 600 amperes go to? A. It centred back in the circuit breaker, when the circuit breaker was running and it

opened that, and that might at the time that the circuit breaker was called upon to take that load, it would not break it.

Q. It did not go through the motor? A. It did go through the motor spasmodically, and as the short circuit under this controller took place, there current found its way to the motors, from the controllers to the motors.

Q. Do the motors carry as much as 600 amperes? A. They weren't getting that; they were simply getting enough to make them jolt and carry ahead, but this was where the great trouble was, this controller had burnt up so badly that whatever was positive current in the box got mixed up with whatever was negative current, and caused a complete short-circuiting of the line right in there, and caused this abnormal flow of current that burnt the circuit breaker to bridge it across. That is all I can say as to the theory of what caused it. I am not going to attempt it.

Mr. McCARTHY: Q. Now, my learned friend asked you whether what happened might not be caused by one of those fingers becoming loose, to begin with, commencing an arc? A. If the fingers were so loose and everything to fall down and bridge across a positive and negative terminal, where there was positive and negative current at that time, it might have started that trouble.

Q. If it fell down? A. Yes.

Q. How would that indicate itself to the motorman—when a finger falls down? A. Well, it is such an unusual thing. We don't have them fall down except the spring breaks and then they generally lie in the leaf.

Q. There is a leaf under each one? A. Yes, that leaf fits in between each finger.

Q. Which prevents the finger falling down on the one below? A. Of course, it is not impossible for it to fall down.

Q. You say that might fall down? A. But not on the one right below it. It might get down; it might cross in the magnet.

Q. How can it get loose—is that a finger you have there? A. They don't get loose—they get loose, but not to fall; they might get loose and move, but they would not fall down.

Q. As the screws come out? A. Yes. That is an unknown thing. What does happen sometimes is the spring will break across there.

Q. That is the spring? A. That is right.

Q. That is what holds it? A. That is the junction against the segments.

Q. You say that occasionally will become loose? A. But not to fall off.

Q. But, of course, the idea in repairing or inspecting the motors is to see they are tight? A. Yes. There is one thing might happen, if they were very loose on these cars and the load were very high, it might burn the screws off. It is not impossible for a finger to get loose.

Q. Could that happen under the circumstances described here? A. Yes, it might. I am in the position of knowing about everything. I have

had 18 or 19 years' experience of this kind of thing, but I am not going to say what did happen.

Q. You have had accidents happen in the controllers before? A. Yes, we have had them burn out.

Q. Have you had similar accidents which you could not account for? A. We have never had anything in my own experience that occurred like that. We have never had a controller take fire from any cause unless this trouble in the hood switch. It is a most unusual thing.

Q. Have you had controllers badly damaged? A. Yes, we have had them practically gutted with fire.

Q. What was there unusual in this, the condition of the hood switch? A. Yes, and the loud report and these spasmodic reports, the current getting to the motor spasmodically and kept that car going on ahead.

Q. Could the condition to be found happen in the way my learned friend suggests, that one of these became loose or fell down? A. Well, every trouble has a start, and that might have started at that. There are a dozen other things that might have caused it.

Q. Is there anything that might have started it that the inspection could have prevented? A. No, I don't think so, because if it were so bad as to cause this, it would have been apparent to the inspector immediately, and I doubt if that car would have run so far as it did; am doubtful if that motor would have operated successfully up to the time of this accident if there had been anything so badly run as to have caused this trouble, the car would have refused to operate on a certain position.

Q. In the connecting of the wires, is that the hole that the wires go in? A. No, that is where the adjusting screw goes on.

Q. Where does the wire go? A. The wire is soldered on to that terminal, that is the brass terminal here.

Q. The brass terminal to which D is screwed? A. Yes, and that brass terminal runs over the footboard, and into the end of the brass terminal is soldered the lead wire to which D is fastened by screws.

RE-EXAMINED by Mr. GAMBLE:

Q. Now, I think that you misled my learned friend just now. Now you have an electric light in your house and it runs all right until the wire separates, and then it goes out, doesn't it? A. Yes.

Q. There is no trouble apparent in the operation of the light until the separation takes place? A. Taking your illustration——

Q. Just answer my question. That is so, isn't it? A. That is so, they burn out suddenly.

Q. And wherever there is a break, there is an arc to start with? A. When the open circuit takes place there is an arc.

Q. And if an arc were formed in this particular case the thing might run perfectly all right until that break in the arc took place, mightn't it? A. If the trouble started that way.

Q. And with this machine, this controller, for instance, taking that as

a sample, if that controller had a loose finger of some sort, not so loose as to cause trouble at the start, it might, when it went over this special work, have shaken loose then and caused the trouble, mightn't it? A. Yes, if it came down out of these compartments when the leaf got out of there it might, but it is doubtful if it got out of there, it is housed right in there. Anything is possible in these things, anything unlooked for is possible. You did not get through with your light burning in the house, I did not understand the illustration.

Q. It does not matter. The illustration I was giving you was this, that you might have everything running all right with electricity up to a point when the trouble takes place and it is instantaneous? A. Well, that is perfect until it burns out.

Q. And it might be just hanging on and keeping sufficient connection to carry the current through and just at the time when the break comes, the burn out comes, it forms the arc then? A. Then you would not have been able to do anything to prevent that.

Q. Of course, not in that case? A. It is a good illustration that this happened suddenly and unlooked for.

Q. No, I don't think so; what I think that the illustration has pointed out is that that might have been from something out of repair or loose that was overlooked by your inspectors, because they do sometimes overlook things, don't they? A. Those things they would overlook in a controller may be just as necessary in the operation of a car——

Q. What I want to ask you is this, an inspector does sometimes not do his duty as well as others that is so? A. That is quite true, but if he overlooks anything it will make itself felt.

Q. But it would not make itself felt until the time it made itself felt? A. Well, it was not a very serious thing for him to overlook if it would run several hours before making itself felt or show; he could be excused for overlooking it.

Q. If the car run for several hours without it showing—you say then it was not a very serious thing? A. It would be likely to be in some place where he could not see it.

Q. In reference to the brake; you found the brake open, I think? A. Yes, the air brake was not applied; the trailer brake had been applied.

Q. But I mean the brake? A. The hand brake?

Q. No, the brake on the motor car? A. No; and as I said before——

Q. Whereabouts was the pole pulled off? A. That I could not say. I think, perhaps, the car might have drifted the length of itself and the trailer after the pole was pulled down and the trailer brake was put on.

Q. Somewhere to about Princess street? A. Somewhere crossing Princess street.

Q. Were the motors wired with smaller or larger wire than those laid in the wooden box in the vestibule? A. They were smaller wire, No. 6 in the field coils—I may be mistaken about that—but No. 9 in the armature coils.

Q. How much electricity was there going through the car in volts? A. It would be an average of 550 or 560. At that hour of night it might have been a little lower, because the heavy load is on the line, all the cars are out, and it might have been down between—it might be more safe to say 525.

Q. What voltage comes into a dwelling house for electric light? A. Usually 110.

Q. When you told my learned friend that it was handy to have this wooden thing to carry your cables through, it was because you could lift up the top instead of pulling the cables out? A. Yes.

Q. That top is not on a hinge? A. It is screwed on with probably six or seven screws, and to remove it you lift the top right off.

Q. Then you think that is handier than the method that is adopted in the covers of the steel box? A. There is no doubt about it.

Q. The steel would be the safer of the two? A. Not necessarily. It would be in a steel car.

Q. I am not talking about a steel car, but wouldn't it be safer to carry these cables in a steel conduit than in a wooden conduit? A. No, I am prepared to say it is not as safe, and I will give you my reason. The reason is this, that in steel conduits in pulling your wire around the corners and into the junction box, you are liable to injure the insulation, and your steel conduit, mark you, is always grounded, that it is negative current and you are pulling off cables throughout that is more a positive current, and they are very liable to be injured, and where the passenger is sitting, sometimes the current is applied, and your cables coming there, the current discharges under your passengers' feet, which is more dangerous.

Q. Notwithstanding it is on the line? A. Yes. And your frequency of grounding with steel cables on the modern steel cars is more frequent than it is on the wooden cars that are insulated.

Q. And you found that this cable had burned under the bulk-head? A. Yes, to the bulk-head.

Q. Wasn't there wire burnt inside the passenger part of the car? A. No. But I want to say this, it was burned from the controller inward towards the bulk-head, not from the bulk-head outwards towards the controller, the fire had flowed in from the cable to the bulk-head.

Q. It had not gone through the bulk-head? A. No, just to the bulk-head.

Q. Quite sure of that? A. Yes, quite sure, the smoke came up, and the fire was between the bulk-head; but the controller was only burnt to the bulk-head, the outside of the bulk-head was burnt, and the inside was scorched, was burnt a little.

Q. I got somewhat mixed from what you told my learned friend in regard to the cars being inspected in the day time in the barns. Do you mean that a car that generally lodges in Roncesvalles avenue barn and has repairs done there, as a rule may be repaired down in King street? A. She might, yes.

Q. How do they keep track of that, is there any record of that? A. That is the duty of the chief inspector at night to see that everything is done on those cars irrespective of which division they are in. King street is the only route on which the cars go to the Roncesvalles barns, and there are just a few cars on that route that were so done, and it is not very difficult to follow.

Q. What is bothering me is this, you stated that these cars get their inspection of the controllers about once a week. Now, if they go to various barns, how do you keep track of that particular car being inspected there? A. You see they don't go to various barns, they only go to one barn, King street.

Q. They go to Roncesvalles? A. They must leave some place and go to another; they leave Roncesvalles barns, but they don't go to various barns.

Q. Now, it is his duty to follow those cars? A. No, not until a certain thing has to be done on them.

Q. How would he know it? A. He is there to see it; he is around the different barns.

Q. Then did I understand you to say that if a car was sent in say by the motorman for some break in a part of the motor—— A. From any cause making it necessary to go to the barns.

Q. That that would be repaired by the mechanic at the barn? A. That is in the day time.

Q. If it is a break of that sort, it would be one done in the day time? A. Yes, if it was a serious break, it would be done in the day time.

Q. That would be O.K.ed out, and that repair is finished by the foreman who did it? A. And he had inspected the rest of the equipment.

Q. You say that every time that any repair is done on a car, that the whole car is inspected, every bit of the equipment? A. I say it, yes.

Q. On oath? A. I do. I am on oath now.

Q. You say, no matter how small the repair that is done to a car that is sent in, whether the controller to axle to motor, before that car goes out, every part of it is thoroughly examined? A. Thoroughly examined, and all repairs made to it. There is a man at every division in the day time, working on controllers all the time, he is on nothing else but controllers, and just as soon as a car comes in, it goes on the repair pit, and that man gets right on her, and he works on the controller, repairing it, cleaning it and seeing that it is in good shape.

Q. That controller is only a part of the equipment? And then what about the wires, for instance, are they examined? A. Certainly, they are all examined.

Q. How is the test made on them? A. We examine all the wires.

Q. What do you do? A. We examine the controller, hood switch, motors, trucks, the air and hand brakes and rheostats now and then, at least once a year we would take down everything.

Q. Now, you gave my learned friend the state of the vestibule when

you arrived there, after you had run down to where it was on the other side of Princess street? A. Yes, I told them what I remembered of it, as I saw it then.

Q. You told us that the motorman was in there when you got there? A. Yes.

Q. And that he was in bad shape? A. He was in bad shape, yes.

Q. And about the fire in there, the amount of fire that was in there at the time; was there any fire burning when you found the man there? A. No, there wasn't a great deal; there was just the flames burning on the rubber insulation; but the pole had been down there then perhaps two or three minutes, but the smoke was still in.

Q. You haven't any doubt that the motorman himself was there? A. Absolutely none.

Q. Might he have got off his car and run and got up on it again? A. Yes, he might have; the car was not going so fast, but what he might have done that.

Q. At the time of the explosion, of course, there would not be much fire in there; there would be more appearance of fire than fire? A. The fire would come right out at the explosion.

Q. That is the flash? A. The flash, the entire vestibule and the street was lit up and the reflection was on the windows of the houses all simultaneously with the sound of the report.

Q. But that went out? A. No; the smoke would come and then a small amount of fire.

Q. It was not a continuous fire from the moment of the first flash until the pole was pulled down? A. Well, it was a continuous fire, but not always as large as when the flash took place, not always as large a fire and so much smoke.

Q. What gas would you get? A. Well, there is a sulphurous gas that comes from copper that is burning electrically, and it is a nasty smelling stuff.

Q. And that was much worse by the time the thing stopped than when it started? A. Yes. And when McPhail was in there, he was just about collapsing when he was helped out for the want of fresh air.

Q. Have you any reason to suppose he did not come out of his vestibule and run after the car and catch it? A. No, I could not say as to that. I was coming across the intersection and the motorman was in there when he crossed the intersection, and the motorman was in there when the car stopped.

Q. The reason I ask you that is, you heard these people yesterday, who apparently have no interest in the case at all, say that they did see him get out, that is why I wanted to ask you that? A. I heard the motorman state he opened the door.

Q. I wanted to get from you what your evidence was on that point so we can arrive at a proper conclusion, because if the man didn't get out we don't want to try to make out he did get out, and I want to try and see how

far you can go in saying that he did not get out, and I want to know now, can you state he did not get out? A. No, he may have got out and got in again, but he certainly was in when I first saw the car going over the intersection, and he was in when the car stopped.

HIS LORDSHIP: Q. With reference to the cables that ran from the controller on towards the motor, you say they were burning. Can you tell from the nature of the burning whether that was the burning rubber or the cables melted by the electric current? A. I saw those, and I would judge the fire simply got into the rubber and followed to the outside of the wires. The copper cables inside the wire were not burnt off by fire or any short circuit; they were continuous and whole, but the insulation was burnt off them.

Q. There was no indication of the electricity that was going through that? A. Not at all; the wires were complete.

Q. Then the origin of the fire, as I understand your evidence, took place by the flow of electricity continuously in the controller some place? A. Yes, it started up there.

Q. I suppose a good deal that took place afterwards was the combination of the burning and the flow of electricity and the puff of the rubber? A. Just so, yes.

—Adjourned until 2 p.m.

—Resumed at 2 p.m.

JOHN S. RICHMOND, sworn. Examined by Mr. GAMBLE:

Q. Mr. Richmond, what is your profession? A. Consulting engineer.

Q. Electrical? A. Very largely electrical, but general.

Q. Will you just tell me what your experience has been in your profession? A. I have been for several years a consulting engineer; some years previous to that I practised as a consulting engineer and expert; previous to that again I was the expert at various periods for different companies; previous to that again, I held positions of more or less responsibility and practised about 15 years, a total experience of about 29 years and 9 months.

Q. Have you had any experience in motor car equipment—electrical matter? A. Yes. By arrangement with Dr. F. S. Pearson, a well-known motor and electrical engineer at New York, I was engaged for the special period of 3 months with the view to acquiring and getting a working knowledge of the difficulties and the troubles met with in the operation of street railway powers and their equipment, my principal duties being to inspect and repair the equipment.

Q. Then what else—what year was that? A. Oh, that would be in the early nineties.

Q. In Montreal had you any experience? A. I was inspector of motor cars and other matters for the Montreal Street Railway for a period of about 5 months. My duties for the company being to inspect cars and their equipment while in the car barns, so they could be put in good order

for service for the day; to keep track of the cars and their equipments while in service on the streets, and also to attend in difficult cases to the fixing up of disabled cars on the street in a temporary way so that they could be got back to the car barns for repairs. I also had to look after other matters generally, such as the power plant and other matters, electrical and general. I was also for a period of 2 years with the Philadelphia Traction Co.; that company then operated some 450 miles of track. My duties for the company were very general, such as fell to the lot of an expert electrician, and consisted in dealing with the construction and problems connected with the power house plant, cable systems, motor and car testing, telephoning and signalling systems, the testing of laboratories. I personally looked after this for the company.

Q. Had you anything to do with the Manhattan Railway Company of New York? A. I was an expert for that company.

Q. Is that an electrical company? A. Yes. I was an expert for that company for a period of 5 months, in connection with the electrical problems of that road, and I have written several articles on the subject, the principal being the "Use and Abuse of Controllers by Motormen."

Q. What about Mr. Way, of New York? A. I represented him at Richmond, Virginia, for a period of about 8 months, during which time I made a full investigation of and carried out a considerable amount of rebuilding in connection with that part of Virginia which was destroyed, and power companies and plants affected by the use——

Q. Have you carried on a certain amount of scientific research in connection with electrical work? A. I have, some of which led up to the applying for and obtaining a patent for the grounded neutral. I also endeavored in a limited way to explain in some clear and concise manner the character of all phenomena, considered separate from and in conjunction with matters.

Q. When you speak of phenomena, you don't speak of that in the sense in which it is commonly used, I think, as something extraordinary, phenomena as used by you? A. I take it from the Greek root.

Q. What is the meaning? A. A phenomenon with me is anything appreciable to the senses.

Q. Then have you had any appointment under the Colonial Office in England? A. Yes. I was appointed by the Colonial Office of the British Government as electrical engineer for the Government of Trinidad, my duties being principally to examine and report upon the various systems of light, power and telephone in the port of Spain and its vicinity, with a view to finding out the possible danger to life and property thereby.

Q. Then have you ever had anything to do with such questions as have arisen in this case as to finding out and ascertaining where trouble arises? A. Yes. With nearly every company that I have been engaged with, in the case of anything unusual, or what is called by the average man phenomenal happening, it nearly always fell to my lot to investigate and find out what was the original cause of the trouble.

Q. Then you say this experience extended over a period of about 29 years? A. Yes.

Q. Do you feel confident to form an opinion as to the cause of the accident in this case? A. I certainly do, whether it would be exactly——

Q. Is there any difficulty in your mind in locating what the origin of the trouble was, in view of the evidence that you have heard of the motorman, Mr. McCrae, and the witnesses for the plaintiff? A. No, I feel very clear as to what was the first trouble.

Q. Does it strike you as being anything extraordinary as put by Mr. McCrae? A. Not in the sense he meant it, but it was an unusually heavy trouble; it wasn't an ordinary trouble that takes place generally; it was simply an excessive difficulty, the character of which was not phenomenal.

Q. Will you explain to the Jury the basis of your deduction from the facts which have been placed before you in evidence here in Court? A. The evidence shows that the trouble was confined to the vestibule portion of the car. Mr. McCrae's evidence, which was very clear to me, proves that conclusively. In the vestibule end of the car, which is occupied by the motorman, the electrical equipment consists of some wiring from the top of the car to the circuit breaker, the circuit breaker, the controller and some wires from the controller to the vestibule going into the body of the car. The origin of the trouble must therefore have been in some part of this equipment. The wire from the top of the car to the circuit breaker, including the contact part at the circuit breaker, was not damaged. The circuit breaker was fused up, the controller was fused up and the wires leading from the controller to the partition separating the vestibule from the main body of the car had the insulation burnt off them; but, according to Mr. McCrae, the stranded wires inside the insulation were not burnt or damaged—probably they were damaged at the controller or just by it. The trouble was a bad ground, and it is only a bad ground in this case that can cause such an excessive trouble as that which happened in the accident, and it is only a bad ground that could have resulted in the flow of probably 1,000 or 1,500 amperes, it was somewhere in the neighborhood of that amount which passed through the circuit breaker and which would have produced such an extraordinary state of affairs. As I said, and as Mr. McCrae has shown himself, the circuit breaker should carry up to 600 amperes without any trouble happening to it, that is, it would have simply automatically opened and have released the circuits without any trouble taking place. The loud report, an unusually loud report, was evidently the first evidence of anything wrong. That being the case, it was the heavy report when the third breaker under such an extremely heavy load blew out, and that heavy load immediately fused the terminal, causing the metal to run together and leaving the circuit breakers in exactly the same position that it had ever been, that is, in view of the electrical equipments, the grounding could not take place at the circuit breaker.

Q. Now, that the Jury may understand that, you say the ground; what do you mean by that? A. That is the connection between a wire

which has an electrical condition, or what is termed carrying the electrical current right to the earth, and in a trolley system run with one wire only, as represented by the trolley wire, the other side of the machine is connected to the ground at the power house up at any point around the trolley wire. Ground in this case means that some part of the wire or equipment, after passing the circuit breaker, became to all intents and purposes grounded, in the same way metaphorically as a ground wire would be in a case like that from the trolley wire called dead current, resulting in a very heavy ground flow.

Q. That would be from the live wire; that is to say, there was a current coming from the trolley pole going to the same conductor which would take it to the rail? A. To the rail, only not by the usual course which it should take when the car is in good working order by a short cut; in other words, straight to ground, to save the frame work of the motor; in other words, there was evidently as the first trouble a ground between some part of the equipment in the controller or just by the controller which took the current direct to the ground wire or some ground terminal.

Q. Took it to the ground wire, that is the wire that is represented as a black line? A. Yes, in the sketch that has been represented by "G" in Exhibit 4. Any part where you see a heavy black wire is the ground wire.

Q. And that could be brought about how; how do you say it was brought about in this case? A. To more or less show how it was brought about, it is necessary to limit the area in which, or the parts of the equipment that ground took place. That area is restricted by the evidence which has been given either to some ground terminal point in the controller or to a point at or just in sight of the controller where the wires run into the conduit box and tie together with the ground wire. If the trouble took place inside the controller by the grounding of some wire, more or less a direct connection with the trolley and a ground terminal in the controller, then the controller must have been in a very bad and defective condition. In my opinion, however, the grounding took place at that point where the wires are leaving the trolley to tie together with the ground wire.

Q. Now, is that because——? A. Now, that is the result of the analysis of the evidence which has been given by Mr. McCrae, principally by Mr. McCrae.

Q. Then, do you remember what this man McPhail said, that he put on the power, worked up his machine to about the second or third position, and that when this report, this blow-out or explosion took place, he threw it off again; what do you say was the result of that? A. The ground, which was the original trouble, at once caused the circuit breaker to open and get into trouble as it did; that happening almost to the senses incident with other troubles, the motorman automatically, subconsciously, threw off, which he should have done, the controller which may have been, it is immaterial, on the second or third point. When he threw that

off there was a very considerable amount of current also flowing through the top segment and top finger contact, which is connected from the wire to the circuit wire, which flows to the trolley wire.

Q. That is to say, at point T? A. The direct current still being on there is always life as long as the circuit breaker is closed, or in the condition as if it was closed, or if the trolley pole is up. therefore, when he could brake her between the contact finger T and the top segment, every time that that is broken, provided that the circuit breaker is in working order and closed and the trolley pole is up, there is always an arc takes place there; but that arc is not sufficient under ordinary circumstances as to cause an arc which will spread and cause other troubles in the controller. If, however, the main current flowing at the time is very excessive, such as it was in this case, that arc will be a very heavy one, heavy enough in fact to cause confusion all around, melting the metals of the segments and the contact fingers, and the trouble will rapidly spread, and as it did in this case, right through the controller.

Q. That is to say, so we can get it clearly for the Jury, there are in the controller certain points that come together to make a connection, an electrical contact? A. The controller part of it is simply a series of switches working in conjunction with a set of resistance coils known as the rheostats.

Q. So if I can say it in an ignorant sort of way that will appeal to myself, when the motorman has his connection made——? A. The controller handle on.

Q. The controller handle on, he has the connection made between two points? A. There may be more than two points, essentially between two.

Q. Then, when he throws it off, that comes apart? A. Yes.

Q. And there is always an arc formed as it comes apart? A. Yes, just the same as you open a little switch on a light circuit.

Q. Then ordinarily that spark is blown up? A. Yes. That is partially what the magnetic blow-out coil is for, and the arc deflector.

Q. But if there is too much together that spark remains? A. It isn't blown out.

Q. And causes confusion at the connecting point? A. At the point it did connect.

Q. And that is what you say took place here? Now, on what do you place that; why do you say that; what evidence is there of that? A. The evidence that the controller was all burnt up; the fact that the motorman threw off the controller handle; that all these things we know electrically took place almost simultaneously and to the senses appear coincident with one another, they follow each other in such a rapid succession that no one can say, especially amid the confusion, definitely, and on account of the very slight period of time between one incident and another, no one can say really which took place first. But the fact is that the most noticeable thing in this is, and the thing that drew everybody's attention first

must have been the first thing, and that was that unusually loud report, which was to my mind the circuit breaker flying open.

Q. What caused the circuit breaker to fly open? A. The very excessive flow of current due to this bad ground.

Q. Due to the bad ground either in the cable——? A. Where it enters the controller in that neighborhood, or in the controller itself.

Q. You say that no such bad ground could occur in the controller itself unless it were in a very bad state of repair? A. Precautions are always taken in type K.C. controller, which is a good controller, a good design, it is well enough designed for them to have taken care that there is the smallest chance possible of a short circuiting taking place between another part of the controller and the ground terminal. If anything happens that did produce that it shows that the controller must have been in a pretty defective condition. I don't think it was.

Q. Then the point where you consider that the ground contact took place was just outside the controller? A. Just inside or around that point. The actual definite point to a quarter of an inch would be difficult to decide upon.

Q. Then supposing we follow that out, that contact having taken place at that point, that is, say just outside the controller, you say that would enable the current in large quantities to flow through the circuit breaker, through the controller and out at that contact point to the wire that took it to the ground? A. Yes. The contact point would be the ground really in electrical parlance.

Q. And the first defect of that you say would be to fuse the circuit breaker? A. No, to open the circuit breaker, which it should do, and which it did do, but that the flow of current was so exceedingly excessive that the circuit breaker had not a sufficient factor of safety to keep itself out of mischief, and it became damaged so greatly that it was in exactly the same condition as if it never opened.

Q. Would you say that the trouble went from the circuit breaker to the controller or from the controller to the circuit breaker? A. From the ground to the circuit breaker—the ground first, circuit breaker second, and controller third.

His Lordship: Q. It does not make much difference? A. No, practically almost coincident with each other.

Mr. Gamble: Q. That would be technically the order of it? A. Technically the order.

Q. Now, what caused that short circuit in the wire near the controller? A. You mean that caused the ground?

Q. Yes? A. Well, if it took place right at the point where the cables or wires entered the controller, it can only have been the result of one or two things, either some great carelessness on the part of some man at some previous time in damaging some of those wires or a gradual deterioration of the insulation of the cables and the deterioration had reached that point that at the particular moment when the accident happened, it broke down,

a small current took place coincident with it, that current became a very heavy current and away went the circuit current.

Q. Now, you heard Mr. McCrae speak of the way in which they inspected their tables in order to find out whether there was any leakage likely to cause a large amount of arc. How is that to be tested? A. There are three ways to do it. One is a purely mechanical way, or what you might call a visual one, by simply observing, that is by lifting the cables up and peering around and looking at them and feeling them, try and see if there is any apparent damage. There is the second way, a very simple one like the first, a periodical and more scientific one, and that is by the use of a set of plain resistance coils in the form of a whet-stone, making what we call a plain insulation test, finding out what the resistance is between the electricity inside the wires and the ground outside.

Q. Is there any difficulty about that? A. It is a simple operation. Then there is a more difficult—not more difficult, simple enough to those who understand it—but that could not be used by railways anyway.

Q. If any of these systems had been properly and carefully carried out, could such a state of affairs have existed in cables without being noticed? A. If periodical insulation tests were made out of the wiring, any deterioration which was gradually taking place would show on each subsequent test that the insulation or resistance was getting lower and lower, and that would lead to a further thorough examination to find out where the trouble was that was reducing that lessening of resistance. It is metalled and it flows constantly, only they used the galvanometer in the conduits that run through the streets.

Q. Supposing, for instance, by jarring against the machine, the part had become worn? A. It often happens.

Q. That could have been ascertained, if not by careful visual inspection, by the system that you have secondly described? A. I would say it could be more easily found by physical examination, because if you had the insulation entirely rubbed off the one part in that way, if there was an air space around it when you made an insulation test and the rest of the wiring is good, it would still have a high insulation resistance, so in a case like that a physical examination would be better.

Q. Should a visual examination have shown anything of that sort? A. Yes.

Q. Why might not this trouble have occurred further into the car, starting further in the car than the bulk-head as it is called, the partition separating the two parts of the car? A. Well, it could have happened there, but it didn't in the case under consideration.

Q. I mean, why can we say that it didn't happen there? A. Well, for instance, if you had a ground which came out at a point, after the current had had to pass through that amount of resistance, that is, if current entered the controller, went through the controller, then through the resistance coils, and then through the motors in multiple series, the

resistance would be sufficient to limit the current flow to a much less amount than that which caused the damage to the circuit breaker.

Q. Then getting out of the motors? A. Getting out of the resistance coils in the motors.

HIS LORDSHIP: Q. What flow would go through? A. Well, you see in the ordinary case it might run from ordinary to extraordinary—about 150 amperes.

Q. What could go through those? A. I would say 1,500 or 1,000 amperes, or perhaps more. Then the motors were in no way damaged; their wires are smaller than the wires which run from the controller to the motors, and as the wires were not damaged there that run from the controller to the motor—it was a short circuit in the form of a ground; it is always a bad ground that is the cause of the trouble.

MR. GAMBLE: Q. You consider the ground was either in the controller or in the wire just outside of it? A. Just outside the controller.

Q. The cable just outside the controller; and the evidence points more in your opinion to the point just outside the controller? A. No. I would say that superficially the evidence points more to the trouble having been in the controller.

Q. Superficially? A. Yes, because nobody actually saw where the trouble did take place, nor was there evidence left afterwards of the exact point where the trouble took place, and that would be much more observant, that would lead me to believe that the trouble really started in the controller. The motorman, for instance, was facing the controller, if the circuit breaker flew open next to him and coincident with that trouble, the impression left on his mind would not be that it was the circuit breaker open first, but the impression left on his mind was that the trouble was in the controller itself.

Q. As a matter of fact, from the evidence as you have heard it, where do you say the trouble did start? A. I say it started in either of these two points. If it started inside the controller, which I don't believe is the point it started in, the controller must have been in a very bad state of repair, because that controller is a well designed one—the evidence shows it is in a good state of repair when it went out—and precautions are taken in the design to prevent any short circuiting in the form of a bad ground taking place between another portion of the controller and a ground terminal. Of course, taking the whole series of incidents to the finish, about the controller bursting up as it did, eventually to the extent it did, it is probable also there was another bad ground at the last stages of trouble; it is always formed in the controller between some of those terminals.

Q. How would that happen; would the ground outside or the arcing outside, in that cable outside, would that have the effect of communicating itself to the controller? A. Certainly, by the excessive amount of current when flowing through the top of the segment and to contact finger T making that arc which I described before, and I noticed that the motorman

himself says that the trouble appeared to be in the bottom of the controller, which is the point at which the wires enter into it.

Q. Now, I suppose that the current having got the start of the circuit breaker, there were some other means by which the current could have been shut off the car. How could that be done? A. It could have been done by instantly pulling down the trolley pole. The circuit breaker doesn't take the current off the car totally, because it still lives, and to pull down the trolley pole takes the current off every part of the car.

Q. You say that as long as the pole is on, notwithstanding that the circuit breaker may be opened, that there is still the electric fluid going through the car? A. Not through the car, but down as far as the circuit breaker, down the trolley pole, through the wire that runs to the circuit breaker, and up to the circuit breaker.

Q. Then, where has this trolley pole to be operated from? A. It appears to be generally one of the duties of the conductor to take care of it.

Q. Whereabouts? A. In the rear end of the car.

Q. Where the rope comes down at the rear end of the car attached to the trolley pole? A. Yes.

Q. And if that trolley pole had been pulled down at once, that would have taken all the electricity off the car? A. If, as soon as the accident had happened, that had been pulled down, there would not have been so much smoke, so much illumination, and so much trouble to take place, and the car might have come to a stop before it reached the point at which I understand the plaintiff was thrown off, or fell off, whichever it was.

Q. Then, supposing that the air brake had been put on the car, going at the rate you have heard, supposing that had been put on at the time that the motorman put his power off, threw over the handle of the power, what would the effect have been? A. The car would have stopped within 75 or 100 feet easily, especially if he had thrown it on full. It would bring the car to a pretty sudden stop.

Q. We are told that at some time the brake was put on the back car, but leaving that out of the question, the putting on of the air brake simultaneously with shutting off his power, you say, would have brought the car to a stop inside of 100 feet? A. Yes, you can easily bring a car to a stop.

Q. Now, from what you have heard from the evidence of Mr. McCrae, what do you say as to the efficiency of the inspection of these cables? A. That would be very difficult for me to answer without knowing very fully of their methods, but I do feel perhaps a little—I don't know whether I am right in expressing an opinion—there is a tendency to sacrifice a certain amount of inspection and to allow apparatus to run until it breaks down; it is the tendency of modern practice. I will give you a concrete example.

Q. I don't want that. From what you have heard of the sort of ex-

amination that were made of these cables, do you consider they were properly inspected.

His Lordship: Was there any evidence given of the kind of examination? He said that once a year the cables were looked at through the car. I do not recollect that he said anything——

Witness: He said they took off the cover.

His Lordship: He said they did, but he did not say when they did it.

Mr. McCarthy: He didn't say what tests were made.

His Lordship: As far as I know, he did not say anything about what was actually done.

Witness: He didn't say when it was done.

Mr. Gamble: Q. In reference to the inspection of the controller, you heard what Mr. McCrae said about the controllers being examined about once a week, and 15 controllers to one man. Do you think that an effiicent inspection can be given in that way? A. Providing that the man hadn't any fair amount of repair to do, and provided that that was the only work he did, I believe that a competent man could handle the inspection of 15 controllers per night.

Q. Did you ascertain for me how far it was to Yappy's shop from Sherbourne street? A. Somewhere in the neighborhood of 270 feet east of the east side of Sherbourne street, approximately that, it might be a few feet more or less, but very close to that.

Q. You measured it? A. I measured it roughly.

Q. By a line? A. With a tape.

Q. Have you got a table showing the time that a car moving at 4 miles an hour or 6 miles an hour would take to get to these different points. You made up a table, I think, haven't you, about that? A. I suppose I can refer to the table—I am not certain about that—270 feet, without my sketch.

Q. 271? A. That was the number of the store. A car traveling 5 miles an hour, which I assume was about the speed the car was going, it would take 13 3-5 seconds to travel 100 feet; that would be about 27 seconds to go about 200 feet.

Q. About a half a minute? A. Very nearly half a minute. I think that was less than 270 feet.

Mr. McCarthy: Q. What mileage was that? A. That is at 5 miles an hour.

Mr. Gamble: Q. Have you any memorandum that would show how far that place was, in your pocket there? A. No, only that sketch I made up. I am afraid I have mistaken the number of the store; it might be 260.

Q. Either 260 or 270? A. Yes.

Q. Then you know the construction of this car, the way the seats are placed in it and the width between them? A. I have never seen the car, but I have seen a car similar to it.

Q. You haven't seen that car? A. I haven't seen 966.

JOHN S. RICHMOND—CROSS-EXAMINATION.

Q. Now, Mr. Richmond, what effect, if any, on this accident would the trouble on the car have?

HIS LORDSHIP: Has that any relevancy?

Mr. GAMBLE: The facility of getting at the trolley pole.

Q. As to the effect, would the strain make any difference with the breaking down of a weak part in the machinery? A. Not in this particular case, because it wasn't due to any ordinary every-day little trouble; it was a bad ground, it was a trouble distinct from the every-day trouble, happening every day.

CROSS-EXAMINED by Mr. McCARTHY:

Q. Mr. Richmond, you say you have had some 29 years' experience? A. I have.

Q. I think some of that was as an apprentice? A. I certainly did.

Q. Then, I think you gave your first experience with Dr. Pearson at Boston? A. I can go back a great deal further than Dr. Pearson.

Q. I don't know whether that represents your first experience with motors, controllers, hood switches, etc.? A. Largely so.

Q. You went into the devices there? A. Yes.

Q. Was it an active experience or to give advice? A. It was simply and purely to work as a workman and to get working knowledge of the troubles and difficulties.

Q. That was an active practical experience in the motors? A. To get the knowledge of those difficulties and troubles met with.

Q. It was with that idea you went in there? A. It was.

Q. To try to master those difficulties? A. It is necessary to get the mastership of them.

Q. You realized at that time that those difficulties did exist in controllers, motors, hood switches, etc.? A. Very much so at that time.

Q. They were very much greater, I fancy, in those days than to-day? A. They were. That is where one learnt more in those days, because he had so many troubles to deal with that men in these later days haven't to deal with.

Q. That was when? A. In the early nineties. Probably in 1892.

Q. You spent how much time there? A. Three months by special arrangement with Dr. Pearson.

Q. Then you say you were in the Montreal Street Railway? A. Yes.

Q. In what capacity? A. I was first of all head inspector at night, and then day inspector during the day.

Q. That had to do with the shop? A. With the shops and everything outside, as far as the electrical construction was concerned.

Q. Very much with the same idea as you had in Boston; that is, to try and solve difficulties which were happening in the shops? A. Well, we did get our experience and training.

Q. When was that? A. That would be probably 12 months or 9 months subsequent to the time I was with the West End Street Railway.

Q. What year would that be? A. That would be probably the end of 1892.

Q. The West End is the Boston Railway? A. That is the Boston Railway.

Q. After leaving Boston in 1892 or 1893, you went to Montreal in the capacity simply to apply the knowledge that you gained in Boston? A. No, to keep on at my experience.

Q. You had to do with similar difficulties such as we have met with in this case? A. I had.

Q. Motors, controllers blow-up; had they any hood switches of this automatic kind? A. No, they had the ordinary common type; it wasn't the automatic. That is one of the developments that we learned at the time that was necessary. It is far better in all electrical matters if you can put in a piece of automatic apparatus.

Q. Then you were in Montreal in that capacity of inspector for how long? A. 5 months.

Q. Then, after leaving Montreal, what position did you occupy next? A. I was with the Baldwin Locomotive Company in Philadelphia.

Q. That is locomotive steam engines? A. Well, while I was there, during the 9 months I was there, they were building an electrical locomotive, and it was for that reason I went there, and I had spent 2 years on locomotive instruction.

Q. So you were with the Baldwin people after that? A. I was with the Philadelphia Traction Company.

Q. In what capacity? A. For about 2 years, and you might call me general electric superintendent for them.

Q. There were others there, of course, as well as yourself? A. Well, practically all those expert matters came to me; I had men under me; I used to go out first and take a piece of work and show them how to do it; in those days we hadn't the same ability to obtain men who were good workmen as to-day, and the result was I had to go first and do some work with my own hands and show them the method that was adopted, and they would follow that.

Q. As a matter of fact, the electrical business was in its infancy at that time? A. Oh, no, it wasn't. The West End Street Railway in Boston used the double reduction automatic motors, and it is because I didn't think much of that and Dr. Pearson's offer that my time ended with that company, as it was one of the biggest mistakes that was in the street railway business.

Q. You differed with Dr. Pearson? A. I didn't differ with him. I simply stated the great troubles they had with their motors on the cars, and due to the fact that they were 15 horse-power and double reduction motors.

Q. I understood you to say that that led to your ending your time? A. To my termination. I am very proud of the fact.

Q. Because they didn't agree with you? A. It wasn't a question of agreeing.

Q. With the Philadelphia Traction Company, you say your principal work was solving electrical difficulties? A. Solving difficulties and starting the work which was very new to the men, showing them how to do it.

Q. In what respect? A. The power house, equipments in connection with the cable, systems of installation, testing, and the laying of their telephone system.

Q. I think, if I remember rightly, your connection with the Philadelphia Traction Company was largely in connection with their power house, their cables, and the returns? A. No, not the question of the returns, it was general work, switch boards, the dynamos; if somewhat suddenly the whole city was put in darkness, and I was away, I was the man that was suddenly sent for, because I knew the whole plant right through from beginning to end.

Q. At Philadelphia you hadn't charge of the trucks, the controllers and the cars? A. No, I hadn't charge except some work to repair or test the car, testing those motors.

Q. Your chief work was in connection with the power house? A. It was general expert questions all around.

Q. You were solving phenomenal difficulties? A. If you like to put it that way, but I wasn't all the time, but those were part of my duties, to solve those matters, but they are more construction and training; I did more training of men in construction than I did of solving problems.

Q. Then you say you were with the Manhattan Railway of New York? A. Yes.

Q. For how long? A. For a period of about 5 months.

Q. In what capacity? A. I was on special problems which I mentioned, such as electric corrosion and the use and abuse of controllers by motormen.

Q. When was that? A. That would be, as near as I can tell you, in the fall of 1902 and the beginning of 1903. I think that was the date.

Q. You were there solving problems in electric corrosion, that is commonly called electrolysis? A. Yes.

Q. And also in connection with the abuse of controllers by motormen? A. More correctly I was—there was quite a prominent question came up between the operating department and the construction department, which was practically taking hold of things until it was taken over, that is Mr. Selmar's side of the matter, in which there was considerable dissatisfaction, and I was put on to that question to go up and down the line and watch the men as they used the controllers, not as a detective.

Q. Mr. Selmar had the construction end of it? A. No, he was for the Manhattan Elevating Railway, the consulting engineer.

Q. He was on the construction end of it this time? A. The operation was going on.

Q. Your particular part was watching the motormen? A. There was no particular problem in watching the motormen, keeping track of them.

Q. Then, after Mr. Selmar, you went to Richmond, Virginia? A. I did.

Q. To investigate the electrical conditions down there? A. Yes.

Q. That work was connected with the electrolysis one? A. It was connected fundamentally with that, and required, as I say, the reconstruction of a very considerable part of their plant affected by the use of ground return.

Q. That was when? A. That would be—I think it was during the main part of 1899.

Q. Then, since that period, have you been with any other company? A. I was with the Ontario Power Company.

Q. When was that? A. That was following the Richmond one.

Q. That is still Mr. Selmar? A. Yes.

Q. When did you leave there? A. I left there in May, 1903—I left there about, I suppose, March or April or a little later, of 1904.

Q. That is when you severed your connection with Mr. Selmar? A. It is.

Q. Since that time have you been with any particular company or for yourself? A. I was superintendent of construction of the trolley roads in the provinces after that.

Q. Since that time? A. After I left Mr. Selmar I was superintendent of the construction of the trolley roads out in the provinces.

Q. How long were you there? A. I was called in in that case, practically speaking, because they got into such difficulties, there was no system in that company, and I was called in to systematize the whole plant, and to put them in working order. I was at that about 3 weeks.

Q. In regard to their tracks? A. The construction of tracks and roadbeds.

Q. And since then? A. Then, after that—sometime previous to that, I left and came to Toronto.

Q. I think you have been here ever since? A. Practically speaking.

Q. As a consulting engineer? A. Yes.

Q. During the time you have been here you have, I have no doubt, been consulting with people with the idea of solving difficulties such as have occurred in this case? A. Certainly, by yourself, for instance.

Q. That was in regard to electrolysis? A. Yes.

Q. I think Mr. Selmar suggested it, too. Have you ever in the last 5 years been called in to investigate a similar phenomena? A. No, I haven't. As Mr. McCrae himself has said, the thing is only a thing that happens very rarely, and he has never seen such a thing before.

Q. Have you seen such a one before? A. I have seen accidents which bear very much on it, but not exactly similar. I have seen accidents happen.

Q. There is no doubt, in the first place, that you and Mr. McCrae

agree that it was the result of the grounding? A. Quite, I think we quite agree.

Q. There is no question about that? A. About there being a bad ground?

Q. In the ordinary course, of course, the current would be following the ordinary line, would go through the circuit breaker into the controller, on into the motors, and on into the rail and back to the power house? A. That would be the course when all the resistance was cut out; it would have to go through the resistance motors, and go to the rails and back to the power house.

Q. Apparently it never got as far as the motors in this case? A. Unless at this time. I mean every time there was a shock to the car, the ground moved and because there was a short circuit, putting the controller into the condition, as if the handle were on, the motors moved quite a little bit.

Q. So that the current, apparently, did go to the motors? A. Just spasmodically.

Q. But I mean with the great force of current you speak of, did not reach the motors? A. No.

Q. That didn't get through the rheostats? A. Because it would have damaged the motors.

Q. There is no question the damage can be fastened within a very small area? A. Quite sure of that.

Q. And the question is about one of the fingers on the point where the contact began. You have two or three theories as to just where the damage may have originated. Do I understand you right? A. I say it occurred either as it was localized right down to the controller, or just by the controller, as the circuit breaker could not be grounded, and as the wires in the box could not be grounded, as the ground wire was outside the box, the ground absolutely has to spread behind the controller or between the wires.

Q. You would confine it to a still smaller area than Mr. McCrae would, that is, you would eliminate the possibility of the difficulty having occurred between the circuit breaker and the controller? A. Because there is no ground wire at the circuit breaker.

Q. Could the failure of the circuit breaker to act—I say that from Mr. McCrae's evidence. If the circuit breaker failed to act in any way and allowed a large current out of it to go through to the motors, might that have caused difficulty to the motors? A. No, because there was no trouble in the motors.

Q. I mean the controller? A. No. I say this, that the trouble happening there could only have been due itself to a very bad ground, because nothing less than a very bad ground would have sufficient current to pass through the circuit breaker to put it into the very bad condition in which it was.

Q. Supposing the circuit breaker failed to act and didn't open? A. I understand from the evidence it did open.

Q. Afterwards, it did open at the same period, that is, the handle was open at the same period; but what I say is, it was the opening of the circuit breaker, according to you, that caused the explosion? A. My opinion is that was the main explosion.

Q. Then tremendous power must have been applied at that point because of that explosion? A. The expansion was so great as to make a large report.

Q. Could it be possible that the circuit breaker not operating at the point when the power was applied, caused the difficulty? A. It isn't very possible, but very improbable.

Q. So that the difficulty may have originated in the circuit breaker? A. No, not in the circuit breaker, because it is a heavy current, of course, a heavy flow of current through the circuit breaker.

Q. If the circuit breaker didn't act at the point which this should act? A. Well, that may not have been a trouble.

Q. But the trouble is that you don't know that the circuit breaker opened? A. But I say from your line of argument that you are taking a secondary line of argument to mine, and then you would have had some trouble somewhere else.

Q. That is, provided the circuit breaker fulfilled its duties? A. What I understood you to say was, that supposing that the circuit breaker should have been opened earlier on, and didn't open. Now, I say, if it should have opened earlier on, then it was due to some fault in the apparatus somewhere.

Q. Therefore, in your opinion, the trouble did not originate in the circuit breaker? A. My opinion is entirely opposed to any trouble in the circuit breaker.

Q. Therefore, you eliminated all possibility, as far as you can, of the trouble arising in the circuit breaker? A. I certainly do.

Q. You think the trouble originated elsewhere, which caused the difficulty in the circuit breaker? A. Which caused subsequently or almost coincident with.

Q. Therefore, you get down to somewhere between the controller and the wires, including the ground wire at the bottom of the controller? A. Yes, between the controller and where those wires, the ground wire and the other wires become separated.

Q. You say that might have happened through the insulation in the wires becoming defective? A. Those troubles often do happen.

Q. In testing the wires you suggested three best tests, either the physical which you have heard takes place, then there is the second method; assuming, as I will subsequently show, that we use the second test suggested by you, that is the proper test, isn't it? A. That is a proper test, probably for car wiring.

Q. Then the wires themselves, is there any fault to find with them; I mean the material used? A. Oh, no.

Q. It might have happened, as you say, in the wires themselves at the bottom of the controller, or it might have happened in the controller itself? A. Yes. I don't think Mr. McCrae or myself or anybody else could absolutely, definitely, finally say it happened in one or the other.

Q. It is impossible to say just where this difficulty happened. Now, in regard to the controller, of course there are, as I think Mr. McCrae said, some 200 pieces in the controller? A. More than that.

Q. It is something that does go out of order, we will say, even occasionally. You have known cases in your experience, I am sure, where the controller has got out of order through no fault of anybody's? A. I have known them where if you only knew all the matters all through you could eventually trace responsible with somebody.

Q. I mean doing all that could be done as far as human power can do it, that difficulties will happen evenin the best regulated families? A. Yes, provided you have men who are lax in the doing of their duties at times you are bound to have trouble.

Q. You were put yourself for five months to watch motormen. During that time you found that some of the motormen had abused their machines? A. They did not, after I had been there and made my report.

Q. You don't know what they do now. You found anyway when you went there that men did abuse their machines? A. Yes, I was put on that work because that was noticed by others.

Q. Machines will become abused by reason of that? A. If the inspection or superintendence of such matters are lax.

Q. For instance, just take a case; a car is inspected in the morning, and the controller is properly inspected, and that car is turned out on the road, would it be possible through the abuse of the motorman who ran that car in the morning to have difficulties occur which might lead to what happened in this case? A. According to my views, if he opened it and made a too short circuit or jammed something in and damaged, but if the controller was properly inspected, as you say, before it went out, it would have been very difficult for it to get out of order without some almost criminal case of negligence.

His Lordship: Q. You mean something entirely beyond incompetence? A. Yes.

Mr. McCarthy: Q. It would have to be beyond incompetence? A. Yes.

Q. How often would you suggest that a controller should be inspected? A. I don't know. I used to inspect any I had; I used to look everyone over every morning.

Q. How many had you? A. Oh, probably in the neighborhood of 50.

Q. You would do 50 yourself? A. I would go over them. there were other men there besides, but I would check them over——

Q. I don't mean simply a visional inspection, I mean taking them out? A. I would do no repairs.

Q. I would mean no repairs? A. I would just take the connections out and look over them.

Q. Would you take them out on the bench? A. No, I would not do that; that was the men's work.

Q. You would simply look over them as they were there? A. I could not tell definitely myself from my inspection whether there was or not a trouble there. My inspection was simply to keep track of and check the men who were doing that work. I had sub-inspectors and other men under me, but I personally myself took considerable pains about my personal investigation to check them over.

Q. It would be impossible to take them apart? A. Oh, no.

Q. Then, in spite of that inspection, did you have difficulties arising in your controllers? A. Not so much in the controllers. Now and again we would have a little leakage or something like that, or nothing that would produce a bad ground, like that; but in those days the apparatus was not what we get these days, a well designed apparatus.

Q. So the necessity for inspection to-day is not as great as it was when you had charge of these cars? A. It is just as great; the necessity is as great, but the troubles which would result are not as great, because the apparatus is more perfect; there were more repairs to it those days.

Q. What are the difficulties which beset the controller to get it in such a condition as it would be liable to cause such an accident as happened in this case? A. Loose contact fingers.

Q. Would the one loose contact finger cause it? A. It might; it would not cause a trouble like this, not like the one we have under consideration; it could not produce a ground like this, because, as I said before, the type K.C. controller is so designed that the usual things like finger contacts getting loose or other little matters getting loose will not result in a ground terminal.

Q. Might one finger coming loose lead on to difficult results? A. Not in a case like this. As Mr. McCrae said, if you had a loose contact finger, it would begin to heat up, being loose there, not a very good contact, that you can handle; and the contact would get worse, and at last it would begin to arc, and the motorman would notice that arcing, and they have to start the car and attend to it; but to get such an accident as happened in this case one would require a series of ground quite different to that.

Q. What I want to get out from you is, what would have to be the condition of the controller to cause the accident you have here in this case? A. As I said, for instance, if you took a wrench or something, which I am certain was not done, and put it between one of the ground terminals, the ground terminal in the controller must go, then you might have the same results that arcing would have got into such a condition that all sorts of trouble would have happened.

Q. If it began with one arc? A. One arc leads to another.

Q. One arc might be caused by a loose finger? A. Only as I say, the arc formed in that case—the arc deflector is put in there to take care of that arc.

Q. I don't yet understand what would be the condition of the controller to cause what happened in this case, if it was caused from the controller? A. I said it is very improbable in my mind that of the two points I selected as one of which the grounding took place, that it was in the controller. It would require, if you decide that it was in the controller, that some very unusual state of affairs took place to produce that, such as making a short circuit between those two points.

Q. So under ordinary circumstances it would be almost impossible to get such an explosion as occurred in this case in the controller? A. I think the ground was at the bottom of the controller; I see no other position left.

Q. Your idea, in your opinion, comes down to that one point, practically that some difficulty occurred with the wires at the bottom of the controller by which the current became——? A. The circuit breaker flew open.

Q. You had to get your ground first? A. Yes; that was not the cause, but it was the primary cause.

Q. It was the originating cause? A. No, it was not the originating cause; it was the primary trouble.

Q. The cause, you say, was something wrong with the wires which caused the ground? A. Which again would have a cause before that.

Q. So if we go on ad infinitum that might go around so far as to get on the car itself. That happened, you think, from some wiring from contact with the ground wire forming a bad ground, which threw your circuit breaker open, allowed an enormous amount of current to flow in? A. I don't confine that short circuiting to the ground wire, right absolutely to that point, but some other point in that neighborhood, because those wires go a little further up, they go into the connection part.

Q. So it is almost impossible to believe in your mind that the accident originated in the controller itself? A. Not as you mean the controller, not as a piece of apparatus considered by yourself.

Q. Would you expect, or would it be reasonable to expect that if that controller was taken to pieces two months before, those wires were all taken down, separated, tested both visually and otherwise, put back in their place in apparent good order, would you look for trouble in wires during that period? A. I have known in less periods than that the wires to become defective, not in the ordinary way, but——

Q. You would not look for it, as a matter of fact? A. It would depend upon just the class of men I was dealing with and the way my cars were running, and what part of the shops they were in. I have known wires to deteriorate very rapidly.

Q. From what cause? A. A man may work around a wire and he

may use a solder; all men don't use the same thing, some use acid, and some may drop hot solder on the insulation.

Q. If solder and rosin were only used——? A. That is what we always use. I have caught men using acid; I may say I have done it myself when I have not had the rosin handy, but knowing what it would do——

Q. From a cause of that kind, of course, I can readily understand that might burn through an insulation very quickly? A. Yes.

Q. I mean with reasonable use, would it be reasonable to expect the insulation of these wires to wear in this time? A. Certainly not, with reasonable use and reasonable care, you would certainly expect reasonable results, that goes without saying.

HIS LORDSHIP: How long ought the wires to last? A. Oh, in the ordinary course of events—of course, rubber is a very uncertain thing, there is a very great difference in the class of rubber that is used for insulation; some is very poor.

Q. Taking wires like these, roughly judging by that, they weren't bad wires? A. They ought to last ten or fifteen years.

Q. As I understand it, in your view, the whole case is shut up to this one question, that this incoming electrolysis got into the outgoing wire through some other than the orthodox channel? A. By some very short cut.

Q. And it is not permissible with electricity? A. No, it is not.

Q. That short cut involved confining these two sets of wires fairly close together? A. It did.

Q. And they were sufficiently originated originally? A. At some original time.

Q. When they were covered with rubber, that cover kept them perfectly safe? A. Yes.

Q. So the incoming current got into another place where it had no right to be? A. Yes.

Q. And as I understand it, you think that by some means that got into the ground wire? A. Yes.

Q. And then as soon as it found a way of getting out, then the flow of electricity created all the rest of the trouble? A. Yes, it was very excessive; it would be in a bad ground like that.

Q. And how long did it take that electricity to create trouble after once it began to leak into the outgoing wire? A. The first arc that is formed may be small, but it very rapidly—but it would increase very rapidly.

Q. So it might well be even that when this man was crossing over Sherbourne street, he had no ground whatever? A. It might have been that; there might have been a little coming on, but increased. It might have taken a second.

Q. It might have taken a few seconds and the whole thing would be over? A. Yes.

Q. So there would be really no opportunity unless your eye happened to be on it, to observe the trouble? A. No, nothing like that.

Q. It would be all right until this happened, and then the moment the whole thing would be over in a few seconds? A. Yes. The only thing I don't like is, I don't like the ground wire being—as Mr. McCrae says, so close to the other wires. It is not done in the case where the box runs between the controller and the partition. Where he said it went into the controller by the use of tape, they were bound together, that brings them very close together, and that is not a good thing.

Q. It is all guess where it was? A. Guess in a certain way, to get to the exact point, you understand.

Q. You know it happened outside the bulk-head, and that is practically all you do know? A. Nobody can say absolutely and definitely the exact point it was that trouble took place.

Mr. GAMBLE: There might be, as I understand it, a trouble that could not possibly be detected on one side, and it developed so quickly——

His LORDSHIP: What I understood from the witness is this, that the current began to leak and the first are that was formed as result of that leakage would be nothing, a very slight thing, and that leakage might develop so rapidly that it would be only a matter of a second before the leak would amount to a very large one.

His LORDSHIP: Q. It is just like a little spark? A. Just exactly to all intents and purposes; the big burn-out takes place at once.

Mr. McCARTHY: There is another point, my Lord, the wires are not bound together as they come out of the controller.

WITNESS: They are bunched together.

Mr. McCARTHY: They are not bound just there.

His LORDSHIP: I assume you will be able to show how close they are together.

Mr. McCARTHY: Oh, yes, my Lord.

Mr. GAMBLE: That is the case, my Lord.

DEFENCE.

WALTER R. McCRAE, re-called. Examined by Mr. McCARTHY:

Q. You have been sworn. Just explain to his Lordship and the Jury on this photograph, Exhibit 3, where the wires, the ground wires, come out of the controller? A. This pole shown here in the photograph marked G.

Q. The hole represented by the letter G? A. You have the cables into the controller, it is the only way for the wires to go in there above the ground; the trolley and all the distributing wires go through that hole, and around that hole you will notice a little black edge here, that is a piece of red fibre, which is an insulator, insulating these cables away from the grounded portion of the box, and this box is grounded intentionally, and

that fibre is put around so that the insulation of this cable shall not be torn against the rough edge of the box or hole; that is a cast iron——

Q. After the cables go through they come through loosely? A. You just pass them out through here loosely, to wherever they go in these different directions; then all these wires are carried out, they are not bunched, not together, they are bent and shaped and brought around to the left hand of the car. There is no crowding there.

Q. What methods are adopted by you or your company of testing these cables? A. We test the insulation at the White Stone bridge; and we have the resistance tests.

Q. Do you keep track of the different tests? A. Of the different cars, yes. If they show weakness in any of the cables they are immediately repaired at the time.

Q. You can tell from time to time whether the resistance is all right or not? A. Yes.

CROSS-EXAMINED by Mr. GAMBLE:

Q. There is no effort made to separate the ground wire from the other wires going into the controller at that point? A. Only in so far as putting tape around the ground wire, as well as the original insulation that is on the wire. We bend them all; that is an extra precaution going amongst those other wires, an extra precaution, perhaps, not necessary.

Q. Is that insulation continued wherever it comes in contact with the other wires? A. Around at the box, coming in around under the box and into the box over the window; it is kept outside of the wooden conduit, it does not meet it there.

HIS LORDSHIP: Q. As I understand you, this is put there for the purpose of giving additional insulation? A. To that particular wire.

Q. This table is an insulating table? A. Yes.

HUGH COWAN, sworn. Examined by Mr. MCCARTHY:

Q. What is your position with the Toronto Railway Company? A. Night inspector.

Q. Your inspection covers what barn? A. All the barns.

Q. How many barns are there where cars are stored? A. We have five operating barns and central shops.

Q. Now, what is your system of inspection? I suppose the majority of the cars are in at night? A. Yes.

Q. And the fixed part of the regular inspection takes place on them? A. Yes.

Q. This car, No. 966, I believe, is housed between the Roncesvalles and King street barns? A. Just at the time of the accident she was running continuously out of the Roncesvalles barns.

Q. She was housed continuously at Roncesvalles avenue? .A Yes, if I don't mistake. I looked it up, and I think she was there for some time.

Q. Then her inspection would be there? A. Yes.

Q. Her repairs would be there, too? A. Yes.

Q. Her overhauling would be at the main shops? A. At the central shops.

Q. That takes place once a year? A. Yes, sometimes oftener.

Q. In regard to inspection, Mr. McCrae has told us the number of inspectors, and I don't think we need go over that. A. Mr. McCrae informed you what was right.

Q. You have one inspector anyway in regard to controllers? A. Yes.

Q. What is his system of inspection as far as controllers are concerned? A. His system of inspecting controllers—he has so many to do each night.

Q. Tell us what he does? A. Well, he would knock his circuit breaker out, if it is not out, and look at the condition of the controller, and if it requires any fingers he puts them in; if it requires any oiling, greasing, he does that. He manages to go over the controllers about once every 7 days.

Q. Who was the foreman in charge of the shops there? A. Mr. Barton.

Q. Who was the controller inspector at that time? A. Mr. Dalton.

Q. Where is he now? A. I could not tell you; he went away to some city on the other side about June last, I think it was.

Q. Then you say the inspector gets around over the controllers about once—about every seven days.

Q. Is there any regulation about the motormen looking at their controllers at all before they go out? A. Well, the instructions to the motorman is, when his car is assigned to him, he goes to his car and sees that his circuit breaker is not out, puts the reverse key on and places his controller on full both forward and reverse position; that will let him know if there are any defects in the fingers or anything of that kind.

Q. Are these cars reported as they come in? A. Yes, they are all signed in.

Q. That is, if a man takes out, as soon as he comes in he signs it in? A. Yes.

Q. That means, he either says it is all right or reports any defects in it? A. Yes, he signs it in on the signsheet, with any defect he may detect.

Q. Have you the signing in sheets for this car? A. Well, I am not certain. I think they are here.

Q. Whom would they go to? A. I think they are here. The signing in sheets are signed by the night foreman.

Q. Who are they signed by? A. They should be signed by the night foreman, Mr. Barton, or his assistant.

Q. But the motorman signs it in? A. Yes. I thought you referred to the signing of it.

Q. But down at the bottom Mr. Barton is the man who signs and the motorman is the man signing these cars in, they are signed in to him? A. No, the cars are signed in there. The object of the inspector signing that

sheet is to show that there has been nothing missed that has been signed in by the motorman; that is to say that all inspection has been made.

Q. If a motorman signed a car in as having two windows broken, this is to show that they were repaired before he went out, and holds the motorman responsible; you hold him responsible? A. Yes.

Q. Now, apparently there are daily reports made in regard to the cars by the inspector of the Roncesvalles division? A. Yes.

Q. Is that the form of the daily report? A. That is the night man's report; this is the report of the controller inspector.

Mr. GAMBLE: None of these things, my Lord, have been produced, and it is a very serious matter when you are dealing with a case of this sort, because we should have an opportunity of criticizing these.

HIS LORDSHIP: I would naturally have found that you would have found that out at the examination for discovery.

Mr. GAMBLE: No, my Lord, your examination for discovery shows all things in connection with this case produced—the history of the car—your Lordship will see it is not quite clear.

HIS LORDSHIP: I could not exclude the evidence on that ground. It would be better to have these documents all produced.

Mr. GAMBLE: Does your Lordship mean that in no case, where documents are sprung on the other side, that they should have no opportunity of criticizing them?

HIS LORDSHIP: I do not mean anything of the kind. What I mean is, when we are trying the case, as far as I am concerned, I went to get at the bottom of it. You can make all the comments you wish, as to whether they are produceable or not.

Mr. MCCARTHY: There was no order to produce, no affidavit on production.

HIS LORDSHIP: That ends it.

Mr. GAMBLE: My learned friend is wrong. It is putting us at great disadvantage to have these things come up.

Mr. MCCARTHY: Of course, my learned friend had the history of the car and the other papers my learned friend had. I did not know of the existence of this until to-day myself.

Mr. GAMBLE: My affidavit on production was duly served, sworn to by Mr. Green in which——

HIS LORDSHIP: It seems to me that the lesser evil is allow the documents to go in, and you can make what comments you want afterwards.

Mr. GAMBLE: I wish to point out to your Lordship that the only thing they produce is the employees' report of the accident, which they claim——

HIS LORDSHIP: I quite understand that at that stage of the case the man who made the affidavit only had his mind directed to that particular thing, and the one thing was what he had before him, that is to say, the reports he had of the actual occurrence of the accident, and it was not until later on that the importance of these documents came up.

Mr. MCCARTHY: Your Lordship will realize this, that the particulars

were only given last May, and I did not know until last night what my learned friend was attacking; I did not know until Mr. Richmond got in the box what the attack was.

HIS LORDSHIP: The production made was about the overcrowding of the car and the conductor leaving his post and not pulling the trolley pole off the wire.

Mr. GAMBLE: I would like an opportunity, of course, my Lord, before the case is closed of looking over these documents, and if necessary cross-examining on them later on, because I am not prepared now to do so.

Mr. MCCARTHY: I am only asking you, Mr. Cowan, if this was a daily report put in by your foreman, Mr. Barton, on the 7th of August, with reference to the controller and inspection of this car? A. Yes. That is, to all cars; that is the number of cars that the controller inspector did that night.

Q. I see he did eight cars that night? A. Yes. And among the eight cars was 966.

Q. Then the sheets show that a practically new controller was put in on June 7th.

Mr. GAMBLE: I submit, my Lord, that is not evidence.

HIS LORDSHIP: I do not think the sheets have any interest in it.

Mr. MCCARTHY: I am going to call the man who made it.

Q. Then, about the inspection of these cables; are they under your inspection too? A. No, any more than coming through the controller, coming up into the controller.

Q. That is what I mean? A. Yes, the inspector examines all those and all the terminals.

Q. What inspector? A. The controller inspector.

Q. He inspects these cables, you say? A. In the controller.

Q. And as they come out of the controller or where? A. Well, of course, as they come out of the controller they have got to come back; he can only see what is in the controller.

Q. They come out of the controller at a certain point and go into the conduit? A. Yes.

Q. Who inspects those? A. Well, the motor inspector, or rather the controller inspector will look at and inspect all wires it is possible for him to inspect.

HIS LORDSHIP: Does the controller inspector put on the arc test? A. No.

Q. Who does that? A. That is done in the central shops.

Q. That is under Mr. McCrae? A. Yes.

CROSS-EXAMINED by Mr. GAMBLE:

Q. You say the car was housed continually at the Roncesvalles barns? A. Well, take for a few days just around that time, I looked it up, and I am pretty sure she was; the signing in sheets would show that.

Q. You might make yourself a little sure of that; do you know it is so?

Mr. McCarthy: Here are the signing in sheets, my Lord; I don't know that they are evidence. This man does not sign them.

Mr. Gamble: I want him to give his own evidence.

Q. Do you know where that car was housed? A. I know that on the 9th that car was in the Roncesvalles car barns.

Q. Did you see it? A. Yes.

Q. You remember seeing it? A. I know by the signing sheet and the records. It would be difficult for a man to go over a number of cars and pick out one car from memory.

Q. Do you know anything about the method of inspecting the controller? A. The method of inspecting the controller?

Q. Yes. Do you do the inspection yourself? A. Why, no, I just look after the inspectors.

Q. You see that they do their work? A. Yes.

Q. What is the system of inspection, who he do? A. The system of inspection—every man knows the car that is in his barn, every controller inspector knows how many cars he has to look after; now, he has so many days to go around those controllers, and that is the general inspection, outside of any trouble that might develop; if there is any trouble, that is looked after in the interval. Now, the method of inspection is to open the controller, see that the fingers are good, the segments are not burnt, to see they are oiled, the contacts are oiled, brush out the controller, clean it out, see there is nothing wrong in the controller, and that is the inspection of the controller.

Q. That does not include any examination of the wires in the back part of the controller, does it? A. Well, you cannot examine——

Q. Just say what it does. Does it include the examination of any wires in the back part? A. Oh, yes, that includes the examination of the wires.

Q. In the back part. Then why were you going to say you cannot do it? A. Well, what I thought you meant was what we call the back of the controller, that is right in back of the main roll.

Q. That is what I mean? A. You cannot examine those; those are covered with the fibres. I thought you referred to the wires that come up here at the bottom.

WILLIAM BARTON, sworn. Examined by Mr. McCarthy:

Q. You are the foreman, I believe, at the Roncesvalles barns? A. Yes.

Q. You are in charge of the inspectors and repairing at that barn? A. Yes.

Q. And who is Mr. Dalton who was with you in August of last year? A. Controller inspector.

Q. When did he leave you? A. He left about three months ago, I guess.

Q. What were his duties in regard to controllers? A. Well, clean them, overhaul them if they needed it.

Q. And repairing? A. Yes.

Q. Did you superintend that work over him? A. Yes.

Q. Now, can you speak, looking at the records, which I notice is signed by you, of the report of cars inspected on August 7th, 1910——

Mr. GAMBLE: Is that evidence, my Lord?

HIS LORDSHIP: He can refresh his recollection. He must have a recollection to refresh. He must say, I recollect.

Mr. MCCARTHY: I don't suppose, my Lord, that I could ask a man to recollect what controllers were inspected on August 7th last year?

HIS LORDSHIP: I do not suppose he can.

Mr. MCCARTHY: Q. I don't suppose you can recollect what particular cars were examined on August 7th? A. No.

HIS LORDSHIP: In one sense, I think it is a great misfortune that the records were kept that way. Unless the witness can say, I have a recollection, he cannot use that in order to refresh his memory; but if in the refreshing of his memory he can say he can recollect, that can be used.

Mr. MCCARTHY: Q. Can you say, speaking from recollection, how many controllers were inspected that night, how many cars would be inspected that night. A. It would be just according to the work we done. I think there might be five, they might do seven, they might do ten, just according to the work they required.

Q. How many cars were housed in that barn as a rule in August, 1910? A. I guess, as near as I can think, there would be about 80 cars.

Q. Was 966 one of the cars? A. It was.

Q. Then can you say, speaking from your recollection, whether the controller in 966 was inspected during that time; have you any recollection of the controller being inspected that time at all? A. No, I could not say, not straight. I suppose I examined them all right through after they were done. Of course, I could not say right straight that I looked at that car specially.

Q. I did not suppose you could, it would be a pretty hard task on a man's memory? A. And it is so long ago since it has been done.

Q. Did all the controllers go through you after Dalton had finished with them? A. Most generally.

Q. Can you remember 966 as distinct from other cars? A. No, I could not remember it. I remember the night and everything that the accident happened.

Q. If you remember the night the accident happened, do you remember whether you had inspected the controller previous to that; I mean, did the night of the accident call your attention to the fact that the controller had been inspected at all? A. No.

Q. So you have no way of recollecting when that car was inspected in August of 1910? A. No, only by the sheets, that is all I can go by.

Q. You have seen the sheets? A. I have seen the sheets, I have the sheets for six or seven years.

HIS LORDSHIP: I think the situation is plainly that the witness cannot

recollect one incident in the case. All he can say is that he can go by the sheets.

Mr. McCarthy: Subject to your Lordship's ruling, I would submit the question in reference to the sheets which he has.

His Lordship: 99 cases out of 100 it is not objected to because we want to get at the actual facts, but if the objection is taken, I am afraid I shall have to so rule, but it is against my own desire.

Mr. Gamble: In all these cases there is a reason. Your Lordship says if I object, you won't admit it, although you would like to have it. What I was going to say is this, that for all these rules of evidence there are reasons, and the Courts have decided that evidence of this sort is not to be admitted, because it is not reliable.

His Lordship: That is not the reason. The main reason and the only reason is this, that a witness must give his oral evidence as to what he personally can recollect. If he cannot recollect it—the evidence must be given under oath.

Mr. Gamble: And behind that is the reason, my Lord, it has got to be given under oath. What is the use of having it under oath? Because you want evidence of real facts. You don't want to have reports loaded up——

His Lordship: If anyone would suggest that witness is going to make a false entry before the accident happened, it would be very extraordinary.

Mr. Gamble: Now, I am casting no reflection on my learned friend when I say this, it is not necessarily before the accident happened; the whole thing might be concocted in a week.

His Lordship: That will come out, if there is going to be anything concocted. However, I have ruled with you.

Mr. McCarthy: Q. In the inspection of these controllers, do you inspect the cables which come from them? A. Underneath the car?

Q. Yes? A. Yes, I inspect the cables underneath the cars every night up as far as the controller, and the controller man inspects them.

CROSS-EXAMINED by Mr. Gamble:

Q. What cars are you talking about that you examine? A. What cables?

Q. Yes? A. The cables from the machines.

Q. From the machines to where? A. Up through to where they go into the box to lead to the controller.

Q. How far do you examine those? A. Well, from the machine up to the bottom of the car.

Q. And that is about the middle of the car, isn't it about the middle of the car? A. It just depends on which machine you are at.

Q. Where is it that your cables stop, what part of the car? A. Well, they run right along to the back of the car, from the front to the back.

Q. Where are the wires that you examine, the cables that you examine; will you tell me just whereabouts they are in the car? A. They

run along the inside of the car in a box and come down opposite each machine.

Q. How far do you go back towards the back of the platform and examine those? A. You see we only examine them from the bottom where they come out of the machine and up into this box.

Q. You don't follow them along that box? A. Oh, no, we cannot.

Q. Just between the motor and the box, that is all? A. Yes.

Q. Who inspects the wires at the controller? A. The controller man.

ALBERT MITCHELL, sworn. Examined by Mr. McCarthy:

Q. You are conductor in the employ of the Toronto Railway Co. A. Yes.

Q. You were the conductor on the car on which this accident happened in August last on King street? A. I was.

Q. You remember starting up that night from Sherbourne street? A. Yes.

Q. Where were you on the car? A. I was about the third seat from the front.

Q. When you started? A. When we started.

Q. Were your seats all full? A. Pretty fairly full. There would be about 65 passengers on the car.

Q. On the motor? A. On the motor.

Q. How many does she seat? A. The seats face the one way.

Q. How many seats would there be? A. That I could not say. The car should seat about 75 or 80 people, I should say.

Q. You say there were about 65 on that night? A. Yes.

Q. When the car started from Sherbourne street you were standing where? A. I had collected the fares. We stopped at the street before you come to Sherbourne street to pick up some shopmen, and then we proceeded on to Sherbourne street, and I had collected their fares, and I was about the third seat from the front.

Q. Standing on the side of the step? A. Yes. There was a lady and little girl that got on at Sherbourne street, and, of course, the car proceeded; the Belt Line car went up first, and the motorman gave her one position to turn his point and then, of course, threw off the power.

Q. You could not see what the motorman did? A. I was up there and seen that.

Q. Do you remain there? A. I went to collect this lady's and the little girl's fare.

Q. Where did she get in? A. She got on, it was about the fifth seat from the front of the car.

Q. So after she got on you say you stepped back to collect her fare? A. Yes.

Q. Had you crossed the intersection by that time? A. We were just crossing the intersection.

Q. Where were you when the explosion took place? A. Just at this fifth seat.

Q. What did you do when the explosion took place? A. Well, of course, I didn't get much time to do anything. A big woman came and knocked me off; I guess she weighed about 400.

Q. That is where you felt the shock? A. She grabbed my collar and tore it right off.

Q. You went down on the street? A. I went down on the street and I jumped up, and of course I ran to catch up with the car to get on, you see, to get at the pole, and when I got there I got knocked off, a man with a bag came up and knocked me off again.

Q. So your experience began opposite the fifth seat, when the lady took you off, and then you say you jumped up and ran along to catch the car, and as you got on the rear end the man with the bag knocked you off again. What sort of a bag was it? A. He was a plasterer's laborer.

Q. Then after you got the second knock-out, what happened you then? A. Of course, I made a grab for the car; of course I had the box in one hand, and I grabbed with the left hand on the car, and I got on. There was a man had the pole down at this time.

Q. Did you see anything of the motorman during this time? A. The motorman opened the vestibule door and leaned around and told the people not to jump off.

Q. Did you hear him? A. I remember him distinctly say that.

Q. Did he say anything to you? A. He yelled to pull the pole off, and when he yelled that, of course, I got the knock.

Q. Did you see the motorman outside the vestibule at all? A. Not until after the car was stopped.

Q. When you were running along the street, could you have seen the motorman, or was he there? A. The motorman was in the vestibule.

CROSS-EXAMINED by Mr. GAMBLE:

Q. Now, when this 400 lbs. struck you, where did you light? A. Well, of course, naturally out on the street.

Q. Was the 400 lbs. on top of you? A. Well, she was hurt, too.

Q. Of course, you did not do any of the damage, did you, to the 400 lbs? A. Oh, no, no.

Q. You weren't annoyed with her at all. She lit out on the street with you. How did you do; did you sit down opposite to each other? A. Oh, no, we did not get time to think about that.

Q. You did not have time to exchange any compliments? A. No.

Q. How did you light? A. Well, on my side, of course.

Q. It is not of course, because there is a softer spot on your body than that, which it would have been just as easy to light on, but you laid on your side as a matter of fact? A. Yes.

Q. And the lady, where did she light, on your side, too, or on her's?

A. Well, that I don't know with reference to where she landed, but, of course, her wrist was twisted.

Q. It got entangled in your collar, I suppose. Did you labor around on the ground for any length of time? A. No chance. I ran alongside the car.

Q. I have not got you up yet? A. I don't take so long as that to get up in the morning.

Q. You laid on your side on the ground talking to the lady? A. No, I had no conversation with her. We are not allowed to talk to passengers.

Q. And as long as you laid on your side, of course the motor was moving along? A. Moving along, yes.

Q. You got up? A. Got up.

Q. Where was the motor when you got up? A. Running alongside.

Q. Good Heavens, you weren't running along on your side when you were lying down? A. You said, where was the car—it was running along.

Q. Where were you? A. I got up and ran along with it.

Q. Surely to gracious, after being knocked off the fifth seat, you weren't able to get up and find yourself by the car, were you? A. Oh, yes, I was not knocked unconscious.

Q. But you mean to say, after the 400 lbs. knocked you on to the ground, that you had time to get up and still the car was beside you? A. Yes.

Q. You must be the rubber man? A. Oh, I am a beauty of a contortionist.

Q. Then you just bounced up, so to speak, the car going four or five miles an hour, you lay on the ground, and you bounced up and found yourself just beside it, and you got up and ran along with it; is that it? A. I did not find myself; I picked myself up and ran.

Q. Who found you? A. Nobody found me; I found myself.

Q. You picked yourself up and ran along by the side of the car. A. Yes.

Q. The car had not got away from you? A. It is impossible; I am a good sprinter.

Q. You did not sprint while you were on your side? A. I did not lay that way long.

Q. But you had time to get up, and when you got up you found the car had not passed you? A. About two seconds I lay there.

Q. How far would it be from the fifth seat to the back of the car in feet? A. About 18 feet.

Q. And although you were right down on the ground, when you got up, where were you beside the car, how far back were you? A. Just about the rear seat, just the handle was right opposite me.

Q. Did you try to get on then? A. Yes, I tried to get on.

Q. There were some people on the platform, you could not get on? A. Yes, there was a man with a bag there.

Q. There were others standing there, too, weren't there? A. Just two men on the back.

Q. Standing there? A. Yes.

Q. People sitting there? A. No, there was nobody sitting on the back seat of the motor.

Q. Did you hear what Mr. Cheer said yesterday. A. I don't care what he said.

Q. I am not asking you whether you care; I am asking you if you heard? A. Yes.

Q. You say that there was no one sitting on the back seat? A. No, sir.

Q. Not when you were on the other side of Sherbourne street? A. On the other side of Sherbourne street there were two more passengers. They jumped off.

Q. When you got there, there were only two men there, and they were standing up? A. One was holding the pole down, and the other one would not let me on.

Q. And the other one hit you in the stomach with a bag? A. Yes.

Q. He wanted to get out? A. Of course he did.

Q. Have you ever seen the 400 lb. lady since? A. I don't know as I have. I haven't been on King street since; I have been on King street, all the time.

Q. Then you heard the motorman tell you to pull the trolley pole down? A. I did.

Q. You saw him, did you? A. I seen him.

Q. And where was he when he spoke to you? A. He was standing on the footboard, with his hand on the side rail.

Q. Which way was he facing? A. He was facing toward the pole.

Q. Had he come out of the vestibule? A. He was just looking around like this (indicating).

Q. He was on the footboard? A. One foot. You see there is two steps down on to the bottom step; he was standing on this step here.

Q. On the second step? A. With his hand on the rail looking around like this (indicating) and calling to the people to keep their seats.

Q. When did you lose sight of him? A. Well, in the crowd. I seen him when the car stopped.

Q. When did you lose sight of him. You saw him looking around and telling the people to keep their seats and telling you to pull the trolley pole down, you lost sight of him then? A. Yes, when the 400 lbs. knocked me down.

Q. When did you see him again? A. When I ran alongside of the car, he was still in the vestibule.

Q. No; he was outside? A. He was not outside; I never said such a thing.

Q. He was looking around the vestibule? A. He was not outside.

Q. Wasn't his body? A. It was only half out.

Q. And when you looked for him again, after recovering your equilibrium, where was he then? A. In the vestibule; he was all inside this time.

Q. Was there any smoke in the vestibule? A. Yes, quite a lot.

Q. How could you see him? A. I could see it when I went to pull the pole off.

Q. Wasn't the whole car full of smoke? A. Well, not all.

Q. Wasn't the glass shut between you and the interior of the car? A. Well, of course, that didn't prevent the smoke from coming through.

Q. But between you and the interior of the car—the back bulk-head, the glass in the rear bulk-head, that was closed, wasn't it? A. Yes.

Q. And then there was smoke, the car was full of smoke we have been told? A. Oh, about half full.

Q. And yet you saw through the bulk-head and the smoke and the other end, you saw the motorman in his box, did you? A. Certainly, because this smoke wasn't obscuring him.

Q. Who was it obscuring? A. You see it was only down the side.

Q. Now, I thought you had told my learned friend you did not see the motorman until the car stopped, I have here "didn't see him until the car was stopped." A. Well, of course, wasn't I pulling off the pole? I seen him when I was running along—you heard me make that statement—I seen him when I was running along, and I did not pay any more attention to him. I paid attention to the pole, I wanted to get the car stopped, and then when the car was stopped, I seen him then.

Q. You said that you tried—after you were knocked down and picked yourself up again and you went and got on the car, you tried to get rather, and the man would not let you on, he was trying to get off the back seat, that is right, and then how long after that was it that you got on the car? A. I was hanging on with my left hand, you see, to let this man off, he jumped off then and I got on. Well, of course, when I seen this man that he stepped down, the next thing to do was to wind the trailer brake, and I did that.

GEORGE SWEETLOVE, sworn. Examined by Mr. McCarthy:

Q. You were with Mr. McRae the night of this accident on King street? A. Yes.

Q. You are an employee of the Company, too? A. Yes.

Q. You were coming up Sherbourne street, with him? A. Yes.

Q. You saw this car pass the intersection, and you saw the explosion? A. Yes.

Q. And you ran along the side of the car with Mr. McRae? A. Well, I might not have just been with him, but I was there at any rate, I went along King street.

Q. You followed the car? A. Yes.

Q. Were you on the roadway or the sidewalk? A. Well now, I don't just remember for sure.

Q. Did you see the motorman? A. I did.

Q. When? A. When I got up to the car, when the car stopped.

Q. Did you see him before that at all? A. Well, no, I wasn't paying any attention to that; I was making for to get the trolley pole off.

Q. And the car stopped before you reached him? A. Yes.

Q. What did you do when you got there? A. I went right to the front of the car, and I tried to get in and I could not, and I came around to the door that runs in from the vestibule into the body of the car, and I opened that door to get in that way, and when I went to get in that way the motorman was there, and I helped to pull him out with somebody else over the back of that seat.

Q. What shape was he in? A. Well, he was pretty badly scared.

Q. What was the condition of the vestibule as regards smoke? A. Full of smoke.

Q. Was the man exhausted?

Mr. GAMBLE: Now, my Lord, Mr. McCarthy asked him what condition he was in?

HIS LORDSHIP: Asked him what physical condition he was in; he gave his mental condition.

Mr. MCCARTHY: Q. What was his physical condition? A. Well, he looked to me as though he was pretty badly played out.

Q. What was the condition of the vestibule? A. Well, it was full of smoke, and there was some flame there from the burning cable.

CROSS-EXAMINED by Mr. GAMBLE:

Q. What were you running after the car for? A. I was running after the car to try to get at the front end of the trailer to pull the pole down.

Q. When did you catch the car? A. When it stopped.

Q. You did not catch it until it stopped? A. No, sir.

Mr. MCCARTHY: That is the defence, my Lord. I wish, my Lord, to make the motion for a non-suit, on the ground that no negligence has been shown.

HIS LORDSHIP: I would entertain it even at this stage. In answer to the motion for a non-suit, what negligence do you think you have established, Mr. Gamble, so that the issues may be clearly before the jury.

Mr. GAMBLE: I think it is fair my learned friend should have any information I can give him.

HIS LORDSHIP: Taking it from your standpoint, if the case goes to the jury in an uncertain way and they give as an answer of negligence, something that counsel know perfectly well won't hold water. I had once before at St. Thomas, where counsel formulated his negligence and went to the jury, and the jury gave answers to the questions of negligence, none of which were formulated by counsel, and the Divisional Court said there was nothing to go to the jury.

Mr. GAMBLE: Your Lordship's first question to the jury will be?

HIS LORDSHIP: Was the accident caused by negligence? And the next: What was the negligence?

Mr. GAMBLE: Take the negligence in order. The first negligence is in having the car overcrowded, so that when an accident occurred passengers became panicky and crowded out of the car.

HIS LORDSHIP: In regard to this man, there were three passengers in his seat, there were only those two passengers besides himself, so I do not think there is very much for that.

Mr. GAMBLE: The panic in the car.

HIS LORDSHIP: It did not affect him, except——

Mr. GAMBLE: Except so far as it extended to the women.

HIS LORDSHIP: He cannot complain of overcrowding.

Mr. GAMBLE: I would say, yes, my Lord. Then that the conductor by the overcrowding was prevented from attending to his duties in pulling down the pole; that the seats were too closely set together, that the motorman failed to apply the brake, and that the pole was not pulled down until too late. Then I propose to argue to the jury this doctrine of res ipsa loquiter in reference to the defective condition of the controller or wires. Then, that the evidence shows that there was a defective condition of the controller or cable, which was responsible for the accident. I think that covers the whole ground.

Counsel addressed the jury.

Court adjourned until to-morrow at 10 a.m.

Resumed September 27th, 1911.

CHARGE.

Now, Gentlemen of the Jury, it is your duty and mine to consider this case for a little while and try to bring our minds to bear upon the precise questions that you and I have to determine, because, according to the law of this country, I have to deal with the legal questions, and you are made the sole and absolute judges of all questions of fact. I may give you my ideas in the course of discussion, or I may not, just as I see fit, but, if I do express to you any views of my own, that is only an expression of my views upon the questions of fact which you are not bound to regard or pay any attention to, because our law thinks it better in a case of this kind, that the jury, a body of men picked from different walks of life, should deal entirely with questions of fact. The judge, of course, naturally has to deal with the legal questions, because he has had the legal training which unfortunately—or perhaps I should say fortunately—you have not had. Therefore, in the first place, I want to say one word to you about your duty. It is your duty to approach this matter realizing that for the moment you have been made by the law to occupy the position of judges. You are bound to approach the matter with every idea of giving absolute justice and fair play to both litigants. You are not to be swayed by any motive arising from your desire to help an old and unfortunate man, who has suffered a serious accident. You are not to be in any way influenced by this being a contest between a man on the one side and a company on the other. You are to regard the matter with as great fairness as it is possible for you to do. You are to take exactly the same stand of impartiality and fairness in what you do as I must take in the discharge of my duty, and I leave the case to you, trusting and believing that you will not allow any improper motive to sway you in any way, and that you will struggle against any feeling of sympathy you may have in your desire to do that which is absolutely clean-cut, cold-blooded justice between these parties.

Now, as counsel have said to you, no doubt there was this accident, no doubt there was this explosion, and no doubt there was a serious injury to this unfortunate plaintiff; but it does not follow by any manner of means that, because there was an accident, upon the Street Railway, therefore the Street Railway has to pay.

In the first place, I want to put entirely on one side any question arising from the fact that these ladies shoved the old gentleman off the car. If, through the negligence of the Railway Company something happened, the natural consequence of which was that the passengers got excited and acted foolishly, and so shoved the old man off the car, the Railway Company are just as much responsible as if through their negligence they had themselves knocked him off the car, because the passengers getting into a fright and getting into a panic, is a natural thing to result from the happening of the explosion. But we have to get back to the fact and ascertain whether the explosion resulted from negligence, I fancy you will have very little difficulty in finding that the injury to the old man

followed as the natural and ordinary consequence of that explosion, if it was caused by negligence. So we have to face the real difficulty; was there negligence? Now, negligence is this: You have to find something which the Company did which they should not have done, or something which was left undone which they should have done. There are duties arising from different relations in which different persons find themselves to others. If I were standing somewhere alone in a wilderness, I would owe no duty to anybody else, but as soon as some other person came into that wilderness, I would owe him a duty. As soon as he came near enough for me to do anything to him or which would affect him; I must not injure him by anything I might do wilfully or negligently. Special relations may exist between parties, persons or corporations. Merely because we are living together in a civilized world, we owe certain duties to each other. Special contracts may also impose special duties and obligations.

Now, this man was a passenger on the railway, and therefore the Railway Company owe to him the duty which every carrier owes to his passengers, that is to say, they owe the duty to provide a reasonably safe car for his carriage, they owe him the duty of operating that car as far as they can in a safe manner. They must not be guilty of negligence either in providing the car or in the mode in which they operate that car; that is to say, they are to do all reasonable things to avoid the happening of any accident to him, and they must not leave undone anything which would conduce to his safety, and which would suggest itself to a careful, considerate and painstaking carrier.

Now, Mr. Gamble has given to you a list of the things in which he says this Company has failed. I am going to go through these and draw your attention to the meaning of each one of them as best I can, and draw your attention to the evidence very shortly as it bears upon each of these questions. But I want, in the first place, to say to you, that I propose submitting to you three questions, and the first one is this: "Was the accident to the plaintiff caused by any negligence of the defendants?" Now, it is quite manifest to anyone who thinks for a moment that many things happen which we call accidents, which are nothing more or less than what is known in law as a pure accident, that is to say, no one is to blame, things happen which we cannot say in fairness anybody ought to pay for. A man may do his best, and having done his best, as has been illustrated to you by counsel, something that he could not by the exercise of reasonable care have foreseen will happen, and some injury will be done. Now, for that kind of thing nobody is responsible; it is just one of those accidents which everyone is subject to and as to which we all have to take our chances. Before this plaintiff can succeed against the Railway Co., you have to find, as I said before, that there was something specific which was left undone which should have been done. Then the second question is: If so, what was that negligence? Now, I want you to answer me the second question fully. To the first one you can say "Yes" or "No." If you find there was no negligence, you do not need to

trouble yourselves any further. On the other hand, if you think there was negligence, I want you to be very particular in giving your answer to the second question, and do not be afraid when you come to write out the answer of saying exactly what you mean, because a great deal of time is taken up in our courts afterwards in trying to find out exactly what a jury did mean when they have made certain answers, and I want you to put down just whatever negligence you think existed; do not rest content with putting down one item; if you think there was negligence in ten items, put them down, because it will be assumed by the Court that you have stated the only negligence you are able to find and so you will find against the plaintiff by silence with regard to any of the particular grounds. I think that is a fair thing for you to know. When you come to deal with these different matters, express in your own language as clearly as you can exactly what it was that was left undone, or what it was that was imperfectly done.

Now, to run over these items. Mr. Gamble did not give them to you quite in the order of their importance; so in order that none will be overlooked, I will take them in the order in which he gave them to you. He says, in the first place, the car was overcrowded, and he says several things were thus brought about. In the first place he said that the car was so full that it made it easy for a panic to take place among the passengers. A panic did take place, and as a result this man was thrown out. Now, upon this question of overcrowding, you have, I think, two certain statements to go upon. You have the statement of the conductor of the car that there were about sixty-five passengers on the car, a car that would seat seventy-five or eighty. Now, these cars are being operated for public convenience; the street cars are used for the service of the public; that is why they are there. The street car is made for the carrying of people home, in order to get home from their work, and at this hour of the evening the factories are all discharging, the shops are all emptying, and at half-past five in the evening naturally you will expect a street car to be full; and it is for you to say whether there was anything wrong in a street car, capable of carrying seventy-five or eighty people, having sixty-five upon it. I should have thought that as long as the seats were not full, there could not be said to be any overcrowding. Beyond that we have this specific statement made by the plaintiff himself, and upon that you can rely; of course the plaintiff will say you must not absolutely rely upon what the conductor said. You are, of course, the absolute judges. From the man's demeanor and the way he gave his evidence, you are the judges of the weight that is to be given to his testimony. But you have the plaintiff's own statement, and he says that in the seat in which he was, which was capable of seating five, there were only three people. So that does not look like overcrowding, and I fancy that that aspect will give you comparatively little difficulty. Then the other suggestion is made, that by reason of this overcrowding, the conductor was unable to discharge his duty in that he could not pull down the trolley pole as quickly as he might, and so bring the car to a standstill. Well, I will tell you, as a matter of law, that he is not

bound to stay on the rear platform of the car; he has other duties to discharge. He was rightly in the discharge of those other duties, along the side of the car collecting fares. Well now, when the accident happened, coming as suddenly as it did, and the passengers being frightened as they were, he was along with the rest, along with this plaintiff, shoved off the car; he endeavored to get on, and in so doing he ran against the people getting off the car, and before he had got upon the car, the trolley pole had been pulled down by some man on the car, and the duty that is stated he did not do had been done for him. Now, I do not see very well how you can find that there was any negligence there; but I am not going to take the case from you upon that point, I am going to leave it to you.

Then it is said that these seats were too close together. That again it seems to me to be a matter in which you will find difficulty in holding the Railway Company guilty of negligence. The Street Railway Company naturally desire to carry as many passengers as possible and the passengers naturaly desire and expect as many seats to be put in a car as can be, so that as many can be accommodated as possible. Whether this unforeseen thing, the happening of this explosion, the panic as the result of that explosion, the shoving out by these two ladies—I do not know wether they shoved the old gentleman out intending to do so for his good, and thinking it was safer for him and them to be upon the road, or whether they simply shoved him out in an endeavor to get themselves to safety, but whichever it was, was it a thing for which the Railway Company were in any way blameworthy? Were they in fault in not having foreseen that the proximity of these seats in the happening of an accident and panic might bring about such a result as happened that day, is a question for you.

Then we come to the fourth suggestion. It is said that the motorman did not apply his brake. Now I think it is pretty clear upon the evidence that he did not. But just the same as you excused the passengers for getting into a panic and say they were not doing anything wilfully wrong in throwing the old man off for his own safety or for theirs, as the case may be, so you must realize the fact that a man in the position of a motorman, confronted with a difficult situation, confronted with a position of peril, is not at all times to be blamed because he does not do the thing that we sitting down here afterwards might think was the wisest and the best thing for him to have done. You must judge his conduct leniently, because the situation which confronted him was a difficult situation, and one which did not give him any time to realize the position. Here is the hood switch up above to be operated, it had turned off, he could not turn off his current there, the current was still going into that car, and burning everything as it came in; he turned off his controller and that did not stop the electricity coming in, and he realized that the only thing that remained for him to do, to stop the electricity coming into the car and doing damage, he did not know where it would end, was to have the trolley pole pulled off; so, knowing that no harm was being done by the running on of the car, the first thing was to stop this current coming into

the car, so he shoved his head around the corner, he called to the conductor, "Pull down the trolley pole," knowing that that would immediately stop the real danger of the electric current that was flowing into the car, and it is for you to say whether he is said to be guilty of negligence because he did not in the first place apply the brakes, and so delay the more important matter of cutting out the current to some extent. Now, you have heard the evidence as to the condition in which the man was found, you have heard the evidence as to the vestibule, and it is for you, as practical men, to say whether he is found to be blameworthy; and in judging that question, you have to judge it as judging the motorman himself; you have to say whether that man was to blame in what he did, or whether on the whole he acted as wisely as you would expect a man to do under the circumstances.

Then, it is said that the pole was not pulled down until too late. Well, the motorman could not pull it down, because he was in the front part of the car; the conductor was a good way off in the discharge of his duties, and I think you will probably feel that he did his best to get back to that back platform to get the pole down. There was no obligation upon anyone else to pull it down; so you are practically to say whether you think the conductor did not do his best to get that pole down.

Then, Mr. Gamble spoke next about what has been called "Res ipsa loquitor," that is, "The thing speaks for itself." I think he misunderstood exactly what the law is upon the subject. No doubt, when an accident does happen, when the unusual thing happens, that should not happen in the well-regulated street car, or well-regulated factory, then it is said, "The thing speaks for itself." That is to say, the plaintiff does not need to show more than the happening of the explosion before the defendants are called upon to explain why it happened, and if Mr. Gamble had chosen to rest his case and did not call any witnesses to explain the cause of the accident, I would have said to him, "That speaks for itself. The defendants have got to now answer the case." But you, gentlemen, have heard the explanation. Each side has explained to you what in his view caused the accident. The defendants in this case have gone into the case, and they told you exactly what they did. They have endeavored to explain to you the car which they took out; they have shown to you exactly what was done in the way of purchasing materials and choosing machinery, in the way of installing machinery, in the way of overhauling the machinery, and taking care of it to see that it does not get out of repair, so that this maxim has not anything to do with this case. And here you are face to face with what seems to be the real problem in the case: Was there anything wrong in the car or in the installation of this electric equipment upon this car? Because it is admitted by the witnesses for the plaintiff that the machinery which was put in was the best that could be got. And I tell you, as a matter of law again, that a carrier does all that he is bound to do when he buys the standard equipment, the best equipment he can buy. The carrier does not guarantee that the machinery will not break down. He does not make the machinery. He goes to the estab-

lished and reputable manufacturers and he buys good machinery, and if he installs that property and takes care of it properly, his duty is at an end. Now, as I say, everyone admits that the controller was one of the best controllers they could get; everyone admits that the cut-out switch was one of the best switches that could be bought; and everyone says that the wiring which was put in was as good wiring as there is upon the market. So there is no liability there. But the real question is, was there a sufficient and careful inspection? Well now, you will have the exhibits if you choose to take them to look at them, you will see the kind of wire that is used. This wire, according to the evidence, was carried up into the controller through the hole in the bottom of it, which was made by the manufacturer for the purpose of having just such a wire as that carried through. You were told in the installation of that, that the outcoming wire was carefully covered in addition to this insulation by insulating tape, so as to give additional protection, the witnesses said the liftime of the wire under ordinary circumstances would be from ten to fifteen years; they told that new wire was put into the car about two months before the happening of this accident; and you are told by Mr. Richmond that probably that the defect which caused this accident was occasioned by the passing of electricity from one of the side wires into the big outgoing wire, and that that would take place in almost the twinkling of an eye; the electricity would begin to leak, and leaking it would soon get such a discharge through the installation that the current would then flow and the flowing of the current would do all the damage.

Now, you have heard what the witnesses have said about the inspection. You saw the men in the box; you are as good judges, and probably you are better judges than I am of the credit to be given to these men. It is for you to say whether these men did their duty, or whether they were negligent to their duty. It is for you to say whether what was done was sufficient by way of inspection or not. You have heard the evidence, and I am not going to recapitulate it to you; but when you come to answer that question, I want you to answer specifically and say precisely and exactly what it was that you think is omitted that should have been done, so that if there is any question about the matter, we will have hereafter, if the case is ever appealed, a statement of precisely what you as practical men and as men who are used to machinery of this kind, more or less, think or consider the Railway Company failed in, or these officials failed in when you find the existence of negligence.

Now, that, I think, covers the different grounds of negligence suggested. I think perhaps it might be helpful to you, because I do not know how much you know about electricity, that I should try to explain to you what was explained to us yesterday by the witnesses here. You will have that sketch or diagram showing how the wires run in the car. Well now, a good deal was said at the beginning that I think this disappeared before we got through because Mr. Barton, who gives evidence in a way that impressed me, giving it very candidly and fairly, said there is nothing inside the controller that went wrong in controlling the machin-

ery, thus there was nothing in all this complicated wiring in the car that went wrong except in the one place, by reason of something that took place in a comparatively narrow space. Now, the system by which this car is run is this: There is a great quantity of electricity sent down the feed wire that runs down the street, you can get any quantity of electricity out of that; that electricity passes down through the different wires until it gets to the motor, when it gets to the motor it does its work; it passes out through the ground wire, the large wire, and gets out back to the station; so that the electricity is going all the time, through the wires, through the motor and through the ground and back to the station again. Now, that is the way it works. It is a physical fact with regard to electricity that as long as it is not flowing through the wires, it will not do any great deal of harm, and no great degree of work or any work at all; it is the flowing electricity through the wires that does both the work and the damage. When a little too much electricity is flowing through a wire, it creates a great deal of heat, and if a wire is not able to carry that load, the amount of flowing electricity, the wires get intensely hot. This car was equipped so that it will take what they call 150 amperes to operate these motors. If the motors get overloaded, if there is too much electricity let into them, they get hot and burn out, and therefore they had this cut-out device, and they had that set at 300 amperes, so there is a margin of another 150 amperes in round figures before this cut-out is called into operation. Now, if anything happens by which, instead of 150 amperes being let through the car, they are letting through more than 300, that opens the space through which the electricity would otherwise flow, a connection through which it would flow, and the flow of the current is stopped, so that if the motorman turns on too much current, if there is any great overflow of electricity, the cut-out will operate. This "cut-out" is fixed so that it will take care of all the flow between 300 and 600 amperes, and when it goes over 600, the machine will not take care of it, because such an enormous flow of 600 is something that nobody has foreseen, and nobody did foresee what was then going to happen. The witness says that the flow of electricity in this case must have been ten times what was normal, it must have got up to in the neighborhood of 1,500. The result was that when that enormous flow of electricity started, from whatever cause it did start, the whole thing melted, melted down into a mass of fused metal and ran down, and then the controller would not work and would not shut off, and the current ran through this melted metal to the ground wire and was in the meantime burning everything in its way. That, I think, will give you an idea of what Mr. Richmond meant when he said the accident happened by this grounding. You see the grounding happened in this way: the electricity getting through all these wires let the enormous quantity of electricity of this overhead trolley wire get down through all the connections and get out, and as it began to flow rapidly and in quantities, it brought about the heat and the flame. Now you will find that these two systems of wires, the wire which is shown in that plan as the red wire, that is the wire that is carrying the electricity

before it has done its work, before it has gone through those motors; and you will find the black wire indicating the outgoing or discharging wire. It is said that the electricity broke through the insulation from the one wire to the other, and I think that is a very reasonable explanation of what took place. So the question is, was there anything which this Company should have done and which they omitted to have done? In the first place, it is admitted by all that the wire they put there is all right; it is admitted that the system of testing it was the proper system. Was there anything negligent in the application of it? Was there anything negligent in anything that was left undone which they should have done? Was there anything which a competent and careful man operating such a car as that, and having charge of it, regarding him as an individual said to be in fault instead of a corporation, ought to have noticed and ought to have seen which would have prevented the happening of this disaster? If there is, find it and say so, and then you have dealt with the second question satisfactorily.

Then the last question is the question of damages. Now both counsel stated the law and the bearing on that matter to you very fairly, and I think accurately. I did not notice any difference between what was said to you, except that one man was looking through the large end of the telescope and the other through the small end. You are to give, in the first place, the expenses, what he has been out of pocket; give him what earnings he has lost because that is a branch of his out of pocket expenses; you give him what you think is fair for the pain and suffering which he had, and you give an allowance for the future, having regard to what you might think his earning capacity would be to the extent to which that earning capacity has been injured. You are not to put aside a large sum of money, and say live on the income of that, because the money would still be there, and he would have no right to have it; but you are to say, here is a man of 69 years of age; nobody has told us how long he is likely to live; you have got to apply your own common knowledge to that. Nobody has told us how long he would be able to work. Do the best you can. You are to allow him what you think is fair. Allow him such a sum as you think he is entitled to for undergoing such an injury, and such a sum as you think that a man who has been guilty of negligence should pay to a man who has been the victim of that negligence, not giving any damage by way of punishment, because nobody suggests for a moment that the Railway Company wanted this kind of thing to happen, but award him a sum purely and simply upon the basis of the loss which he has sustained.

I am sorry that the case has taken so long, and I am sorry that I have taken so long in discussing it with you, but I want you to understand it, because your desire and mine will be that we may arrive at a just result, a result, if it is criticised afterwards by other courts, which will be found without defect and that there may be no negligence on our part for which we may be blamed when it comes to be considered.

Mr. Gamble has rightly drawn my attention to the fact that some of

the other witnesses who were called spoke of the condition of the overcrowding in the car. I did not intend to say what I mentioned to you was all the evidence about that; and you, of course, have all the evidence present to your mind, and you will give to it what weight you think it is entitled to.

Mr. Gamble is quite right in another matter he draws my attention to. He says there is no evidence in the one sense that the proper system of testing cars was applied to this car. The position there is one you will readily understand. You have evidence all the cars were tested; you have evidence that this car went into this barn and took its turn in being tested and examined along with the other cars; you have evidence of the system in use. No witness was called who could say, "I remember that on the night of the 7th of August or the night of the 6th, or whatever night it was, I tested car number 966; I have a record, I cannot use that record because I cannot remember anything about it, but I know that all the cars that went in were duly tested in their turn." Now that is just what happens in any case. I would not believe and I do not believe you would believe a man who came in here a year and some months afterwards and said, "I remember each of the cars I tested on the night of the 6th of August." All an honest man can say is, "I knew what my duties were, and I discharged those duties faithfully with regard to testing all the cars." It is quite true also in regard to the controller question, that the man whose duty it was to do this particular work is not here, for the reason given in evidence, that he had taken another job in another city, and they did not know where he was; so on that aspect of the case, you will have to do the best you can, and I can rely upon you to try to do what is fair to both parties.

Certified to be correct.

GEO. R. JONES,
Official Reporter, H.C.J.

IN THE COURT OF APPEAL FOR ONTARIO.

BETWEEN:

WILLIAM FLEMING,
(Respondent) PLAINTIFF,

AND

THE TORONTO RAILWAY COMPANY,
(Appellants) DEFENDANTS.

The Honourable the Chief Justice of Ontario in Chambers. Saturday, November the 11th, 1911.

UPON the application of the appellants for an order respecting the printing of the Exhibits in the printed Appeal Case in this appeal, and upon reading the consent of the respondent and upon hearing counsel for the appellants:

1. IT IS ORDERED that the printing of the two Exhibits, the photograph and plan of the controller, in the Appeal Case be, and the same is hereby dispensed with.

2. AND IT IS FURTHER ORDERED that the costs of this application be costs in the appeal.

Entered O.B. XII.
Issued 11th Nov., 1911. N. F. P.

N. F. PATERSON,
Registrar.

EXHIBIT No. 1.

Dr. T. Shaw Webster, 581 Spadina avenue,
Physician and Surgeon.

Toronto, Mar. 6th, 1911.

Mr. Fleming, 315 Euclid avenue.

To Professional Services—

Aug. 12th, 1910, cons. with Dr. McPherson		$ 5.00
August 14th, 1910, cons. re knee		5.00
August 15th, 1910, applying splint to leg		40.00
September 6th, 1910, cons.		5.00
November 8th, 1910, cons.		5.00
March 4th, 1911, cons.		5.00
		$65.00
		10.00
		$75.00

EXHIBIT No. 2.

Dr. D. A. McPherson, 244 Bathurst street,

Toronto, September 25th, 1911.

Mr. Fleming, sr., 315 Euclid avenue.

To professional services and medicine $90.00

EXHIBIT No. 7.

Length, 30 ft.
Weight, 37,870 lbs.
Truck, D.2, Curtis.
Motors, G.E. 1000 (4) Controller K.C.

CAR REPAIRS.

Built 1904 Rheos., T. R. Co.

Sheet No. 327.
Closed Car No. 966.
Brake, Magann air, Peacock hand.
Watson Fender.

1910.	Run in.	Date.	Reported for.	Repairs made.	Repaired by	Finished
R. Jany. 6				Wheels, 1 for chipped flange; motors insp.	Layden.	5 p.m.
K. " 22				Changed fields 3; new shoes put on; H.S. changed.	Hamilton.	2.30 p.m.
R. February 1				New jour box 4; wheels 2; jour and axle brngs 2; insp. motors.	Layden and Copping.	5.20 p.m.
" " 9				Put in light of glass.	Copping.	4.30 p.m.
MS. " 14				Rprd. contlr.; changed arm. 1, 2; mchne. 3; B.H. 1, 2; new shoes; fender reprd.	Conner and Brennan.	
R. " 17				Arm 1. for grnd.; motors insp.	Layden.	2 p.m.
" March 3	12.42 a.m.	3	Broken w'dow.	Cut and put in light of glass.	Copping.	3 p.m.
MS. " 7				Grnd. wheels, 1, 2, 3; 3 new drawbars; changed wheels, 4.	Roche, Peach, O'Neill.	5.30 p.m.
" " 9	7 a.m.	9	Blowing.	Arms. 1 and 4.	Kelly.	
R. " 16	3.6 p.m.	16	"	Arm. 3, op. cir.; motors inspt.	Layden.	5.30 p.m.
" April 7				Arm. 2, rough com.; motors insp.	"	3 p.m.
" May 5				Arm. 2 for grnd.; B.H. 3; motors insp.	Copping.	3 p.m.
K. " 11				Cleaned arm. 3.	Stuart.	10.30 a.m.
R. " 14	5 p.m.	14	Blowing.	Changed B.H. 2; cleaned com.	McMillan.	
" " 26				Arm. 3 for grnd.; B.H. 3 reverse roll; insp. motors.	"	3.25 p.m.
" June 4	1.19 p.m.	4	Machine.	Contlr. cleaned; motor insp. and tested.	Layden.	3 p.m.
" " 6	6.30 a.m.	6	Contlr.	Changed contlr. for burning on reverse finger board; insp. motors.	McMillan.	2.30 p.m.
" " 28				Insp. wheels, O.K.; motors insp.; tightd. bolts.	Layden.	12. a.m.
" July 29	8.7 p.m.	29	Blowing.	Cleaned up 2 and 4.	Barton.	2 a.m.
" August 2				Axle brngs, 4; insp. motors.	McMillan.	5 p.m.
MS. " 12				Rewired all through, also cable for trolley.	Corp and Rondeau.	5 p.m.
" " 18	5.42 p.m.	18	Controller.	Reprd. contlr.	Corp.	6.25 p.m.
R. " 19				Arm. 2 for strng. band and B.H.; insp. motors.	Layden.	5 p.m.
" " 23				New main roll finger.	Bolton.	9.30 p.m.
" " 26				Wheels, 3 for flat, new collar and insp. motors.	Layden.	5 p.m.

K. October 1				Changed arm. 4, B.H. 2 and 4; H.S.; cleaned arm. 2.	McDonald	4.30 p.m.
R. " 10				Plugs, hngrs. and bolts, sockets, and shoes; insp. motors.	Flewelling.	4 p.m.

"	"	23				New main roll finger.	Bolton.	9.30	p.m.
"	"	26				Wheels, 3 for flat, new collar and insp. motors.	Layden.	5	p.m.
K.	October	1				Changed arm. 4, B.H. 2 and 4; H.S.; cleaned arm. 2.	McDonald	4.30	p.m.
R.	"	10				Plugs, hngrs. and bolts, sockets, and shoes; insp. motors.	Flewelling.	4	p.m.
R.	"	25	11.45 p.m.	25	Dead.	New B.H. 2; terminal M.R. fingers and reverse fingers.	Barton.	3	a.m.
K.	November	7				Changed arm. 2; cleaned 3 and 4.	Roche.	3.30	p.m.
R.	"	10				Put in light of glass.	Copping.	3.30	p.m.
K.	"	29				Changed arm. and B.H. 1; cleaned arm. 2.	Roche.	2.30	p.m.
"	December	2				Changed arm. 1.	McDonald.	9.30	a.m.
"	"	16	2.30 p.m.	16	Jour. box.	Changed jour. box 3.	Brown.	3.30	p.m.
R.	"	22				Arm. 4 for brngs.; insp. motors.	Layden.	4.20	p.m.
K.	"	24				Arm. 2 and B.H. 2 changed; H.S. contlr. cleaned; new rev. roll.	McDonald.	11.20	p.m.

IN THE HIGH COURT OF JUSTICE.

The Honorable Mr. Justice Middleton.

Wednesday, the 27 day of September, 1911.

BETWEEN:

WILLIAM FLEMING,

PLAINTIFF,

AND

THE TORONTO RAILWAY COMPANY,

DEFENDANT.

This action having come on on the 25th and 26th days of September, 1911, and again this day for trial before this Court and a Jury of the County of York at the Assizes holden for the County of York at the City of Toronto in presence of counsel for both parties and the jury having answered certain question submitted to them by the Court and assessed the damages of the plaintiff at the sum of $1,200.00 and upon hearing counsel aforesaid.

(1) THIS COURT DOTH ORDER AND ADJUDGE that the plaintiff do recover against the defendants the sum of $1,200.00.

(2) AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the said defendants do pay to the said plaintiff his costs of this action forthwith after taxation thereof.

Judgment signed this 4th day of November, 1911.

GEO. S. HOLMESTED,
Registrar.

D'ARCY HINDS,
Clerk, J.C. & P.

IN THE COURT OF APPEAL FOR ONTARIO.

The Honorable the Chief Justice of Ontario, in Chambers.

Saturday, the 21st day of October, 1911.

BETWEEN:

WILLIAM FLEMING,

(Respondent) PLAINTIFF,

AND

THE TORONTO RAILWAY COMPANY,

(Appellants) DEFENDANTS.

UPON the application of the above named defendants for an order allowing the defendants to appeal direct to the Court of Appeal for Ontario, from the judgment of the Honourable Mr. Justice Middleton, dated the

27th day of September, 1911, upon hearing read the affidavit of D. L. McCarthy filed, and the pleadings in the action, and the answers of the jury to the questions submitted to them, and the defendants by their counsel undertaking to set the appeal down for the next sittings of the Court of Appeal for Ontario, and the plaintiff by his counsel undertaking to expedite the said appeal:

1. IT IS ORDERED that the defendants be, and they are hereby allowed to appeal direct to the Court of Appeal for Ontario, from the said judgment of the Honorable Mr. Justice Middleton.

2. AND IT IS FURTHER ORDERED that the defendants be permitted to set down their appeal for the next sittings of the Court of Appeal for Ontario, without the deposit of the printed Appeal Case as required by the rules of Court, they undertaking to deposit the same and deliver copies thereof to plaintiff's solicitors on or before the first day of the next sittings of this Court.

3. AND IT IS FURTHER ORDERED that the costs of this application be costs in the appeal.

Entered O.B. XII. N. F. P.
Issued 24th of Oct., 1911.

N. F. PATERSON,
Registrar.

TAKE NOTICE that we have this day paid into Court the sum of $200.00 as security for the costs of the defendants, appeal to the Court of Appeal for Ontario.

Dated at Toronto this 24th day of October, A.D., 1911.

McCARTHY, OSLER, HOSKIN & HARCOURT,
Defendants' Solicitors.

To Messrs. C. & H. D. Gamble,
Plaintiff's Solicitors.

REASONS FOR APPEAL.

1. The plaintiff in this case was a passenger on a car of the Toronto Railway Company, on the 10th day of August, 1910, and met with an accident as the result of being shoved off the car by the passengers sitting next him.

2. The car upon which the plaintiff was riding was a King street open car, travelling east. The car stopped at Sherbourne street, crossed the intersection, and shortly afterwards an explosion took place, accompanied by a loud noise, and flames and smoke, frightening the passengers who were sitting next the plaintiff who was at the end of the seat, and they, thinking some harm would come to them and to the plaintiff, apparently shoved him out and got out afterwards, the plaintiff sustaining injuries, as the result of his fall.

3. The plaintiff in his claim alleged negligence against the Company, the negligence set forth in paragraph 8 of the claim being as follows:

"not having properly inspected the controller, or if so inspected "not having it put in proper order and in leaving the said controller "out of repair or not in proper condition to be in operation and in "having the cars overloaded and thus giving the controller too much "strain and in the motorman turning the power of the controller on "too suddenly when overloaded; neglecting to turn off the power "after the controller blew out and in the motorman deserting his "post and leaving the car to run away and in the conductor and "motorman neglecting to pull the pole off the wire and thus stop."

Subsequently the plaintiff delivered particulars of certain acts of negligence complained of, the particulars being as follows:

"The defective form and design of the car consists in having the "seats too close together; in having a running board on the outside "of the car instead of a passage in the centre of the car and the de- "fect in the general arrangements so that the employees cannot "pull down the trolley pole in an emergency or when required.

"Insufficiency of provision for electrical transmission in portion "of the equipment circuits; insufficiency of provision for insula- "tion between portions of the equipment circuits; insufficiency of "provision for insulation in the circuit breaker when open; insuf- "ficiency of provision for fire protection in case of trouble in the "provision for electrical transmission in portions of the equipment "circuits; insufficiency of provision for shutting off the power when "the circuit breaker failed to serve its purpose at the time of the "accident.

"The particulars in reference to the controller are as follows:

"Defective insulation and too low conductivity in the circuit."

4. The action came on for trial before the Honourable Mr. Justice Middleton on the 26th and 27th days of September, 1911, when the following questions were submitted to the Jury, their answers to them being as follows:

1. Was the accident caused by the negligence of the defendants?

Answer—Yes.

2. If so, what was that negligence; answer this question fully?

Answer—We believe the motorman was incompetent to handle a car in case of emergency. Had he used the air brake the car could have been brought to a stop before the accident happened, and we also believe the car was not properly inspected.

5. At the trial the only acts of negligence relied upon by the plaintiff were the failure of the motorman to apply the brake when the explosion occurred, and thus stopping the car, and failure to keep appliances in proper order, and failure to inspect the same.

6. In regard to the failure of the motorman to apply the brake, the evidence was that he ran his car across the intersection properly, that he fed his controller up to one or two points, when suddenly the automatic circuit breaker blew out, the controller caught fire, his vestibule was filled with smoke and flames, and the man himself received a shock, and all the apparatus of the car were put out of commission. He managed, however, to keep his presence of mind, and he called to the passengers not to get off, and he called to his conductor to pull the pole off the wire, but he failed to apply his brake, and the Jury have found that he was incompetent to handle a car in case of emergency, and that the car could have been brought to a stop before the accident happened.

7. There is, however, no evidence to justify such a finding. The stopping of the car would not have prevented the flames and smoke, and it was these that frightened the passengers, who shoved the plaintiff off the seat, and there is nothing to show that the fact that the car was moving had anything to do with the plaintiff's injuries, as it was the fall from the seat of the car to the pavement which injured him, not the moving of the car.

8. In regard to the second point, the evidence was that all the apparatus in the car was of the most up-to-date description, and no fault could be found with it, but the learned Trial Judge refused to allow witnesses to refresh their memory in reference to inspection of certain parts of the controller from the sheets put in by the Inspector and the Foreman who made these inspections. The system of inspection was explained to the Court, and although the foreman testified that in the ordinary course of affairs this car would have been inspected within a certain time, he could not, without his sheets, say exactly when that inspection took place, and the learned Trial Judge refused to allow him to refresh his memory with those sheets to state exactly when the controller and the wires connecting the controller had been inspected.

9. It was shown conclusively that the car had been overhauled within a short time of the accident, that new wiring had been put in, the plaintiff's expert could find no fault with the system of inspection or the materials used, and the question very largely came down to the fact as to when the last inspection had taken place just prior to the accident, and the defendants submit that the foreman should have been allowed to refresh his memory from the inspection sheets, in the absence of the inspector himself, who unfortunately had left the company's employ.

10. The appellants therefore submit that in the first place there was no evidence to justify the finding of the Jury in reference to the incompetency of the motorman to act in an emergency, and there is no method of testing whether a man is competent to act in an emergency, because it is impossible for the defendants to create accidents for the purpose of testing the competency of an employee, and in any case, the appellants submit that failure to stop the car had nothing whatever to do with the plaintiff's injuries, because whether the car was stopped or going, the elements which frightened the female passengers would still have existed,

and he would have been shoved from the car whether it was standing or moving.

11. The appellants further submit that there is no evidence to justify the finding of the Jury that the car was not properly inspected, and the appellants submit that in any case they were entitled to have their witnesses' memory refreshed by the inspection sheets, which are the only means that a man has of refreshing his memory where numbers of cars are inspected night after night, and he is called upon to testify in regard to it a year or more after the accident.

12. For the above reasons the appellants submit that the action should be dismissed, or that, in any event, they should be permitted to have the action retried and the evidence which was rejected properly put before the Court.

D. L. McCarthy,
Of Counsel for the Appellants.

REASONS AGAINST APPEAL.

1. On the 10th of August, 1910, between 5 and 6 o'clock in the evening the plaintiff was a passenger on an east bound open King street car of the defendants to which a trailer was attached. Just as the car had passed Sherbourne street several explosions occurred in the front vestibule of the car followed by smoke and fire.

2. The plaintiff was sitting at the extreme end of the seat where any one on the same seat seeking to alight would have to pass him. The seats all faced in the direction the car was going, and there was no space between the plaintiff's knees and the back of the next seat for any one to pass.

3. The cars were crowded and when the explosions took place and the smoke began to come back into the body of the car, the cars not being stopped but continuing on their way, the passengers became alarmed, some of them panic stricken, and those in the same seat with the plaintiff forced their way off the car and, as there was no room for them to pass between the plaintiff and the back of the next seat and he being an elderly man, they carried him with them and forced him off on to the pavement, the result being that he was very seriously hurt, having several ribs broken, his hip and knee injured, the latter permanently, besides receiving other painful, but not serious injuries.

4. The plaintiff in his statement of claim charges, among other acts of negligence on the part of the defendants:

(1) Defective condition of the controller in construction or state of repair.

(2) Defective form and design of the car, of which particulars were furnished, which in part are as follows:

Insufficiency of provision for electrical transmission in portions of the equipment circuits—insufficiency of provision for insulation between portions of the equipment circuits, defective insulation of and

insufficiency of provision for electric transmission in portions of the equipment circuits.

(3) Lack of proper inspection.

(4) Allowing the car to be operated by an inexperienced and incompetent motorman.

(5) The failure of the motorman to apply the brake and thus stop the car.

5. The plaintiff submits that the mere fact of the accident happening in the circumstances of this case establishes negligence on the part of the defendants in the absence of explanation by them.

6. The defendants did not attempt to explain the cause of the accident, claiming that they could not in any way account for it; that it was as their witness McCrae put it, an inexplicable phenomenon.

7. The evidence of the plaintiff showed that the accident was caused by defective insulation in the cables close to the controller; that if there had been proper inspection by the Company of these cables the defect would have been discovered and could, of course, have been remedied; that the result of such defect was that a short circuit of the current was established at the defective point which caused the trouble. The evidence did not, as stated in the Reasons of Appeal, show that the car had been thoroughly overhauled within a reasonable time and new wiring put in; on the contrary, the defendants failed to show proper inspection of the car particularly of the defective cable and the jury found that the car was not properly inspected.

8. The evidence shows that the defendants' motorman was incompetent and that he was negligent in not applying the brake.

The controller and brake are so placed that the motorman has his controller under his left hand, and the air brake under his right hand and a competent or careful motorman would have applied the air brake simultaneously with shutting off the current. This the motorman failed to do. Not that he was alarmed, because he states in his evidence that he was not alarmed, but simply through neglect. He omitted the vital act which would have saved the situation, namely, the applying of the brake, and instead of so doing he called to the passengers, according to his account, not to get off the car and told the conductor to take the pole off the wire, which was not done. The jury found that the motorman was incompetent. He was only a relief man, and they found that he was negligent in not applying the air brake by which means he could have brought the car to a stop before the accident to the plaintiff happened.

9. While it is true, as stated in appellants' reasons of appeal, that the stopping of the car would not have prevented the fire and smoke, it would have prevented the smoke from drifting back into the car and it is reasonable to believe that it would have materially reduced, if not entirely done away with the panic, when the passengers saw that the car was stopped and that they could get off when they pleased without hurry or risk, and the plaintiff could have alighted with safety instead of being shoved off, and even if they had shoved the plaintiff off while the car was at a stand-

still he would have been less liable to be injured than if shoved off while the car was in motion as in the present case.

10. There was, therefore, ample evidence to support all the findings of the jury, and the jury having found for the plaintiff upon the evidence, this Court, it is submitted, will not disturb such findings.

11. The evidence of reports which was excluded was properly excluded.

12. It is submitted there could be no more dangerous evidence than the evidence of such reports which might be cooked to suit the case of the party from whose custody they come.

An illustration occurred in this very case where, upon the examination for discovery, an officer of the Company produced what he swore to be a correct copy of the history of the car taken from the defendants' books. This document contained a statement that "the equipment (which, of course, would cover the whole equipment controller, cables, motors and all) of the car had been inspected on a certain day. Upon the trial (see Exhibit) it was shown that not the equipment of the car, but the motors only had been inspected on that day and no other part of the equipment, and that the word "equipment" had been substituted for "motors." So that a direct effort to deceive was made in this very case.

13. For these, among other reasons, the plaintiff submits that this appeal should be dismissed.

H. D. GAMBLE,
Counsel for Respondent.