

MR. TRAIN: I renew my offer of the rules.

MR. NAYLOR: I will put the question in this form.

BY MR. NAYLOR:

Q What was the duty of Mr. Kelly, the motorman on the Ninth Avenue train, coming past that cautionary signal No. 1?

Objected to.

Objection sustained.

MR. NAYLOR: I invite your Honor's attention to the fact that you have allowed him without the rules being introduced to show the duty of the towerman.

MR. TRAIN: Pardon me, not a word about duty.

MR. NAYLOR: You asked him what his duty was.

THE COURT: I received no rules except what you gentlemen have offered by consent.

BY MR. NAYLOR:

Q Does the cautionary signal No. 1 have any meaning to a motorman on an approaching Ninth Avenue train?

MR. TRAIN: I object -- that has already been answered.

Objection sustained. Exception.

Q Are these signals that are placed along the track, signal No. 1 cautionary signal with yellow, the home signal and the pot signal for the guidance of the motorman in the operation of trains,

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MR. TRAIN: That is conceded.

THE COURT: You may answer.

THE WITNESS: Yes.

BY MR. NAYLOR:

Q What does the signal No. 1, the cautionary signal, mean to a motorman on a Ninth Avenue train?

Objected to.

THE COURT: That is the third time that question has been asked -- the first time by the introduction of a paper covered book, the number of which I do not recall, in which the meaning of it is printed, and second Mr. Train brought it out and at the time he brought it out I said there is not any need for this, it is cumulative, and now you have it a third time.

MR. NAYLOR: " I will explain myself in that matter, this way, that that is a general statement. I ask as to a particular train on a particular day, and asking the application of this general rule, your Honor has called attention to at this particular time --

THE COURT: It is purely cumulative.

MR. NAYLOR. I do not wish to be technical nor impede the progress of the trial.

THE COURT: Its being objected to I will rule it out

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MR. NAYLOR: My solicitude is to have the jury understand this matter.

MR. TRAIN: I have been very anxious to have them understand what a trainman's duty is.

BY MR. NAYLOR:

Q Of the three signals, the cautionary signal No. 1 the home signal and the pot signal at the point of the switches which is the signal a motorman must give first attention and all attention to?

THE TRAIN: I object.

THE COURT: Objection overruled.

MR. TRAIN: Who is to decide? It depends upon the rules and duties of a motorman and the best evidence of that is in the printed rules of the company and there is no evidence whatever that this gentleman is competent to answer a question of that kind. He has identified a book which shows the duties of a motorman and towerman.

THE COURT: I think we may assume that Mr. Hedley is an expert, from his testimony.

MR. TRAIN: He cannot be any more an expert as to the printed rules than the book itself.

THE COURT: I will permit the question to be answered.

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MR. TRAIN: The question itself is peculiar--
that is the one signal to which the motorman must give
his attention first and all his attention to .

BY THE COURT:

Q Does one signal have precedence or priority over the
other signals?

THE WITNESS: No, sir, he has to be guided by all
three of them.

BY MR. NAYLOR:

Q Which one should he observe first?

MR. TRAIN: I object. It is apparent that the
nearest one is the one he should observe.

MR. NAYLOR: I do not think that follows at all.

THE COURT: I will state my understanding of it. He
must observe all three signals. He meets first the cau-
tionary signal. He meets next the one signal and
last the pot signal but must observe them all, one is
an important as the other, but the first one is the cau-
tionary signal.

MR. NAYLOR: With your Honor permission I will
suggest, this is what I am trying to get at, that the
pot signal at the point of the switches which determines
the route this man is coming down -- the upper switch,
the yellow cautionary signal--

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MR. TRAIN: I object to any statement.

THE COURT: If you desire to prove something beyond what I have said you may do that.

BY MR. NAYLOR:

Q Is it not a fact that a motorman approaching the turnout at 53rd Street should observe as soon as he observes the first signal, the pot signal, the key signal of the situation?

MR. TRAIN: I object. That is a question of the rules of the company, and can only be proven by the rules of the company and if excluded in my offer, they should be on his.

MR. NAYLOR: I will modify the question.

BY MR. NAYLOR:

Q As matter of practical operation on the trains, is it not essential that the motorman should observe the signal at the point of the switches, the pot signal?

MR. TRAIN: I object. He says it is essential that he should observe all of them.

THE COURT: I will let him answer.

THE WITNESS: Yes, he must observe that signal.

BY MR. NAYLOR: "

Q Can he see the pot signal from 59th Street station?

Objected to. Objection overruled.

A Yes.

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Q As matter of fact he can? A Yes.

Q And he can see the home switch at 59th Street? A Yes.

Q And he can also see the cautionary signal No. 1?

A Yes.

Q When you went up on the structure after the accident you found Mr. Jackson, the defendant there, at the time?

A I do not recall that I saw Jackson that morning.

Q You saw him later in the day? A I do not recall that I saw him that day. I know I saw him the day after.

Q Did you see the motorman that day? A No.

Q Do you know where he is? A No.
Have you ever seen him since? A No, sir.

Q Have you talked with him about this accident? A No, sir.

Q You do not now where he is? A No.

Q Did you ever try to find him?
Objected to as immaterial.

Q Did you ever get any information from the motorman as to what part he took in the transaction?

THE COURT: I think that question is answered?

He said he had not seen him at all.

BY MR. NAYLOR:

Q Have you had any report from him?

Objected to as immaterial. Overruled.

A Personally I have had no report from him.

MR. TRAIN: You have had a communication.

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MR. NAYLOR: I object to that.

THE COURT: proceed.

BY MR. NAYLOR:

Has any officer of the company received a communication from him, a report from him, as far as you know?

MR. TRAIN: I think that is going a little too far.

BY THE COURT:

Q Have you any personal knowledge whether or not any other officers of the company have received reports from the motorman? A Yes, a letter--

MR. TRAIN: That is an answer.

THE COURT: The answer is yes.

BY MR. NAYLOR:

Q Have you tried to see him since that time?

Objected to as immaterial. Sustained. Exception.

Q How long has Jackson been in the employ of the company?

A I think some 10 or 12 years.

Q What was his record as an employee?

Objected to. Objection sustained. Exception.

Q Any dereliction of duty on his part ever reported?

Objected to. Objection sustained.

THE COURT: You may prove his character.

BY MR. NAYLOR:

Q Do you know the reputation of the defendant? A Yes.

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Q For truth, for attendance upon duty and faithful discharge--

THE COURT: You simply desire^{now} to make Mr. Hedley a character witness.

MR. NAYLOR: Yes, sir.

BY THE COURT:

Q You know others who know the defendant Jackson? A Yes, sir.

Q Do you know his reputation for carefulness? A Yes, sir.

Q What is it, good or bad? A Very good.

BY MR. NAYLOR:

Q The accident took place at what time, so far as you know? A About 7:05 in the morning.

Q How long had Jackson been on duty prior to that? A He went on duty at twelve o'clock midnight.

Q His tour of duty ran until what time? A He would have been relieved at eight o'clock that morning.

Q You testified there was on duty at this place a towerman assigned to duty as towerman, train dispatcher, yardman and flagman-- in the tower was Jackson? A Yes, sir.

Q The flagman was Youman, was it not? A I don't recall that name, whether that is correct or not.

Q What time did he report on duty?

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MR. TRAIN: I object because it appears that this gentleman was not there and doesn't know anything about this and he does not know when Jackson went on duty.

Q Your testimony whether these four men were there at what time is not based upon your personal knowledge but simply upon reports, isn't that right? A It was their duty to have been there, that is what I am basing it upon.

Q Do you know whether the yardman or flagman knew anything about the tower? A I don't recall seeing either of them.

Objected to. Objection sustained.

Q Did the yardman or flagman know how to operate the levers in the tower house so far as you know?

Objected to. Objection sustained.

THE COURT: If you have any knowledge you can tell us what your knowledge is but the question is open to objection and therefore I sustain the objection.

BY MR. NAYLOR:

Q What does the combination of signals, yellow at the cautionary, green at home and yellow at the pot signal, mean, to a Ninth Avenue line?

Objected to, unless the rules are offered in evidence.

THE COURT: He may answer the question. It calls to a certain extent for expert knowledge.

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MR. TRAIN: The question is exceedingly vague and indefinite -- what does it mean to a Ninth Avenuemman.

THE WITNESS: Stop, before he arrived at the switch .

BY MR. NAYLOR:

Q Stop, before he got to the pot signal point of the switches? A Yes, sir.

Q Did this Ninth Avenue train stop before it met the point of switches? A It evidently did not.

BY MR. TRAIN:

Q You say that a yellow distance signal , green home signal and Sixth Avenue pot signal means stop? A For a Ninth Avenue train, yes, sir.

Q What does it mean for a Sixth Avenue train? A Go ahead.

Q Go ahead? A Yes, go right toward the curve.

Q Does a green signal at home mean stop? A No, sir.

Q What does that mean? A It means go ahead if the other signal is all right.

Q Taking the green signal by itself what does that mean?

A It means go ahead, pass that signal.

Q It means all clear? A Pass that particular signal, yes.

Q So when a man sees the green signal at home, he is in a position to go ahead? A To the next signal, yes.

Q To the next signal? A Yes.

Q How far away was the next signal, after passing the green signal? A 35 or 36 feet.

BY MR. NAYLOR:

Q He observes all this combination of three signals at the same time, does he not? A Yes.

Q So he is in a position to know what the situation is before he passes the cautionary signal, No. 1?

Objected to as having already been testified.

MR. NAYLOR: He has not answered that.

THE COURT: I overrule the objection.

THE WITNESS: Yes.

BY MR. TRAIN:

Q If it is the business of the motorman to see all three at the same time, to see the pot signal as soon as he passes 59th, what is the object of having the first two signals at all?

A The first signal is a necessary signal to govern the southbound local trains. Whenever an express train is pulling out from the center track to the southbound local.

Q That means, as far as the local trains are concerned, that signal hasnot any significance unless it shows red,

A Yes, it has.

Q What significance has it got? A It shows a yellow disk and wherever we have a crossover leading from the center to the main line, in order to indicate to the motorman that

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a crossover is there, a yellow disk is displayed, which means caution at that point all the time.

Q Then the first signal means all the time there is a crossover from the express to the local track, does it?

A That particular signal does, yes.

Q So far as that signal is concerned, it has no other significance whatever at that point, has it? A Only for the control of that crossover that I have mentioned.

Q That crossover is from the express to the local track?

A Yes, sir.

Q And it does not refer to the 53rd Street switch at all?

A No, sir.

Q It is the duty of the engineer -- and I am cross examining you on a question put by the other side--

MR. NAYLOR: I object to that.

THE COURT: Strike out the statement and proceed with the question.

MR. TRAIN: (Continuing) To see the pot signal as soon as he leaves 59th Street, is that correct?

A He can.

Q Is it his duty to? A No, I wouldn't say we would demand that of him.

Q What did you mean in giving your answer to Mr. Naylor, to convey to the jury? A Merely that it would be a physical

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possibility to see from 59th Street to 53rd Street and determine what the proper signal was. I was asked the question if a man could see all three signals from 59th Street and I said yes.

Q Was it his business to see the pot signal at 59th?

A It is his business to look for those three signals as soon as they come in his line of vision.

Q Precisely, but the first signal you have just said has significance only in connection with the crossover, that is to say when an express is going to be switched over to a local track, that is correct? A yes.

Q And if that is white, all it indicates to the motor-man is that there is not any express being switched over on the local track, isn't that correct? A If that is white, he would stop.

Q If it is yellow that is all it indicates -- it indicates there is no express train being switched over? A At that point, yes.

Q What is the home signal for, the next signal he sees? A The home signal is to indicate to the motorman that a route is set up and he has the right of way to pull his train over a route.

Q And to go ahead? A That route is either Sixth or Ninth Avenue.

Q And to go ahead? A Go ahead by that home signal,

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yew.

Q That home signal is precisely the same, whether the Sixth or Ninth Avenue route is set up? A Precisely the same for either train, the home signal.

BY MR. NAYLOR:

Q Then he has to go on to the point of switches before he can determine whether he is on the Sixth or Ninth Avenue route? A The two signals are within 35 or 36 feet of each other.

BY THE COURT:

Q It does not mean that he has to go on to the pot signal? A No, sir, it means that he could go on to the pot signal and he would not be disciplined for doing it, he has the right of way that far.

BY MR. NAYLOR:

Q The home signal shows the route set up, and the pot signal which route it is? A That is right.

Q So far as the cautionary signal No. 1 you have testified that is used when express trains are crossed over-- is it not also a cautionary signal for all trains, local and express, coming down on the west track? A It is a fixed cautionary signal on the southbound local track.

Q For every train? A Yes, sir, all the time.

Q And for every train? A Every train.

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BY MR. TRAIN:

Q What do you mean by a cautionary signal? A Where - ever we place a crossover we put a yellow disk in connection with the switches to indicate there is a crossover there and it is necessary for the motorman to operate their trains slowly.

Q That is all you mean by your answer to Mr. Naylor's question? A Mr. Naylor asked me one question and you asked me another, I think.

Q Mr. Naylor asked you if this cautionary signal did not relate to all local trains coming down the track; I merely asked you, while it is true that it relates to all local trains coming down the track, it relates purely to the crossover and to nothing else; it is a cautionary signal as to what-- that is what the jury want to know? A Yes, it is placed there because of the crossover there.

Q And it is not because of the switch around into 53rd Street? A No, sir.

BY MR. NAYLOR:

Q Does it not mean caution and slow down to every train coming down? A Yes, sir.

Q It may also be used in connection with this switching of the express trains? A Yes, sir, it is used in that connection.

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Q Is it not used for both purposes?

MR. TRAIN: I object unless the two purposes are specified.

BY MR. NAYLOR:

Q Is the cautionary signal No. 1, yellow used for the guidance of all local trains coming south on the west track, and also at such times as an express is crossing over into the center track?

MR. TRAIN: I object -- of course it is used for local trains, because it is a local signal.

Objection sustained; exception.

BY MR. NAYLOR:

Q In addition to being placed at this point because there is a crossover, it is also used as a glide to all trains, local or express, coming down on the west track, is it not?

Objected to as leading.

MR. NAYLOR: This is cross examination.

THE COURT: He may answer.

THE WITNESS: It necessarily must be because it is so close to the junction. The crossover is only a matter of 300 feet away from the junction switches.

BY MR. TRAIN:

Q Supposing there was not any crossover there, would you have that signal at 395 feet from the switch? A No, sir.

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EDWARD J. MORAN, called as a witness on behalf of the people, duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Where were you at the time on the 11th of September, 1905, at the time of the accident on the Ninth Avenue L?

A Southeast corner of 53rd Street and Ninth Avenue.

Q Will you tell us what you observed in relation to trains which came south on the Ninth Avenue local track?

A At that particular time?

Q Yes. A I had not noticed anything coming south.

Q Tell us what you did notice?

MR. NAYLOR: I object. He said he did not notice anything

THE COURT: He may answer.

MR. NAYLOR: I except.

THE WITNESS: I noticed at the time of the accident just a second or two preceding the falling of the car from the structure to the street-- I noticed just about where the switches - just about on the crosswalk, the north crosswalk of 53rd Street and Ninth Avenue, I noticed a shower of electric sparks fall from the structure and about that time also a rumbling crunching ^{sound} coming across the structure. At that point the sidewalk is obstructed by the structure, almost, we will say, to the building line, on the curb. I

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was standing right at the framework of the window of the drug store that connects the street side and the window side, where I could see the sky. If you were standing on the curb or beyond that you could not see anything on account of the obstruction of the structure.

Q What did you see? A As I heard the noise I looked up and saw this car almost touching the rail of the structure, as though it were coming over the street; that is the way it looked to me and I thought it was pretty near time for me to get out of the way. I ran east on 53rd Street/

THE COURT: Never mind your thoughts, strike that out.

THE WITNESS: I ran east on 53rd Street.

MR. NAYLOR: I object to this, it not being at all related to the issue, as incompetent, irrelevant and outside of the issue.

THE COURT: Get down to what you want to prove.

BY MR. TRAIN:

Q Did you see any train leave the elevated track?

A yes.

Q State what you observed? A This train left the track on an angle; the end of the train stood on the sidewalk, and the upper end rested against the track.

Q Did you see any car separate itself from the train and

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fall in the street? A Yes, sir.

Q At what point on the curve did that car leave the track, could you say? A No, I can,t say that.

Q You cannot tell that? A No.

Q Can you state how rapidly or with what velocity this car or the train left the track? A No, sir.

Objected to.

THE COURT: It is already answered.

BY MR. TRAIN:

Q Tell us what you observed? A After I had run east on 53rd Street --

MR. NAYLOR: I object to that as incompetent, irrelevant and immaterial.

THE COURT: Strike it out.

BY THE COURT:

Q Tell us what you saw. Answer the question. A The train stood resting on the structure with one end on the sidewalk.

BY MR. TRAIN:

Q What became of the people in the train? A The people were strewn on the sidewalk among the wreckage.

MR. NAYLOR: I object as entirely irrelevant, incompetent and immaterial to the issue before the jury,

THE COURT: It is part of the res gestae and we

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must receive it.

Exception.

BY MR. TRAIN:

Q Did you go to the assistance of the passengers? A Yes, I did.

Q How many people were killed?

MR. NAYLOR: I object to all this line of questions.

THE COURT: I must rule upon your objections as you make them.

MR. NAYLOR: I object to this question as being entirely outside of the issues in this case and as incompetent, irrelevant and immaterial.

Overruled. Exception.

BY MR. TRAIN:

Q How many people were killed? A Twelve bodies were taken from the street to the station house.

same objection, ruling and exception.

CROSS EXAMINATION BY MR. NAYLOR:

Q What time was this? A Between 7 and 7.05 A. M.

Q When you said train you meant car fell over? A One car, yes

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F R E D S. J O H N S O N, called as a witness on behalf of the people, duly sworn, and examined, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Were you a passenger on the southbound Ninth Avenue L train that came to grief at 53rd Street on September 11th?

A I was.

Q What car were you in? A I was about the third or fourth seat in the first car nearly opposite the motorman.

Q Where did you get on the train? A 116th Street.

Q Do you remmber when the train pulled out of 59th Street?

Objected to as incompetent, irrelevant and immaterial, and in no way related to the issue of negligence charged in this indictment and on file at this time.

THE COURT: That is quite righr but it is a preliminary question and therefore proper. The objection is overruled.

Exception.

BY MR. TRAIN:

Q When the train pulled out of 59th Street, do you remember? A Not at 59th street but I do at 66th.

Q What do you recollect as to the rate of speed at which the train was traveling after leaving 66th Street up to the

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time of the accident? A It did not seem to me that there was any slackening of the speed.

Q Did the train stop at 59th Street? A It did.

Q Thereafter, do you recollect whether or not there was any slackening of the speed up to the time of the accident?

A It did not seem to me that there was although I cannot say positively.

Q It did not seem to you that there was? A Did not seem so, no.

Q When the accident happened, what did you experience, what occurred? A Simply a shaking--

Objected to as incompetent, irrelevant and immaterial. Objection sustained.

Q The car you were in did not leave the track? A It did not, no, sir.

Q The car behind you? A The second car.

Q The second car behind you left the track? A Yes, sir.

No cross examination.

WALTER L. BERRY, called as a witness on behalf of the people, duly sworn and examined, testified as follows.

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DIRECT EXAMINATION BY MR. TRAIN:

Q Were you on the Ninth Avenue elevated train that met with the accident on September 11th? A Yes, sir.

Q What was your position? A Rear guard.

Q Are you able to say whether or not there was any slackening of speed in that train before the accident, after leaving 59th street? A Well, sir, when we left 59th street we had a skip ticket, to skip 30th.

BY THE COURT:

Q You mean you were to pass 30th street station? A Yes, sir, and we left 59th street and when we got to about where the switch is, I think, to the best judgment of mine, that the train was going at a speed, at a rate of between 20 and 25 miles an hour.

Q When you got to -- A When we got to the curve, passing ---

Q I asked you if there was an diminution or change in the speed after leaving 59th street? A No, sir.

Q No change whatever? A Not to my knowledge.

Q At what rate of speed was the train running, before you reached the cautionary signal? A I just stated at the rate of 20 to 25 mile.

Q Do you testify now that the train continued at that rate up to the curve? A Up until the accident occurred.

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Q And that there was not any diminution at all? A No, sir.

Q Do you remember testifying in the Coroner's Court?
A Yes, sir.

Q Did you testify to that in the Coroner's Court? A Yes, sir --- at least I think I did.

Q Do you remember this question, "Did you notice at about what speed the train was going as it passed that precautionary signal." Do you remember that question? A Yes.

Q And do you remember this answer: "Well, as we left 59th street we were at the usual speed; as we got down to the cautionary signal we kind of slackened up; we started off then at the rate to my knowledge of about 20 or 25 miles an hour"; -- do you remember that? A I think I did say it.

Q Recollect that you said there was a slackening up at the cautionary signal --- do you now recollect that to be the case? A I recollect now, I don't know whether it slackened up to any amount to notice it.

Q You noticed it enough to testify that you slackened up there, in the Coroner's Court? A I don't think I did.

Q Did you testify in the Coroner's Court that "As we got down to the cautionary signal, we kind of slackened up"?
A Kind of, I said, but not enough to notice it.

Q Did you so testify? A I think I did, but, ---

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Q Is that the fact? A I think the fact is that just as I was saying, you could not notice it so much.

Q What do you mean by could not notice it so much?

A Did not slack it as he ought to slack up at the cautionary signal.

Q Did he slack it? A Not enough to notice it.

Q Did you notice it? A No --- I noticed that we did not go at the full speed exactly as we did, leaving the station, but continued with more speed after we got started.

Q Then you noticed something occur at the cautionary signal? A Yes, sir.

Q What was it you noticed? A I noticed that the train was going around the Sixth Avenue switch.

Q No, at the cautionary signal, three hundred and ninety-five feet north of the switch, what did you notice? A I noticed our train was going at a rapid speed.

Q Did you notice if there was any slackening up of speed?
A No, not to my knowledge now.

Q To your knowledge in the Coroner's Court there was?
A Very little.

Q There was some?

BY THE COURT:

Q Enough for you to swear to? A Yes, enough to swear to but very little it was if there was any.

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BY MR. TRAIN:

Q Will you swear to very little now or swear that he did not slacken at all now? A I will swear just as I did in the Coroner's Court then.

Q What was that? A Slackened it very little.

CROSS EXAMINATION BY MR. NAYLOR:

Q You were leaning over the rail, were you not, at the rear end of the car? A Yes, sir.

Q Looking ahead? A Yes, sir.

Q You saw the switches set for Sixth Avenue? A No, sir.

Q Didn't you see the pot signal down there? A No.

Q How do you know you were going down Sixth Avenue?

A Because I was on the east side of the train leaning over. I saw my train was going at a rapid speed and making a Sixth Avenue curve. I then pushed my way from the east side of the train going south bound and pulled the emergency brake.

Q You never went down that grade before so fast, had you?

Objected to. Objection overruled.

A No, sir, I had not.

Q Nor since? A No, sir, and don't wish to.

THE COURT: Strike out the question "Nor since"

and the answer of the witness.

BY MR. NAYLOR:

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Q Have you ever come down the same rate of speed since?

THE COURT: You may answer the question.

Q (Question repeated) A No, sir.

Q Was there not an increase in the rate of speed as you came down, from the cautionary signal? A No, sir.

Q As you went down the grade was there not an increase?
A No, sir, just about the same speed we were going.

Q All the way around, you went on that curve at that same rate of speed? A Yes, sir.

Q You know there is a grade down that hill? A Yes, sir.

Q You were on the east side of the car? A I was on the east side of the rear car.

Q That is the way you were looking forward? A Yes, sir, looking forward.

Q So you were not on the same side of the train that the signals are? A No, sir.

Q Do you know who the motorman was on that train? A No, only to see him working.

Q Do you know his name Paul Kully? A I did, but never spoke to the man in my life.

Q Did you see him on the day of that accident? A Yes, sir.

Objected to as immaterial.

THE COURT: * It is answered.

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Q Did you talk with him?

Objected to.

THE COURT: They are preliminary questions and I will let the witness answer the questions.

BY THE COURT:

Q Yes or no. A No, sir.

BY MR. NAYLOR:

Q Did you see him on that day after the accident?

Objected to as immaterial.

THE COURT: I will overrule the objection. It is preliminary.

BY THE COURT:

Q Yes or no.

THE WITNESS: No, sir.

BY MR. NAYLOR:

Q You have not seen him since?

Objected to.

THE COURT: He may answer yes or no.

THE WITNESS: No.

J O H N B. L U T Z, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

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DIRECT EXAMINATION BY MR. TRAIN:

Q What is your occupation with the Manhattan Elevated Railroad? A Tower switchman.

Q How long have you been in their employ? A 29 years.

Q Did you instruct the defendant as to his duties as towerman? A Yes, sir.

MR. NAYLOR: I object and move to strike out the answer. This man is not an officer of the company and what instructions may be comes with no force, simply a co-employee.

THE COURT: We will receive it.

Exception.

BY MR. TRAIN:

Q During what period of time?

Objected to on the same grounds. Overruled.

Exception.

A You mean what time I broke him in as switchman?

Q When was it you instructed him? A I cannot really tell but about seven or eight years ago I guess it is -- probably ten years --- I couldn't really tell how long ago it was when he first came there.

Q Did he at once pass under your control as a prospective towerman? A Yes, sir.

MR. NAYLOR: I object to all this and take an excep-

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tion.

BY MR. TRAIN:

Q And did you then instruct him in the duties of towerman? A I did.

Q And do you remember at what time -- A That is regards the signals and all such stuff as that.

Q Do you remember at what tower you instructed him?
A Right in that tower.

BY THE COURT:

Q What do you mean by that? A 53rd street and Ninth avenue.

BY MR. TRAIN:

Q Ten years ago? A It is in that neighborhood --- I don't really know if it is ten --- it may be a little less.

Q Did you instruct him as to the rules of the company governing towermen? A I did.

MR. NAYLOR: I object. It is not the proper way to prove the rule.

MR. TRAIN: We will offer the rules, if you prefer that.

THE COURT: You have objected -- have you finished?

MR. NAYLOR: I want to take an exception.

THE COURT: I have not ruled yet upon your objection.

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MR. NAYLOR: I mean an objection --- I beg your pardon --- I wish to object upon the ground this is not the proper way to prove a rule, the instructions of this co-employee.

THE COURT: I think the rule has been proven, but it has not been admitted in evidence owing to your objection that it was not brought to the knowledge of the defendant. The People are now trying to bring it to the knowledge of the defendant, thereby meeting your objection.

MR. NAYLOR: It is not shown that this witness has any knowledge of these rules himself.

THE COURT: The People have not finished their case yet. Their question is one leading up to the meeting of your objection. It seems competent and I will allow it.

Exception.

BY MR. TRAIN:

Q Were those rules the rules and regulations for the governing of the operating of certain of the employees of the Manhattan Railway Company?

Same objection, ruling and exception.

A Well, we don't ---

Question withdrawn.

Q I show you a copy of a book marked "People's Exhibit 6

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for identification and I ask you if when you entered the employ of the company you received one of those books? A Yes, sir, I have got one of them.

Q Did you familiarize yourself with the rules governing tower and hand switchmen? A Yes, sir --- as far as the tower switch was concerned.

Q Did you communicate those rules to the defendant?

MR. NAYLOR: I object.

Objection sustained.

Q Did you instruct the defendant in the rules of the company governing tower switchmen? A I instructed him to be a tower switchman the same I was instructed.

Q Just as you were instructed? A Yes.

Q And you were governed in part by the rules of the company which you say you had?

Objected to. Sustained.

THE COURT: You may ascertain whether or not these precise rules were brought to the defendant's attention.

MR. TRAIN: That is what I am endeavoring to do.

MR. NAYLOR: I move to strike out the last answer.

THE COURT: It is in now.

BY MR. TRAIN:

Q In your capacity as tower switchman, you obeyed the rules of the company contained in the book you received from them?

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Objected to. Sustained.

Q You had knowledge of these rules, did you? A I know the rules was there in the book.

Q And they are in the book? A I know that.

Q Did you instruct the defendant in these rules?

Objected to as too indefinite.

Objection sustained.

Q I ask you if you communicated them to the defendant?

THE COURT: Ask him what he told the defendant -- ask him if he read the rules to him.

MR. TRAIN: I do not care whether he read it or communicated it by sign language. The point is to get the information to the defendant as to what his duties are.

THE COURT: Ask him how he did it, find out how he did it.

BY MR. TRAIN:

Q Did you instruct the defendant that he was responsible as a tower switchman for the safe passage of trains over switches in his charge and that as his duties required the closest attention, that any neglect might causeserious accidents?

Objected to.

Objection sustained.

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MR. TRAIN: Is there any objection to the word
"communicated"?

THE COURT: What was said is the proper way.

THE WITNESS: I instructed this man as a tower
switchman.

THE COURT: That is not it -- did you show him
the rules which Mr. Train has in his hand?

THE WITNESS: I told him --- no --- I told it.

BY THE COURT:

Q What did you tell him? A I told him to --- this was
the way it was to be worked and that was the way he was instruc-
ted by me and that was the way we are always instructed and we
live up according to the rules.

Objected to.

BY THE COURT:

Q If I understand your answer right, you showed him by
operating in his presence --- A Yes, sir.

Q (Continued) The switches and explaining their use
and purposes? A Yes, sir, exactly, and when he was o. k. I
turned him into the company and not before.

Q What we want to know is whether or not you read or
showed him the rules that Mr. Train has in his hand? A No,
sir, I did not.

BY MR. TRAIN:

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Q Did you tell him what those rules were? A No, sir.

Q Did you yourself know what the rules were? A Well, know some part of them. Of course I never had much time to read the rules, but I know what I had to do --- been there long enough and I ought to know.

Q Please just answer my question, did you tell the defendant in substance that he must keep the switches locked for the main track, except when passing trains to and from the main track?

Objected to as leading and irrelevant and incompetent and immaterial.

Objection overruled. Exception.

THE WITNESS: Yes --- he understands that part.
BY THE COURT:

Q That is not the question, whether he understands it, did you tell him that? A Sure, and I told him how to work them.

BY MR. TRAIN:

Q Did you tell him that? A That is what I told him, how to work them and I showed him how to work them. I didn't go through this book of rules.

BY THE COURT:

Q The question asked you is perfectly plain and you are of sufficient intelligence to answer it correctly.

BY MR. TRAIN:

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Q (Question repeated) Did you tell him that? A I did.

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

Q Did you tell him he must always be on the watch for approaching trains and give the safety signal if all is right?

A Yes, sir.

Same objection, ruling and exception.

Q Tell the jury what safety signal you referred to?

A Well, the caution signal in the first place, that is the one that is above the home signal, and all trains approaching that signal have orders to ---

Q I did not ask you that --- I asked you what signal you referred to as the safety signal? A The only safety signal is when a train is coming down, and which way the switch is, if it Sixth avenue it is for the turnout and that is safety signal to give them the right of way, --- that gives them the right of way.

MR. TRAIN: I move to strike out the answer.

Motion granted.

Q There are three signals and we will call them 1, 2 and 3, first the distance signal, number 2 the home signal and number 3 the pot signal; when you, as you say you did, instructed the defendant that he must be on the watch for approaching trains and give the safety signal if all was right,

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which signal did you refer to, No. 1, or 2 or 3? A That is No. 1, and No. 2 both --- No. 1 is always for caution.

Q When you had set the safety signal, at what color had you set No. 1 and No. 2? A No. 1 is always set for caution and No. 2 is the home signal. When that is clear, it is green.

Q In other words, if all is right, you instructed Jackson to set the signal green, did you? A That is according to the train. I have to know what train is coming.

MR. NAYLOR: I object to the question upon the ground this is trying to do by indirection what they cannot do directly, and as incompetent, irrelevant and immaterial. If he is asking him as to what these signals mean, that is one thing. If he is asking what he instructed Jackson, that is another.

THE COURT: He is asking him what he told the defendant, as I understand it.

MR. TRAIN: Precisely.

THE COURT: I will allow it.

BY MR. TRAIN:

Q You instructed him to watch out for approaching trains and to give the safety signal if all was right and by giving the safety signal, just what did you mean -- what do you mean? A It all depends upon what train. I have to have that first. I

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have to throw the switch first to see what train is coming and then give the safety signal.

Q What did you tell him to do? A That is No. 2 --- that is the home signal.

Q Suppose, we will assume that a train has gone down, passed the tower on the right track, what did you instruct the defendant it was his duty to do in regard to preparing for the next train and setting the track? A He sets the signal at danger.

MR. NAYLOR: I object.

Objection overruled. Exception.

BY MR. TRAIN:

Q Which signal? A No. 2.

Q And then do what? A Set the signal at danger and wait for the next train.

Q You are not irritated at me? A No, sir.

Q Or the jury or the Judge? A No, sir, but you say you want to hear me and so I thought I would talk loud.

Q Having set the No. 2 signal for danger, you told him the next thing was to see what train was coming? A Exactly.

Q Supposing the train that had just gone down was a Sixth Avenue train, and he waited, and the next train was a Ninth Avenue, what did you instruct him his duty was to do? A He sets the signal at danger and then straightens up the switch and

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then waits for the next train, and when he comes down Ninth Avenue he gives Ninth Avenue the right of way.

Q In other words it was his duty to set that home signal at danger? A Yes, sir.

MR. NAYLOR: I object. He has not asked if he told him that.

Objection sustained.

BY MR. TRAIN:

Q In other words, you told him, did you not, that after letting one train through, the next thing to do was to set No. 2 signal at danger? A Always protect your coming train.

MR. NAYLOR: The question should be what you said to him. I object as leading.

Objection sustained.

BY MR. TRAIN:

Q This is a matter of importance, I want to get it perfectly clear upon the record --- what did you tell the defendant that he should do after clearing one train past the tower? A I told him to protect the next train that came along.

Q How? A By setting the signal and straightening up his switches.

Q By setting up what signal? A No. 2.

Q What color? A And the switch.

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Q Yes, but what color do you set it, No. 2? A When you set it up it sets at red.

Objected to.

THE COURT: What we want to know is what you told the defendant.

BY MR. TRAIN:

Q Did you tell him that after one train had passed, the next thing he should do is to set No. 2 at red?

MR. NAYLOR: I object to the form of the question.

Overruled. Exception.

A At danger, yes.

Q You told him that?

THE COURT: Answer that yes or no.

A Yes.

Q What was the next thing you told him he should do?

A I told him to straighten up the switch and wait for the next coming train.

Q When you say straighten up the switch, tell what you mean? A That means for the straight main line, Ninth Avenue down.

Q In other words to set the track for a Ninth Avenue train? A Safety all the time and then it is safe, on the main line safe.

Q The jury do not understand your technical terms?

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A I cannot tell them any different.

Q We will assume the train that has gone down is the Sixth Avenue L. A Yes.

Q Now, after it has gone by, you say you told him the first thing to do was to set the home signal at danger? A Yes, sir.

MR. NAYLOR: I object to the form of the question. He states his condition and hypothesis first and then says under those conditions did you tell him so and so.

BY MR. TRAIN:

Q The track having been set up for a Sixth Avenue train, what was the very next thing you instructed Jackson to do after he had set up his red signal? A Told him to straighten up his switch and leave the signal as it was.

Objected to.

THE COURT: You use the word instruct, when the word told or said would be better. The question is open to objection because it calls for his opinion.

BY MR. TRAIN:

Q Tell us what you mean by setting up the track?
A That is straightening it up.

Q What do you mean by that? A For safety, that is straight. The signals are there to protect the switch --- when it is for the Sixth Avenue it is for the crossover.

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BY THE COURT:

Q The crossover is regard as unsafe? A Yes. You cannot tell it any different; that is the proper way and I could not give it to you any different.

Q When the switch is for Sixth Avenue it is for the crossover and when straightened up it is for the Ninth Avenue, and there is signals there to protect both.

BY MR. TRAIN:

Q What signal? A No. 2.

MR. NAYLOR: I object. It is nothing that has been stated as having been told to the defendant.

THE COURT: The objection is late.

BY MR. TRAIN:

Q What I want to know is this, this is something new --- which did you tell Jackson was the first thing to do after he set up his red light, to look foran approaching train or fix his track? A Fix his track.

Q In other words to fix it? A Clear and straight and leave the signal at danger.

Q And the next thing was to wait and see if it was a Ninth -- Ninth --- A Ninth or Sixth or whatever it was.

Q If it was a Ninth to do what? A Then when he came down, when he got pretty close to it and it slowed up a little he pulled off the signal and let that go.

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Q Giving them a green light at No. 2?

Objected to.

Q Is that what you mean, by changing his light from red to green at No. 2? A Exactly.

Q Supposing the next train that came down instead of being a Ninth Avenue train was another Sixth Avenue train, what did you tell the defendant he should do? A I told him to hold it and then set the switch and then give him the clear signal.

Q By that you mean giving him a green light? A Yes, sir.

Q But always to show first the red signal? A Always red, the signal is always at danger just as soon as the train goes by, it is put at danger.

Q And then change the track and then watch to see what train was coming? A Yes, sir.

Q And then to fix the track to suit that train? A When it gets down there.

Q And when it is down there and the track is set, to let it through by giving it a green light? A Exactly.

Q What is the normal condition of the main line? A What do you mean by that?

Objected to. Sustained.

Q Did you instruct the defendant as regards to whether or not the track should be kept in a certain condition?

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A Yes, sir, always kept straight. Just as soon as the Sixth Avenues goes around, it is straightened up.

Q As soon as every Sixth Avenue train went around, to set it for Ninth Avenue? A Yes, sir.

Q Did you tell the defendant anything as to whether he could leave his post during hours of his duty? A We don't leave post. We generally --- sometimes ---

Q Did you tell him anything about that? A No, I didn't tell him anything of that kind.

Q Not a single word about that? A I did not.

Q And besides your last answer which you started to give?

A What is that?

Q You said we don't leave our post, we generally ---

A Did I say that?

Q Yes. A I don't recollect saying it.

Q It has just been read to you? A Just now?

Q Yes. A Just now but not before that.

Q I want you to complete your answer. A We don't leave our post unless we are relieved.

Q Is that the rule of the company? A Yes, sir; there is always somebody supposed to be there.

MR. NAYLOR: I object. You are trying to prove a rule again and I object to it on that ground; you are trying to prove a rule by an employee.

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THE COURT: I sustain your objection. The trouble is your objection was made too late to the last question. I have instructed this witness not to answer if an objection is interposed.

BY MR. TRAIN:

Q Did you tell Jackson he should report daily to the dispatcher on duty at the point to which he was assigned, and that during the hours of duty he should not leave his post without first notifying the dispatcher and obtaining relief?

A No, I did not.

Q What? A I did not tell him that, no. That ain't my orders.

BY THE COURT:

Q Where is the train dispatcher? A Right downstairs.

Q If you want to speak to him how do you communicate?

A We have a button to communicate with him, a bell, which rings.

Q What happens when you ring the bell? A He answers it, comes out and wants to know what we want.

CROSS EXAMINATION BY MR. NAYLOR:

Q A few minutes ago you were asked a question and asked to remember it and you said you had quite forgotten than you had said it --- is your memory defective at all? A No, not

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that I know of.

Q Do you remember and about what season of the year you had this conversation with Mr. Jackson, when you gave him all these instructions talked of? A No, I don't really know. I cannot tell what year it was.

Q It is eight or ten years ago? A In that neighborhood.

Q Do you remember what you told him ten years ago?

A Well, no, hardly, I do not, only in regard to instructions, that is all.

Q You have been telling us here what you think you might have told him, have you not? A No, not that I know of.

Q What do you mean to say, that you remember just what you told him ten years ago? A Well, I was only asked how I instructed.

Q Answer this question, you are actually remembering as an act of your mind, what you told him ten years ago? A Yes, I told him just about how he should work at it and that was all, if that is what you mean.

Q Do you remember that? A I think I do, yes --- some of it.

Q What season of the year was it? A I couldn't say that.

Q Do you know what year it was? A No, sir, I do not.

Q Do you know what month it was? A No.

Q Do you know who else was present? A Who was present?

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Q Yes. A No --- nobody present but myself.

Q Is it your recollection that Jackson was in that tower or employed around that tower ten years ago? A I told you I didn't know if it was seven or ten years. I told you I did not know. It was in that neighborhood.

Q Do you know as a matter of fact he was not there ten years ago? A Well, you know ---

Q Do you or do you not? A When he came there as a flagman, he was broken in in the tower.

Q You don't know if that was ten years or not? A I told you I didn't know if it was ten or eight. I don't know how long ago it is.

Q This tower house is a two story structure? A Yes, sir.

Q And the levers are on the second floor, the first floor is on a level with the platform of the structure, the toilet is down in the northwest corner, an ordinary closet, is it not? A Yes.

Q Your levers come through underneath that upper floor so that when you are sitting on the toilet, you can see the bottom of the levers? A Yes.

Q There is a little hole in the north side of that structure, right opposite where the washstand is and adjoining the closet? A A small window.

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Q And from that you can see up the line? A Yes, sir.

Q Have you not had a Ninth Avenue train run down on you before you got your home signal set up?

Objected to.

Q (Continued) So as to get around on the Sixth Avenue curve?

MR. TRAIN: I object.

THE COURT: How is that material?

MR. NAYLOR: We are charged here with being regardless ---

THE COURT: I understand fully.

BY MR. NAYLOR:

Q I ask you whether you have not had such a condition presented?

Objected to. Sustained. Exception.

Q In case a Sixth Avenue train had gone around on a clear track, and you were in the tower house, and at that time you should be taken suddenly ill, or you should fall in a fit, you should break some of the couplings and be unable to change the home signal from green to red, what would the Ninth Avenue train do?

Objected to. Objection sustained. Exception.

Q Is it not possible for the Ninth Avenue train to come down and find the Sixth Avenue switches set against it?

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A Certainly.

MR. TRAIN: I object. That is what happened in this case. It is conceded that it is possible.

THE COURT: It is already answered.

BY MR. NAYLOR:

Q Does not that happen frequently?

Objected to. Sustained. Exception.

Q Has not that happened to you?

Objected to. Sustained. Exception.

Q Is there any way to prevent such accident occurring, so far as the towerman is concerned?

Objected to. Sustained. Exception.

Q Is not the running of a train at such times entirely under the control of the motorman?

MR. TRAIN: I object. It is already testified to that the only person that controls the train is the motorman and anybody knows that anyway.

MR. NAYLOR: He has not testified to that.

MR. TRAIN: Is it necessary. We are all men of common sense. It is not contended that the train is operated from the tower.

BY THE COURT:

Q The motorman runs the train? A Yes, sir.

BY MR. NAYLOR:

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Q The towerman does not run the train? A He governs them, according to where they want to go.

Q If the motorman does not obey the signal you cannot stop his train? A No.

Objected to.

THE COURT: It is already in evidence and the common sense of the jury will explain that to them.

BY MR. NAYLOR:

Q How long have you been in your present occupation?

A I think I have been over there about 12 or 13 years, somewhere in that neighborhood.

Q Is ⁱⁿ that tower? A In that tower? A Yes.

Q Have you been there continuously? A Yes.

Q Where were you during March, 1905?

Objected to as immaterial.

THE WITNESS: Where do you mean, 1905?

BY MR. NAYLOR:

Q March, 1905? A What date?

Q In March, 1905? A 1905 --- oh, I was on the road and out on strike.

Q You went out on strike? A Yes.

Q And Jackson took your place? A I believe he did. I was not there.

Q And when he came back --- when you came back he was employed there? A Yes.

Q Jackson did not go out on strike? A I believe not.

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JOHN E. BIBBER, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Were you the train dispatcher at the tower at the corner of 53rd street and Ninth avenue on September 11, 1905? A Yes.

Q About seven o'clock in the morning? A Yes.

Q Did you see Jackson that morning before the accident?

A Well, my statement before the Coroner's inquest says that I saw him ---

Q Do not state what your statement says; answer yes or no? A Yes.

Q Where was it you saw him? A I was probably about eighty to one hundred feet north of the tower.

Q Did you have any conversation with him? A No, sir.

Q Did you communicate with him in any way? A No, sir.

Q What did you do? A Probably saluted him; the customary salute.

Q Did you salute?

BY THE COURT: Have you any recollection whether or not you saluted him? A I did, yes.

BY MR. TRAIN:

Q Did he salute you? A That I cannot say.

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