

53,1932

In the Privy Council.

No. 18 of 1932.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

WINNIPEG ELECTRIC COMPANY (*Defendant*) *Appellant*,

AND

JACOB GEEL (*Plaintiff*) *Respondent*.

RECORD OF PROCEEDINGS.

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In the Privy Council.

No. 13 of 1932.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

WINNIPEG ELECTRIC COMPANY *(Defendant) Appellant,*

AND

JACOB GEEL *(Plaintiff) Respondent.*

RECORD OF PROCEEDINGS.

PART I—PLEADINGS, ETC.

No. 551/28

In the King's Bench

The 29th day of November, A.D. 1928.

BETWEEN

JACOB GEEL,

Plaintiff,

and

WINNIPEG ELECTRIC COMPANY,

Defendant.

10

G. H. WALKER,

Prothonotary.

AMENDED STATEMENT OF CLAIM

1. The plaintiff is a painter and resides at the City of Winnipeg in Province of Manitoba.

2. The defendant is a company incorporated under the laws of the Province of Manitoba and has its head office at the said City of Winnipeg.

3. On the 22nd day of April, 1928, about nine o'clock at night,
20 the plaintiff was riding as a passenger in the rear seat of an automobile which was proceeding in a westerly direction on the north side of Portage Avenue in the said City of Winnipeg, which had stopped at the intersection of said Portage Avenue and Donald Street and was standing there in obedience to the traffic signal at the intersection of said streets, when an auto bus, being a passenger automobile, bearing license No. 1601 (1928) and being the property of and operated by a servant of the defendant company was so carelessly, negligently, unlawfully and improperly driven and operated by said servant of said company that it collided with and struck the rear of
30 said automobile in which the plaintiff was riding as aforesaid with such violence as to throw the plaintiff suddenly backward, striking his head and back against the said automobile in which he was riding and causing him severe personal injuries.

4. The plaintiff alleges that he sustained said personal injuries by the negligence, improper conduct and default of the defendant company.

5. Particulars of said negligence, improper conduct and default of defendant company are as follows:

(a) The driver of the said bus did not have the said bus under
40 proper control.

*In the
Court of
King's
Bench.*

No. 1.
Amended
Statement
of Claim,
29th Nov-
ember 1928.

(b) The driver of the said bus did not keep a proper look out and was not alert to avoid the said collision.

(c) The said bus was being driven at a reckless and dangerous rate of speed.

(d) The driver of the said bus, in approaching the said intersection, did not exercise due care.

(e) The driver of said bus did not stop said bus in time to avoid the said collision.

10 (f) In not having said bus equipped with proper brakes adequate to control said bus and in not keeping said brakes in repair and proper condition.

(g) In failing to apply said brakes in time to avoid the collision.

(h) In failing to reduce or shut off the power in time to avoid the collision.

(i) In failing to reverse the gears in time to avoid said collision.

(j) In not equipping said bus with gong, bell, horn or other device and in not keeping the same in proper repair.

(k) In neglecting and failing to sound any bell, gong or horn when approaching said intersection.

20 (l) In approaching said intersection at a greater rate of speed than was reasonable under the conditions existing and at a speed contrary to the laws of the City of Winnipeg relating to traffic on public streets in said city and contrary to the provisions of "The Motor Vehicles Act."

(m) In failing to stop at said intersection in response to the traffic signal.

(n) In failing to take precautions to avoid a collision with said automobile.

(o) In colliding with the said automobile.

30 (p) In failing to guide and direct the said bus both before and after the collision in a proper and careful manner so as to avoid striking the said automobile.

(q) In permitting the said bus to be placed on the highway in the condition it was then in, it being a thing necessarily dangerous to persons who used the highway.

(r) In permitting the said bus to be driven by an incompetent driver.

40 6. The plaintiff has in consequence suffered, is now suffering and will continue to suffer great pain and has incurred expense for medical attendance and nursing and has been prevented from attending to his business work and occupation and has sustained serious permanent injuries.

7. Particulars of the injury are as follows:

(a) Damage to the brain.

(b) Damage to the nervous system.

(c) And the following permanent injuries:

1. Apprehension and fears.

*In the
Court of
King's
Bench.*

No. 1.
Amended
Statement
of Claim,
29th Nov-
ember 1928
—continued.

2. Sleeplessness.
 3. Confusion of ideas:
 4. Weakness.
 5. General Debility.
 6. Increase pulse and heart rate.
 7. Marked tremor of muscles of hands, arms, legs and neck.
 8. Marked increase of tendon and abdominal reflexes.
 9. Vasomotor disturbances.
 10. Spastic condition of the muscles.
- 10 8. Particulars of the damages are as follows:
- | | |
|------------------------------------|-----------|
| (a) Doctors' Bills..... | \$ 919.00 |
| (b) Medicine..... | 10.25 |
| (c) Winnipeg General Hospital..... | 47.00 |
| (d) Nursing Board and Room..... | 104.00 |
| | \$1080.25 |
9. The plaintiff, therefore, claims:
- (a) The said sum of \$1080.25.
 - (b) Forty thousand dollars (\$40,000.00) damages.
 - (c) The costs of this action.
- 20 (d) Such further and other relief as to this Honorable Court shall seem meet.

The plaintiff proposes that this action be tried at the City of Winnipeg in the Province of Manitoba.

Issued this 29th day of November by Chapman, Thornton & Chapman, whose address is 305 Huron & Erie Building in the said City of Winnipeg in Manitoba, solicitors for the plaintiff.

In the King's Bench

BETWEEN

JACOB GEEL,

Plaintiff,

and

WINNIPEG ELECTRIC COMPANY,

Defendant.

*In the
Court of
King's
Bench.*

No. 2.
Statement
of Defence,
6th December
1928.

STATEMENT OF DEFENCE

1. The defendant admits the allegations contained in paragraphs 10 1 and 2 of the plaintiff's Statement of Claim, but specifically denies all the allegations contained in paragraphs 3, 4, 5 and 6 of the plaintiff's Statement of Claim, and puts the plaintiff to the strict proof thereof.

2. There was no negligence on the part of the defendant company, its servant or agent, causing or in any way contributing to the accident in question.

3. The defendant denies that the automobile bus referred to in paragraph 3 of the plaintiff's Statement of Claim was carelessly, negligently, unlawfully and improperly driven and operated by its 20 servant, as alleged, and denies that the plaintiff sustained his personal injuries by reason of any negligence, improper conduct or default on the part of the company.

4. Without restricting the generality of the above denials, the defendant company in question specifically denies each and every allegation of negligence set out in paragraph 5 of the plaintiff's Statement of Claim. Denies that the driver of the bus did not have it under proper control, or did not keep proper lookout, or was not alert to avoid the collision. Denies that the bus was being driven at a dangerous and reckless rate of speed, or that he failed to exercise due 30 care, or that he failed to stop the bus in time to avoid the collision, or that he negligently failed to apply the brakes, or negligently failed to reduce or shut off the power or negligently failed to reverse the gears.

5. The defendant company further denies that the said bus was not equipped with proper brakes adequate to control it, and denies that the said brakes were not kept in repair and proper condition. Denies that the bus was not equipped with gong, bell or horn or other device, or that the same were not kept in proper repair.

6. The defendant further denies that its servants negligently 40 neglected and failed to sound any bell, gong or horn when approach-

ing the intersection; denies that he was proceeding at a rate of speed greater than was reasonable under the conditions existing, or at a speed contrary to the laws of the City of Winnipeg, or contrary to the provisions of the Motor Vehicles Act.

7. The defendant further denies that it failed to stop at the intersection in response to the traffic signal, or failed to take precautions to avoid a collision, or that it negligently failed to guide and direct the bus both before and after the collision in a proper and careful manner.

10 8. In respect of the whole cause of action, the defendant says that the accident in question was inevitable.

By Statute, section 116, Chap. 168 of the Revised Statutes of Manitoba 1913 (public); sections 9, 12, 32, 34 of Chap. 56 of 55 Vic. (private); Section 2, Chap. 54 of 58 and 59 Vic. (private); all of which statutes were enacted by the Legislature

20 of the Province of Manitoba.

Delivered on 6th day of December, A.D. 1928, by Messrs. Anderson, Guy, Chappell & Turner, 304 Electric Railway Chambers, solicitors for the defendant.

*In the
Court of
King's
Bench.*

No. 2.
Statement
of Defence,
6th December
1928
—continued.

9. The Defendant Company says it is not guilty.

PART II—EVIDENCE

[There are no pages number 6 to 10.]

In the King's Bench

BETWEEN

JACOB GEEL

Plaintiff,

and

WINNIPEG ELECTRIC COMPANY

Defendant.

In the Court of King's Bench.

No. 3.

Opening Address by Plaintiff's Counsel, 3rd December 1929.

The trial of this action had and taken before Mr. Justice Dysart, 10 and a jury, at the court-house, in the city of Winnipeg, in the Province of Manitoba, on the 3rd day of December, 1929, commencing at the hour of 10.30 o'clock in the forenoon.

Present—Mr. E. R. Chapman and Mr. D. R. Chapman appeared for the plaintiff, and Mr. R. D. Guy, K.C., and Mr. F. J. Turner for the defendant.

Mr. Chapman—May it please your lordship, I have filed a notice of amendments to the statement of claim, which have been consented to by counsel for the defendant.

The Court—The amendment is consented to?

20 Mr. Guy—Yes, I will consent to it.

The Court—Very well; let me have the notice.

Mr. Chapman—"First, by adding to paragraph 5 thereof the following:

" '(q) In permitting the said bus to be placed on the highway in the condition it was then in, it being a thing necessarily dangerous to persons who used the highway.'

" '(r) In permitting the said bus to be driven by an incompetent driver.'

"Second, by striking out the particulars in paragraph 8 thereof 30 and inserting in lieu thereof the following:

'(a) Doctors' Bills	\$ 919.00
'(b) Medicine.....	10.25
'(c) Winnipeg General Hospital.....	47.00
'(d) Nursing Board and Room.....	104.00
	\$1080.25'

"Third, by striking out sections (a) and (b) of paragraph 9 and inserting in lieu thereof the following:

'(a) The said sum of \$1080.25.

'(b) Forty thousand dollars (\$40,000.00) damages.'"

Mr. D. R. Chapman—My lord; and gentlemen of the jury: This case relates to an accident which took place on the 22nd April, 1928. The plaintiff, Jacob Geel, was a man 47 years old, and up to that time, as the evidence will show, he was a strong and healthy man. A few minutes after nine o'clock in the evening on Sunday, the 22nd day of April, 1928, the plaintiff, who had been at a meeting in the Capitol Theatre, came out and got into his friend's automobile, along with several other people, including his wife and his son, Jacob Geel, Junior, twelve years old.

10 They proceeded in this car west along Portage Avenue to Donald Street, where they stopped in compliance with the traffic signal. While they were stopped there, waiting for the signal to change, a sudden jolt occurred to their car. This jolt was so violent that it knocked the hat off the driver of the automobile, caused the engine to stall, and caused considerable damage to the back of the automobile. The plaintiff's son, Jacob Geel, received some minor physical injuries, for which he received medical treatment. Some of the ladies in the car suffered a certain amount of pain from the jolt. The plaintiff Jacob Geel, received such a blow on the back of the head or neck that
20 he was rendered for the time being almost unconscious. This jolt was caused when the bus, owned by the defendant, The Winnipeg Electric Company, the Transcona bus, which was proceeding in the same direction along Portage Avenue, crashed into the rear of the automobile in which the plaintiff was riding.

The police ambulance was called, and the plaintiff was taken away to the Winnipeg General Hospital. After the accident the defendant's bus was towed away. After the plaintiff had received a superficial examination at the hospital, he went home.

From the time of the accident he suffered pain continuously. The
30 next morning he had such a severe headache he was unable to get up from his bed. The family physician, Dr. Yonker, was called in. The plaintiff remained at home, spending his time in bed, resting, hoping that he would recover. As he did not get any better, he went to the country and tried to recuperate in the country air. Other doctors saw the plaintiff during this time, including a doctor sent by the defendant company. After spending some time in the country, at Sturgeon Creek, where he had not improved in the least bit, he came back to his home in Winnipeg. As he kept getting steadily worse, he was taken to the hospital for diagnosis under the care of Dr. Swan.
40 How his case was diagnosed will be told you by the medical men who attended him.

The plaintiff has been unable to do any kind of work whatsoever at any time since that accident. How serious his injuries are will be described to you by the doctors who have attended him and examined him, and by himself and some other witnesses. It will be for you to say who is to blame.

*In the
Court of
King's
Bench.*

—
No. 3.

Opening
Address by
Plaintiff's
Counsel, 3rd
December
1929

—*continued.*

Mr. Chapman—I offer in evidence, first, the City of Winnipeg Traffic By-law No. 12783.

The Court—You put the whole by-law in, and specify the section.

Mr. Chapman—Yes, my lord; by-law 12783.

(Traffic By-law of the City of Winnipeg, 12783, referred to, produced and marked "Exhibit 1.")

The Court—What section do you wish to put in?

Mr. Chapman—Section 39. "39. Where a traffic light signal is in operation, all vehicular traffic must obey all signals therefrom, as follows:

"(a) Green light. All vehicular traffic toward which it is directed may proceed.

"(b) Red light. All vehicular traffic toward which it is directed shall stop at the nearest crossing or white line indicating place of stop, and shall not again proceed until a green light is shown."

There is also section 9: "9. A vehicle overtaking another vehicle shall pass on the left side of the overtaken vehicle and shall not pull over to the right until entirely clear of it."

Mr. Chapman—May it please your lordship, the Evidence Act 20 provides that no more than three experts may be called, except on the order of the Judge, and that application has to be made before the trial.

The Court—What experts would you need?

Mr. Chapman—It may be necessary, and if we do need to call them I would like to have permission to call them. The section is section 7 of the Evidence Act: "7. Where, in any trial or other proceedings, it is intended by any party thereto to examine as witnesses professional or other experts, entitled according to the law or practice to give opinion evidence, not more than three of such witnesses may 30 be called upon either side without the leave of the court or judge or person presiding. (2) Such leave shall be applied for before the examination of any experts who may be examined without such leave."

The Court—It is customary not to refuse the leave, so I will grant it. I don't know that you will need them.

Mr. Chapman—We had a plan made of this location, my lord, and I will put that in as exhibit No. 2.

The Court—Is that by consent?

Mr. Chapman—Yes, it was kindly made by the engineering 40 department of the defendant company.

(Plan referred to, produced and marked "Exhibit 2.")

Mr. Chapman—I would like to have a copy of this plan placed with the jury.

The Court—Have you got blueprints of it?

Mr. Chapman—Yes, my lord.

*In the
Court of
King's
Bench.*

No. 3.

Opening
Address by
Plaintiff's
Counsel, 3rd
December
1929

—continued.

FRED CALSBECK (Examination-in-Chief).

FRED CALSBECK, being first duly sworn, testified as follows:

Direct Examination by Mr. Chapman:

Q. Where do you reside? A. In East St. Paul.

Q. What is your occupation? A. Market gardener.

Q. Do you remember this accident which took place on the 22nd of April, 1928? A. Yes, sir.

Q. What day of the week was that? A. On Sunday evening.

Q. What were you doing that evening? A. I was attending a
10 meeting at the Capitol Theatre.

Q. A religious service, was it? A. It was.

Q. How did you go to that meeting? By what means of transportation? A. By automobile.

Q. Who was driving it? A. I was myself.

Q. When you went into the meeting, where did you park your car? A. I parked it east of the Capitol Theatre, on the north side of Portage Avenue.

Q. About what time did you come out of the meeting? A. It must have been shortly after nine o'clock.

20 Q. The meeting was from eight to nine? A. Yes.

Q. Did you see the plaintiff, Mr. Geel, there? A. Well, he was there.

Q. Did you speak to him after the meeting? A. After the meeting, yes, I did.

Q. Was he with you when you went to your car? A. He was with me when I went to the car, and went into the car.

Q. He got into your car? A. He got into my car.

Q. Who else? A. Mrs. Geel, Mrs. Schurman, Mrs. Sulkers, and my daughter Grace.

30 *By the Court—*

Q. Did you have a bus or just a car? A. Just a car, sir.

By Mr. Chapman—

Q. Who else? A. My son Herman and Mr. Geel's son.

Q. You were driving, sitting in the front seat, I presume? A. Yes.

Q. In the driver's seat? A. Yes.

By the Court—

Q. How many in all were in the car? A. I think, nine; I don't know just exactly.

By Mr. Chapman—

40 Q. I think you have named eight. Who were in the front seat with you? A. My son and daughter, Grace, and Herman.

Q. And the rest were sitting in the back seat? A. The rest were sitting in the back seat.

FRED CALSBECK (Examination-in-Chief).

Q. Do you know what side of the car the plaintiff was sitting on?

A. No, I don't know exactly which side he was sitting on.

Q. You don't know where the people sat in the back? A. No, I don't know in the back where they sat.

Q. What kind of a car is that you have? A. A Reo.

Q. Is it a large car? A. It is quite a roomy car, a 1916 model.

Q. How wide is the car outside? A. Outside it is between five and a half and six feet wide, from outside of the fender. It would be
10 over five and a half feet and less than six feet.

Q. How much does it weigh? A. I have never weighed it approximately, but I have a Reo truck which weighs 3200, and I should judge this would weigh about a ton.

Q. After you all got aboard the car, which way did you start to drive? A. I proceeded west.

Q. On what side of Portage Avenue? A. On the north side of Portage Avenue.

Q. It is common knowledge that Portage is one of the main thoroughfares of the city? A. Yes, it is.

20 Q. A great deal of traffic on it generally? A. Yes.

Q. Do you remember the buildings that are on the corner of Portage and Donald? A. Eatons is on one of them, the 15 Cent Store, or the Somerset Block, is on the other, and I don't remember, I think the Capitol Theatre is on the other corner, and I don't just remember what is on the other one now, I can't just say.

Q. You know where that signal is? A. Yes, it is right in the middle of the street.

Q. The center of the intersection of the two streets? A. Yes.

By the Court—

30 Q. You say the signal, do you wish to specify more particularly the kind of signal it is?

By Mr. Chapman—

Q. What is this signal? A. It is a stop signal with green and red lights, and it turns about.

Q. Operated by electricity? A. Yes.

Q. What happened as you drove up to the intersection of these two streets? A. I stopped because the signal had turned red, and I stopped; and as I had stopped I don't just think for half a minute or so, something like that, a crash came into the back of my car, and then
40 of course we got out as quickly as we could.

Q. Just before that, was your engine running when you came up to the intersection? A. No, it stopped; for what reason I don't exactly know; I don't remember that, because it is a very short space, and my hat was knocked off, and then we got out.

FRED CALSBECK (Examination-in-Chief).

Q. Your hat was knocked off when? A. Right when the crash came.

Q. And you say you got out of the car? A. We got out of the car.

Q. All hands got out? A. I think they pretty well all got out; but before they all went out, the driver of the bus came and asked if there was anybody hurt; and I presumed at first there was nobody hurt very seriously, I didn't know.

Q. Just what did you tell him? A. I said I didn't know; I didn't
10 think so. Of course they had not all got out of the car then yet.

Q. Did you notice the plaintiff Mr. Geel? A. Yes, he came out of the car; and when he came out of the car he came like this (indicating) with his hand to his neck, just exactly like that.

Q. What was his appearance at the time? A. Well, he didn't say anything at all; he didn't say nothing. Just kind of staggered over some place along the side of the car. I don't know just what happened, but after a little while an ambulance came along and he was conveyed by an officer into the ambulance and they took him away.

20 Q. What damage was done to your car. A. When I examined the damage to the car at the back, the back spring was broken, and the fender was all doubled up under it. The bus had run under my car; that is, under the back of it; and the wind shield was broken, and the back tire.

Q. The wind shield that was in the front of the car? A. Yes, that was in the front of the car; and the back tire had been dented right into the back of the car, dented the back of the car; I don't know what you call that.

Q. The body? A. Yes, the body.

30 Q. You say that the bus sort of lifted the part of your car; what part of your car was lifted off the street? A. The body.

Q. The front end or the hind end, or one wheel? A. The hind end.

Q. Both wheels? A. No, it wasn't under the wheels; the wheel was on the ground. But it just ran under the body, because we had quite a job getting them apart again.

By the Court.

Q. Getting what apart? A. The bus and the car.

By Mr. Chapman—

Q. The bus and the automobile? A. Yes.

40 Q. Who got it apart? A. I don't say who; there was quite a crowd around at that time.

Q. What kind of an automobile was it, a touring car or a sedan?

A. A touring car.

Q. Did you have your side curtains up? A. Yes.

FRED CALSBECK (Examination-in-Chief).

Q. Did you hear any signal of an alarm before the bus struck you?

A. No.

Q. A horn or gong? A. No, nothing.

Q. Did you have any conversation with the driver of the bus?

A. Not very much; because by that time—

Q. You have told us that he came up and asked if anybody was hurt? A. Yes, that is the conversation I had; and then there was an officer, a policeman, came and took my name, and took the chauffeur
10 or the driver of the bus, his name; and it all went very quickly, because there was quite a crowd around, blocking the traffic.

Q. Was the bus injured in any way, or did you notice that? A. I am not sure; I think that the radiator of the bus was damaged.

Q. Was the bus moved away while you were there? A. I don't remember that, because I was told to come across the street and pull away; there was a crowd gathering.

Q. Where did you go when you were told to do that? A. I went across Donald, and stopped on the other side.

Q. On the north side of Portage? A. Yes.

20 Q. Your car could run under its own power? A. Yes.

Q. What did you do with your car? A. I don't know just exactly whether we had to block it up, but we had to run it very slowly, and I took it to Innis' garage on the corner of Redwood and Main, on the south side.

Mr. Guy—Has this any bearing on the matter?

Mr. Chapman—I think it has.

The Court—There is no action for damage to the car.

Mr. Chapman—No, my lord.

By Mr. Chapman—

30 Q. Is that man Innis in the city now? A. I don't know.

Q. Is he running that garage there? A. I don't know; I haven't been there since.

Q. What did it cost you to repair the car?

Mr. Guy—That is not relevant.

The Court—We will get into a great many side issues, and if they are not relevant they should not be given.

Mr. Chapman—I think it is relevant to this extent.

By Mr. Chapman—

Q. Did you pay for the damage to your car?

40 Mr. Guy—I object to that.

The Court—No, it is not in issue.

Mr. Guy—There is no issue about the car at all.

FRED CALSBECK (Cross-Examination)

The Court—If it is not relevant to our inquiry here, why should we receive it?

Mr. Chapman—It would be relevant in this way, by way of admission.

The Court—Not an admission to you; an admission somewhere else, and even then, as far as I know, it might be entirely without prejudice.

By Mr. Chapman—

10 Q. How was the light at the corner at the time of this accident, the visibility? A. The visibility was fairly good, because they could write there.

Q. They could write? A. Yes.

Q. The street lights were on? A. Yes.

Q. How long have you known the plaintiff? A. I have known him for at least twenty years or more.

Q. Did you meet him frequently during that time? A. Yes, off and on; sometimes there would be a little while, but quite often—I don't know just what you would call, just exactly, frequently.

20 Q. Where has he lived during the time you have known him? A. He lived in the city of Winnipeg, not quite always; he has been somewhere else away, but he has been living in the city of Winnipeg off and on. He lived in Elmwood before he lived where he lives now.

Q. He doesn't own his own home; he moves from one house to another? A. Yes.

Q. Are you any relation to him? A. His wife, Mrs. Geel, she is my cousin; her mother and my mother were sisters.

Q. Then you have been very friendly and met him frequently during this time? A. Oh, yes; we have always been on good terms.

30 Q. You observed his physical condition? A. He was all right; he worked mostly for Mr. Voorsmidt, a painter.

Q. What state of health was he in during the time you knew him? A. He was always in good health, just as good as myself.

Q. Did you ever know him to be ill? A. It might have happened once or twice during the years he might have had a headache, just like myself.

Q. Did you ever know of his having medical attendance? A. No.

Q. Did you ever know of him losing work through illness? A. No. I don't think he ever did, not to my knowledge.

40 *Cross-Examination by Mr. Guy—*

Q. Did I understand you to say, Mr. Calsbeck, that you didn't have any conversation with the driver of the bus except what you have told us about; that he came up before any of you got out of your automobile and asked you whether anybody had been hurt? A.

ARCHIBALD GILLIS (Examination-in-Chief)

That is all I remember, it is quite a while ago; there might be something else, I have just forgotten, but as far as I remember that is all the conversation I had with the driver.

Q. Did he tell you how he came to run into you? A. No, I don't remember that.

Q. You don't remember that? A. No.

Q. Did he suggest to you that the brake broke? A. Oh I heard something about it, but I don't know if the driver told me that.

10 Q. But right there at the time? A. Well, there was something mentioned about that, but whether I got that from the driver—but he didn't say that to me if he did say it—I wouldn't be sure whether—it is a long time ago—whether I heard him say it or heard somebody else say it.

Q. Anyway, you got the information right there at the time that the brake on the bus had broken? A. There was something mentioned about the brakes, whether broken or not, that is something I don't exactly know.

Mr. Guy—That is all.

20 ARCHIBALD GILLIS, being first duly sworn, testified as follows:

Direct Examination by Mr. Chapman—

Q. Where do you reside? A. I live in Winnipeg, in Fort Rouge, 846 Weatherdon Avenue.

Q. That is in the city of Winnipeg? A. Yes, sir, in the city of Winnipeg.

Q. Do you remember the night of April 22, 1928, attending a meeting at the Capitol Theatre? A. I attended the meeting on April 22 in the Capitol Theatre.

30 Q. Did you meet the plaintiff there? A. I met Mr. Geel at the meeting, both before the meeting and also after the meeting.

Q. What did you do after the meeting? A. I was one of the deacons, and it was our duty to clean up the theatre, and I called on Mr. Geel to assist me, which he did. He took one side of the aisle and I took the other.

Q. When you came out did you see this collision? A. I took the side door of the Capitol Theatre, and walked south on Donald Street, and I seen the Transcona bus collide into the rear end of the touring car in charge of Mr. Calsbeck.

40 Q. Where were you at the time the collision occurred? A. I was only a very short distance from the corner of Donald and Portage, going straight south.

ARCHIBALD GILLIS (Examination-in-Chief)

Q. With what force did the bus strike the automobile? A. It struck it with terrific force, so that the body of the car almost stood on end. I thought it was going to turn over for a minute. I started to run towards it, but it only had rear end brakes, and it settled down, and when I got up they were probably a foot and a half apart, the bus and the touring car.

Q. Did you hear any of the conversation? A. I asked Mr. Calsbeck what happened, and he said he stopped for the traffic signal.

10 Mr. Guy—I object to that.

Q. Did you hear anything said by the driver of the bus? Did you speak to the driver of the bus? A. I asked the driver of the bus what happened, and he said that his brakes was not working.

Q. Did you see the plaintiff, Geel? A. I didn't see Mr. Geel, but I heard Mrs. Geel say to somebody that her man was hurt.

The Court—No, that is not evidence.

Q. What kind of a car was it that Calsbeck had? A. A Reo touring car.

Q. Did you notice what damage was done to it? A. The body
20 was resting on the right rear wheel, that is the only thing I noticed; the body of the touring car was resting on the right rear wheel.

Q. Did you not examine it to see what caused that? A. No.

Q. The body had gone down on to the wheel? A. The body had gone down on to the top of the wheel.

Q. Did you assist in moving it up? A. No, the policeman came along and ordered everybody to stand back, which I did, and other pedestrians assisted the car to get it out of the road.

Q. In what state of health did Mr. Geel appear to be when you
30 were working with him there in the theatre? A. He appeared to be in the very best of health, just as healthy and strong as myself.

Q. How was the visibility there at the corner at that time?

A. The visibility was good, clear night, and street lights were on.

Q. Did you notice any other automobiles there at that corner?

A. I did not take any notice if there was any other automobiles.

Q. You did not notice any? A. No.

Q. How near was Calsbeck's right side of his auto to the kerb on
the north side of Portage Avenue? A. It seems to me it was about
10 or 12 feet from the kerb.

Q. So that there was plenty of room for the bus to go between—

40 Mr. Guy—I object to that; that is a leading question.

Q. What was the width of the bus? A. I don't know; I never measured.

Q. Did you see it there that night? A. I seen it there that night.

Q. What would you consider would be the width of the bus?

ARCHIBALD GILLIS (Cross-Examination).

ARCHIBALD GILLIS (Re-Examination).

A. It would be probably about 10 feet; I am not sure, but I think about that.

Q. What part of the automobile was struck by the bus? A. The bus struck the automobile in its rear end.

Q. On what side, or in the center? A. It seemed to be right square on the back; probably a little bit on the right, if anything.

Q. At any rate, the right side of the body was on the right hand rear wheel; it settled down there? A. Probably a little bit, slightly.

Q. Did you hear any alarm given by the driver of the bus previous to the collision? A. None whatsoever.

Q. Did you notice any other traffic on the street? A. I didn't notice any other traffic on the street.

By the Court—

Q. What was the condition of the surface of the street? A. Well, the surface is very good; there was no ice on the streets. A nice spring night.

Q. What about moisture? A. There was no moisture, as far as I can remember, Your Honor.

Cross-Examination by Mr. Guy—

Q. Do I understand, Mr. Gillis, that you came out of the Donald Street entrance to the Capitol Theatre? A. Yes.

Q. And you walked south on Donald Street to the intersection? A. Yes.

Q. How far did you get when you say you saw the collision? A. I wouldn't be more than probably about 30 or 40 feet from the corner of the kerb stone, I imagine.

Q. Thirty or 40 feet from the corner of the kerb? A. Yes.

30 Q. That would be on Donald Street? A. On Donald Street.

Q. That would be north of Portage, wouldn't it? A. North of Portage, yes.

Re-Examination by Mr Chapman—

Q. Did you see Mr. Geel after the accident? A. I didn't see Mr. Geel after the accident for some time after.

Q. I mean that evening? A. No, not that evening.

Q. When did you see him? A. I seen him probably several months after that.

Q. Where? A. At his home.

40 Q. How was he then? A. He was in a very bad condition. He appeared nervous and a complete change to what I had seen him the night at the meeting.

JAMES WONNACOTT (Examination-in-Chief).

JAMES WONNACOTT, being first duly sworn, testified as follows:

Direct Examination by Mr. D. R. Chapman—

Q. Do you remember the evening of April 22, 1928? A. I do.

Q. Tell the jury, Mr. Wonnacott, what you remember of that time in connection with this accident? A. I was at a meeting at the Capitol Theatre that night. I left the theatre at the Donald Street entrance about nine or 9.30, around there, I don't remember exactly, and I proceeded south on Donald Street, and I went up Portage 10 Avenue east.

Q. Were you going towards something there? A. I had parked my car there. I had missed my friends and thought possibly they had gone down to the car.

Q. What did you see just at that time? A. I didn't find them there, and I turned around and came back on Portage; and when I got about, I would say, 75 feet or so, the bus, the Street Railway bus, came in towards the kerb. It was going at quite a rate of speed, so fast that I stepped to one side.

Q. Where were you at the time? A. On Portage Avenue, near 20 the kerb, facing west.

Q. On the sidewalk? A. Yes.

Q. Would you indicate on the plan, Exhibit 2, Mr. Wonnacott. This is Portage Avenue, and this is Donald Street, and the Capitol Theatre is here (indicating). The first building on the corner is the United Cigar Store. About where were you standing? You say you were on the sidewalk? A. I was on Portage Avenue.

The Court—In front of which one of those buildings as indicated?

Mr. Chapman—There is the United Cigar Store, Picardy, Honey Dew, and then the Commodore, and then the Capitol? A. I would 30 say I would be here.

Q. About the line between the Honey Dew and the Commodore Cafe on the sidewalk? A. I would judge so.

Q. And that would be within about—

The Court—That will appear there if you mark it.

By Mr. Chapman—

Q. Mark it with a capital A? A. Yes, I have marked it.

Q. What do you say about the speed of the bus when it came along there? A. It came along at rather a fast rate; I don't know how fast it would be going to be sure.

40 Q. How about other cars or other traffic on the street at that time? A. I didn't see any other cars farther west on the street at that time except the one.

Q. Farther west? A. Yes.

JAMES WONNACOTT (Cross-Examination).

ROBERT HOLLINGER (Examination-in-Chief).

Q. Were there any other cars to the east? A. Yes, I think there were. Yes, there were some.

Q. Didn't you say your car was down there? A. Yes.

Q. And many others? A. I don't remember how many; I imagine there would be several.

Q. What did you see take place then after the bus came along towards the kerb? A. It never slacked its speed at all, and went
10 into the back of the car that was stopped right near Donald Street.

Q. Did you recognize that car that was hit? A. I did not.

Q. Did you stay there any length of time? A. No, I kept going right back to the Theatre.

Q. Did you see what damage was done? A. I did not.

Q. Do you drive a car yourself, Mr. Wonnacott? A. I do.

Q. You have a fair idea of the rates of speed then? A. Yes, I think I have. I would estimate that about 15 miles an hour.

Q. You would estimate this bus was going about 15 miles an hour? A. Yes.

20 Q. Did you notice whether the car that was run into was going at all? A. To all appearance it was standing still.

By the Court—

Q. You live here in the city of Winnipeg? A. I live in Elmwood sir.

Cross-Examination by Mr. Guy—

Q. Did you stop and watch the bus? A. I couldn't say whether I stopped or not, likely I did.

Q. Likely you did? A. Yes.

Q. You were going west at the time? A. Yes.

30 Q. And after the collision actually occurred, Mr. Wonnacott, how far did the bus go? A. I couldn't say, I didn't know that it moved at all.

Q. You could not say that it moved at all? A. No, I wouldn't think so.

Q. Do you know how far the automobile was moved by the impact? A. No, sir, I do not.

ROBERT HOLLINGER, being first duly sworn, testified as follows:

Direct Examination by Mr. D. R. Chapman—

40 Q. Where do you live? A. No. 6 Einarson Avenue, Winnipeg.

Q. Do you remember the evening of April 22, 1928? A. I do, very well.

ROBERT HOLLINGER (Examination-in-Chief).

Q. The accident that occurred at Donald and Portage at that time? A. Yes, sir.

Q. Tell his lordship and the jury what you remember of that time?

A. I was attending a mass meeting in the Capitol Theatre that evening. I came out of that theatre and walked south on Donald Street towards Portage Avenue, and east on Portage towards my car, which was parked there, with my wife. As I walked down Portage east, the Transcona bus came up at a very good rate of speed, and I turned
10 around, thinking he was going to come into the sidewalk.

Q. Could you estimate the speed of the bus? A. Well, I wouldn't like to do so.

Q. About what do you say was its speed? A. Twenty miles an hour anyhow.

Q. You say it came towards the kerb? A. Yes, sir.

Q. What then? A. And I turned around, thinking he was going to come into the kerb, and I watched the bus and I heard a crash. The bus hit the rear end of a touring car standing in front, waiting for the stop signal to change.

20 Q. Did you recognize the car that was hit by the bus? A. I recognized it afterwards.

Q. Whose car was it? A. Mr. Calsbeck's car.

Q. Do you know Mr. Calsbeck? A. Slightly.

Q. Did you see the plaintiff, Mr. Geel, at that time, after the accident? A. I did.

Q. What was he doing? A. He was sitting in the back seat of the car.

Q. On what side of the car? A. On the right hand side.

Q. How did he appear? A. He looked very white.

30 *By the Court—*

Q. That is, of the car that was— A. That was struck by the bus.

Q. How soon after the collision did you get to the plaintiff?

A. About two minutes.

By Mr. Chapman—

Q. You say he looked white. What else did you notice about him? A. That is all. I don't remember what I said to him. He looked very pale, and he was holding his hand to the back of his head.

Q. Did you see the driver of the bus at that time? A. I seen him immediately after that talking to the policeman.

40 Q. Did you hear him say something about this? A. I heard the remark pass that his brakes did not hold, and I heard the brakes screeching when he pulled them on.

Q. Do you know the plaintiff, Mr. Geel? A. Slightly.

Q. You are no relation to him? A. None whatever.

ROBERT HOLLINGER (Cross-Examination).

Q. Did you hear any horn or anything of that sort at the time of the accident? A. I did not.

Q. What was the first thing that attracted your attention to the accident? A. Was the speed of this bus coming up Portage Avenue.

Q. You saw it before you heard it? A. Yes, my wife saw it also, but she is not in a condition to give evidence.

Q. What would you say about how the bus hit the car in front of it? A. I did not examine it.

10 Q. Did you see where or how hard it hit? A. It was the rear end of the car, and it was quite hard because I heard the crash quite distinctly.

Q. You say it hit on the rear end of the car? A. Yes, the rear end of the Reo car.

Q. Towards the center or either side? A. No, it was towards the north side, I believe.

Q. And the car was facing how? A. The Reo touring car was facing west.

Q. That would be the right side of the car? A. I think so.

20 *Cross-Examination by Mr. Guy—*

Q. You were walking east on the north side of Portage Avenue when you say you saw the bus coming? A. Yes.

Q. Where was the bus when you first saw it? A. It was coming west on Portage Avenue, probably about 20 or 30 feet from me, when I was walking east.

Q. That is, the first time you saw it was when it was 20 or 30 feet from you? A. Yes.

Q. Why do you say 20 or 30 feet from you? Do you mean coming towards you? A. When I saw it it was about 20 or 30 feet away from
30 me.

Q. Where were you when you first saw it. A. I was walking east on Portage Avenue towards my own car, which was parked near the Capitol Theatre.

Q. But I want to know where you were on the street? A. Right close to the kerbstone.

Q. At what point? A. Probably about 20 feet east of Donald Street, on the north side of Portage Avenue.

Q. About 20 feet east of Donald? A. Yes.

Q. When you first saw the bus it was 20 feet away from you?
40 A. Yes, the bus was 20 feet from me and I was 20 feet from Donald Street; at least I wouldn't swear to the distance, but it seemed to be that.

Q. It didn't seem to be stopping? A. No, not until he passed me, then I heard the brakes screech.

Q. Not until he passed you? A. No.

ROBERT HOLLINGER (Cross-Examination).

Q. Did he pass you? A. Yes, he passed me.

Q. How far past you did he go before the collision or impact took place? A. I would imagine the same distance I was from Donald Street, about 20 feet.

Q. About how far past did he go? A. Before the collision took place?

Q. Before he came into contact with this other car? A. I didn't measure the distance, but I believe it was about twenty feet.

10 Q. About twenty feet past you? A. Yes.

Q. You saw him about 20 feet before he came to you, and he went another 20 feet before he went into the back of the car? A. Yes.

Q. I thought you told us you were only about 20 feet from the intersection? A. Yes.

Q. Then did the impact take place right on the intersection?

A. The collision took place right at the intersection. Mr. Geel's car was standing waiting for the signal to go.

Q. Yes, but it stood behind the line of the intersection, didn't it?

A. I don't just understand where you mean.

20 Q. You know where cars usually stop at the intersection. They stop just before the intersection commences? A. Yes.

Q. You say you were 20 feet east? A. Yes.

Q. And the bus after passing you went another 20 feet before it went into the car? A. That is quite true.

Mr. Chapman—He is only speaking approximately.

A. I didn't measure it, I said that.

By Mr. Guy—

Q. How far would Mr. Geel's car be away from the intersection when you saw it? A. I imagine he would be on the line. I didn't
30 measure that either. There was a car waiting there to go, and I found out after it was Mr. Geel's car.

Q. You found out after? A. When I went up to see whose car it was.

Q. What took place after the impact? How far did the bus go after it struck this car? A. I really couldn't say that.

Q. You were watching? A. I didn't see the bus travel any distance. I think he stopped still, as far as I could see. I didn't see him go any distance after he struck the auto.

Q. What about the automobile? A. I just seen it kind of lifted
40 up; I didn't see it go forward.

Q. Were you looking? A. I was; I turned right around.

Q. So you were looking, and you didn't see the bus go, or the other automobile go forward when the impact took place? A. I seen the automobile lifted up, the rear end.

ROBERT HOLLINGER (Re-Examination)

ELIZABETH SULKERS (Examination-in-Chief)

Re-Examination by Mr. Chapman—

Q. Did you see what they did with the defendant's motor bus, the Transcona bus, after the collision? What became of it? A. No, I did not. I went to my car and went home, and I did not take any notice of that.

ELIZABETH SULKERS, being first duly sworn, testified as follows:

10 *Direct Examination by Mr. Chapman—*

Q. Do you remember this accident which occurred on the 22nd April, 1928, on the corner of Donald and Portage Avenue? A. I do.

Q. Where were you that evening? I was in the back of the car.

Q. And in Mr. Calsbeck's car? A. Yes.

Q. What seat of the car were you sitting on? A. I was in the center by Mrs. Schurman and Mr. Geel.

By the Court—

Q. In the center of which seat? A. Back seat.

By Mr. Chapman—

20 Q. Mr. Geel was on which side? A. On the north side.

Q. Your right hand? A. Yes.

Q. And Mrs. Schurman? A. Was to my left, and I was in the center.

Q. Where was Mrs. Geel? A. I can't remember whether she sat on my left or on Mr. Geel's left.

Q. Do you remember where the boy sat? A. No, I can't remember that.

Q. They were both in the back seat with the rest of you? A. Yes, we were all in the back.

30 Q. And you had got into the automobile where it was parked near the Capitol Theatre? A. Yes.

Q. And then you had driven west until you came to the intersection of Donald and Portage? A. Yes.

Q. Did you notice the signal? A. Yes, I noticed the signal was on "stop," and so we stopped there.

Q. Was Mr. Calsbeck's engine still running, or did you notice that? A. I didn't notice that.

Q. What happened while you were standing there?

A. We were standing there, you might say, half a minute, and all 40 of a sudden we heard such a terrible crash which came right into the

ELIZABETH SULKERS (Cross-Examination)

car I was sitting in, and we were pushed ahead a certain amount; and it was an awful crash, and we were really shook in the car.

Q. How did it effect you? A. I had a very sore back for a few weeks from the sudden jolt.

Q. And after the crash, did you see the bus driver? A. Yes, he came up to the car, and I think if I remember right opened the door, and he asked us if we were hurt.

Q. Anything else? A. It appeared, and I thought at first that
10 nobody was hurt, but I remember seeing Mr. Geel, and he had his hand like this (indicating), and of course all our attention was on Mr. Geel, and he was very pale that night, and he wasn't able to say a word, he was so stunned. He had his eyes closed, I remember that.

Q. How had he been before the crash? A. He was always a healthy man, as far as I knew him.

Q. Was he in his usual good health up to the time of the crash?
A. Yes.

Q. All you heard the bus driver say was that he asked whether anybody was hurt? A. Yes.

20 Q. Did you see what Mr. Geel did when he got out of the car?
A. I just don't remember; but I remember it was kind of full at the back with all of us and that somebody helped him to the front seat, and while he was sitting in the front seat, then a policeman came along, and very shortly there was a big crowd of people around us, and they asked Mr. Geel if he was hurt, and nobody could get him to answer a thing.

Q. What did they do with him? A. They took him out of the car, put him in the ambulance and rushed him to the hospital.

30 Q. How long have you known Mr. Geel? A. I have known him
for a number of years, seven years.

Q. What was his condition physically, as far as you could see?
A. As far as I have known him he has always been a healthy man. He is always working.

Q. Have you ever known him to be ill? A. No, I can't say.

Cross-Examination by Mr. Guy—

Q. Do you know how far your car moved after this impact with the bus? A. I couldn't say; but it was just pushed forward, the car, and raised at the same time. It was a sudden jolt.

40 Q. You don't know how far it went? A. No, I couldn't say; but
it was a terrible crash, I remember that.

Q. You remember the crash, but you don't know how far it went?
A. No, I thought it was a building fell down on top of us.

Q. You did not see the bus coming? A. No.

Q. The collision was a surprise to you? A. Yes.

ELIZABETH SULKERS (Re-Examination)

EMMA SCHURMAN (Examination-in-Chief)

Re-Examination by Mr. Chapman—

Q. Did you hear any alarm or horn? A. No, I did not.

Q. No alarm? A. Nothing whatever.

EMMA SCHURMAN, being first duly sworn, testified as follows:

Direct Examination by Mr. Chapman—

Q. Do you live in Winnipeg? A. In Bird's Hill.

10 Q. Have you been acquainted with the plaintiff, Mr. Geel? A. About six or eight months.

Q. Were you at this meeting at the Capitol Theatre on the evening of April 22, 1928? A. I was.

Q. Did you see Mr. Geel there? A. I did.

Q. Before the meeting? A. I don't remember about that.

Q. Did you see him immediately after? A. I remember seeing him when we all got into the car.

Q. How did he appear physically? A. He appeared in perfect health.

20 Q. Do you remember who got into the car? A. Yes, all of the ones that have been named.

By the Court—

Q. And did you get in too? A. I got in too.

By Mr. Chapman—

Q. And you were sitting on the left hand side of the rear seat? A. I was.

Q. Who sat to your right? A. Mrs. Sulkers sat in the center, and Mr. Geel sat on the outside, three of us sitting on the seat.

30 Q. Where did Mrs. Geel sit? A. I couldn't say. It was in that part of the car, but I couldn't say where it was she was sitting.

Q. Do you remember where the boy sat? A. No, I don't. I know I was sitting on the seat myself.

By the Court—

Q. Mr. Geel was on the seat? A. Sure, he was sitting on the seat.

Q. He wasn't on any one's knee? A. No.

By Mr. Chapman—

Q. When you got into the car what direction did you go? A. North on Portage Avenue.

40 Q. North? A. Or west, really I haven't got the directions. We were going down from the Capitol, down towards the stop sign, and

EMMA SCHURMAN (Examination-in-Chief).

we stopped there on the corner of Donald. That is the way we were going.

Q. While you were standing there what occurred? A. While we were standing there I was sitting so I could look through the window of the car, and I just turned my head and glanced out, and as I did I saw the bus coming, and it was coming at such a rate that before I was done thinking, "Oh we are going to be struck"—before I was done thinking that—the crash came and we were struck.

10 Q. What effect did it have? A. It kind of gave me a jar, but I was looking for the jar and I was prepared for this jar, because I knew it was coming, but it jarred me pretty good at the time.

Q. What did it do to your automobile? A. It broke the back out, kind of squashed it down, and raised it up, and moved the automobile.

Q. When it struck, what effect did the crash or jolt have on the automobile, send it forward or what? A. It sent it forward, certainly.

Q. Did you notice Mr. Geel immediately after the crash? A. Everyone began to look around to see if anyone was hurt, and Mr. 20 Geel must have been hurt, because when he was asked, "Are you hurt?" he did not seem to answer, and his hand went up to the back of his head, and he seemed to be the one that was hurt the worst, although Mrs. Sulkers said, "Oh my back, I have got a terrible pain in my back."

Q. Did you see the driver of the bus? A. When he opened the door, I saw him then. I would not recognize him again if I saw him.

Q. Did he say anything? A. He said something about he could not make his brakes work, or something to that effect; I could not repeat the words he said.

30 Q. Something to the effect that he could not make his brakes work? A. Yes.

Q. Do you know how far your auto went ahead after the collision? A. No, I couldn't tell that. I didn't take any notice what happened, for I will tell you the reason why, because I was on a crutch myself.

Q. I only want to know the facts; I don't want to know the reason.

The Court—You want to know how far the car moved forward?
Mr. Chapman—How far the car went forward.

By the Court—

Q. You understand? A. Yes. I couldn't tell you how far it 40 went forward.

By Mr. Chapman—

Q. Could you tell me how far the bus was away from your car when you saw it coming? A. I would judge it was about 20 feet when I saw it coming.

SIPKO VOORSMIT (Examination-in-Chief).

SIPKO VOORSMIT, being first duly sworn, testified as follows:

Direct Examination by Mr. Chapman—

- Q. Where do you live? A. In the city of Winnipeg, 144 Arnold.
 Q. What is your occupation? A. I am a painter and decorator.
 Q. Are you a master painter or journeyman? A. Master painter.
 Q. Do you know the plaintiff Mr. Geel? A. Yes, I do.
 Q. Is he any relation to you? A. Yes, he is my brother-in-law.
 Q. I believe the evidence is that he works for you at times?
 10 A. Oh, yes.
 Q. How long have you been in business in Winnipeg? A. About fifteen years.
 Q. How long have you known Geel, the plaintiff? A. I have known him for about twenty years. He is the brother of my wife.
 Q. How long has he worked for you? A. I believe he started in 1919 or 1920 for me.
 Q. Did you take all his time? A. I tell you, if I got lots of work he was always there to work for me.
 Q. Did he work for anybody else? A. Oh, yes; he has been work-
 20 ing in partnership with somebody else, but when I was busy he was always working for me. If I had no work he took work on himself, took small contracts on himself.
 Q. What rate of pay did you give him? A. He was entitled to the highest rate of union wage.
 Q. What were they last year? A. Last year, 85 cents an hour.
 Q. And this year? A. 90 cents an hour.
 Q. Eighty-five cents per hour last year, and 90 cents per hour this year? A. Yes.
 Q. Has that rate varied much in the last few years? A. No.
 30 Q. It has been 80 and 90 cents per hour one year and another?
 A. Yes.
 Q. Could you tell me how much he would earn working for you year in and year out? A. The way he was working, he did quite a bit every day. He was able bodied and he wants to have all the work that he could get. I could say nine or ten hours a day, if he was working in some cases when there was plenty of work.
 Q. Could you tell how much a year he would earn with you?
 A. Say, for instance, in 1920 he made about \$1700; 1900 hours he made that year.
 40 Q. Could you tell how much he made last year? A. Last year he wasn't working for me only for three months. His accident occurred on April 22nd, and he was working the day before, up to the last day.
 Q. And he had worked to the first of the year 1928 with you?
 A. Yes.

SIPKO VOORSMIT (Examination-in-Chief).

- Q. And had been working steadily during that time? A. Yes.
- Q. What was his condition physically during the time you have known him? A. Before the accident?
- Q. Yes? A. Perfect, a strong and healthy man.
- Q. Did you ever know him to lose any time from his work on account of illness? A. Never.
- Q. Did you ever know him to have any medical attention? A. Not to my knowledge.
- 10 Q. How did he go to and from his work? A. If the weather was good, in most cases with his bicycle.
- Q. He rode a bicycle? A. Yes, to and fro.
- Q. Where would you generally be working? A. Mostly in Fort Rouge.
- Q. Where does he live? A. For the last couple of years he lives on Magnus Avenue, and before he lived on Riverton Avenue, Elmwood.
- Q. And he would ride from there over to his work in Fort Rouge back and forth? A. In most cases, yes.
- 20 Q. Did you see him on the night of the accident? A. Yes, I did.
- Q. What would you say as to his health that evening, before the accident? A. I didn't see him before.
- Q. You saw him after the accident? A. I saw him after the accident, when he was taken in the police ambulance.
- Q. You went to the hospital with him? A. No, I came out of the meeting of the International Bible Students held in the Capitol Theatre, and after I came out I saw the police ambulance and quite a few people there, and somebody told me Uncle Jacob was hurt. I went in and just saw him going into the police ambulance. I asked
- 30 the policeman where he was going to take him, and he said to the General Hospital.
- Q. And what did you do? A. I picked up his wife and children and brought them home in my car.
- Q. And afterwards did you see him? A. Afterwards, when I brought his wife home, and the children, I went up to the hospital to see him, and he was sitting down with the doctor in the ante-room, or waiting room, or what you call the entrance room, and the doctor asked him the question if he wanted to stay. No, he wanted to go home—
- 40 Q. That is not evidence. What condition was he in? A. He was in pretty poor state. He was nearly as white as a piece of paper, and he was all shaking.
- Q. What did you do with him? A. From the hospital I took him home and helped to put him to bed.
- Q. Did you see him the next day? A. I saw him the next day. He was still in bed, and he had called for Dr. Yonker.

SPIKO VOORSMIT (Examination-in-Chief).

Q. What condition was he in? A. Still suffering.

Q. I suppose you have seen him off and on since then? A. Oh, yes.

Q. How has he got since then? A. It seems to me he is in pretty poor state, and gradually seems to be worse.

Q. Gradually getting worse? A. Yes.

Q. When did this tremor that you notice start? A. I would presume about a year ago.

Q. You remember he was taken to the hospital? A. No.

10 Q. Did you not know he was in the hospital about a year ago?
A. Oh, yes.

Q. You did not go to the hospital with him? A. No.

Q. Has he worked any since the accident? A. No.

Q. Has he been able to be around at all? A. Very poorly, hardly can walk, hardly can go up and down the stairs.

Q. What did he do in the summer time? A. I often came into his house and asked him to go for a little walk or exercise, to take fresh air, and sometimes he would do it, sometimes he could not.

Q. Have you ever taken him out in your automobile for a ride?

20 A. No, he would not; he is scared to go in an automobile any more.

Q. During the summer, where did he stay; at his home or where?

A. He went down to Sturgeon Creek for a couple of months, I believe it was—I don't know exactly how long it was—to try and get some fresh air and get a little bit built up; and then he decided to go home again.

By the Court—

Q. Witness, I did not get just clearly your answer to Mr. Chapman's question. I will repeat it in substance: When did you first notice the physical tremor in the plaintiff? A. I would presume
30 about a year ago.

Q. What time? A. It was before he was taken to Sturgeon Creek.

By Mr. Guy—

Q. It was December, 1928? A. In December he was taken to Sturgeon Creek.

Mr. Chapman—He just said that he noticed the tremor before he was taken to Sturgeon Creek, but he was taken to Sturgeon Creek along in the summer time.

The Court—If there is any doubt about it, get it from the witness.

40 *By Mr. Chapman—*

Q. When did you notice the tremor in the plaintiff, before he went to Sturgeon Creek or when? A. Before he went to Sturgeon Creek.

HENRY LEONARD ERHARDT (Discovery Examination).

By Mr. Guy—

Q. When was it he went to Sturgeon Creek? A. I couldn't tell you exactly when it was.

Mr. Chapman—I want to put in parts of the Examination for Discovery of Henry Leonard Erhardt.

(Examination for Discovery of Henry Leonard Erhardt, as an officer of the defendant company, produced and marked "Exhibit 3.")

Mr. Chapman—I will put in the caption and the formal parts on 10 the first page.

The Court—Erhardt is an officer of the defendant company?

Mr. Chapman—Yes, my lord.

"IN THE KING'S BENCH

"Between Jacob Geel, Plaintiff,

and

"Winnipeg Electric Company, Defendant.

"This is the examination of Henry Leonard Erhardt, as an officer of the above named defendant company, *viva voce*, upon oath, for discovery, had and taken before A. E. Bowles, Esq., a special examiner 20 of this Honorable Court, at the law offices of Messrs. Chapman & Thornton, in the Huron & Erie building, in the City of Winnipeg and Province of Manitoba, on Thursday, the 10th day of January, A.D. 1929, at the hour of three-thirty in the afternoon.

"Present: E. R. Chapman, Esq., appearing for the plaintiff; F. J. Turner, Esq., appearing for the defendant.

"By consent of counsel present, the further attendance of the examiner on this examination is dispensed with, and it is agreed that this examination, as taken down, extended and signed by the reporter, shall be treated in all respects as if the said examiner had been present 30 throughout the examination, and shall be as valid, binding and effectual in every way and for all purposes as if the said examiner had been present throughout.

"It is agreed between counsel present that this examination be taken down in shorthand by Margaret E. Watterson, court reporter, and afterwards extended by her on the typewriter, and that the reading over and signing of the transcript by the witness, and also the swearing of the reporter, be dispensed with.

"The said Henry Leonard Erhardt, having been first duly sworn, was examined by Mr. Chapman and deposed as follows:

40 "1. Q. What is your name? A. Henry Leonard Erhardt.

"2. Q. You have been sworn? A. Yes.

"3. Q. What is your occupation? A. Chauffeur.

"4. Q. With whom are you employed? A. Winnipeg Electric.

"5. Q. The defendant company? A. Yes.

HENRY LEONARD ERHARDT (Discovery Examination).

- "6. Q. How long have you been employed with them? A. 1922.
- "7. Q. You have been working continuously ever since? A. Yes.
- "8. Q. Do you remember the evening of Sunday, the 22nd of April, 1928? A. I don't just remember the date, but it was somewhere thereabouts.
- "9. Q. When you had this accident with the plaintiff? A. That was on Donald and Portage.
- 10 "10. Q. You were driving a bus at that time, of the defendant company? A. Yes.
- "11. Q. What was your route? A. West on Portage; I was on my regular route.
- "12. Q. That wouldn't be the whole of your route? A. Transcona route, running between Winnipeg and Transcona.
- "13. Q. Your Winnipeg Terminal was where? A. 264 Hargrave.
- "14. Q. And you were on your way then from Transcona going up to Hargrave? A. Yes.
- "15. Q. And this accident occurred at the corner of Donald and Portage? A. Yes.
- 20 "16. Q. It was at the northeast corner? A. At the northeast corner.
- "17. Q. You had charge of the bus alone? A. Yes.
- "18. Q. You were driver and conductor both? A. That is right.
- "19. Q. And about what time in the evening? A. About 9.25, between that and 9.30.
- "20. Q. What is the seating capacity of that bus? A. Twenty-five passengers.
- "21. Q. Besides the driver? A. Yes.
- 30 "22. Q. What is the weight of the car? A. I am not quite sure; some place between five and six tons.
- "23. Q. The license number? A. 1928, 1601, I think.
- "24. Q. You were a licensed chauffeur? A. Yes.
- "25. Q. What number did you have? A. That year, number 3.
- "26. Q. That is Manitoba License No. 3? A. Yes.
- "27. Q. Was there a city license for the car? A. Yes.
- "28. Q. What was the city license number? A. That I do not remember.
- "29. Q. Do you have a city license? A. Yes.
- 40 "30. Q. What was your city license number? A. I don't know; I believe I have the old one with me—I think I destroyed the old one.
- "31. Q. At the time, did you have a city chauffeur's license? A. Oh, yes.
- "32. Q. And you were carrying it at the time of the accident? A. Yes.
- "33. Q. Do you remember how many passengers you had on board? A. Oh, just one at that time.

HENRY LEONARD ERHARDT (Discovery Examination).

"34. Q. Where was he bound for? What was his destination?
A. At the accident he got off at Donald, and disappeared in the crowd. I think he intended going down to the bus station. I am not sure about that.

"35. Q. Had you intended to draw to the curb there to take on or let off passengers? A. No, I had no reason to stop there at the curb.

"36. Q. As you were going along approaching the northeast corner of Donald and Portage, do you know what rate of speed you
10 were travelling? A. About 12 or 15 miles an hour, about that.

"37. Q. How do you know that? A. That is the usual speed we can go; when the traffic is heavy, you couldn't go any faster if you wanted to.

"38. Q. But you have no specific information on that? A. Nothing more than approaching for the light changing.

"39. Q. But you had no specific or definite information or knowledge of what speed you were travelling at that time? A. At the time I was approaching Donald, no, no definite information.

"40. Q. Do you carry a speedometer all the time? A. Yes.

20 "41. Q. But you were not noticing the speedometer? A. Not at that moment, no.

"42. Q. I suppose you were not looking at it along there? A. Not at the speedometer, no.

"43. Q. So that you do not know exactly; it is just your judgment about the rate of speed. A. That is all.

"44. Q. Had you been working continuously from 1922 as a driver of buses? A. A bus driver, yes.

"45. Q. Were there any automobiles parked on the north side of Portage Avenue between Smith and Donald? A. Oh, yes, quite a
30 number.

"46. Q. Were there any in front of the Capitol Theatre? A. Not that I remember.

"47. Q. When you got to the Capitol Theatre then, there would be none on the north side of Portage from that until you reached Donald—parked on the north side? A. I don't remember seeing any there.

"48. Q. When you came up to the Capitol Theatre, did you swing over to the curb to the north—to the north curb on Portage?
A. I didn't swing over into the north curb until I noticed the light
40 change, and I went to apply my brakes to stop myself as the cars in front were stopped.

"49. Q. Whereabouts were you at that time; west of the Capitol? A. Oh, yes, just a trifle west of it.

"50. Q. You would be in front of the Commodore? A. Yes, about that.

HENRY LEONARD ERHARDT (Discovery Examination).

"51. Q. At that time you swung over to the curb? A. To slow up as the light changed; there were cars in front of me.

"52. Q. Do you remember how close you got to the curb? A. I hit the curb with my right front wheel.

"53. Q. Why did you do that? A. As I went to stop, and the light changed, in applying my brakes it seems as though all of a sudden something broke at the same time; I don't know what it was, and the brake pedal went right through the floor board. I realized
10 something had gone wrong. I couldn't go straight ahead because there were two cars alongside one another, directly in front; so I hit for the curb to bring the car to a stop. As I hit the curb with my right front wheel I hit the right rear fender of the Reo car with my left front wheel, just with the fender, bending the fenders down on both cars, on mine and also the Reo.

"54. Q. And that was the automobile the plaintiff was sitting in? A. Yes.

"55. Q. Well then, the cause of the accident was the trouble with the brake? A. The little bolt, it is in the brake evener on the brake
20 rods, I call it the brake mechanism; I don't know whether it was in the brake evener or the rod itself; it broke as I applied the brakes, letting my brake pedal go right through the floor board with no pressure on the brake.

"56. Q. This is the mechanism that is connected with the pedal? A. Yes.

"57. Q. Didn't you have an emergency brake on? A. The emergency and the pedal brake of that car are on the one brake evener.

"58. Q. Did you try to use the emergency? A. I did put it on;
30 as soon as I hit for the curb I put the emergency on.

"59. Q. And that didn't hold up? A. It held it up but not enough to stop me in time.

"60. Q. To avoid a crash with the automobile? A. With the curb and the automobile at the same moment.

"61. Q. Is it a gas engine on that bus? A. Yes, gas propelled motor.

"62. Q. There are two pedals, one for the foot brake, and one for the clutch? A. Yes.

"63. Q. How many gear shifts are there? A. Four forward and
40 one reverse.

"64. Q. Does that work the same as an ordinary automobile, whenever you change your gears you disengage your clutch? A. Yes, certainly."

"71. Q. Did you find this bolt that had broken? A. I saw it lying on the pavement afterwards.

"72. Q. You didn't take care of it? A. No, I didn't—that is, I saw a bolt lying, I can't say it was the bolt out of my car.

HENRY LEONARD ERHARDT (Discovery Examination).

"73. Q. You don't know where that is? A. No.

"74. Q. At any rate the bolt came out and disconnected the mechanism so that the brake wouldn't work at that time? A. Yes."

"80. Q. You didn't stop from the time you left the corner of Main and Portage until you got up to Donald Street? A. No.

"81. Q. How fast were you running at any time on that stretch? A. Not over fifteen, because it was heavy traffic that night on the street."

10 "86. Q. Just as you got along by the Capitol theatre you saw the light signal change? A. I was a trifle past the Capitol.

"87. Q. I mean just past the Capitol, say in front of the Commodore? A. Yes.

"88. Q. And it turned to 'stop'? A. Yes."

"91. Q. And by hitting the curb it did not stop your car? A. It hit the curb and the back end of the other car at the same time."

"99. Q. What did you do? A. After it hit the car, I got out of my bus and went around to the front of their car, and they were starting to get out by that time, naturally; and I asked the man at the
20 wheel—I don't remember his name—if anybody was hurt. He said, 'I don't know; I am not.' And he turned round and asked the rest, and this old gentleman complained of a pain in the back of his shoulder. Just then a policeman came along, and he took particulars. I mentioned to the policemen that this gentleman complained of a pain in his shoulder, and he says, 'Well, better get the ambulance and take him to the hospital.' He went over to the box and phoned for the ambulance. While he was doing that, I phoned in to the local garage for a tow in, because the brakes were gone. The ambulance came along, and the policeman that had taken the particulars and the
30 sergeant that came up with the ambulance, and put this man in apparently against his will, into the ambulance; he didn't want to go then after the ambulance had come. And that is the last I saw of him until here today; what they did up there I don't know."

"110. Q. The emergency brake and the foot brake? A. I think both of them work on the same brake evener; I am not sure about that.

"111. Q. What is the license number of that bus this year, for 1929? A. I don't know what it is. It is not on the service at the present time.

"112. Q. Has it been in service since? A. Yes.

40 "113. Q. It has not been in service since the first of the year? A. Not to my knowledge. We don't use them on Transcona; it is too small for us just now.

"114. Q. Was it an old bus or a new one? A. About five years old, I think—four or five.

"115. Q. It was brought here by the defendant company, new? A. No, it was bought over from a private individual in Winnipeg at one time.

HENRY LEONARD ERHARDT (Discovery Examination).

"116. Q. How long had the defendant company owned it?
A. Since 1925.

"117. Q. About three or four years? A. Yes, the latter end of 1925 it was bought over.

"118. Q. And previous to that it had been run by a private individual? A. Yes.

"119. Q. Do you know how long? A. A little over a year, about 12 or 13 months; something like that.

10 "120. Q. And had it been in constant service from the time the defendant company got it until the accident? A. Not in constant service, not daily; we used it about half time, I guess."

"125. Q. How far were you from the automobile when the connection broke on the foot brake? A. About fifteen feet.

"126. Q. That would be all? A. It may have been a foot or two either way, more or less, but about that.

"127. Q. And it was after the connection broke that you swung your car over so that the wheel came in contact with the curb?
A. Yes.

20 "128. Q. Putting it another way, the connection with your brake was severed before you swung your car over so that your wheel came in contact with the curb? A. Yes; it was after the bolt broke I realized the brakes were useless.

"129. Q. So, whether it was 15 or 150 feet, the connection on your brake was severed before your wheel came over to the curb and scraped along the curb? A. You mean that I was travelling alongside the curb at the time?

30 "130. Q. I mean, isn't this a fact, that no matter how far you were away from these cars when the connection was severed, before you came over to the curb so that your wheel scraped along the curb, the connection had been severed? A. Yes, it had been severed before that."

"137. Q. You say there are four gears going forward? A. Yes.

"138. Q. And at the time of the connection being severed what gear were you in? A. Fourth.

"139. Q. That is the highest? A. High gear.

"140. Q. And when you found that the brakes didn't hold, then you threw it into third gear? A. That is right.

40 "141. Q. How far were you from this automobile in which the plaintiff was riding when you did that? A. About six feet, as I was going towards them."

"145. Q. Did you have any gong or bell? A. Electric horn on the motor.

"146. Q. Did you sound that? A. I didn't have time for that.

"147. Q. You didn't sound that from the time you left Smith Street, which is the next street east of Donald, till you struck the automobile? A. No.

HENRY LEONARD ERHARDT (Discovery Examination).

"148. Q. Made no noise, nor gave any alarm of any kind?
A. No."

"153. Q. But you could have? A. Yes, I suppose I could have."
Mr Guy—What does that "could have" refer to?

The Court—You will have to explain that perhaps.

Mr. Chapman—I will put in question 152 to explain.

"152. Q. You could have given an alarm, couldn't you, by sounding some gong or something? A. I could have, and probably taken 10 my hands off other work that I was using them for trying to stop the car.

"153. Q. But you could have? A. Yes, I suppose I could have."

"156. Q. Would your horn have been loud enough to have attracted the attention of the driver of this automobile that you struck?
A. The horn would have been loud enough, certainly.

"157. Q. Did you notice whether that car that he was riding in was a touring car or a sedan car? A. An open touring car.

"158. Q. And were the side curtains off at that time? A. No, they were on.

20 "159. Q. All the side curtains were on? A. Yes, all were on.

"160. Q. But your horn was loud enough so that he could have heard it? A. Plenty.

"161. Q. I suppose we might say that the cause of the accident was your failing to stop the bus. That was it, wasn't it? A. I presume that it was that way.

"162. Q. Isn't that right? If you had stopped your bus you wouldn't have struck the automobile? A. If I had hit the curb harder I wouldn't have hit either."

30 "166. Q. Were there just the two cars ahead of you? A. There was this car that I came in contact with, and two others, waiting for the light to say 'go.'

"167. Q. Were there any to your left hand side? A. Not to the left hand at the moment I started to pull to the curb; there were others after I started to pull."

"Certified a true transcript of the Examination for Discovery of the said Henry Leonard Erhardt, as taken before me, *viva voce*, upon oath, on the date and at the time and place herein set forth.

A. E. BOWLES,
Special Examiner."

40 "Certified a true transcript of the Examination for Discovery of the said Henry Leonard Erhardt, as taken by me in shorthand on the date and at the time and place herein set forth.

MARGARET E. WATTERSON,
Court Reporter."

GEORGE GARBUTT (Examination-in-Chief)

The Court—During the recesses at any time, gentlemen of the jury, be very careful not to discuss the case with any person at all except among yourselves, and do not allow any one to approach you and talk to you about the case, or do not allow any evidence to reach your ears at all, because you have got to determine this case upon the evidence you hear in court. I will just give the one warning, and that will stand throughout the trial, and please keep that in mind.

(Court adjourned at 12.30 p.m. December 3, to 2 p.m. the same 10 date.)

2 p.m. December 3, 1929.

GEORGE GARBUTT, being first duly sworn, testified as follows:

Direct Examination by Mr. Chapman—

Q. Where do you reside? A. 157 Magnus Avenue.

Q. That is, next door to Mr. Geel? A. Yes.

Q. What is your occupation? A. Printer, foreman of the *Free Press* composing room.

Q. How long have you known the plaintiff? A. Between three 20 and four years.

Q. Have you been living as next door neighbors during all that time? A. Practically during all that time.

Q. Have you noticed the plaintiff's physical condition up to the time of the accident? A. Previous of the accident he was a very robust man, in fact I think above the average.

Q. How did he go to and from his work? A. He used a bicycle.

Q. Did you ever see him doing anything in particular that made you mark him out as a robust man? A. Yes, on the morning of the accident or the morning preceding the accident—

30 Q. What date? A. Sunday, the 22nd April, the front chimney was split zig-zag down. He notified the landlord to have the chimney fixed. I was afraid of the children playing—

Q. Was that on his house or yours? A. Mr. Geel, the plaintiff's house. Apparently the landlord paid no attention to it, and the morning of the 22nd was very windy, and part of the chimney blew down on a zig-zag angle within a foot or two of the house. Mr. Geel had a ladder and he went up the back shed, and on to the kitchen, where there were slats nailed across the roof, he climbed up those, worked his way over across the roof, and took down the loose bricks 40 in the chimney, and came down the same way he went up.

Q. What do you say as to that piece of work? A. I would say that was a pretty nervy piece of business for an ordinary man.

THOMAS DAVIS (Examination-in-Chief)

Q. Did you ever see him do anything else? A. Yes; the Fall previous he swept the back chimney. He used a long water pipe with a bunch of rags tied around it. His boy, his son, handed this up to him when he was on the ridge board, and twisted his leg around the chimney. He went up and pulled it up hand over hand so that he could get up to sweep the chimney.

Q. Had he any staging? A. He had a ladder made of 2 by 2, which he put on the kitchen roof, and climbed up that. It was very 10 clumsy.

Q. Then this Sunday morning he appeared in his usual good health? A. Yes, he appeared all right to me.

Q. Did you see him after the accident? A. About two weeks after.

Q. Have you seen him at times since that? A. Yes.

Q. How was he when you first saw him after the accident? A. Well, he was in bed, and he was very nervous, and apparently he could not collect himself. He had quite a hard time to explain anything to me, and he would have to go back and forth over it to con- 20 nect his story up.

Q. You saw him from time to time? A. Yes, and he apparently was getting worse all the time.

Q. When did you first notice these tremors in his limbs? A. Well, shortly after the accident.

Q. How long? A. I would say about three weeks he started to tremble, three weeks to a month.

Q. Do you remember when he went away to the country in the summer time? Do you know when he went away? A. No I do not.

Mr. Guy—I have no questions.

30 THOMAS DAVIS, being first duly sworn, testified as follows:

Direct Examination by Mr. Chapman—

Q. Where do you live? A. 530 Sherburn Street.

Q. In the city of Winnipeg? A. Yes, sir.

Q. Do you remember the night of April 22, 1928, when this accident occurred? A. Yes, sir.

Q. Where were you standing at the time of the accident? A. On the northeast corner of Portage and Donald.

Q. Right at the corner? A. Right on the very corner.

Q. That would be near the United Cigar Store? A. Right on the 40 very corner of the United Cigar Store.

Q. Did you see the bus coming? A. Yes.

Q. Just tell the court and jury what you saw? A. I stood on the corner waiting for a street car there, and this bus came along Portage

THOMAS DAVIS (Examination-in-Chief)

Avenue from the east, travelling west, and just as it got opposite the Capitol Theatre, to me, it was travelling between 20 and 25 miles an hour, perhaps more, but it kind of swayed, all of a sudden it swayed into the curb. For a moment I thought it was going to climb the sidewalk and dash itself into the Commodore windows. Instead of that the driver turned his wheel to the south and came along parallel to the sidewalk to within six or seven feet of the line on the corner where all automobile traffic has got to come to a stop, and crashed into the 10 back end of this car.

Q. That is the Calsbeck car was standing on the corner? A. Yes.

Q. The car was standing there, and the bus going along crashed into the rear of Calsbeck's car? A. Yes.

Q. With what force did it strike that automobile? A. It struck it with the force of a car travelling between 15 and 20 miles an hour.

Q. What effect did it have on the automobile? A. It jarred, to my way of thinking, to be correct, it jarred it pretty nearly six feet from the point where it hit, farther on; that is, it drove it farther over the crossing.

20 Q. It pushed it along? A. Yes.

Q. Did you notice the damage it did to the automobile? A. Not at that particular time.

Q. Did you examine the automobile afterwards? A. I just took a look at it and saw it was kind of dented in the back end, and I walked away from the place altogether.

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

Q. Did you see the plaintiff? A. No, sir.

Q. Do you know him? A. Well, yes, I know him to see him, and speak to him on and off; but to have any personal contact with 30 him from day to day, I couldn't say I had that, but I have seen him off and on, but I haven't seen him from the day of the accident until now, and in fact then I didn't know it was any person that I knew that was hurt.

Q. Did you see him that day? A. No, I can't say I did.

Q. How long before the accident did you see him? A. I would say pretty nearly two weeks.

Q. Do you notice much change in his physical appearance? A. Yes, he seems to be broken down in physical appearance, a kind of nervousness.

40 Q. You have never seen him since the accident until today? A. No.

Q. Where do you work? A. For the City of Winnipeg.

Q. What department? A. In the department of Public Health.

Q. Do you remember what the weather was like that evening?

A. There was no ice or snow on the roadway, and it seemed to be a kind of a cool sort of wind. I took particular notice of his car. It

THOMAS DAVIS (Cross-Examination)

seemed to be all curtained off, so that you couldn't see who was inside of it without getting close to look, and having my spring coat on, I took it from that recollection I believe it was kind of cool sort of night.

Q. Were the streets dry or wet? A. All dry.

Q. Did you notice any other automobile there at the intersection of those streets? A. No.

Q. Were there any? A. No, not to my knowledge.

10 Q. Did you take notice? A. Yes; there were no cars parked along that way from the front of the east door of the Capitol Theatre; there were no cars parked along that side of the street, and there were none in the roadway. The bus had a perfect clear right of way, and could have pulled off to the south and prevented this banging into the back end of that car.

Cross-Examination by Mr. Guy:

Q. You were standing on the corner, Mr. Davis? A. Yes.

Q. Right on the corner? A. Yes.

20 Q. Where was the bus when you first saw it? A. Going west just right opposite the Capitol Theatre.

Q. It was opposite the Capitol Theatre when you first saw it? A. Yes, just opposite it.

Q. You say it was going then 20 to 25 miles an hour? A. Yes.

Q. Where was it it started to swerve towards the kerb? A. Just about a little ways this side—just between the wall of the Capitol Theatre and the Commodore alongside.

Q. Just at the wall? A. Just at the wall between the two buildings.

Q. Did you have any reason to notice that particular place?

30 A. Yes, because I was looking at that time straight east on Portage Avenue when I seen the car travelling, coming along at that rate, and I thought at first it was going to travel straight along west, and instead of that it turned sharply into the kerb.

Q. It turned sharply into the kerb? A. It went headlong into the kerb.

Q. He made a sharp turn into the kerb? A. No, I wouldn't say he made a sharp turn to come parallel with the kerb; he made a sharp turn to go as if he was going to climb the sidewalk.

40 Q. But he made a quick turn into the kerb, and then along the kerb and struck the car? A. Yes, it would be from 50 to 75 feet from the time he got near the kerb until he hit the back end of the car.

Q. You think he went 50 to 75 feet from the time he struck the kerb until he struck the other car? A. Yes.

Q. Where was it he did strike the kerb? A. That would be the wheel on the north side?

THOMAS DAVIS (Cross-Examination)

Q. No, I am not asking you that. Where on the street did the bus hit the kerb? A. The wheels on the north side of the bus scraped along the kerb.

Q. I am asking you the place where he first came in contact with the kerb?

The Court—In front of what building? A. In between the two walls of the Capitol Theatre and the Commodore is where he first swayed into the kerb.

10 Q. He would then be some distance back from the intersection?
A. Yes; as I said before, perhaps 60 to 75 feet, because I judge by that I am taking between the lamp posts on the street.

Q. You are taking between the lamp posts on the street? Is that how you measure your distance? A. I took pretty well from that, judging from that observation.

Q. Between the line of the intersection and the Capitol Theatre is about $88\frac{1}{2}$ feet? A. From where the line goes across the street.

Q. Yes, from the intersection of the street to the Capitol Theatre is about $88\frac{1}{2}$ feet. Do you say that the bus struck the kerb just at
20 the wall between the Capitol Theatre and the Commodore Cafe?
A. I don't believe that I have said that the bus struck the kerb.

Q. That is what I asked you, where did it first strike the kerb?
A. It was in front of the Capitol Theatre when the front wheels came in contact with the kerb.

Q. Right in front? A. Right in front of the Capitol Theatre.

Q. How far did the bus go after it collided with the automobile?

A. That is, when it struck the automobile?

Q. Yes? A. It stopped pretty nearly within half a foot, or it may
30 have went a foot or so.

Q. But you think the other automobile went about six feet?
A. Well no, I wouldn't say that, because the other automobile was parallel with that line across where the automobiles are supposed to come to a stop.

Q. Will you tell us how far the other automobile did go? A. He just drove it a little over that line.

Q. How far? A. I would say pretty nearly to the edge of the kerb there.

Q. I am asking you in feet? I want to know how far the automobile went when the bus came into the automobile—how far it drove
40 the automobile ahead, how many feet? A. I would say between four and six feet. I wouldn't be absolutely sure on that point.

Q. You think when they came in contact the bus was going 15 miles an hour? A. It was travelling between 10 and 15 or between 15 and 20 miles an hour.

Q. I just want to get your idea? A. That is my idea.

Q. That at the time it did strike it was going 10 or 15, or which is it?

JACOB GEEL (Examination-in-Chief)

A. I would say 15 miles an hour when it struck the automobile.

Q. Do you suggest any reason why it would stop? A. Well, the only thing I would put down for it coming to a stop would be applying his brakes, but his brakes not working at the time he put them into operation just took effect when he came into contact with the car.

Q. But do you know of any reason? A. Do I know of any reason why he applied the brakes?

Q. No; why he would stop if he were going 10 or 15 miles an hour, 10 why he would stop in such a short distance as you have described it?

A. Coming in contact with the car, if the car was loaded, would naturally stop him.

Q. You think it was the collision or contact that really stopped it?

A. Yes.

JACOB GEEL, being first duly sworn testified as follows:

Direct Examination by Mr. Chapman—

Q. Mr. Geel, will you speak loud enough so that the jury can hear you. Where do you live now?

The Court—Don't ask this man any unnecessary questions.

20 Q. You are a painter by trade? A. Yes.

Q. How long have you been working at that trade? A. About 15 years.

Q. You have lived here about 20 years in the city of Winnipeg? A. Yes.

Q. In your younger days you were a sailor in the Dutch navy, weren't you? A. Yes.

Q. How old were you in April, 1928? A. 45 or 46.

Q. You are a married man, and have four children? A. Yes.

Q. Up to the time of the accident, did you enjoy good health? 30 A. Yes.

Q. Were you ever sick? A. No.

Q. Were you ever under the care of a medical doctor? A. Maybe a couple of time.

Q. Was that for any illness? A. No.

Q. You had an accident one time and cut your leg? A. Yes.

Q. What doctor attended you then? A. Doctor Yonker.

Q. The same man that attended you since the accident, is that right? A. Yes.

Q. You have had no diseases of any kind? A. No.

40 Q. Did you ever have any venereal disease such as syphilis? A. No.

Q. Did you ever have sleeping sickness? A. No.

JACOB GEEL (Examination-in-Chief)

Mr. Guy—He said he never had anything.

Q. And you were never laid up in any way, and never lost any time from your work through sickness? A. Not much.

Q. Then on the 22nd April you met with this accident. You were driving with Mr. Calsbeck in his car, and there was this collision, do you know at the time what happened? A. No.

Q. What affect did it have on you? How did you get hurt? A. There was smash. I didn't know what happened to me.

10 Q. What were you doing at the time? A. I was moving with Jacob.

Q. Jacob is your son. He was sitting on your knee. You were moving, you say? A. Yes, the car was crowded.

Q. Did that crowding of the car make you uncomfortable? A. Yes.

Q. And you went to move to ease your seat? A. Yes.

Q. Just as the smash occurred? A. Yes.

Q. Where did it hurt you? A. I was dazed.

Q. Did it hurt you in any part of your body? A. I can't remember that.

20 Q. Do you remember being taken to the hospital? A. I know I was in the hospital.

Q. You know you were in the hospital that night? A. Yes.

Q. Then you went home? A. Yes.

Q. How were you the next morning? A. I had a headache.

Q. Any other soreness about you. A. I have forgotten.

Q. Then you called in Doctor Yonker that day. Do you remember any other doctor coming that day? A. No.

Q. You don't remember another doctor coming that day. A. No.

30 Q. Do you remember going out to Sturgeon Creek in the summer time? A. Yes.

Q. How long were you out there? Several weeks you were out there? A. Yes.

Q. Did that do any good? Did that improve your health any? A. Not much.

Q. You just continued to get worse. When did the severe shaking in your limbs commence? A. Out at Sturgeon Creek.

Q. Do you know what month that was? Oh, well, Mrs. Geel can tell about that. Then you were in the hospital again about a year ago, in December of 1928 you were in the hospital? A. Yes.

40 Q. And you have, of course, never been able to work? A. No.

Q. Do you think you can collect yourself, Mr. Geel, and give the jury some idea of the pain and suffering you have gone through since the accident? Have you pains in the back of your head yet?

Mr. Chapman—My lord, the strain seems to have affected him more.

MARGARET GEEL (Examination-in-Chief)

The Court—Can you get the evidence you want from other witnesses.

Mr. Chapman—I don't know except they will say what he tells them.

Q. Have you always had this pain in the back of your neck since the accident? A. It is getting bad.

Q. But has the pain always been there since the accident? A. Not in my neck.

10 Q. Where is it? A. All up here in the back of my head.

Q. Does this shaking ever stop, Mr. Geel? A. Not that I know of.

Q. Never when you are awake or asleep? A. No, not that I know of.

Q. Do you have any other pain? A. Sometimes here in my breast, and over here up to my face. Can I talk to these gentlemen?

Q. Surely, tell the jury anything you can? A. I went from the City of Winnipeg to Sturgeon Creek, and I got that way, but I didn't get any better at all. I have four children. (Witness becomes incoherent.)

20 The Court—I think he had better go back to his seat.

Mr. Chapman—At times he is quite composed and can talk, but I suppose the strain of being in court has affected him more.

MARGARET GEEL, being first duly sworn, testified as follows:

Direct Examination by Mr. Chapman—

Q. You are the plaintiff's wife, Mrs. Geel? A. Yes.

Q. How many children have you? A. Four.

Q. What are their ages? A. 15, 13, 11 and 5.

Q. You have been married then about 17 or 18 years? A. Yes.

30 Q. Previous to this accident what was Mr. Geel's physical condition? A. He was a healthy strong man.

Q. Did he ever have any illness? A. No, not that I know of, not since he was married.

Q. Never had any diseases? A. No diseases, never a doctor attended to him as far as I know.

Q. Do you remember the time he had his leg cut? A. No, that was before we were married.

Q. And he was able to work every day? A. Oh, yes, every day; never was laid off on account of sickness.

40 Q. He worked for Mr. Voorsmit? A. Part of the time, and if Mr. Voorsmit had no work during the winter he took jobs on for his

MARGARET GEEL (Examination-in-Chief)

own; and sometimes, two winters ago, he got in partnership with Mr. Grant, and they were together because Mr. Voorsmit was slack that winter.

Q. Since you have been married, has he had steady work? A. Steady work.

Q. How much time would he lose during the year? A. He would make up during the summer what he lost during the winter, but he would lose a couple of weeks during the year.

10 Q. Coming down to the night of the accident, you were in the car with him when this collision took place? A. I was.

Q. Where were you sitting? A. I was sitting on Mrs. Sulkers' lap. The car was kind of crowded because it was just a little piece, and we were going to get off the car there, so we decided to take the car because it was a cold night.

Q. You were sitting on Mrs. Sulkers' knee. She was sitting where? A. Mrs. Schurman went into the car, and then she went, and then I went and sat on her knee, and then my husband and he took Jacob in, and he sat on his knee.

20 Q. So you were sitting in the middle. And did you see the bus coming at the time of the collision? A. No, I did not see anything.

Q. You knew nothing about it? A. I knew nothing about it.

Q. What kind of a jar or collision was it? A. It was a terrible smash. It gave us a jerk like that.

Q. Did it injure you in any way? Yes, I had a little backache at first. Q. You soon got over that? A. Yes.

Q. Was anybody else injured? Mrs. Sulkers told about something. Was anybody else hurt besides Mr. Geel? A. Yes, Jacob Geel.

30 Q. The boy was hurt? A. Yes.

Q. Did he require medical attendance afterwards? A. Yes.

Q. Just describe what happened to Mr. Geel? A. After the collision took place, he did not move. We all went out of the car, and there was water on the street between the kerb and the car; when I stepped out of the car there was water, and then he did not move, but Jacob was terribly pale.

Q. You mean the boy? A. The boy, and my attention was more with the boy than him at first, and so I didn't know what happened; and when I went to the car he had been moved from the back seat
40 into the front seat, and stayed there until the ambulance came, and then he was moved from the car to the ambulance.

Q. What was his appearance? A. He was terrible pale when I saw him in the ambulance, and I was wondering if he would get through it, I thought he was dying. The policeman wanted me to come along with him to the hospital, but I had to look after Jacob, and Mr. Voorsmit took us both home.

MARGARET GEEL (Examination-in-Chief)

Q. So you did not go to the hospital with him? A. No.

Q. And he was brought home that night? A. He was brought home that night.

Q. The next morning, how was he? A. He didn't say much during the night, but early in the morning he said, "Call the doctor; I am very sick." I called our doctor, Doctor Yonker.

Q. He is your family physician? A. He is our family doctor, and he came at once.

10 Q. How was Mr. Geel suffering? He has not been able to tell the jury. A. He suffered terribly.

Q. What was the matter with him? A. He complained about his head, and he did not speak, he never spoke hardly for three months. I hardly got anything out of him unless he would just say, "Oh, I am suffering." And it was on a Sunday when he said to me, "I was for a time that I didn't know where I was." He couldn't make out where he had been.

Q. His ideas seemed to be confused. How was he before the accident in that respect? A. There was nothing wrong with him.

20 Q. Happy and talkative? A. Oh, Yes.

Q. How did he continue physically from the time of the accident? A. It was only in July when he was brought to Sturgeon Creek. On arrival at Sturgeon Creek he was very sick. He was helped out of the car, I think by Mr. Voorsmit.

Q. How did he go? A. Mrs. Bay brought him down with the car, and Voorsmit was with us too; and then at Sturgeon Creek he suffered. But the first two or three days I didn't go down to see him; and then I went down to see him and there was no change in him at all until about in August, when I noticed that he started, with his hands,
30 started to tremble.

Q. How did you happen to notice that? A. He was signing his name on a check.

Q. And you noticed that he trembled in his hand? A. Yes.

Q. Did you notice the shaking before that? A. No, I didn't notice that, no.

Q. What was his nervous condition between the time of the accident until you saw him having this shaking, this shaking like he has today? A. It wasn't that bad, it came on slowly.

Q. What was his nerves like from the time of the accident? A.
40 From about that time he was breaking down if anybody visited him. I had seen for a while he was just broken down.

Q. Broken down in what way? A. Crying.

Q. Was he that way before the accident? A. Oh, no.

Q. Did you ever see him cry before the accident? A. Oh, no.

Q. And the day after the accident, when you called Dr. Yonker, did any other doctor come there to visit him? A. Doctor Macdonald,

MARGARET GEEL (Examination-in-Chief)

he called in the afternoon, and he said he was sent by the Street Railway Company.

Q. What did Dr. Macdonald say, if anything? A. I asked Dr. Macdonald his opinion, and he said, "Oh, rest will fix him up."

Q. And he stayed quite closely to his bed. Would he ever get up?

A. No, he didn't get up unless just when necessary. He always helped himself. He did not need any attention.

Q. But how was he when he got up? Would he be able to walk?

10 A. No, we had to help him.

Q. What was the reason? A. Because his head was so sore. He complained about pains in his head, and heat flushings.

Q. How about dizziness? A. He was very dizzy sometimes he said. He said it seemed as if the bed was going up and down, and things would fall on him.

Q. That is what he thought? A. Yes, that is what he thought.

Q. And then this disease crept on until in December he was taken to the hospital again under Doctor Swan? A. Under Doctor Swan's care, yes.

20 Q. In the meantime, did any other doctor come there sent by the Street Railway? A. Yes, Dr. McMurray, and Dr. Mathers.

Q. When did Dr. Murray or Dr. McMurray come? A. That was before he was taken to Sturgeon Creek.

By the Court—

Q. Why did those people come? Did you send for them? A. No; we didn't send for either of those doctors.

By Mr. Chapman—

Q. Dr. Murray and Dr. Mathers were sent by the Street Railway?

A. Yes.

30 Q. Did they tell you that? A. Dr. McMurray, I don't know his name, I asked him the same question, and he said the same thing, "Rest is all we can do."

Q. What did Dr. Mathers say? A. Dr. Mathers, he didn't say much. He was there with Dr. Yonker, and he spoke to me for a little while, but not to any extent. I asked him what he thought, and he thought he was a sick man.

Q. None of them volunteered any opinion as to what was the matter with him? A. No.

40 Q. And then he went into the hospital in December, 1928, and then after the New Year, do you remember any other doctor that was sent there?

By the Court—

Q. How long did he stay in the hospital? A. Eight days.

MARGARET GEEL (Examination-in-Chief)

By Mr. Chapman—

Q. Did Dr. Yonker attend him, and has he been attending him ever since? A. Dr. Yonker has been attending him every day.

By the Court—

Q. Do you know about these doctor bills? A. No, I don't know anything about the doctor bills.

By Mr. Chapman—

Q. Except, these are the bills? A. They never gave me any bills.
10 Q. Have they been paid? A. No.

By the Court—

Q. The doctors have not rendered any bills to you? A. No.

Mr. Chapman—They have sent them to me, my lord.

Q. Whose house was he at out at Sturgeon Creek? A. Mrs. Hopman.

Q. Did you see that bill? A. No.

Q. How long was he there? A. He was there from the 11th July to a part of October included, although he came home a couple of time and tried to stay home; but he could not stand the noise of the
20 street cars, so then he went back to Sturgeon Creek.

Q. Here is a bill by Mrs. Hopman for \$104. Has that been paid? A. No.

Q. Do you consider that a fair and reasonable bill for his care and attendance and board out there? A. A sick man is quite a little trouble.

By the Court—

Q. How many weeks was he out at this place altogether?

Mr. Chapman—The bills is for 13 weeks altogether.

The Court—With the exception that sometimes he would stay at
30 home.

By Mr. Chapman—

Q. How long did he stay home? A. Two nights. He tried hard to stay at home, but he could not stand the noise of the street cars.

Q. Did you dispute this bill?

Mr. Guy—If it came in from Mrs. Hopman, it is all right.

(Account from Mrs. Hopman for \$104, referred to, produced and marked "Exhibit 4.")

Mr. Chapman—And then this drug bill for \$10.25.

40 The Court—Put them in order if you can.

(Drug bill for \$10.25, referred to, produced and marked "Exhibit 5.")

MARGARET GEEL (Examination-in-Chief)

(Hospital bill for \$47 produced and marked "Exhibit 6.")

Q. Do you admit this bill of Doctor Swan for \$76?

Mr. Guy—Yes.

(Account from Dr. Swan, referred to, produced and marked "Exhibit 7.")

Mr. Chapman—And Dr. Yonker's bill of \$821?

Mr. Guy—That is his bill.

(Dr. Yonker's bill, referred to, produced and marked "Exhibit 108.")

Mr. Guy—They do not correspond with your pleadings.

Mr. Chapman—In that amendment I think it would be about the same.

By Mr. Chapman—

Q. After the collision did you see the bus driver? A. Yes, he opened the door and asked if any of the ladies got hurt, and of course we did not take very much notice, we had such a terrible shock, I thought it was an earthquake. I heard Mrs. Sulkers say, "Oh, my back."

20 Q. Did you hear the bus driver say anything else? A. Yes, I heard him say something about he was afraid of his job in connection with that.

Q. Did he say anything about how it happened? A. Yes, about the brakes, but I didn't get every word of it, but I heard him speak about the brakes, I think it was to the policeman.

Q. What did he say about the brakes? A. Well, that they did not work, and he looked very sorry.

Q. Was there any other doctor sent by the Street Railway Company during the winter after Mr. Geel had been out of the hospital?

30 A. Dr. Adamson.

Q. Did he tell you anything about what was the matter with him?

A. No, he didn't mention his health or his condition.

Q. Then was there a nurse or a woman came there in July?

A. Yes, after he had left for Sturgeon Creek then a lady came and said she was sent by Dr. Yonker to see Mr. Geel and take a blood test. I said, "Dr. Yonker knows that Mr. Geel is not here—

Mr. Guy—That is hardly evidence.

The Court—What did she do?

By Mr. Chapman—

40 Q. Then what did she say after you told her that Dr. Yonker knew he wasn't there, what did she say? A. She took the address at Sturgeon Creek. Two days after that the blood test was taken.

The Court—Why introduce this?

Mr. Chapman—Only just to show these people were there, and if they want to come and give their evidence they can come.

MARGARET GEEL (Cross-Examination)

HENRY YONKER (Examination-in-Chief)

By Mr. Chapman—

Q. Did he generally give you his earnings? A. Yes.

Q. How much did they amount to? A. It was \$2000 yearly.

Q. About that on the average? A. About \$2000 yearly.

Q. He always got the highest pay, 80 cents and 90 cents an hour, and worked all the time? A. Yes, he worked always, yes.

Cross-Examination by Mr. Guy—

10 Q. Can you tell us just exactly what the conversation was between the bus driver and the occupants of the automobile when he opened the door? A. No, I could not.

Q. You can't do that? A. No.

Q. You say he mentioned something about being afraid of his job? A. Yes, he mentioned something about he is being afraid of his job.

Q. How did he come to say that? A. I don't know how he said it, but I heard to that extent he was afraid of his job. He didn't think at the time that he smashed us up as bad as it was, and he
20 thought how that could be kept quiet.

Q. You thought that he thought he wanted you to keep it quiet?

A. Yes, something to that effect.

Q. And he asked you if anybody was hurt? A. Yes.

Q. And then he said his brakes did not work? A. Yes, that was mentioned about the brakes.

Q. And then he was trying to keep something quiet? A. Yes.

HENRY YONKER, being first duly sworn, testified as follows:

Direct Examination by Mr. Chapman—

Q. Where do you reside? A. 397 Burrows Avenue.

30 Q. In the City of Winnipeg? A. Yes.

Q. You are a duly qualified physician licensed and authorized to practice in the City of Winnipeg? A. Yes.

Q. How long have you been practicing? A. About 25 years.

Q. Have you been practicing all that time in the City of Winnipeg? A. Most of the time.

Q. You know the plaintiff, Jacob Geel? A. Yes.

Q. How long have you known him? A. A long time, about 18 years.

Q. Do you remember treating him for a cut in the leg? A. I think
40 early, some 18 years ago, he had a cut in his foot one time, I believe.

Q. Did you ever treat him for anything else? A. I don't think so.

HENRY YONKER (Examination-in-Chief)

Q. Have you seen him frequently during that time? A. Yes, sir.

Q. What was his apparent physical condition? A. Very good, excellent.

Q. Up to the 22nd of April, 1928? A. He was in perfect health all the time. He was rather a virile sort of a man, working all the time, and able to do a great deal of work.

Q. You have attended him then ever since? A. I have always attended his family.

10 Q. Since the accident you have attended him? A. Yes.

Q. Has he lost much weight? A. He has lost considerable weight, not such a terrible lot of weight maybe, about 25 or 30 pounds.

Q. You remember being called in on the 23rd April, 1928? A. Yes.

Q. How did you find him? A. I was called in after he had met with an accident on the night before, and I found him in bed, a very sick man. He was propped up in bed, and he suffered a great deal evidently from pain, excruciating pain in the head and neck, and his general appearance was very bad. He looked as if he had
20 received a severe injury of some kind. He was very pale. The pallor was extreme. His general condition was very poor. He was not unconscious, but still he was what you would call apathetic. It was difficult for me to get him to answer questions. He would answer them, but he seemed to do it reluctantly. Whether that was due to the severe pain that he suffered or whether it was due to the shock he had received is hard to say. Then his general physical condition was low, what I would call low, not exactly normal, hardly irritated, still it was more or less irritable. Well, I would say that he was if anything a little below normal, which I ascribed mostly due to shock.
30 That is about the only thing I could ascribe it to. And that is the way he looked, and that is about all I could say about his appearance at that time.

Q. Did you meet Dr. Macdonald of the Street Railway Company that day? A. I did not, but he was there that day.

Q. You did not meet him? A. No.

Q. You kept in attendance? A. Yes, I saw him every day. I had to see him every day, because his condition did not change for a while. For the next week or so his condition was apparently very much the same. Sometimes he was quite irritable and at other times
40 he was more quiet, but he always kept moving about and complaining about his head and readjusting the ice pack or compresses kept on his head in order to find a place where it might be more restful. And that state of affairs continued I would say for almost ten days before it let up to any extent. Then he became considerably easier, but still he always complained of a headache. The headache was so bad that it nauseated him, and he complained of being dizzy, a peculiar irritable

HENRY YONKER (Examination-in-Chief)

headache that made him sick, and that is why he probably looked so ill as he did.

Q. Then do you remember when Dr. Mathers came to see him?

A. That was considerably later; yes, Dr. Mathers saw him with me one time, but that was considerably later.

Q. When? A. I don't know just when that was, but quite a little bit later. It may have been a month later or two months later.

Q. Mrs. Geel said it was in July? A. This is April and May I 10 am speaking of.

Q. Is there anything different you want to speak of up until Dr. Mathers saw him?

A. No, his condition remained somewhat the same. I had other doctors come in and see him, friends of mine, as it was a rather interesting case.

Q. Interesting in what way, doctor; explain to the jury? A. Interesting because it was so obscure, and the symptoms serious and rather—yes, rather serious.

Q. You were puzzled about it? A. I didn't know how serious it 20 was; so in a case like that we generally call in friends just to get their opinion; so I took other men along just to verify my ideas and see what they thought.

Q. Dr. Mathers was sent there by the Street Railway Company. Did you have a consultation with him?

A. I had a consultation with him in July. He went over the man. By this time the man was considerably better. This was in July, almost three months after. His condition was a great deal improved, but still he was even then complaining of headache and this weakness, physical weakness, and inability to do anything. He was not able to 30 be up and around, so Dr. Mathers came or was sent in consultation, and we went over him carefully to ascertain what could be the matter, and how serious it might be, and so on. He was still pale.

Q. What was done as the result of his examination? A. Nothing much was done.

Q. When did you have the blood test taken? A. On account of his pallor and so on, in a case like this it is a matter of diagnosis as to what might be the cause of this condition, and Dr. Mathers also noticed the extreme pallor of the man. Then in going over the history, and his occupation; so he suggested it might be this, that, or 40 the other thing, and in order to eliminate all the different causes it would be well, he thought, to verify this by an examination of the blood, in case we could find anything definite as to some other different cause. So I think some blood tests were taken at that time, or sometime later, to try and find out if there could be any particular cause for this man's—

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Q. What thing particularly were you looking for here to eliminate different causes? A. For instance, he is a painter. Painters are often afflicted with what we call lead poisoning.

Q. Were you satisfied from the blood tests he did not have lead poisoning? A. Yes.

Q. Anything else that could produce those symptoms that he had? A. This man might have had some previous illness. For instance, he might have had encephalitis, inflammation of the brain, sleeping
10 sickness, or he might have had syphilis, which is a very serious disease, which often produces very similar effects.

Q. Were you satisfied from the blood tests he did not have syphilis? A. I eliminated all those things, and I satisfied myself it was impossible that he had those things; so that did not clear up the situation any at all; so I had to revert back to the original cause of the shock that he received on the night of the 22nd.

Q. You could see no other reasons for his symptoms excepting the shock? A. Absolutely no other reasons.

Q. What do you call that shock or jar in medical parlance? What
20 is the term used in talking about it? A. We call it shock ourselves.

By the Court—

Q. Did you ever have an X-ray taken of the patient? A. Yes, the X-ray was rather negative. It seems to me it showed little shady spots in the cervical region of the spine, that is the region below the neck, but that did not show anything at all because that same X-ray picture might obtain in any man that we X-rayed about that age, although together with the other symptoms it might be a bit suggestive.

By Mr. Chapman—

30 Q. Suggestive of what? A. Confirming that at one time there had been a rather severe contusion.

Q. And that pointed to the same thing, shock? A. Well, a shock is simply the result of some severe blow, or some severe—anything at all that will produce a severe effect upon a person's physique.

Q. That pointed to the same thing? A. Yes.

Q. Then in July he went out to Sturgeon Creek? A. He wasn't getting any better, and it was rather noisy in that part of the city, and he could not sleep at all, so we talked the matter over, and he had his sister living in Sturgeon Creek, where it would be quiet, and
40 he would be outdoors, and I suggested he had better be sent out there.

Q. He went out there? A. He went out there and stayed out there until the middle of October.

Q. In the meantime did any other symptoms develop? A. At that time, towards the end of July and August, he developed a certain tremulous condition of the muscles of the hand and arms,

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which became slowly worse and worse, and if you have seen him this afternoon, that is the condition that is obtaining now, that constant tremulous condition of the muscles of both arms, and one leg is also a little bit affected. He always walked with much difficulty after the accident, due to weakness, but he also developed a severe pain in the side; and then he developed a paralytic condition of that leg, not a paralysis, but a great loss of function of that one leg.

Q. What would that come from, Doctor? A. That is very
10 difficult to say; that might also be due to the injury to the head, which I think is most possible, or he might also have injured his pelvis at the time of the accident, but which had been overlooked, and which had not produced any effect until then. However, this condition of the leg is to a great extent also a sequel of the injury to the brain.

Q. So that from that time on he continued to get worse, until he is in the condition he is in now? A. Yes. It wasn't a very fast process; it is almost imperceptibly slow. He kept on growing, you could hardly say worse, but he kept on getting not any better until
20 this condition that he has now obtained became its strongest at about December or January, and he has been very much in the same condition ever since.

Q. Have you any hope of him being cured, Doctor? A. No, it does not look very bright.

Q. Do you think he ever will recover? A. I do not think so, judging from what has occurred before in these cases, I do not think he will ever be well.

Q. And you have been in constant attendance on him every day?
A. Yes.

30 *By the Court—*

Q. How long do you expect the patient to live? A. That is a question which I cannot answer. He might live five years, or this man might live another ten years, but we do not know. These people often succumb to some intercurrent disease. I notice he is troubled with bed sores now, and if he goes down hill at all very fast his life will not be as long as if he could be out and be more robust.

By Mr. Chapman—

Q. What is the effect on his physical powers of resistance?
A. They are being lowered, of course. If he would get pneumonia
40 he would not have half the chance that he would have if he were well or if he would get influenza or endocarditis his powers of resistance have been lowered a great deal.

Q. You have rendered a bill for \$821 for your attendance?
A. Yes, sir.

Q. Do you think that is fair and reasonable? A. I think so.

HENRY YONGER (Cross-Examination)

Q. That would be according to the usual prices that are charged?

A. Yes.

Q. No part of this bill has been paid to you? A. No, a little to the opposite.

Cross-Examination by Mr. Guy—

Q. Dr. Yonker, what did you do when you visited this man every day? What did you do for him? A. Sometimes I thought I did something, and sometimes I thought I did nothing.

10 Q. Did you go and visit him every day? A. During the first three months I almost had to visit him every day.

Q. You had not decided what the trouble was up to that time, had you? A. Well, I wasn't thinking of that.

Q. But you were trying to find out what the real cause of this disability was? A. Well, I would not put it that way. I had to treat this man regardless of cause, and regardless of what was the matter with him.

Q. I take it, Doctor, you were going to try to do something that would help him if you could find out what would help him? A. I
20 certainly tried my best, together with half a dozen other men, to help this man.

Q. I don't know that you have told my learned friend what the trouble was that he is suffering from now? A. I described everything.

Q. You have described symptoms, but what is the disease or trouble that he has? A. Well, I tell you, the conclusion I have come to, in conjunction with the other men that have seen him, is I think we are quite safe in saying that he is afflicted with the disease called paralysis agitans.

30 Q. When did you come to the conclusion that is what he was suffering from? A. Well, I suspected it for quite a while, but after a certain simple complex became quite evident, that must have been in about December.

Q. About December a year ago now? A. Yes, or maybe a little earlier.

Q. That is, when the trembling became apparent? A. Yes, when he began to tremble, and when he had this constant tribulation of muscles, and so on, our suspicions were quite strong, and they were being confirmed as time went on.

40 Q. Now, first, I suggest you found it very difficult to account for his symptoms and this complaint? A. He had none of these symptoms then.

Q. He did not have the tremor or shaking part at that time, but at first you found it difficult to account for his complaint? A. I think I said at first he was suffering from acute shock of the injury.

HENRY YONKER (Cross-Examination)

Q. That is what you thought? A. Not thought; it was quite evident.

Q. In July you said you thought he was getting better? A. At times these things vary.

Q. But you did say that? A. It is quite right; I supposed he was, I thought he was.

Q. It was after that you were endeavoring to eliminate the possibility of lead poisoning? A. Well, you see, lead poisoning—

10 Q. It was after the time you thought he was getting better that you endeavored to eliminate the possibility of lead poisoning? A. I don't understand you exactly.

Q. You have said that he was getting better in July? A. He improved slightly; he got so much better that he was able to walk about.

Q. But you canvassed the possibility of lead poisoning then, after the time that you thought he was getting better? A. Yes, for a certain reason.

Q. Well, I know, but you did it then? A. Yes.

20 Q. And you also canvassed the possibility of his condition being caused by syphilis, by making your blood tests? A. You see, when we see a patient, especially a nervous patient like this, you have to eliminate all possible causes.

Q. Yes, but you only have to eliminate possible causes because you don't know what the real cause is? A. No, sir.

Q. Isn't that the reason? A. Absolutely not.

Q. Do you suggest you knew what the cause was? Do you suggest you knew what the cause was, and yet you tried to eliminate the other causes? A. To confirm the fact that we were correct in our assumption. We had a direct cause for this man's illness—

30 Q. Please answer the question; that is all I am asking you. These blood tests were made in December, weren't they? A. I don't know exactly when they were made.

Q. Weren't they made about the time he went into the hospital in December, 1928? A. I think so; some were made before.

Q. And this tremor had commenced some little time before that, had it? A. Yes, in October, a month before.

40 Q. Why were these tests made? A. I will tell you why these tests were made: Because Dr. Mathers suggested on account of this man being a painter, on account of his pallor, he thought that the cause was lead poisoning, and in order to satisfy him these blood tests were made.

Q. Did Dr. Mathers say he thought it was lead poisoning, or he thought it might be due to lead poisoning? A. What do you mean "might"?

Q. That it was a possible cause? A. If he said "might" that would infer that he was thinking.

HENRY YONKER (Cross-Examination)

Q. That is the way you look at it, is it? If he said it might be, it would mean the same thing as if he said it was. If he said it might be due to lead poisoning, you think that is the same thing as saying it was lead poisoning? A. No, he did not know; but he was thinking just the same.

Q. After you found out in December, after the diagnosis, it was pretty clear he was suffering from paralysis agitans in December?

A. Yes, the symptoms that he was suffering from we happen to call
10 paralysis agitans.

Q. It was pretty clear in December, 1928, that his trouble was paralysis agitans? A. Yes, but paralysis agitans is not a cause.

Q. I know it is not a cause, it is a disease? A. It is not a disease.

Q. Whatever it is, he had it. And it is clear he had it in December, 1928. A. Yes, he had the symptoms.

Q. Did you know it was that in December, 1928? A. Yes.

Q. Then you knew he had it. Then, after he had it, is there anything you can do for paralysis agitans? A. No cure for it.

Q. Is there anything you can do for it? A. Yes, you can do a lot
20 for it. You have to do a lot for the patient, but you can't cure it. Just as we can do a lot for tubercular patients, and oftentimes can cure them, you do not leave them alone, you have to treat them symptomatically.

Q. What did you do with this man when you went to see him every day? A. Everything that I thought. I treated the symptoms symptomatically. Whenever symptoms came up, whenever I found them, I allayed the pain as much as I could. I stimulated him, and tried to get him on his feet as best I could.

Q. One of the symptoms you saw was the shaking. Did you do
30 anything for the shaking, or can you do anything for the shaking?
A. No, you can't do very much.

Q. Can you do anything? A. Probably not.

Q. What? A. Probably not, but we try.

Q. What did you try? A. Different things.

Q. Did you know beforehand that it wasn't going to do any good?
A. It doesn't make any difference.

Q. You are going to try it anyhow? A. You certainly must.

Q. You are trying to stop the shaking even although you know you can't stop it? A. Certainly, because you might stop it.

40 Q. Is that the only symptom you treated? A. I treated the man as a whole, shaking, pain, and all his symptoms combined, whatever they were, as they came up, whatever he complained of, the whole picture, the whole man, as we do in all these cases.

Q. Tell me what you have done for him in the last month? A. I have done for him in the last month exactly as I have been doing all along.

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Q. That is not telling me what you have done for him. Please tell me what you have done for him? A. I tried to get him up, tried to invigorate him, to get his general condition in better shape.

Q. What did you do to try and invigorate him? A. Medication of different kinds; stimulating medicine.

Q. You gave tonics? A. Tonics, and all those things are included.

Q. Did you give him tonics? A. I certainly did.

Q. What else? A. Tonics, good food—well, there are so many 10 things that you would do for a patient.

Q. Not what you would do, but what you did? A. That is what I did.

Q. You gave him tonics, good food, and what else did you do?

A. I suggested different things, for instance, massage.

Q. Did you do any massaging? A. Yes.

Q. Every day? A. Every day.

Q. You had him massaged every day? Just the arms or the legs?

A. No, his whole body.

Q. Anything else you could do for him? A. That is the only 20 things you could do for these people.

Q. Did it help him? A. I don't think it did him any harm.

ROBERT R. SWAN, being first duly sworn, testified as follows:

Direct Examination by Mr. Chapman—

Q. You are a duly qualified physician licensed to practice in the Province of Manitoba? A. Yes.

Q. You reside in the City of Winnipeg? A. Yes, sir.

Q. How long have you been practicing? A. Since 13th November, 1901.

Q. Where did you get your training? A. In Glasgow in Scotland, 30 that is, my student training. I have been training ever since.

Q. How long have you been practicing in Winnipeg? A. Since 1906.

Q. Have you made a study of nervous diseases? A. Yes.

Q. Have you made a special study of this man's case? A. Yes.

Q. When did you see him first? A. A year ago today, it happens to be, the 3rd of December, my own birthday.

Q. Where did you see him? A. In my office.

Q. Will you just tell the court and jury how you found the man? In what condition was he? A. I found him very much as you see him 40 today, only not quite so bad. He was a very sick man, but his symptoms were just as marked in a way as they are today. They were not so marked, but they were marked enough for me to make, and for my partner who was in my office, to make what we call a snap

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diagnosis, that is, a diagnosis of paralysis agitans. That is how I found and made the diagnosis in my office a year ago today. But to make certain that it was paralysis agitans, and to exclude everything, I said to his wife, "The best thing we can do for your husband is to take him to the General Hospital, and we will exclude every other cause that it might be."

Q. Every other thing that might produce these symptoms?

A. Every other thing that might produce these symptoms, yes.

10 Q. You had the history of the case? A. Yes.

Q. You have heard the evidence here today? A. Yes.

Q. And substantially the same has been detailed in the evidence?

A. Quite so. He was so sick that day he was in my office he wasn't able to give his testimony. You saw the cruel picture here today when you were trying to get evidence here today. He was so sick he could not tell me his story. His wife had to tell me the story, as she could have done it today. That is the condition he was in then. I asked that he come to the hospital, and he was a little averse to coming to the hospital. Nobody wants to go to the hospital unless
20 they have to; but I persuaded him to come to the hospital. We put him through the various tests there to eliminate everything. I asked—not suspecting for one moment that there would be any litigation in the case; I never thought for a single moment I would be in a law case over this thing—I asked Dr. Mathers to see him in consultation with me, not knowing that Dr. Mathers had seen him in July before. I had satisfied myself in my own mind that this man had paralysis agitans. I wanted to see if Dr. Mathers could suggest anything different, and he substantially agreed with the diagnosis of paralysis agitans at that time. There was never any doubt about
30 the diagnosis in my mind. You were asking that a few minutes ago. There was never any doubt from the moment I saw him in December that he had it, and I think the same today.

By the Court—

Q. You took him to the hospital to eliminate. How far did you get along with the elimination?

Mr. Chapman—I have the blood tests and everything here that were made?

The Court—No, if the witness will just say.

A. I forget all the tests.

40 Q. Give us the results? A. The results were completely negative.

By Mr. Chapman—

Q. I think, Doctor, you could take these things in your hand to refresh your memory? A. It is all the same to me.

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Mr. Guy—He did not make these records.

The Witness—I wrote the history long before I knew there was ever going to be anything like this.

By Mr. Chapman—

Q. You wrote this document? A. I wrote this document, the history of the case.

Mr. Guy—I cannot see that we are interested in anything but the result.

10 *By the Court—*

Q. No, I just wanted to know when you took him to the hospital, if you eliminated all these other possibilities? A. We certainly did.

Q. So that after all that elimination, what was your conclusion? A. That the man was suffering from paralysis agitans. Both Dr. Mathers and I were agreed about that.

Q. Can you ascribe the cause of paralysis agitans? It comes on some people without apparent shock. A. Yes, it comes on like gray hair; in elderly people it comes on. The specific cause of paralysis agitans is not known. Nobody on this earth knows what is the
20 cause of it. There are all kinds of arguments about it, and you can look up—I have got 12 or 14 volumes at home, and I have been trying to find out the cause of it since I have met this man, and I can't find out yet. But the authorities are all agreed on four different points with regard to paralysis agitans. First is that paralysis agitans, as I have said, the etiology, as we speak of it, the cause of it, is not known. The second point about it is that it is incurable. It is absolutely certain he is going to die, perhaps not of paralysis agitans, but he will die of exhaustion or tuberculosis, or something like that. The third point about it is this: All authorities are agreed that paralysis
30 agitans follows injuries; all authorities are agreed upon that. The fourth point is that paralysis agitans frequently follows shock. These are the four points, and these are the four essentials in the case. Do you want me to say anything more about paralysis agitans?

Q. Yes, but make it as plain to the jury as you can. A. I want to make it as plain and simple for the judge and jury as it is possible to make it, and I would say that paralysis agitans is somewhat like tuberculosis in a way. You know and I know that 86 percent or 90 percent of the people in this courtroom have got in their systems tubercular focus—85 or 90 percent. I have it myself I know, and
40 percent have tuberculosis in our lungs. That is proven by my examinations of men who break legs or have injuries due to other causes. With regard to tuberculosis, however, we know the specific cause; the focus is there. We don't know of any focus in this case; but the cases are comparable in this way, that the most of us in

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this room will go through life without developing tuberculosis, and will not have the symptoms to produce the disease. It requires something to start it going. We need to get an attack of influenza, or pneumonia, or pleurisy to bring on tuberculosis. Now, I say this man may have had this disease in his system before-hand. I don't know, and nobody on earth knows; and it may have been this accident which proved the stimulus to bring it out. Instead of having pleurisy or pneumonia to bring it out, he met with this accident, and I maintain that had it not been for this accident this man would, like the rest of us who have got tubercular foci, be going on as a perfectly well man; but he met with this accident, and if he had not met with the accident you would not see the fearful spectacle you saw today.

Q. Then what, in your opinion, Doctor, is the cause of this man's condition today? A. I say that my opinion is this, and I have looked through every authority I can look through to back it up, just as I have said a moment ago, if this man had not met with this accident the chances are, humanly speaking, he would have been going on at his work as a painter today.

Q. And having met with this accident? A. And having met with this accident, that is the reason for him being here in this condition today. I don't care what the fight may be as to the diagnosis; there is a continuous chain of symptoms. I understand on the morning of his accident that man was upon the roof of his house. He wasn't sub-standard in any way we know of. There was nothing the matter with his nerves when he was up on the top of the roof of his house repairing his chimney. And from the moment of that accident until today he has never been able to lift his hand to do a single thing. He is living, as you see, a living death. There is a continuous chain of symptoms from the moment of that accident, and that chain will only be broken by his death. I know that; he doesn't know it.

Q. What is the history of this disease generally? What is the word that best describes it? A. Shaking palsy.

Q. You were mentioning about going from one stage to another? A. It is a progressive disease.

Q. That is, it is bound to get worse? A. Yes.

Q. Until it ends in death? A. Until it ends in death.

Q. In your opinion, how long will this man live. A. I can't give you anything like that. He may live quite a while, but he may develop tuberculosis or some other disease that will carry him off.

Q. And unless something like that intervenes? A. I may say five years and look foolish if he dies in three. I might say fifteen and look foolish if he died in five. No human being can make an estimate like that, because they often linger for a long while.

Q. The time he lives depends on what? A. On how quickly

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he goes down hill. He is far more gray than he was a year ago. He is five or six years younger than I am, and he is an old man in his appearance today.

Q. Of course, a stronger man—like in any other disease—would resist this disease longer? A. Yes, that is a reasonable statement.

Q. And being a strong man before this he might live longer than an ordinary man who would get it? A. Yes.

By the Court—

10 Q. Then when he gets down hill he becomes an easy victim of anything? A. Yes, anything that comes along.

By Mr. Chapman—

Q. What effect does this have on a man's feelings as to what he suffers in the way of pain and agony? A. That man has more or less a continuous headache since the time of the accident. He may have a little relief. I think probably when Doctor Mathers saw him in July that was a period of when it had ceased. I have seen him frequently, and some days he is better than others, and some parts of one day he is better than others, but there is no doubt about the continuity,
20 the chain is unbroken.

Q. But what I am coming at is to give the jury some idea of what a man must necessarily suffer who has this disease as this man has it. Describe some of his feelings. He could not do it himself. A. The man's feelings is one of utter misery. His outlook on life is utterly hopeless. What has that man got before him? He has got nothing. Is there any man who would change positions with him for all the wealth in the world? I am perfectly certain they would not.

Q. What effect has the continual shaking upon him? A. He has had it night and day. I had him once in the General Hospital, and
30 I watched him to see if he shook in his bed at night, and you get the reports of the nurses at night that when he was asleep he was going like this in his sleep. That is one of the proofs of the disease.

Q. And that is exhaustive? A. Yes, it is an accumulation of exhaustion.

Q. And then there is this feeling of hopelessness? A. Yes, he can't feed himself. He may make a grab at something and by chance land it in his mouth, but he can't take a cup of tea or a little soup or anything like that. His life is a living death.

Cross Examination by Mr. Guy—

40 Q. Dr. Swan, you have said that the authorities agree that the cause of paralysis agitans is not known? A. Yes.

Q. And that it is incurable? A. Yes.

Q. And that it follows injuries or sometimes follows shock?
A. Yes.

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Q. You have given it as your opinion that, while the cause of this disease here might have been in this man's system at the time of the accident, the accident brought it up? A. Yes, that was the factor.

Q. Do you intend to express any opinion as to whether or not that would not have come out? A. There is nobody in the world can say.

Q. Do I understand you to say that this disease would not if it was in his system at the time of the accident or before, that, in your
10 opinion, it would not have shown itself? A. Not likely, Mr. Guy.

Q. Your opinion is that it would not likely have shown? A. No.

Q. Are there any cases of where it has shown, this paralysis agitans, where it does show itself when there is no shock or no injury or for no apparent cause? A. No.

Q. What brings it out in those cases? A. There is only one thing can bring it out, accident or injury.

Q. But in cases where there is no injury or no shock, where paralysis agitans does come out without injury and without shock? A. Oh, yes, in old age, like the gray hairs I was talking about with the judge.

20 Q. But before old age? A. I can't answer that question, I don't know.

Q. I wanted to get your opinion. You say, in all probability this disease would not have shown itself in this man if he had not had this accident or some other accident to bring it out. My question is, might it not have come out notwithstanding any injury or any accident? A. You are assuming that he was sub-standard. It may come out in a sub-standard person.

Q. No, I am just asking your opinion? A. Just let me have your question again and I will do my best to answer it.

30 The Court—On this particular man as you found him?

The Witness—Do I think this man would develop paralysis agitans if he met with no accident?

By Mr. Guy—

Q. No; are you prepared to say, if he had not met with this accident, this disease would not have developed? A. No, of course, I am not. This disease might have developed on any of us.

Q. You do not suggest we all have the focus of this paralysis agitans in us? A. I am not suggesting he had them any more than you.

40 Q. They do not know what the cause is? A. No.

Q. But they know something about it? A. There are lots of suggestions about it.

Q. Let me see if I understand your position? A. I want to be as clear as I can.

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Q. You say, while the cause of this disease is not known, and it is incurable, that it follows injuries or follows shock sometimes, and in your opinion it might not have appeared had he not received this accident? A. That is correct.

Q. Now, having got your opinion, I suppose you will likewise admit that opinions differ? A. Absolutely, yes.

Q. You know Doctor Mathers? A. Yes, very well. I have great respect for him.

10 Q. He is a man who deals very largely in these nervous diseases? A. Yes, he does.

Q. Does he spend all his time, or practically all his time at that work? A. He spends a great deal of his time in the psychopathic department. He is an expert on insanity, and everything in connection with insanity, but there are other men—

Q. And other nervous diseases? A. Yes.

Q. No one will question that Dr. Mathers has seen probably hundreds, or possibly thousands of cases of paralysis agitans? A. What is that?

20 Q. That he has seen thousands of those cases? A. Well, he has been walking around every hospital in the Kingdom to see them if he has.

By the Court—

Q. How prevalent is this disease of paralysis agitans? A. The average man perhaps sees about half a dozen cases in his lifetime.

By Mr. Guy—

Q. You don't know how many, of course, Doctor Mathers has seen? A. No, but I can make an estimate—

Q. Have you heard of Dr. Kineer Wilson? A. Yes.

30 Q. Assistant physician for the National Hospital for Paralysed and Epileptics, junior neurologist at King's College Hospital, London, England? A. I have read articles by him, yes.

Q. Is he a man whose experience would be worth considering? A. Oh, yes; no doubt about that.

Q. In other words, he is in a position where he makes a special study of that? A. Yes, he is all that.

Mr. Guy—That is all.

The Witness—Could I say something?

Mr. Chapman—If it is anything you wish to make clear.

40 Witness—I want to quote, to read from the latest book out on this subject, by—not going to London, not going to Paris, but I have read these men's opinions, and they all agree with mine; I haven't met one that has disagreed. If you find anything from Kineer Wilson, it is something he has stated very recently, and something I have not been

ROBERT R. SWAN (Cross-Examination)

able to get. But, as I say, I have read the opinions of the leading Germans, leading French, leading British, and leading Americans, and Doctor Mathers may have some different opinion from them as to the cause of paralysis agitans, but I want to say this much, it does not matter in my estimation what your diagnosis of this man's case may be, what does it matter, he has got paralysis agitans.

By Mr. Guy—

Q. There is no use of arguing it with me, Doctor. A. The point 10 is, this man is a sick man. He has been sick since the hour of the accident. There has been a continuous chain of sickness. What Doctor Mathers thinks about this poor soul—

The Court—You are making an address to the jury, Doctor.

The Witness—I want to make it as clear as I can.

By Mr. Chapman—

Q. I was going to ask you a question in connection with something put to you by my learned friend about this man having this germ of this disease in him.

Mr. Guy—That was a little oversight on my part. I did not 20 mean to insinuate it was a germ.

Q. I do not mean a germ. Was there anything to indicate to you that this disease was dormant in this man before the time of the accident? A. 100 percent no. He was a normal individual, a church-going citizen, a man bringing up his family in the way he should bring it up.

Mr. Guy—That is only hearsay.

The Court—A lot of thoroughly good and moral men have these ailments?

The Witness—Yes, but if there is any insinuation that I was say- 30 ing that thing—

Mr. Guy—There is nobody insinuating anything.

The Witness—Perhaps that is too strong. He was a normal citizen, as far as I know. I am not admitting he was sub-standard in any way.

Mr. Guy—Nobody is asking you that.

By the Court—

Q. Witness, there is just this, you know that you are not supposed to have any advocacy here at all; you are only to express your expert opinion upon these conditions. It is not usual to go further. A. I 40 want to back it up by one quotation from one author, and that happens to be a Winnipeg author.

Q. Of course, if you are going to back up your opinion, I see no objection to that. A. This book, gentlemen, is written by Doctor Fraser, of the Compensation Board in Winnipeg, who has had a great

FREDERICK ARMSTRONG YOUNG (Examination-in-Chief)

deal to do with concussion cases, traumatism, as we call it; cases similar to this—this is a concussion case, of course.

By Mr. Guy—

Q. What does he say about paralysis agitans? A. The reasons why Dr. Fraser, who has been appointed by the Manitoba Government—

The Court—You are introducing too much. Mr. Chapman, you will have to confine the witness to the questions at issue.

10 *By Mr. Chapman—*

Q. All you are permitted to do is to read the quotation.

The Court—The witness is not here to advocate the cause. We can trust Mr. Chapman to do that.

The Witness—This book is published this year. And this Dr. Fraser says, the disease is to be looked upon as a pathological and etiological mystery. That is, there is nothing definite found in every case pathologically after the man is dead, in the pathological examination there is nothing found definitely, pathologically; and the same with the etiology, the cause is a mystery, and there has been on
20 recognizable specific cause. The whole of that sentence reads: "The disease has been looked upon as a pathological and etiological mystery, in that there has been no recognizable specific cause." He goes on to quote authors down below here, all of them backing that opinion up, international authors, not Doctor Mathers.

The Court—I think you are anticipating what Dr. Mathers will say.

The Witness—Well, he and I are great friends, anyway; and I have that much respect for Dr. Mathers that he and I are great friends.

30 FREDERICK ARMSTRONG YOUNG, being first duly sworn, testified as follows:

Direct Examination by Mr. Chapman—

Q. Where do you reside, Doctor? A. In Winnipeg.

Q. Are you a member of the College of Physicians and Surgeons of the Province of Manitoba? A. Yes.

Q. And qualified and registered to practice here? A. I am.

Q. Where did you take your training? A. First in Toronto University, and then abroad.

Q. How long have you been practicing here? A. Since 1904.

40 Q. What is your practice at the present time? A. Medical consultant, internal medicine, what they call an internist, medical problems.

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Q. Have you any official position? A. As consultant at the Department of Pensions and National Health, and recently on the staff of the General Hospital.

Q. So that you came in contact with the pensioners from the Great War? A. Yes, daily.

Q. You have seen and examined the plaintiff? A. Yes, once. I examined him once.

Q. You have heard some of the evidence here today? A. Yes.

10 Q. You got the history of this case as it has been detailed in the evidence? A. Yes, nearly all of it; I wasn't here all the time.

Q. You have made a study of nervous diseases? A. Yes.

Q. And particularly with reference to this case? A. Yes.

Q. From your examination and your general knowledge, reading, and observation, what is your diagnosis of this man's present condition? A. He is suffering from Parkinsonian syndrome. That is a term which is used to signify the same appearances and symptoms as the old standard paralysis agitans. It might come, under a modern classification, directly under the classification of paralysis agitans.
 20 These symptoms are called Parkinsonian syndrome after Dr. Parkinson, who first described the syndrome. It is a term we are using for a group of symptoms, sometimes without a very definite explanation of the cause, so that the Parkinsonian syndrome is this picture that you saw of this man here today, of rigidity, difficulty in moving, in controlling complicated movements, shakiness, weakness, difficulty in balancing, difficulty sometimes in speaking, turning, and looking, but with fairly clear mind, generally a pretty clear mind. This Parkinsonian syndrome is a term which we apply to the condition here today, the result I should think of a severe jar to the brain in this case. I
 30 don't know whether you would like me to go any farther or not.

Q. If you can explain, Doctor, for instance, the reason for the development of these symptoms? A. You referred me to the war cases, pensioners, which I have seen, but perhaps an explanation of other cases which have been studied in regard to shock, and severe jar, as I said, of the brain, might explain things better. The old paralysis agitans was considered to be very, very insidious in its onset, that is, a slow, gradual coming on with years, mostly in middle age, the 40's, and without any particular cause. And those cases without
 40 any particular cause, are not on dissection and examination of the history related to a particular cause. We have in recent years had a very much better opportunity of examining similar groups of symptoms, patients with similar groups of symptoms as the old paralysis agitans described in 1882 by Dr. Parkinson. These cases are the result definitely with infection of sleeping sickness, encephalitis lethargica, of which we had an epidemic in 1919 and 1921. Some of those cases died. Their brains were examined, and certain changes

FREDERICK ARMSTRONG YOUNG (Examination-in-Chief)

- were found in them. There were very tiny microscopic hemorrhages in the brain. There was interference with a lot of cells in a certain part of the brain, in the basal ganglia. Kineer Wilson studied and brought that out very particularly in 1911 in connection with two or three cases of a peculiar character which offered a chance to study the changes in that part of the brain, and centered attention on the fact that changes in these basal ganglia resulted in shakiness and tremor. The encephalitis epidemic showed there were changes
- 10 somewhat in the same area of the brain. In those cases which had a disorganization of the movement of their hands, they later became a shaking typical paralysis agitans type of case, and you see them amongst your friends here in the city. We have unfortunately a few cases of very distinct paralysis agitans combination of symptoms, which we know resulted directly from encephalitis lethargica, and we have to believe that these symptoms were due to these minute microscopical hemorrhages in the base of the brain, around the basal ganglia, causing the shakiness. In the old paralysis agitans it was found in a few cases it was a difficult matter to study because they
- 20 died after some age, and old people often without paralysis agitans had these little changes, they had certain changes in the base of the brain, those few that could be examined. But there wasn't enough evidence to give one conviction on the case. Encephalitis cases, being more numerous, and dying sooner after the onset of the disease, gave an opportunity for the study of the brain, and so by putting two and two together they linked that up. Now, in recent years the study of this encephalitis has proved an opportunity for comparing certain things that were previously somewhat abstruse, and amongst them are the cases of concussion. This is a case of concussion reaction.
- 30 Some of us have fallen, smashed our heads, and then been unconscious without breaking the skull or breaking a bone. We have been unconscious, and recovered perhaps after two or three days, or perhaps after two or three weeks. Others who have been unconscious have been more or less affected all through their lives, or for many years, without showing anything very dangerous to life. There are a few who have had some remaining affects of the character of the shakiness. Others have had changes—hemorrhages would cause changes in the brain, and others which did not cause shakiness would cause, as I say, dullness. Some of them were more or less one-sided paralysis.
- 40 Now, I happen, in the course of working on this subject, to have come across a description of a few cases—

By the Court—

Q. Confine your matter more or less to case in hand. A. It was just in order to make it clear, because in our own minds the study of this thing is difficult.

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Q. I know, but we would like, I think, to keep this down to the practical side of this particular case, if you can. While the other is very instructive, and all that, it may not really assist us so very much.

A. These few cases studied showed that in concussion, a severe accident, that they might have changes in the brain of the same character as you get in encephalitis. The symptoms of encephalitis being the same, the shaking symptoms, as found in paralysis agitans.

Q. In other words, a concussion might bring on this paralysis
10 agitans? A. Exactly. I wanted to get that definitely proved by authority without assuming too much.

By Mr. Chapman—

Q. But then, as a result of your reading these authorities, Doctor, and your own knowledge and observation, what would you say then is the cause of this man's condition? A. Minute microscopic hemorrhages in the base of the brain, in different parts of the brain probably, but certainly around the basal ganglia, leading to a destruction of the cells, generally a progressive deterioration, very slow indeed.

By the Court—

20 Q. And the hemorrhage might cause it? A. By the jar.

By Mr. Chapman—

Q. The jar that this man got in the accident? A. Yes, decidedly. That is why I was referring to the group of cases.

By the Court—

Q. But don't misunderstand me. You are here as an expert, and it is not necessary for you to quote experts in support of your opinion. And we take your opinion from what you state. That is my purpose in getting your own opinion stated on the point. A. But I have references to other authorities outside. Experts differ.

30 *By Mr. Chapman—*

Q. In other words, from what you have learned about this man's case, you believe this condition has been caused by this accident that has been related here today? A. Yes, I have given you that theory, and I would also state that cases exactly corresponding, practically exactly corresponding, have been described by an authority, which is one of the highest, Dr. Maier; another a French case, the result of a bomb; and the other day I examined one here in the city, a pensioner, which was very directly comparable.

Q. What had caused his, a War injury? A. Blown up in the War.

40 Q. Are these cases numerous, Doctor? A. Quite rare with symptoms. Numerous, as I said, on account of the clearing up of the tiny hemorrhages. I think we must refer to the cause, the anatomical and pathological cause, the tiny hemorrhages clear up and

FREDERICK ARMSTRONG YOUNG (Examination-in-Chief)

the symptoms pass away, and in a few of the cases they do not have enough damage to lead to degeneration and destruction of the nerve cells. Those are few as compared with the number—

Q. Are there many cases in the Province of Manitoba similar to this man? A. Very few.

Q. How many would you say in your opinion?

The Court—If you know.

Q. If you know. How many do you know of? A. I wouldn't 10 like to say more than two or three.

Q. What would you think of the statement that there would be hundreds and thousands of them in this province? A. Not showing as distinctly as that.

Q. You have heard about this man, and you have examined him and so on, and what would you say as to what this man has suffered in the way of pain and suffering since the accident?

The Court—The witness is more as an expert; he has not been attending him.

By Mr. Chapman—

20 Q. From your knowledge of the disease, what is the effect on a man in that respect? A. It is harrowing. A man's mentality is generally fairly clear, as I judge from what I have seen of him he understands. He may be slower, and get duller, but he understands. He has very much distress. He also has a great deal of pain in the back. And the difficulty of carrying out ordinary movements is of course very distressing. He is very depressed, I should think; but as a matter of fact, they go on seemingly fairly contented.

Q. What is your opinion as to this disease being curable? A. It 30 will never be cured. There may be a little amelioration from time to time, but it will continue as it is, or become on the whole worse, decidedly worse, with a final incapacity to do anything, and an ultimate exhaustion unless some other disease attacks him.

Q. How long in your opinion would he live. A. He has gone down hill fairly fast, and I should think that there is an approximate limit of between three and ten years for him.

Q. Unless some other disease intervenes? A. Yes.

Q. I suppose one of the effects of this disease, as has already been stated here, is that it lowers the man's physical force of resistance to any disease that might attack him? A. I think so. He can't take 40 exercise and so on, but this disease is a peculiar thing. He may tumble down stairs.

Q. Does this man need medical attention now, and the use of a physician attending him? A. Any sick man should be constantly under observation. He needs in the ordinary practice of today to be

FREDERICK ARMSTRONG YOUNG (Cross-Examination)

FREDERICK ARMSTRONG YOUNG (Re-Examination)

seen once a week, approximately. He will need to have his treatment altered.

By the Court—

Q. What about his ability to take care of himself? A. He has a total incapacity for anything except the simplest kind of daily habits, and not all of them.

Q. What would you expect as a requirement for nursing? A. He must have nursing attention daily. I won't say he has to have somebody attending him both day and night, but even at night he will have to call for help. He can be left in the house alone, for instance, with some child to answer the door.

Cross-Examination by Mr. Guy—

Q. Do I understand your evidence, Doctor Young, to go farther than Dr. Swan did in his statement as to the cause of this man's injury? A. I don't like to answer that further than Dr. Swan's evidence. We may take different views of what you mean.

Q. As I understand your evidence, you practically say that it was the jar or concussion that this man Geel received at the time of this accident which broke down and caused these small hemorrhages in the basal ganglia, and brought about the condition in which he is now? A. decidedly so.

Q. Dr. Swan's statement was to the effect that the cause of paralysis agitans was unknown? A. Dr. Swan was referring to the typical paralysis agitans, the senile variety.

Q. You think he was limiting it to that? A. Yes.

Q. You distinguish between paralysis agitans of the senile variety, and the kind which may occur, which may be brought about by reason of an injury? A. Yes, you perfectly grasp my reference to Parkinsonian syndrome?

Q. Yes, I understand that? A. You accept that as the qualification of the difference when I speak of the term "paralysis agitans." I prefer to apply it to all these cases which show these symptoms.

Q. So you do make the definite statement, then, that the real cause, as I understand it, you say now, of this man's injury was the concussion? A. Yes.

Q. That brought it about? A. Entirely.

Re-Examination by Mr. Chapman—

Q. I didn't ask you, Doctor, what your charges in this case are? A. \$100.

Mr. Chapman—That will be accepted?

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Mr. Guy—Oh, yes, he says that is his account.

Mr. Chapman—I neglected to ask Dr. Swan about his bill for \$76.

Mr. Guy— There is no question about the bill.

The Court—What do you wish to do about it? Do you want to prove the bill?

Mr. Chapman—It is admitted, I understand.

Mr. Chapman—That is the plaintiff's case, my lord.

DEFENCE

10 HENRY MANN, being first duly sworn, testified as follows:

Direct Examination by Mr. Guy—

Q. Mr. Mann, on the 22nd of April, 1928, you were a police constable employed by the City of Winnipeg. A. I was.

Q. Do you remember an accident that occurred on Portage Avenue at the intersection of Donald Street? A. I did; I reported that accident.

Q. Where were you when the accident happened? A. Standing on the north sidewalk of Portage Avenue, about four or five feet east of Donald Street, about where the signal box is, the automatic signal 20 box.

Q. What did you see at the time? A. The westbound traffic had stopped to comply with the traffic signal when I observed a street railway bus proceeding west on Portage head towards the north kerb. It collided with the kerb, and after it swung out and collided with the rear end of a car which had stopped to comply with the signal.

Q. Where was the bus when you first saw it? A. It was proceeding in a northwesterly direction towards the kerb when I first seen it.

Q. It had made its turn then to get towards the kerb? A. To- 30 wards the kerb.

Q. When you saw it? A. Yes.

Q. And it struck the kerb? A. It struck the kerb.

Q. At the time you saw it, at what rate of speed would you say it was going? A. About five or six miles an hour probably.

Q. And when it struck the kerb, how far did it go before colliding with the automobile up in front? A. A matter of three feet or four feet probably, a very short distance.

Q. And after the impact took place between the bus and the automobile, how far did the bus go? A. It never moved after it struck 40 the automobile. It jarred on the kerb, and after that striking the automobile stopped the bus.

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Q. How far did the automobile go after it was struck? A. Well, I didn't examine the marks on the street, whether it skidded or rolled ahead. I couldn't say whether it moved ahead at all or how far it moved, I didn't examine it.

Q. What did you do after seeing the bus come across? A. I opened the rear door of the automobile and asked if there was any person injured, and I was answered, "No, I don't think so," or something to that effect. Then I requested the driver to pull clear of the
10 intersection of Donald Street, that is, across the traffic, and wait until I got particulars, and cleared the traffic. Then I got the particulars, and I again asked if there was anybody injured, and nobody was injured.

Q. It went across the intersection? A. It pulled clear of Donald Street tracks to the west side of Donald Street tracks.

Q. Did you follow it over there and get particulars? A. I did.

Q. Then what did you do after getting the statement from them? A. The sergeant arrived about the same time, and he asked the same question, "Anybody hurt?" And I said, "No, I don't think so."
20 We both made inquiries, and one fellow by the name of Geel complained he had been hurt in the head. We asked him if he wanted to go to the hospital, and he said no he didn't think so. I asked the other members of the party, and they said no, he would be all right. We finally convinced him it would be better for him to go to the hospital, and I took him in the police ambulance.

Q. Did you call the ambulance? A. I did.

Q. And had him taken to the hospital? A. Yes, I accompanied him to the hospital.

Q. Oh, you accompanied him to the hospital? A. Yes.

30 Q. Did you see the damage done to the automobile? A. I did.

Q. Where was the injury to it? A. The automobile had a dent in the body, and the right fender was bent, and I believe the spring was bent a little too, if I remember right.

Q. The spring and the fender? A. The right rear spring and fender, a dent in the right rear corner of the body.

Q. Did you notice the bus to see what damage there was to the bus? A. There was a dent in the front fender; that was the only mark visible of injury made to the bus.

40 Q. What fender would that be? A. The left front fender of the bus.

Q. The left front fender of the bus had struck the right rear fender of the automobile? A. Yes.

Q. Did you examine the bus? A. I did not.

Q. And then, after that you went to the hospital? A. I did.

Q. Can you tell me how far from the intersection it was that the bus came into contact with the kerb? A. I did not measure it.

HENRY MANN (Examination-in-Chief)

Q. No, but how far in a general way? A. The automobile was in line with the intersection. It collided with the kerb. Well, how long is an automobile? You could figure it from that.

Q. They vary in lengths. An automobile I suppose may be 10 or 12 feet? A. There would be maybe four or five feet more than that where it collided with the kerb.

Q. Well, I want to know where the bus came in contact with the kerb first. When you first saw it, it was coming across in a north-
10 westerly direction at a rate of speed of five or six miles an hour?
A. Yes.

Q. It came up, struck the kerb, and then came along, and the left front fender of the bus ran into the right rear fender of the automobile? A. It was after it had straightened up along the kerb and it continued straight west then, there is a shoe store there, if you recollect.

Q. Beside the Picardy Candy Company's store? A. There is the Picardy Candy Company and the cigar store.

Q. Perhaps we could estimate the number of feet it would strike
20 the kerb behind the automobile? A. It would be about two or three feet longer than the bus.

Q. I am not just clear yet as to where it would be. Perhaps if I would show you the plan.

By the Court—

Q. How many feet behind the rear of the automobile was this point at which the bus collided with the kerb? A. It would be four or five feet possibly.

By Mr. Guy—

Q. It collided with the kerb four or five feet behind the rear of the
30 automobile, and the automobile is right up against the intersection?
A. Yes.

By the Court—

Q. It would be the length of the car plus four or five feet?

Mr. Guy—Yes, that is what I want to get.

By the Court—

Q. How far was the automobile from the kerb, south of the kerb?
A. A matter of two or three feet, I wouldn't say for sure; there wasn't enough room for a vehicle to pass between the kerb and car track there.

40 Q. One witness said it was about eight or ten feet? A. No, I wouldn't say it was that, because if it was that there would be room for traffic to get through.

HENRY MANN (Cross-Examination)

By Mr. Guy—

Q. Did it strike you as strange to see the bus coming in a north-westerly direction? A. Yes.

Q. Did you find out the cause of it? A. The driver said the brake pin had snapped.

By the Court—

Q. Were there any other automobiles west of the automobile in question? A. Yes, there were two or three automobiles. They were
10 on the south side of the automobile in question, between the automobile in question and the safety isle zone.

Cross-Examination by Mr. Chapman—

Q. You make these statements quite positively. You are not mistaken in any way? A. Well, I may be in some of them.

Q. In what for instance? A. Which ones do you refer to?

Q. You state that when you saw this bus coming you were standing four or five feet east of the signal box? A. East of Donald Street, near the signal box.

Q. Right near the signal box? A. Yes.

20 Q. What makes you remember that? A. I was in charge of the signal traffic.

Q. You weren't operating the signal? A. It operates itself automatically.

Q. I believe you said that the bus struck the kerb four or five feet from the automobile before it struck the automobile? A. Yes.

Q. How do you remember that so definitely? A. I was so close to it. I was practically in line with the automobile.

Q. You remember that there were two or three automobiles in line there when that bus struck the automobile? A. They were
30 parked there in compliance with the signal. There were two or three; there may have been more or less.

Q. I suppose you took notes at the time this happened? A. I took particulars of the accident, yes.

Q. Have you got them with you? A. I have not.

Q. Have you seen them since you made them? A. I have not.

Q. Do you remember on Saturday getting a telephone communication from our office, asking if you were the officer on duty there, and if you remembered the accident? A. Yes.

Q. What do you remember telling the party? A. I said I can
40 recall it.

Q. You couldn't remember the particulars without seeing the notes? A. I said if I could see my original report I could remember it better.

Q. I thought you said you hadn't seen them? A. You were asking me about my notes.

HENRY MANN (Cross-Examination)

Q. You took the notes, and then when you went to the police station you made a report? A. I submitted my report.

Q. You have seen that report since? A. I have.

Q. Have you got that with you? A. I have not.

Q. Was there anything in that report about where you were standing? A. Not about where I was standing; no, I don't think so.

Q. Is there anything in that report about the distance between the place where the bus struck the kerb and where it struck the
10 automobile? A. I don't remember; I merely took the dates, and the nature of the injuries to the automobile for my report.

Q. Still, when you were talking to the person who was communicating from our office on Saturday, you said you could not remember without referring to your report? A. I said I can recall it, but I could refer better if I had seen my report.

Q. You told that party you could not remember? A. I did not say I could not remember, I said I could remember better if I had seen my report.

Q. And all you have seen on the report is the date and the damage
20 to the automobile? A. Yes, I remembered it better after reading my report, I remembered it better.

Q. Where was the bus when you first noticed it? A. Proceeding in a northwesterly direction on Portage towards the sidewalk.

Q. It was then proceeding on its course on Portage Avenue to the point where it struck the kerb? A. Yes.

Q. Then it would be just a few feet east of where it struck the kerb, four or five feet? A. Yes.

Q. You did not see it when it was down opposite the Capitol Theatre? A. It must have been very near opposite the Capitol
30 Theatre when I first seen it.

Q. That is over eighty feet; you say you just saw it as it was turning towards the kerb, and it struck the kerb? A. It was heading in a northwest direction when I seen it first.

Q. That is, it was coming up Portage Avenue nearer the middle of the street, and then turned towards the kerb? A. It was heading towards the kerb.

Q. Other witnesses have sworn here today when it got by the cars that were parked east of the Capitol Theatre it turned towards the kerb, and then it went near the kerb in a parallel direction, scraping
40 along by the kerb.

Mr. Guy—Just wait now, that is not the evidence.

The Court—One witness said it ran along the kerb.

Mr. Guy—One witness said it came in opposite the Capitol Theatre and then came along, but my learned friend's question to this witness is that the bus came along passed the parked cars up towards the Capitol Theatre and then turned in that way.

HENRY MANN (Cross-Examination)

The Court—No, there is no evidence connecting the turn with the parked cars. If you quote evidence of a witness you ought to be careful.

By Mr. Chapman—

Q. You say that the bus was coming up the middle of the street and when you saw it it was just turning towards the kerb in a north-westerly direction?

Mr. Guy—The witness did not say it was coming up the middle
10 of the street.

The Court—You should divide your question up. If you want to put it in that form you are entitled to do so.

By Mr. Chapman—

Q. When you first saw it, how far was it south of the north kerb on Portage Avenue? A. I couldn't say how many feet it would be; it was heading towards the kerb when I first saw it.

Q. How far from the kerb? A. About 15, 20 or 25 feet, probably more.

By the Court—

20 Q. How far from the spot at which it collided with the kerb?

A. Probably the length of itself.

Q. How many feet would that be? A. 25 or 30 feet I guess.

By Mr. Chapman—

Q. Do you personally know the driver of the bus? A. I do not.

Q. Have you ever seen him before? A. I have seen him at his duties before.

Q. Have you seen him driving a bus? A. I have.

Q. How long have you seen him before that? A. Since he started to drive the Transcona bus.

30 Q. How long before that? A. I seen him driving that bus before that.

Q. How long, some years before? A. I don't know how long I seen him before, I couldn't say how many years, but I know him to see him drive the bus.

Q. Did you ever know him to be in any other accident? A. Not to my knowledge.

Q. Did you ever know of him being in an accident before? A. Not to my knowledge.

40 Q. That is, you don't remember? A. I didn't have anything to do with it if he did.

Q. Do you know of it at all? A. I do not.

Q. How fast did you say it was going when it turned in a north-westerly direction towards the Portage Avenue kerb? A. It was

FRANK L. MITCHELL (Examination-in-Chief)

coming about four or five miles an hour, not very fast, probably not that.

Q. Have you any reason for coloring your statements, Mr. Mann and making them different from these other people? A. I have seen lots of accidents on the street. I know the speed of the cars.

Q. You have seen lots of accidents? Do you remember this sufficiently to describe the rate of speed? A. Well, approximately, that is about what it is.

10 Q. What are you employed at now? A. Driving a truck.

Q. For whom? A. The Free Press Company.

Q. Have you any connection with the Electric Railway in any way? A. I have not.

Mr. Chapman—That is all.

(Court adjourned at 5.15 p.m. December 3, 1929, to 10.30 a.m. December 4, 1929, at the same place.)

10.30 a.m. December 4, 1929.

FRANK L. MITCHELL, being first duly sworn, testified as follows:

20 *Direct Examination by Mr. Guy—*

Q. You live in the City of Winnipeg, Mr. Mitchell? A. Yes.

Q. What is your occupation? A. Real estate.

Q. Do you recall an accident that occurred at the corner of Portage and Donald on the 22nd April, 1928? A. I don't remember the date; I remember seeing an accident quite well. It passed out of my mind at the time.

Q. Do you recollect an accident in which a Transcona bus came in contact with an automobile? A. Yes.

30 Q. Where were you at the time? A. I was about in front of where the Honey Dew store is now, possibly close to the kerb, walking towards Main Street on Portage Avenue.

Q. Did you see the policeman there, a police constable on the sidewalk at that time? A. I saw the policeman after the accident happened, that is, I took notice of him then.

Q. What was the first you saw of the accident? A. I first saw the bus going west on Portage. It was coming down towards the kerb where I was walking, starting down towards the kerb, on that angle—

40 Q. You first saw it coming down to the kerb. What direction would it be going at that time? A. It would be going towards Donald.

Q. Yes, of course, Donald intersects Portage, but in what direction, north, northwest, or in what direction? A. Going west on Portage. Portage runs west.

FRANK L. MITCHELL (Examination-in-Chief)

Q. Yes, but I mean at the time you saw it in what direction was it going? A. Going to the kerb.

Q. Where was it going with reference to yourself? A. Well, it was coming right towards me.

Q. So that when you looked you saw the bus coming towards the kerb and coming right towards you? A. Yes.

Q. What did you do? A. I rather kind of stepped aside. It seemed an unusual way to come into the kerb, something unusual
10 about it; it did not seem natural to me. I stayed there a moment, and the front wheel struck the kerb and bounced off the kerb, the right hand front wheel, kind of bounced off the kerb and continued on a few feet, and struck an open touring car, and stopped.

Q. How fast would this bus be going when you saw it coming across towards the kerb? A. Well, I don't want to make a statement, but probably three or four miles an hour. He wasn't coming very fast. I couldn't say; he struck the kerb and kind of bounced off like that, and went up half the length of the bus and struck this car.

Q. Did he stop as soon as he struck the car? A. The bus stopped
20 as soon as he struck the car.

Q. What happened to the automobile? A. If I remember rightly, I am not so sure that the car continued on for three or four feet after the bus stopped.

Q. The car continued on three or four feet after it was hit? A. Yes, there was a space between the bus and the car after the collision.

Q. What did you do then? A. I passed between the car and the bus and asked the driver of the car if there was anybody hurt, and the gentleman in the car said no, he didn't think there was anybody hurt,
30 and I went on about my business, and let it go at that.

Q. Was there any traffic on the street at the time? A. There were two or three cars to the left hand side, towards the street car. they were standing waiting for the stop signal to let them go on. I say that, I presume that, they were stopped there, they were all stopped together.

Q. Stopped at the intersection? A. Yes.

Q. How far was the auto away from the kerb? A. ten or twelve feet.

By the Court—

40 Q. How far from the kerb was the front right wheel of the bus when the bus stopped? A. Well, the right hand side of the bus possibly six or eight feet, the right hand front wheel of the bus.

Q. That is the wheel that struck the kerb? A. Yes.

Q. How far was it from the kerb when the bus came to a standstill? A. Six or eight feet, possibly eight feet.

FRANK L. MITCHELL (Cross-Examination)

By Mr. Guy—

Q. Did you find out what caused the bus to take the direction it did? A. No, I did not find out, but the man who was driving the car—

Q. You can't give the conversation of this man, but did you personally find out what caused the bus to take the course it did? A. No, I did not, just what I was told by the man who was driving the bus.

10 *By the Court—*

Q. The course that the bus took when it came into the kerb, and after it struck the kerb? A. It hit the kerb with the right hand front wheel.

Q. What was the angle, pretty sharp angle? A. No, it wasn't a sharp angle; it had quite an angle coming in, but it hit the car with the left hand front wheel of the bus.

Q. All I want now is the course the bus took when it hit the kerb and continued after it struck the kerb, what course did it follow?

A. It glanced right out again; it struck the wheel like that, and
20 glanced out towards the center of the street, and continued out probably 18 or 20.

Q. It ran 18 or 20 feet after it struck the kerb? A. Yes, I would imagine so. Its speed slowed up.

By Mr. Guy—

Q. Did you see the actual impact between the bus and the auto? Were you actually looking at the two when they struck? A. Yes.

Q. What was the nature of the collision? A. You mean the amount of the damage to the car?

Q. No, the nature of the contact? A. It just hit the bus like that;
30 the bus stopped and the car went three or four feet after it stopped. I took it for granted that the angle of the street would slow up the bus because it was climbing up the grade of the street.

Q. I just want to know what you did see, not why it did? A. Pardon me.

Mr. Guy—That is all.

Cross-Examination by Mr. Chapman—

Q. Where were you standing when you first saw the bus, Mr. Mitchell? A. I wasn't standing; I was walking on the sidewalk about where the Honey Dew is now.

40 Q. I show you this plan, Exhibit No. 2 (showing the witness). Here is the Honey Dew store and here is the United Cigar Store? A. There is the Honey Dew right there.

Q. Will you take this pen and mark a capital B just about where

FRANK L. MITCHELL (Cross-Examination)

you were on the sidewalk when you first saw the bus? A. Well, I think it was about right there (indicating).

Q. And when you first saw it, the bus was travelling in a westerly direction on Portage, was coming towards you, towards the kerb?

A. Yes, coming to the kerb.

Q. Taking an angle from the westerly course so as to come towards you, towards the kerb? A. Yes.

Q. Did you notice if there were cars parked on the north side of Portage, along east of where you were at that time? A. On the same side of Portage?

Q. Yes? A. Yes, there was a car possibly around Dunlop's Drug Store.

By the Court—

Q. That is east of the Capitol? A. Yes.

By Mr. Chapman—

Q. Did you notice whether there was just the one or others?

A. There was none between that and where I was standing.

Q. Did you notice whether there were more cars or just one?

20 A. I don't remember.

Q. But you notice one east of the Capitol? A. I saw the first one.

Q. Then he had been coming up to the left, of course, of that car that was parked in front of Dunlop's Drug Store? A. Yes.

Q. And as he passed that then, he swerved towards the kerb?

A. Yes, then he came towards the kerb.

Q. Just after passing that automobile? A. Yes.

Q. And he came along and struck the kerb right in front of you?

A. Yes.

30 Q. I suppose you stepped out of the road? A. Well, I wasn't afraid of him going over the kerb where I was, but it was an unusual landing.

Q. And then, as he struck the kerb, he struck the kerb with the right forward wheel? A. Yes.

Q. He then bounced off the kerb or swerved from it again towards the middle line of the street? A. He swung to the left into the street.

Q. And continued from that spot where he struck the kerb until he collided with the rear end of the automobile? A. Yes, sir.

40 Q. And when he struck the automobile that stopped his bus; but he pushed the automobile still further on three or four feet?

A. I would imagine it was three or four feet. There was a space between the bus and the car where they were both stopped.

Q. Did you notice the damage done to the automobile? A. No, I did not; I did not pay any attention to it at all.

FRANK L. MITCHELL (Cross-Examination)

Q. After the collision, did you speak to the driver of the bus?

A. Yes, after.

Q. What did you say to him?

Mr. Guy—Is this evidence.

Mr. Chapman—I submit it is; it is the driver of the bus.

The Court—What the driver said to the witness may be an admission, but what the witness said to the driver is not evidence.

Mr. Guy—Neither can what the driver said under those circumstances be an admission. It is not made to the parties at all.

Mr. Chapman—It is all the better.

The Court—He is an officer of the company?

Mr. Guy—He is an officer for some purposes under the rule.

The Court—I don't know what was said, but if there is any desire to bring out an admission I think it is permissible.

Mr. Chapman—My learned friend started to ask the questions.

The Court—Don't argue any further; ask the question.

By Mr. Chapman—

Q. What did the driver of the bus say to you immediately after the accident? A. I asked him a question, and he said, "My brakes gave out."

Q. Is that all? A. I think that is all he said.

Q. "My brakes gave out?" A. My brakes gave out, or something to that effect, that the brakes did not operate.

Q. Did you see him speaking to the people in the automobile?

A. I am not so sure whether we both went up together to the car or not. I am pretty sure he walked towards the car at the same time I did, towards the car that was hit.

Q. And you spoke to the driver of the automobile? A. Yes.

30 Q. And you don't remember whether he spoke to the driver of the automobile or not? A. No.

Q. Did you know any of the parties? A. No, sir.

Q. You did not know the plaintiff in this case, Mr. Geel? A. No.

Q. You did not know the driver of the car Calsbeck? A. No, I never saw him before that I know of.

Q. Can you describe any more particularly to the jury the force with which the bus struck the automobile? A. There wasn't very much of a crash when the bus struck the car; it hit it, and stopped immediately, and the car went on a little bit. If the gentleman
40 who was driving the car had his brakes off at the time the chances are he would have gone further than he did, but he must have had his brakes on his car.

Q. Then did you notice after the collision where the automobile was standing with reference to that stop line across the street?

A. No, I did not.

FRANK L. MITCHELL (Re-Examination)

Q. You did not notice whether it was to the east or west of that line? A. No, I did not; I don't know whether it was across the line or not.

Q. Did you notice the line at all? A. No, I did not.

Q. You say you saw the policeman there? A. I saw him after the accident happened.

Q. Did you see where he came from? A. No, I did not.

Q. You don't know whether he was there before or whether he 10 came afterwards? A. No, I do not.

Re-Examination by Mr. Guy—

Q. Mr. Mitchell, do I understand you to say that the first time you saw the bus was when it was coming towards you, that is what I understood you to say? A. I noticed the bus coming towards the kerb.

Q. And that was the first time you saw it? A. Yes.

Q. When it was coming towards you, towards the kerb? A. Yes, near where I was standing on the sidewalk.

Q. Did you see the bus when it was down the street coming by the 20 other automobiles parked down there? A. No.

Q. The first time you saw it was when it was coming towards the kerb? A. Yes.

By the Court—

Q. Where did the bus come in contact with the kerb in reference to where you were standing? A. It is about where the Honey Dew is now.

Q. Would you mark on that Exhibit 2 the spot on the kerb where the bus struck, mark it with a capital C. A. Well, I would imagine it would be just about there (indicating).

30 Q. Just put the letter capital C on the kerb where you think it struck the kerb? A. Yes (marking).

Examined by Mr. Chapman—

Q. Do you drive a car, Mr. Mitchell? A. Yes, sir.

The Court—What do you want now? Do you want to cross-examine further?

Mr. Chapman—It doesn't matter; it is just something that occurred to me.

The Court—Well, if you wish it, I will allow it.

ALVIN T. MATHERS (Examination-in-Chief)

ALVIN T. MATHERS, being first duly sworn, testified as follows:

Direct Examination by Mr. Guy—

Q. You are a duly qualified medical practitioner, Dr. Mathers?

A. I am.

Q. Practicing in the City of Winnipeg? A. I do.

Q. Would you mind enumerating your qualifications? A. I have charge of the psychopathic hospital. I have general charge of the 10 mental hospitals in Manitoba. I am a consultant in nervous and mental diseases of the Winnipeg General Hospital, St. Boniface Hospital, Children's Hospital, and I teach these subjects in the University of Manitoba.

Q. And your degrees, Doctor? A. Medical Doctor, and Master of Surgery from the University of Manitoba, and Licentiate of the Medical Council of Canada.

Q. Your experience, and the work which you do, brings you into contact with nervous diseases? A. All the time.

Q. How many years' experience have you had in that connection? 20 A. Thirteen or fourteen.

Q. I take it you have specialized in that work? A. I have.

Q. You do it exclusively apart from general practice? A. I don't do any general practice.

Q. Have you made a study of the disease—I call it disease—known as paralysis agitans? A. Yes, it is one of the diseases I constantly come in contact with, and of necessity I have had to study it.

The Court—Let us clear up the first point. With some hesitancy you refer to it as a disease. Would you ask the witness to just clear 30 up what the nature of it is.

By Mr. Guy—

Q. Will you explain the pathological nature of it, whether it is a disease or what it is? A. It is a disease if one is to consider a deviation from normal bodily health is a disease. I would say it is a disease, and it is so described. Perhaps, in explaining just what this condition is, I had best differentiate it from another condition that it in some way resembles. Real paralysis agitans is a disease that has been known for many, many years, and was described long ago, and has been recognized for a great many years. Then about ten years 40 ago there appeared in this community, shortly after it had appeared in other parts of the world, another disease called sleeping sickness. This left in its train, in the cases of recovery, a peculiar condition that in some ways resembled paralysis agitans, but is not paralysis agitans. We say it is not paralysis agitans because it is quite different in its

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cause. It is preceded by an infectious disease, sleeping sickness. Real paralysis agitans has no such predecessor. The actual symptoms are different when they are examined closely; that is, the conditions we find when we examine a case of real paralysis agitans are not the same conditions that we find in the case that follows sleeping sickness, and looks something like paralysis agitans. If after death the brain tissues are examined microscopically, one finds that the diseased conditions are quite different, that the damage that has
10 occurred in the brain as the result of these two diseases are in different localities. In real paralysis agitans it is in one place, and in this peculiar condition which resembles paralysis agitans, which follows sleeping sickness, it is in another locality altogether. And this difference in locality probably accounts for the difference in symptoms. In speaking of real paralysis agitans, that is this disease which comes on about middle age or shortly after in a certain number of people, and without any infectious disease preceding it, the changes one observes in the brain are these: There are no changes in the blood vessels, the blood vessels are practically unchanged, the real
20 changes are in the nerve cells themselves, they have become fewer, and those that still remain are distorted and deformed, and they do not look like natural cells. What I want to explain is, that in paralysis agitans there is no change in the blood vessels themselves, no such thing as hemorrhage; there is a slow melting out, if you like to put it that way, of certain cells in a certain part of the brain, a very deeply seated part of the brain, it is away down in the bottom, in a very inaccessible locality, and these cells simply seem to fade out, they just drop out and disappear, they degenerate, as we say, deteriorate, and are finally gone. They drop in number and those that
30 remain are deformed, that is, the essential condition in paralysis agitans. That is what we expect to find if a case comes to autopsy and we examine a small portion of the brain microscopically; that is what we see. I might explain further that, dependent upon these changes that are found in the brain, we see certain symptoms out in the body, certain weaknesses of certain parts of the body, a tremor, a stiffness of muscles; and from the effects of the disease, the result of experimentation, and so on, we know that these symptoms are produced by damage to this particular part of the brain in which we find damage in actual paralysis agitans.

40 Q. I would like you now, doctor, to state your own professional opinion as to whether or not an accident or a blow of some kind might cause the condition which you have described as paralysis agitans proper? A. My own feeling is, and in this I find myself in agreement with the eminent authorities who have written on the subject in the more recent years, that injury does not cause this disease. That is, we are quite unwilling, I and along with me the others who work in

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this field are quite unwilling to believe that with a perfectly healthy brain damage from an accident or injury can produce this disease. We are prepared to believe that, with damage already done to the brain by the mysterious agencies that cause this disease, that after an accident symptoms may begin to appear. That does not mean to us necessarily, in fact it means definitely, we take the stand definitely, that the accident did not actually start that, but what it may have done was to anticipate or bring forward the symptoms that in time
 10 very likely would have occurred anyway. And that same thing occurs in other conditions. We see it happening all along in connection with other bodily diseases. What I might say then is that my feeling, and as I say I am in agreement here with those who have written recently on the subject, is that a relationship that the accident might have to this disease is as the final, the last straw, as you might say, that precipitates something, that brings it to the surface, that was already slowly appearing. An accident draws the attention of a person who is hurt to himself; it draws the attention of his friends to himself; and they very often begin to see things then that they
 20 never saw before, that may have been present before, and then, of course, symptoms may begin to appear. But only in that way do I consider that an accident has anything to do with paralysis agitans. That is not the way that was always held.

Q. You might explain the historical connection? A. If one examines the medical literature over a period of years one finds that in the older authorities, those who wrote some time ago, injury was definitely said to be one of the causes. And all through the years there has been a gradual change in opinion, so that nowadays in the latest utterances on this subject one finds the flat statement, the
 30 absolutely flat statement, that it does nothing of the kind. The authority I am thinking of at the moment will not allow any place in the causation of the disease. Some of the others will say, just as I said a moment ago, that it may act as the last straw. But there has been that gradual change of opinion from the time that medical authorities considered it was a definite cause to the time now when they consider it is either not a cause at all or merely contributory cause.

By the Court—

Q. Is it your opinion that an injury might anticipate or hurry on
 40 the disease which might eventually come on anyway? A. That is roughly my opinion. I am prepared to admit that is a possibility in my mind. I am not entirely convinced that an accident has anything to do with this disease, but I am prepared to admit that it may bring forward and cause to appear at an early date symptoms that were going to appear later.

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Q. Would you like to venture an opinion as to how much it would anticipate this disease, that is, by how many months or years?

Mr. Guy—I was going to come to that, my lord, when we deal with the specific case.

The Court—Very well.

By Mr. Guy—

Q. As a matter of fact, doctor, trauma in the early days, or accident, was held a blame for a good many other diseases as well as
10 paralysis agitans that has later been shown not to be the cause at all?

A. That is quite true. I remember in my own medical college days lectures and lessons in which trauma was blamed for the onset of a great many diseases that are now known not to have any connection whatever with trauma. For instance, I remember our lecturer in medicine telling us that locomotor ataxia, a nervous disease, not particularly common in this country ordinarily, that an accident or injury was very often the cause. That theory is entirely exploded now. We know this disease to be due to syphilis. I remember the same
20 lecturer stating that infantile paralysis was brought on by accident or injury. We know now that it is due to an infection, no doubt due to a germ that is carried about from person to person. So it is quite true that the number of conditions in which accident is purely known to be the cause of disease is narrowing down all the time. In the old days people did not understand the causes of a great many of these conditions. They blamed them on a great variety of things, apparently hoping to be sure of blaming it on something. Now, careful observations and experimentation work have gradually eliminated accident as the cause of a great many conditions.

Q. Doctor Swan, who gave testimony yesterday, endeavored to
30 illustrate the action of paralysis agitans by comparing it with the action of tuberculosis, stating that a number, or practically all of us, 95 per cent, I think he mentioned, of the people, had tubercular germs in their systems, and that if something happened that would bring the tubercular condition to the forefront and we would become victims of tuberculosis. What would you say as to that illustration that he has used by way of comparison with paralysis agitans? A. I am afraid I would have to place myself in disagreement with Dr. Swan. In the first place, he is comparing incomparable things, things that can't be compared. For instance, tuberculosis is a disease that is definitely
40 known to be due to infection, due to a germ. Paralysis agitans is not due to a germ. So, in the first place, you are comparing things in which the cause is quite different. I am quite prepared to agree with Dr. Swan that probably we all have had, and perhaps we still have slumbering in us, the infection of tuberculosis that we got in our infancy or in other conditions of strain and stress, but I am quite un-

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prepared to say we all have slumbering in us the disease of paralysis agitans, and every time we get a head injury, and myself who got a head injury, might well look forward to paralysis agitans. Of course, paralysis agitans does not occur in anything like such a proportion of people; it is a comparatively uncommon disease. We all get head injuries, and we certainly do not all get paralysis agitans, so I am afraid I can't altogether agree with Dr. Swan's analogy.

Q. And for the reason which you have given? A. And for the
10 reason which I have given

Q. Are you acquainted with Dr. Kineer Wilson? A. Yes, both of his writing and personally. As a matter of fact, I have seen him during the past summer, and worked with him.

Q. Is he a pronounced medical authority? A. He is recognized, certainly throughout the English speaking world, as one of the greatest of living neurologists; that is, a physician who devotes himself to nervous diseases. I am quite sure that is so, and I know I have never heard anything to the contrary.

Q. So far as his opinion is concerned, does it support your state-
20 ment now, Doctor, that accident does not cause paralysis agitans?

A. Yes, he states very definitely, not only in his writing, but I have heard him say myself—

Mr. Chapman—I object to that.

The Court—The opinions expressed in writing or otherwise by Dr. Wilson may be put to the witness, and the witness may be asked if he agrees with them. I don't know that they ought to be merely quoted as opinions. They may be put to the witness, and have the witness either confirm or reject them. I think that is a proper
30 function of an expert witness.

Mr. Chapman—The rule is that he can refer to text books to refresh his memory.

The Court—He doesn't refresh his memory from them; he may wish to express his own views which he finds in these text books expressed in a way that he thinks preferable to what he would give orally, but it is the witness's own opinion that we are concerned with, and insofar as he adopts the language of some other witness he could give that.

Mr. Chapman—Dr. Young was here yesterday with a whole satchel full of books.

40 The Court—If you want to read from them it is objectionable, but the witness may adopt certain language as his own opinion.

Mr. Chapman—I think Dr. Young was prepared to give that as his opinion, but still he was stopped.

The Court—No, not in the same way. That undoubtedly is correct.

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By Mr. Guy—

Q. Dr. Kineer Wilson, of the National Hospital for paralyzed and epileptics, and junior neurologist of King's College Hospital, London, England, in Oxford Medicine, as revised in 1927, has dealt with the question of the relation of accident or trauma to the disease known as paralysis agitans?

The Court—You are making a very extended statement there that is probably open to objection.

10 Mr. Guy—I am not saying what side he takes one way or the other.

The Court—But the witness may embody Dr. Wilson's opinion if he wishes. What you might do is read to him, and ask the witness what he thinks of that statement. That is the proper way to submit that material. And Dr. Wilson's qualifications should be stated by the witness if he knows them, and he has done so.

By Mr. Guy—

Q. Etiological import means what? A. That refers to the causation.

20 Q. Etiological import means dealing with the cause. Under "pathogenesis of paralysis agitans," Dr. Wilson makes this statement: "We cannot allow any etiological import to previous infections, occupation; trauma, cold, fatigue, emotional upset, and all the rest of the list; with the exception, as has already been emphasized, that if the incidence of a virus is on the corpus striatum, as in not a few cases of epidemic encephalitis, symptomatic paralysis may result. But this is not the same thing as the causation of the idiopathic and progressive disease." A. That simply states there that he does not believe that trauma, among other things, that is, injury, among other
30 things—

Mr. Chapman—I do not think it is fair for the doctor to paraphrase this statement which has been read to the jury, as I heard it. It is in the record and he has been asked if he agrees with that.

The Court—That is really a limitation, I think. A. Well, my lord, I agree with it.

By Mr. Guy—

Q. By trauma he means accident? A. Yes, injury.

Q. Perhaps you could give us your reason why trauma in your opinion does not bring about as a cause this disease of paralysis
40 agitans? A. As I explained at the beginning, the essential condition in paralysis agitans is a gradual dying out, not a speedy dying out, but a gradual dying out of cells in a certain locality. When you examine this locality you find no signs of any inflammation. There is nothing to indicate there has been inflammation there, nothing to

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indicate there has been hemorrhage. The two things that ordinarily follow in body tissues after they have been injured are blood spilled out in the tissue, hemorrhage, or inflammation. When we come to examine this particular locality in the brain where the damage appears in paralysis agitans there are neither signs of inflammation nor of hemorrhage. That is one reason why I believe that accident or injury cannot be the cause of the disease. Another reason is that there is a slow fading out, a slow progressive dying off. It is like the
 10 dying off of an old tree, the top branches die off and the tree slowly dies out. In the same way these cells simply die out. It is a progressive thing. It does not appear at once, as one might expect after an injury, but it simply goes on until the process is completed. Another reason I feel that trauma cannot be the cause is this: Why should this locality in the brain, and deeply located in the brain, an inaccessible locality, why should that be picked out, when the parts injured are very much closer to the seat of the injury; why should that distinct locality be picked out, if an accident or injury is the cause, why pick out a part away off for damage appearing when there is a
 20 more readily accessible part?

By the Court—

Q. Where is that part located? A. Very, very deeply located towards the center of the brain, and almost on the bottom of it.

Q. In reference to the spinal column? A. The spinal column passes down the back of one's neck. If one were to pass a needle straight into that locality (indicating)—

Q. Over the ear? A. Approximately over the ear, one would probably pass through the district involved in paralysis agitans.

Q. You say that there would be some dying out of the cells. Is
 30 there some surface indication? A. No surface indication whatsoever.

Q. What do you mean by no signs of inflammation? A. There are no signs of inflammation in the tissue that you examine.

Q. I thought you were referring to the plaintiff? A. No. my lord. This is a hypothetical case. An ordinary case on examination shows no signs of inflammation, no signs of hemorrhage, just this slow progressive cell deterioration, of certain cells in an out-of-the-way part of one's brain.

By Mr. Guy—

Q. In the tremor or paralysis, or whatever you call it, that comes
 40 as the result of sleeping sickness, you do find hemorrhage, do you not, Doctor? A. Yes, one finds hemorrhage, but as I also mentioned earlier, the damage is in a different locality, not in the same locality at all. It is in a locality—oh, approximately an inch or perhaps an inch and a half away.

Q. Your point then, Doctor, as I understand it, is that because

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of the deep seated locality in which this particular portion of the brain is situated, which when diseased gives rise to paralysis agitans, you can't understand why an accident or an outward blow of some kind would not deal with tissues of the brain just as susceptible to injury, and which are much closer to the exterior? A. Much nearer at hand.

Q. Than the one you described to us as being involved? A. Yes, that is the last point I mentioned. I can't understand why tissue injured should be selected tissue; why, if the injury is to the head, this
10 little spot of tissue deeply buried in the brain should be picked out when much nearer tissues at hand are not damaged. That is why I feel exceedingly sceptical about the effect of injury in producing paralysis agitans.

Q. Your second reason also is because there is no inflammation to the issue, and a blow causes inflammation or hemorrhage? A. That is quite true. When the tissues are examined microscopically, you can very easily detect signs of inflammation in them, and there is no evidence of any hemorrhage. These are the two things we always expect to accompany damage done by hemorrhage, either blood
20 spilled out, hemorrhage, or a following inflammation, and neither one of them are there.

Q. Now you did examine the plaintiff? A. Yes, I examined him.

Q. What was the first time you saw him? A. I think the date was the 4th July, 1928.

Q. How did you find him at that time? A. I saw him at the request of Dr. Yonker. I saw him at his home, and I found him in bed. The thing that struck me as I went into his room to see him was that he was very pale. He was, as we say, very anemic, and he was lying in bed, and he said he did not feel well at all. He said he
30 had some headache and some dizziness, and felt generally miserable. I made an examination of him, mostly an examination of his nervous system, and I failed to find any evidence of any organic nervous disease at that time. The thing that struck me as being the most evident thing, the thing that was most plainly seen, and at that time it seemed to me a rather important thing, was this anemia. I suggested to Dr. Yonker this should be investigated, since it was quite enough to explain all that he complained of. He complained of rather indefinite headache, and some dizziness, and so on, and these are symptoms that anybody who is exceedingly anemic would likely
40 have. So I suggested to Dr. Yonker that this should be investigated to try and establish their nature; but at that time I could see no evidence whatsoever, after an examination of his nervous system, I could find no evidence of any nervous disease; that is, organic nervous disease.

Q. Then you went away shortly after that? A. Yes; I think I left the next day, as a matter of fact.

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Q. And then you later returned and you saw the plaintiff again?

A. Yes, I saw him that time at the General Hospital, at the request of Dr. Swan. I think it was in December. I am not sure of the date, but I saw him in a semi-private ward in the General Hospital. At this time his anemia seemed to be very much better. He seemed to have gained some weight. He wasn't so pale, but now—this was in December—he did have quite definite signs of a definite organic disease, paralysis agitans. It wasn't just perfectly typical—I think
10 I said to Dr. Swan at the time it wasn't exactly typical—but to my mind there was no doubt this was the beginning of the paralysis agitans. The man had some tremors, some shaking of his hands. He had stiffness in his muscles. If one went to move them they moved very slowly, and you could detect a definite stiffness. These things were then present. His anemia was, I thought, considerably better, and the blood examination at that time indicated that it was better. But there were now present definite signs that were not present in July.

Q. Would you state your opinion then, Doctor, from your general
20 experience, and your knowledge of the plaintiff, and from your examinations that you have given him, as to when, if at all, the symptoms of paralysis agitans would have appeared if this accident had not occurred? A. Well, of course, it is—

Mr. Chapman—May it please your lordship, I don't think there has been a ground laid for that.

Mr. Guy—That is the very question your lordship already asked.

The Court—Yes, about the same. I think that is a fair question.

Mr. Guy—Except I am dealing with it now after he had examined the plaintiff.

30 Mr. Chapman—It will be taken subject to objection.

The Court—You have objected, and I have ruled.

A. It is a little difficult, of course, to say. We can't say exactly how soon this might have appeared, but I should think from experience with a great many cases that this disease, coming as I believe it was coming, would have given good evidence of itself certainly within the next year, possibly within the next six months, but I should say certainly within the next year.

Q. I take it you have already accounted for these symptoms coming on from the time of the accident up to the present time and
40 continuing, and being progressively more serious? A. Yes, the disease is a progressive disease.

Q. The disease is progressive and grows? A. It constantly grows, sometimes rapidly, and sometimes not so rapidly.

Q. I think, Dr. Swan, in giving evidence yesterday, made the statement that all the text books agree that the cause of paralysis

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agitans is not known? A. Yes, I think there is certainly a great deal of doubt about it. There are certain things we can definitely rule out. There are other things we are not so sure about.

Q. From your evidence, I take it that, while you do know what takes place in the brain, that is a wasting away or a melting away of the cells of a particular locality of the brain, while you know that, what you don't know is what is the cause of the wasting away of this part of the brain, is that it? A. That is quite right. It may be
10 that certain peoples' body tissues in certain localities die out; they come to an end of their usefulness before those of other people. It is just like a clock that, being wound up for a certain time, comes to an end. It is not due to a tumor, or hemorrhage, or breaking of blood vessels; it is not due to inflammation, nor is it due to accident or injury, at least, I feel it is not; but what the actual thing that starts these cells dying off nobody actually knows.

Q. And his second point was that it is incurable? A. I agree with that.

Q. Third was it followed injuries and shock frequently? A. It
20 may follow it without there being necessarily a connection with it, but my feeling is the connection is exceedingly remote, if any.

Q. As to the authorities agreeing with that, as you have stated, the earlier text books probably did agree that accident had some causal connection with paralysis agitans, but now it is not so? A. That is true; there has been this gradual change, and one can see it if they investigate it.

Q. What reason would you give for the statements in the earlier books and the statements in the present books? A. There has been a gradual increase of knowledge, and a more close appraisal of differ-
30 ent factors. People are studying these things all the time, and devoting their lives to it. While they may devote a great deal of time and not find much, they do find some things, and this is one thing, as time went on, that they satisfied themselves about. In the old days when they did not know, they gathered a great number of things together and said it is one of these, hoping thereby to get some information, but as time has gone on and people have investigated the thing more fully they have been able to rule out one after another of these things, and you can see it is still progressing, this historical progress, if one consults the books that have appeared in the years
40 that have gone by.

Q. Dr. Swan expressed his opinion that, had it not been for the accident, he might have gone on just the same with his ordinary duties as he had been doing before? A. I doubt that very much. I am quite satisfied that this man was in for paralysis agitans. He was getting it; it was coming definitely. It is simply a question of time as to when the disease was going to become overt and fully

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known. I can't agree that this man was bound to be a sound man. I think he was bound to be anything but a sound man.

Q. He was bound to be a subject of this disease, at any rate?

A. That is my feeling about it.

Q. How many cases of paralysis agitans have come under your observation during your experience? A. I have never counted them, but there are very large number. I see them all the time in my own work; and then, of course, when one goes away to visit other clinics and institutions you see large collections of these people. I suppose it must have amounted to a good many hundred altogether.

Q. Have you seen Dr. Fraser's book on workmen's compensation?

A. I have seen the outside of it only; I haven't seen the inside of it.

Q. You know Dr. Fraser? A. Very well.

Q. Is he a specialist in nervous diseases?

Mr. Chapman—I object to that. He is specialist enough to have written a book and be quoted as an authority.

Mr. Guy—But only in respect of workmen's compensation.

The Court—If he is a well known authority, the witness may say that, such as he has mentioned the standing of other authorities. All the experts do that, refer to men who are authorities.

Mr. Guy—But this is the workmen's compensation.

The Court—You must not give that evidence.

Mr. Guy—I am asking the witness.

The Court—You can ask him what he knows of Dr. Fraser as an authority, his reputation in the profession as an authority.

Mr. Guy—On paralysis agitans?

The Court—Or on any of these nervous complaints.

By Mr. Guy—

30 Q. Would you care to answer that? A. The only thing I can say is I doubt very much that Dr. Fraser would pose as one; I don't think he considers himself one at all.

The Court—He may be a man of extreme modesty, but what reputation has he in the profession? A. That is a delicate question for me to answer.

By the Court—

Q. I thought it was, but it has been put to you. A. If it came to a decision on a point in nervous or mental disease—I may put it this way, intending no unkindness whatever to Dr. Fraser—I doubt if he 40 would be consulted on that point, nor would he expect to be.

By Mr. Guy—

Q. If accidents or if a blow sometimes could cause paralysis agitans, or concussion or shock could bring it about, wouldn't one

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have expected to have heard of a great many cases during the War of such disease? A. Yes, it would be really a very much more common disease, because very few of us in war or peace time escape shocks or knocks on the head. I have been getting knocks on the head literally and figuratively for a long time, and I haven't got paralysis agitans, nor do I expect to have it, but it is quite true that injuries to the head and shocks are much more common than paralysis agitans.

10 Q. What was the experience in the War? Was there an exceptional number of cases or not? A. No, it was a rare occurrence. I had a good bit to do with cases of nervous and mental disease coming back from the War, during the latter years of the War, in this district, and I know they were exceedingly uncommon then. I saw very few, and none that I could not have accounted for by other things.

Q. If an accident or a blow would cause it, would you not expect it to show itself in its worst form at the time of the blow? A. Yes, if the blow were actually the cause you would expect it to produce its effects immediately or very shortly, because, as I say, the two ordinary
20 things that follow an injury are either hemorrhage, the spilling out of blood, or inflammation, and those symptoms would be produced. Those are the two things that ordinarily follow injury, and they are not present, as far as I can establish, in paralysis agitans.

Q. As a matter of fact, instead of it being that way, the position is simply reversed; it comes on gradually and unsuspectingly? A. Yes.

Q. And gradually grows worse and worse? A. Yes. In the case in question, I think the man was injured in either April or May. I saw him in July and there were no evidences of the disease then. I
30 saw him then practically five months later, and there were evidences then, but that was either seven or eight months after the injury.

Q. Can you tell us this, Doctor; do people have paralysis agitans who do not have accidents or blows? A. A very large number of them. In fact, thinking over the cases that I know of personally, I can't remember one that was connected with an accident in any way. There are cases in the literature where an accident has occurred, and sometime in the future paralysis agitans has occurred, and the question was, was there any connection? But, as I say, I know of no single case where I felt that accident had really any connection with it.

40 *Cross-Examination by Mr. Chapman—*

Q. How long have you been practicing altogether, Doctor?
A. Sixteen years.

Q. Always in the City of Winnipeg? A. No, not always, most

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of it. I was away from Winnipeg for a short time. That is quite apart from periods of study away.

Q. But you never practiced anywhere except in Winnipeg?

A. Well, I practiced at Ninette Sanitarium, but only for a period of six months.

Q. And you have charge of the pathological ward in the—

A. Not the pathological, the psychopathic.

Q. The psychopathic ward, and the asylums in the province?

10 A. General supervision. Each mental hospital has its own staff, but I have supervision for the purpose of correlation only.

Q. There is no suggestion that this man's insanity is affected in any way? A. Oh, no, he is not insane.

Q. There wouldn't be any connection in that respect? A. No, he was in a rather nervous state when I saw him in July, but it never occurred to me in the world to say he was insane.

Q. He was in a nervous state? A. Rather nervous. A man who is feeling poorly very often is. I get that way myself if I have to stay in bed.

20 Q. Now, then, Doctor, you stated that for a good many years they had certain views in the medical profession, and about ten years ago there came this epidemic of sleeping sickness, from which a good deal was learned? A. Yes, a great deal.

Q. What was the effect of sleeping sickness on this part of the brain? It is called the basal ganglia, isn't it? A. Yes, the locality I have described as being diseased in paralysis agitans, that locality is generally spoken of as the basal ganglia; it is part of the basal ganglia, not all, part of it.

30 Q. How was that affected by sleeping sickness? A. Well, the fury of the infectious process in sleeping sickness was on a locality close to but not actually in the basal ganglia. It was in the locality known as the mid-brain. That is a little distance away from the basal ganglia. If one examines sections from autopsies in cases of sleeping sickness, one can look at sections of the basal ganglia and see some damage there, but if they go over and look at the mid-brain they find infinitely more damage there, and the symptoms and wreckage of these indicate that the chief fury of the disease was spent on the mid-brain in the cases of sleeping sickness.

40 Q. The mid-brain is midway between the inner and the exterior. You have been talking about injuries to the exterior part of the brain? A. No, there is a large portion of one brain up here (indicating) and a small portion down here (indicating), and there is a connecting link, and it is called the mid-brain.

Q. These conditions that arise from sleeping sickness, are they in the exterior part of the brain? A. No, in the mid-brain, and that is pretty well deep in the middle line.

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Q. You speak of the part of the brain affected by sleeping sickness as the mid-brain, the same as the part affected by paralysis agitans?

A. Oh, no.

Q. They are very near together? A. They are about an inch or an inch and a half apart.

Q. But well within the brain from the exterior part? A. But inside the brain.

Q. Are the conditions brought about by sleeping sickness similar
10 to those brought about or existing in paralysis agitans? A. You mean to look at the patient?

Q. In the brain, if a man dies, and you take it out? A. No, they are quite different. You would never mistake them if you were to see the two side by side, and weren't told which was which; you would know them apart.

Q. So, after a patient dies, you can take the brain out, examine it, and see definitely whether he had paralysis agitans or sleeping sickness? A. Yes, that is done all the time.

Q. But the symptoms that are produced from sleeping sickness
20 when they are produced are similar to those of paralysis agitans? A. Superficially, they are similar. If one examines closely they are not similar; they are different. For instance, the stiffness of the muscles, that I spoke of, that is similar. The cases that follow sleeping sickness are not nearly so likely to tremble as are the cases of paralysis agitans. Cases that follow sleeping sickness have a great deal of secretion of saliva in their mouths; ordinary cases of paralysis agitans have not. One could go on and pick out the differences between the two. There is a superficial resemblance, so much so that the condition was, I might explain, that kind of paralysis
30 agitans was named after the man who described it, who was George Parkinson, who described it in 1827, and this condition that followed sleeping sickness came to be known as Parkinsonian, not because it is the same thing, but because it looks like it.

Q. There are a great number of symptoms that are called Parkinsonian syndrome? A. Yes, Parkinsonian syndrome. That is a term that has arisen entirely since the epidemic of sleeping sickness, to describe it.

Q. And the scientific term for it is what? A. Encephalitis epidemica, or lethargica, that is inflammation of the brain.

40 Q. Is there such a thing as encephalitis traumatica? A. Yes, encephalitis traumatica.

Q. That is an inflammation in the brain similar to that produced by sleeping sickness which is produced by trauma? A. No, it is not similar, neither clinically or pathologically.

Q. Why do you call it encephalitis? A. There are signs of inflammation, but all signs of inflammation are not the same. Path-

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ologists tell, and I have every reason to believe it, and I think so myself, that the microscopic picture one sees in sleeping sickness shows inflammation of a certain kind. The evidence of inflammation or definite evidences of trauma encephalitis are a little different, so different you could say they are not the same.

Q. Of course you could not tell that until the patient died and you examined his brain? A. Clinically they are not the same; that is, to examine and look at the patient they are not the same.

10 Q. But the symptoms are similar, they have similar symptoms?
A. They might have a few that are similar, but they are very few, not enough to confuse one.

Q. So that trauma, or injury, is definitely known to produce some of the symptoms that are known as Parkinsonian syndrome? A. No, that is not what I said at all.

Q. Isn't that a fact? A. No, it is not; I don't know that it is; it is not my experience at all.

Q. That is not your experience? A. All I said was you can find certain conditions in the brain that must occur in the nature of
20 encephalitis, which is a general term like fever. Everybody knows there are lots of different kinds of fever. You could not say they are all the same.

Q. In that same way there are different kinds or species of this paralysis agitans? A. Just the two, that the world knows about, real paralysis agitans, and this pseudo, or false paralysis agitans that follows sleeping sickness. Those are the only two that the world knows about.

Q. You said locomotor ataxia is the result of syphilis? A. Yes.

Q. Are these symptoms never described as Parkinsonian symp-
30 toms? A. Never in the world.

Q. They have to the lay eye very similar characteristics? A. I know it is very difficult for the laity to make the fine distinctions we do, but locomotor ataxia is a special recorded disease.

Q. But I mean just to look at a man with locomotor ataxia and paralysis agitans the ordinary lay man would not be able to tell which was which? A. Yes, he would be if he was any way observant, because there is a distinct difference.

Q. But the symptoms are similar? A. No, I can show you how they are different.

40 Q. There is no use wasting time about that. At any rate, Doctor, it comes down to this, that in your opinion while trauma or accident could not be the cause of paralysis agitans it might be an exciting or aggravating cause or something that would set it on?
A. Yes, I would say that is quite my opinion. It may be true that it anticipates it, it sets the symptoms forward; it might do that.

Q. Is it a fact that in other diseases—take cancer; a man might

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have cancer, it might be in his system, and if he got wounded or something like that it might set that disease on, and bring on the cancer? A. There is a little difference there. With a severe injury it is quite true, I think sometimes cancer is very closely related to injuries. That is, if a man breaks a leg, as one prominent physician did once, a so-called cancer developed at the point of fracture.

Q. And the same way with tuberculosis; if he has tuberculosis germs in his system, might not an accident, or even sometimes if he
10 has an operation, precipitate tuberculosis? A. I have had a fairly extensive experience in tuberculosis, and I am quite prepared to admit that a strain will cause a breakdown, and might develop tuberculosis, but I am not so sure that accident causes acceleration of this tuberculosis process.

Q. That is, it would not anticipate the effect immediately, but in time, as the result of the pain and suffering and the effect on his system, it would precipitate the disease of tuberculosis? A. The greater the distance between the effect and the reputed cause the more questionable the relationship becomes.

20 Q. So that if Dr. Swan used the illustration in that way, it would not be at all out of the way? A. No, I can't agree with that. He is comparing things incomparable.

Q. You say they are incomparable? A. Yes.

Q. Because the germ is known of tuberculosis? A. Yes.

Q. But you don't know the germ or whether there is a germ in paralysis agitans? A. We know pretty surely that there is not.

Q. Do you know? A. Yes; I am prepared to say we do know, there is not. Germ activity produces inflammatory signs. They are very evident in tuberculosis, and they are not evident in paralysis
30 agitans at all; they are not there.

Q. But in paralysis agitans there is a breaking down, a melting away of the cells in this part of the brain and you don't know what causes it? A. Yes, I say we don't know the cause; but we know certain things that are not the cause.

Q. My idea is just to show you that you don't know the cause of that, but in tuberculosis you do? A. Yes, that is right.

Q. And notwithstanding the fact of this difference in your knowledge, you are prepared to say what you have said here today? A. Yes, quite.

40 Q. You saw the man first in July? A. Yes, I think it was the 4th.

Q. You could not see any signs? A. No; I examined him, and I could not find any evidence of any organic nervous disease.

Q. But later they did develop? A. Yes, they were there in December.

Q. Then you give us this difference in the authorities. You said

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the authorities some years ago definitely stated that trauma was the cause of paralysis agitans, and now the opinion expressed by these authorities is gradually drifting away from that idea? A. That is right.

Q. Is it not a fact that the older authorities, the authorities of a few years ago, based their statement on observation of actual cases?

A. Yes, based as they thought on observation of actual cases, but an observation often proves fallacious.

10 Q. But they base their opinion on observations, and in these authorities they often quote different cases that they have observed, and having seen so many they found the symptoms to be that way, and from that they concluded it must be the cause? A. Yes, but quite wrongly. They once thought that the world was flat.

Q. Yes, but we do not want to make any of these opinions of medical men ridiculous? A. Unfortunately we have to admit some of them were.

Q. There is a good deal of uncertainty about some of the things they know, but I would treat them seriously.

20 Q. One of the great reasons on which you base your opinion that trauma or accident cannot be the cause of paralysis agitans is that part of the brain that is affected in paralysis agitans is so remote from the exterior part of the head? A. Yes, so remote, and so sharply delimited. There is damage in paralysis agitans, and one sixteenth of an inch away from the limit of that there is no damage. Why should there be this sharp—

Q. That is all I ask you, if that was one of the reasons you based your opinion on. And not everybody that has had sleeping sickness develops this Parkinsonian symptoms? A. No, happily not.

30 Q. Not every person that has an accident develops them? A. The proportion is not at all comparable. Sixty per cent of those who recover from sleeping sickness develop Parkinsonian symptoms.

Q. What is Dr. Fraser? A. Chief medical officer of the Compensation Board.

Q. He examines all the cases? A. I don't think he examines them personally very often. I think he examines some of the minor ones, but he refers a great many to other physicians for an examination and report.

40 Q. The same as you might in the psychopathic ward? A. Quite true.

Q. And amongst these compensation cases he would be constantly dealing with cases of injury? A. All the time.

Q. That is what he deals with all the time? A. All the time, injury or reputed injury.

Q. This paralysis agitans is a very uncommon disease? A. It is uncommon if one compares it with measles; it is not uncommon if one

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compares it with some other nervous diseases, but it is not one of the ten commonest diseases.

Q. How many cases do you think there are in the Province of Manitoba at the present time? A. I could not give you an exact proportion at all. I would even hesitate to estimate, because I don't know exactly. All I know is in the period of thirteen years I must have seen a good many cases.

Q. How many do you think there would be in the City of Winnipeg? A. I should think there would be probably one hundred or so.

Q. All real cases of paralysis agitans? A. I would not wonder. I see them on the street every day walking along.

Q. You were examined before the master on the application for the order for the jury in this case, Doctor? A. I guess I was.

Q. You remember you gave some statements there about the authorities changing their views from a few years ago up to the present time, as you have stated here today? A. Yes.

Q. And you stated there that there was one who stated positively that trauma could not be the cause of paralysis agitans? A. Yes.

Q. Was that Dr. Kineer Wilson? A. It was Kineer Wilson.

Q. Then the statement in Kineer Wilson that has been read today is the basis of your statement that there was one who made that? A. He is the most positive about it; there are others who are nearly as positive, but he is the most flatfooted about it.

Q. Do you know Professor Hans W. Maier, chief physician, Psychiatric University Clinic, Zurich? A. Yes, very well.

Q. Do you know that he has made this statement: "When we know that definite anatomical changes, the result of encephalitic arteriosclerotic or syphilitic processes in the basal ganglia area, especially in the stiro-pallidial apparatus, can bring forth the Parkinsonian symptom picture, it is possible to believe that the same symptoms may be brought forth by little hemorrhages or tissue destruction of traumatic origin in this locality."? A. I don't know whether he wrote that or not.

By the Court—

Q. If he wrote that, would you agree with it? What is your opinion on it? A. No, I don't agree with that; when one examines the tissue in cases of paralysis agitans one finds no evidence of hemorrhage.

By Mr. Chapman—

Q. He is a very eminent authority? A. He is a psychiatrist. He deals with mental diseases. As a matter of fact, I have been working with Dr. Hans Maier for three months of the past six.

Q. Do you remember when you were examined before the master,

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Doctor, that counsel for the Street Railway, the Winnipeg Electric, asked you this question: Q. "Could you give us any idea of how long shock might push it along?" and you answered: "A. It is very difficult to say."? A. Yes.

Q. And then do you remember the master saying: "That question was answered. It depends largely on the—" and he stopped, and Mr. Turner said, "Q. Yes, on the degree of shock and the vulnerability of the man's nervous system." And you answered: "A. That is 10 right."? A. The vulnerability of the man's nervous system, yes; that is, how easily it could be done.

Q. That is, if you had a weak man, or a weak patient, a patient who was weak physically, who had this disease dormant in his system, and he suffered an accident, that accident would push it along a great deal more and bring the symptoms more quickly than it would in a strong robust man of more virility? A. I don't know that physical health generally would have much to do with it. Because one repeatedly sees perfectly healthy nervous systems in very weak bodies and, on the other hand, weak nervous systems in healthy bodies. But I 20 do agree that a person in whom the disease is gradually coming to the top, an injury might bring it a little faster, and anticipate it.

Q. In a person or weak nervous system it would be more than in a person of a strong nervous system? A. No, it is not a question of a weak or strong nervous system, it is a question of whether or not it is there.

Q. What do you mean by the vulnerability of a man's nervous system? A. Cells diseased are vulnerable; they are more easily injured than healthy cells. They are injurable to a greater extent than normal cells. If a man has cells already beginning to die out 30 because of this mysterious process, it is quite possible that injury might set the process forward a little faster than it would in its normal course. I am quite prepared to agree to that.

Q. Of course that would also depend on the force of the shock and the injury? A. Yes, that is a little bit more questionable; but, off-hand, perhaps you might say that the greater the shock the greater the likelihood, but that would be a little difficult to prove.

Q. And then of course it is your opinion, I think you said, that this man can't recover? A. No, he is incurable.

Q. I think you said on your previous examination that your 40 opinion was he would probably die in about five years? A. Well, I wouldn't like to state any definite date; but the most one can definitely say is that the condition is incurable, and is progressive, and many do die inside of five years.

Q. You wouldn't give your opinion about this man? A. No, I wouldn't give that opinion about anybody.

Q. You are satisfied however his symptoms are not from sleeping

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sickness? A. Yes, I could find no evidence, nothing to suggest that he had had sleeping sickness.

By the Court—

Q. Witness, you say that the authorities up until about ten years ago did attribute paralysis agitans to injury as the cause? A. I did not mean to infer there was any sharp change at that time. I mean if one picks up a text book, as I have in my own office, of something like twenty years standing, it is stated positively among the real
10 causes, and as one picks out the books all down through the years you find it becoming a little more indefinite until you finally come to the last one written that I know of, in which they flatly say no.

Q. Roughly the authorities were all agreed until comparatively recent years that injury was a cause? A. I think the first authority that I first came across that seemed to be very doubtful about it, beginning to cast doubt upon it, only presaging what was to come later, was about 1915.

Q. Then are we safe in saying that before 1916 there was no doubt among the authorities in the profession that injury was a cause of
20 paralysis agitans? A. They seemed as a whole, as far as I was able to consult them, they seemed to consider it was a possible cause.

Q. And from that day on the doubt has existed, and has been growing? A. The doubt has been growing until with some at least there is a doubt no longer.

Q. Even today among the authorities there is a difference of opinion? A. Among the recent ones I have been able to consult they will go this far, just as I have expressed myself this morning, they will go so far as to say it might be something that might anticipate, bring on, or bring to light a pre-existent thing; they won't stamp
30 is as of no consequence at all, they would say no, it might possibly be the last straw.

Q. Is the present state of knowledge among the authorities such as they can definitely and positively say there will be no future change in their view? A. No, they would be the last people in the world to say there would be no future change.

Q. As to their view of the cause of this, as to whether or not injury would cause paralysis agitans? A. I would say they would be prepared to say very definitely there would be no change?

Q. That is, those who adhere to the view that it is not a cause?
40 A. Yes.

Q. But those who do not, you don't know? A. I don't know just what they think.

Q. Now, you saw the patient in July and again in December?
A. Yes.

Q. He was in a weakened condition at that time, on both occas-

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ions? A. Yes, he really looked worse in July than he did in December.

Q. Did you form any opinion as to the cause of this condition?

A. In July?

Q. Yes, take July first? A. In July, the only outstanding thing that I could find on examination was this remarkable anemia; and it seemed to me that was practically sufficient to account for his symptoms. He had very indefinite symptoms at that time, but the symptoms he had could be explained on the basis of anemia. I asked
10 his doctor to examine him from that standpoint.

Q. And the answer? A. I had no report.

Q. You don't know then whether his condition was due to anemia or not? A. No, I don't know; but from the subsequent events his anemia was better.

Q. That condition produced by anemia would be one of gradual growth? A. Not necessarily.

Q. Or would it come on suddenly? A. Unless anemia is due to hemorrhage, it is a matter of slow progress always; I mean it comes
20 on slowly.

Q. It has been stated, and I think it has been mentioned here this morning, that the plaintiff was shocked, at any rate, he was injured in a collision. What would you say as to that being a cause of his anemia? A. I don't think it had anything to do with the anemia. The things that appealed to me as being possible causes of his anemia might be said to be four. One was the presence of the disease called pernicious anemia; one was the possibility of lead poisoning (he had been a painter); one was the possibility of syphilis, a common cause of anemia; another was his living an indoor, inactive
30 life. Those are the four things that occurred to me.

Q. Did you take measures to eliminate them? A. I asked the doctor to do so; I was going away the next day.

Q. It has been stated here that lead poisoning was eliminated, and syphilis was eliminated? A. I think they were all eliminated with the possible exception of lying in bed inside a house, and not moving around.

Q. Lying in bed. The evidence is that prior to the injury he was actively engaged in working outside painting. You are referring to lying in bed for some period prior to July when you saw him?
40 A. Yes; I don't remember offhand how long he had been in bed then.

Q. From the evidence, about ten weeks perhaps. A. I should think that might produce the degree of anemia he had.

Q. So that the anemia would be caused by his confinement in bed? A. It seems to me the only one that is left of the possibilities.

Q. And the confinement was caused by the injury? A. Yes, apparently.

HARRY COPPINGER (Examination-in-Chief)

Q. What would you say as to the possibility of a man in that condition being more subject to paralysis agitans than one who wasn't in that weakened condition? A. I don't see that there can be any definite connection, my lord. Paralysis agitans seems to fall on the well and unwell, and the just and unjust alike.

Q. You would not think there was any connection there at all? A. I wouldn't like to think there was. I am certainly not prepared to say there was.

10 Q. You say that the anemia was apparent to you in July, and to a somewhat lesser extent in December when you saw the patient?

A. It was perceptibly different. It was really very definite.

Q. Is there any connection, or do you know of any connection between anemia and paralysis agitans? A. I do not think there is. Anemia is a very common condition. Paralysis agitans is not anything like as common. A great many cases of paralysis agitans are not at all anemic, so, taking it either way, one can't work out any definite connection.

Q. And anemia would not induce or hasten paralysis agitans? A. I can't think so.

20 A. I can't think so.
(Court adjourned at 1 p.m. December 4, 1929, to 2 p.m. the same date.)

2 p.m. December 4, 1929.

DR. HARRY COPPINGER, being first duly sworn, testified as follows:

Direct Examination by Mr. Guy—

Q. You are a duly qualified medical practitioner, are you not? A. I am.

Q. Where do you work? A. At the Winnipeg General Hospital.
30 Q. Were you there in April, 1928? A. I was.

Q. I believe you were the doctor who admitted the plaintiff Geel in the hospital on the evening of April 22? A. I attended to him in the casualty operating room theatre on the evening of the 22nd of April?

Q. That is, he was brought into the hospital, and you were the man who took charge of him there? A. Yes.

Q. About what time in the evening did you see him? A. According to the hospital records, known as the casualty reports form, it was 9.15 p.m.

40 Q. You made an examination of him? A. I did.

Q. It is your duty to do that there as examining physician? A. It was part of my duty that evening.

Q. And when you did examine him what did you find? A. No marks of injury.

ANDREW McBAIN (Examination-in-Chief)

Q. Did he tell you what had happened? A. He told me that he had been seated in the back seat of an automobile that had been struck by a motor bus. He claimed pain in the head. There were no external marks of injury.

Q. When you say no external marks of injury, do you mean—
Mr. Chapman—Let him state what he does mean.

Q. Perhaps you can explain that to us? A. In the first place, there were no marks in the locality that he claimed was injured,
10 there was no abrasion, or no open wound.

Q. What was the locality? A. The back of his head.

Q. There was no wound and no abrasion? A. And no swelling.

Q. What do you mean by abrasion? A. A broken skin, roughened, not necessarily an incised wound, but with some surface skin scraped off.

Q. So there was no abrasion or no swelling to the head. What did you do? Did you find anything at all? A. I found nothing at all.

Q. What did you do then? A. I advised admission on a rule
20 that is rather intended for the guidance of internes, that all head injuries will be admitted for at least over night. He declined admission, and signed a little short statement to the effect that he would exonerate the hospital from any blame in case he was more badly injured than we thought, or that he thought.

Q. He did not want to stay? A. He did not want to stay.

Q. What did he do? A. He went home. I am not aware of the exact circumstances.

Q. Well, he left the hospital. A. He left the hospital.

Q. Do you know about him being back in the hospital in Decem-
30 ber? A. Yes, I do.

Q. Do you know the date that he came back to the hospital?
A. I do not, not exactly.

Q. You know he was back in the hospital for an examination?
A. I know he was back.

Mr. Guy—That is all.

Mr. Chapman—No questions, my lord.

ANDREW McBAIN, being first duly sworn, testified as follows:

Direct Examination by Mr. Guy—

Q. What is your occupation, Mr. McBain? A. Motor man with
20 the Winnipeg Electric Railway Company.

Q. I think you were a motor man in April, 1928, were you? A. I was.

Q. Do you remember the accident that took place at the corner

ANDREW McBAIN (Examination-in-Chief)

of Portage Avenue and Donald Street on the 22nd April? A. I do.

Q. Where were you at the time? A. I was on the extreme east end of the safety island, on the north side of Portage Avenue.

Q. Where had you come from? A. From the Coffee Shop, next to the Gaiety Theatre.

Q. Gaiety or Capitol? A. Capitol rather, pardon me.

Q. Where were you going? A. I was boarding a car, a Park Line car to go home to Fort Rouge.

10 Q. And then what did you do as you left the Coffee Shop, where was that Coffee Shop?

The Court—Do you want to identify the safety island?

Q. Yes, but I haven't identified the Coffee Shop. I want to know which one it was he came from. What was the name of this shop? A. It is right next door to the Capitol Theatre.

Q. Is that the Commodore Cafe? A. Yes, the Commodore.

Q. You had been in the Commodore Cafe, and you came out? A. Yes, I came out to the kerb stone.

Q. What took place when you came out? A. I stepped off the 20 kerb stone, and as I stepped off the Transcona bus was coming west on Portage. I paused just long enough to allow him to clear and then I proceeded across to the safety island. When I got to the safety island I turned, and the signal light was at "stop," and just as I turned my head to the right the bus came in behind this touring car.

Q. You were then on what part of the safety island? A. On the extreme east end.

Q. And as you turned, what did you see? You saw the bus come into the automobile? A. The bus and the automobile kissed just as I looked.

30 *By the Court—*

Q. They what? A. The bus and the automobile collided, your lordship.

By Mr. Guy—

Q. What did you see as the result of the impact? A. The action of the bus to me was as I looked at it the action of a spent bullet.

The Court—Just tell us what happened.

By Mr. Guy—

Q. What did it do? A. The bus merely pushed the touring car a short distance, as far as I could see, from where I was standing.

40 Q. How far would you estimate the distance that it pushed it?

A. I should estimate it somewhere between four and six feet.

Q. Did you do anything after that? A. No, I boarded the car and went home.

ANDREW McBAIN (Cross-Examination)

Q. You did not go to the scene of the accident? A. No.

By the Court—

Q. You have referred to a safety island. Exhibit 2 refers to a safety enclosure. I wonder if you could identify that?

By Mr. Guy—

Q. When you speak of the east end of the safety island, what do you mean? A. That would be where the red light is, there is a pillar there.

10 Q. That does not enlighten us. What is the nature of the safety island that you refer to? A. Well, the enclosure would be posts at Donald and Portage.

Q. There is a light at one end, is there, or perhaps at either, at least a light standard? A. Yes.

Q. Perhaps you could mark on this plan, if you understand it, where you arrived?

The Court—You are now marking Exhibit 2.

Mr. Guy—Yes.

(Witness marks plan.)

20 The Court—What mark are you putting on there?

Mr. Guy—"D," my lord. He marks it at the extreme east end of the safety enclosure (showing plan to jury).

Q. After you saw these two come together you boarded the car and went on your journey? A. I did.

Q. Did you notice any other traffic on the street at the time? A. There was at least three to four other automobiles. There were three automobiles parked parallel with the automobile involved in the accident.

30 Q. What do you mean by parked? A. Or stopped on the signal.
Q. Stopped on the signal line? A. On the signal line.

Q. When you saw the bus, or when the bus crossed in front of you, at what rate of speed was it going? A. Approximately ten to twelve miles an hour.

Cross-Examination by Mr. Chapman—

Q. How long have you been with the Winnipeg Electric Company? A. Ten years next March.

Q. Have you always been a motor man? A. Practically all the time I have been with the Company, yes.

40 Q. Did you ever drive a bus? A. No.

Q. Do you drive an automobile? A. I do.

Q. Have you ever handled one of these busses? A. I have handled them, not in the service of the Winnipeg Electric.

ANDREW McBAIN (Cross-Examination)

Q. Did you ever handle this particular bus that was in this accident? A. I have not.

Q. Are you acquainted with it in any way? A. None whatever.

Q. What kind of brakes do these busses have on them? A. I have no knowledge whatever; I have never been inside of a bus.

Q. Yet you say you have driven them? A. To which bus do you refer?

Q. Do they have a foot brake?

10 Mr. Guy—I object to that.

By the Court—

Q. Do you know anything about this bus, this car? A. I don't, your lordship.

By Mr. Chapman—

Q. Do you know who was driving that bus at the time? A. Not at the time, no.

Q. Do you know now? A. I do now.

Q. Who was it? A. Erhardt.

Q. Do you know him? A. I don't know him personally, no.

20 Q. Had you seen him working for the defendant Company? A. I have.

Q. Do you know how long he has been in their employ? A. I do not.

Q. How long have you seen him? A. That I couldn't say.

Q. I suppose you don't remember the date exactly this accident occurred? A. No, I am rather hazy in regard to the date of the accident.

Q. You did not take any memorandum of it in any way? A. I took no memorandum of it, no.

30 Q. It did not impress you at the time? A. No.

Q. When was it called to your attention? A. Back here some three weeks ago was the first I heard of it in particular.

Q. So that from that date in April, 1928, until the month of November last you had not had any occasion to recollect the circumstances in any way? A. None whatever.

Q. Might you not be mistaken altogether about this accident? And have seen some other accident? A. No, none whatever.

Q. You remember coming out of the Commodore at that time? A. I do.

40 Q. Crossing over, and as you crossed, and just before you crossed this bus passed you? A. Yes.

Q. Was your attention called to it in any way? A. Not in particular.

Q. The first thing you noticed was after you got across to the

ANDREW McBAIN (Cross-Examination)

safety island, or to this enclosure, you saw it collide with the automobile? A. I did.

Q. How is it you happened to remember you were standing at the extreme end of the safety island? A. Well, I couldn't say to that. I remember the exact location of the car which I was going to board.

Q. You marked a spot on this plan of where you were standing, and you noted it as the extreme eastern end. Now are you sure about that? A. Positive.

10 Q. You are positive? A. Yes.

Q. What makes you fix that in your mind? A. I couldn't say as to that, but that is one thing that stands in my mind. I was wondering when I left the kerb whether I had sufficient time to cross the road to catch the car, in time to catch the car.

Q. There was a car at the safety island? A. There were two street cars at the safety island.

By the Court—

Q. Which one did you board? A. The Park line car.

Q. The front or the rear one? A. The rear one, my lord.

20 *By Mr. Chapman—*

Q. Did you step right off the place where you were on to the car that you took to go to Fort Rouge? A. Yes, practically, I had to go around the standard light.

Q. And you stepped into the front door of the street car? A. Into the rear.

Q. When you speak about a standard light, that is the light that is there with the red light flashing? A. Yes.

Q. There is a concrete base to it? A. There is.

By the Court—

30 Q. In what direction was the bus travelling when you allowed it to pass in front of you? A. West.

Q. In reference to the kerb, what direction was it taking? A. Straight west.

Q. Straight west. What do you mean by west in that particular street? A. Well, according to the lay of the street on Portage Avenue, straight west.

Q. You saw it in reference to the kerb? Was it running parallel to the kerb or otherwise? A. It was running parallel to the kerb.

By Mr. Chapman—

40 Q. When did you see that bus first? Where was it when you saw it first? A. It would be a short distance east of where I was to cross.

Q. Did you see how far it was from the kerb when it passed you? A. No, I gave no figures as regards to distance, how far it was to the kerb.

JAMES DOUGLAS ADAMSON (Examination-in-Chief)

Q. You don't know whether it was close to the kerb or some distance? A. It wasn't close to the kerb, it was pretty well to the center of the road.

Q. There were automobiles parked on the north side of Portage Avenue there, east of the Capitol Theatre? A. Not particularly.

Q. Nothing called that to your attention? A. No.

Q. But the thing that stands out in your memory most is your standing at the eastern end of that safety zone where the posts are, 10 and where that red light with the concrete base is? A. Yes.

Q. And you were standing right alongside of that red light there? A. Just inside of the enclosure.

Q. Are you sure of that? A. Positive.

Q. Now, Mr. McBain, don't you know, as a matter of fact, that at that time there was an island there, a sort of a wooden platform, and that that has been removed since then, and those posts and that red light have been put there. What would you say now if that were a fact? A. That safety enclosure has been there, although it has been added to—

20 Q. Wasn't there just a wooden island there at that time? A. Not to my knowledge.

Q. Are you sure? A. I am pretty nearly sure that the safety zone was there for two years.

Q. You remember distinctly standing along side the red light that is there now, at the present time? A. To the best of my knowledge, yes.

Q. You are not so sure about it? A. I am almost positive that safety enclosure was there for two years.

Q. You are not just positive of that, you don't remember standing 30 alongside of the light? A. That is one thing I am almost sure of.

Q. You are just as sure of that as of anything else you have testified here today? A. I wouldn't take my oath on it, but I am almost positive of it.

Q. You are more sure of that than anything else you have told us today? A. Yes.

DR. JAMES DOUGLAS ADAMSON, being first duly sworn, testified as follows:

Direct Examination by Mr. Guy—

Q. What is your profession? A. Physician.

40 Q. Would you mind telling us what your qualifications are? A. You mean my degrees?

Q. Yes, your degrees? A. I am a graduate in Arts, a graduate of Medicine, a member of the College of Physicians of Edinburgh.

JAMES DOUGLAS ADAMSON (Examination-in-Chief)

Q. What experience have you had in the practice of medicine as a doctor? A. I have practiced medicine since 1914.

Q. Have you specialized in any branch of physicians' or doctors' work? A. Internal medicine.

Q. Does internal medicine include a study of the disease known as paralysis agitans? A. Yes.

Q. Are you familiar with that disease? A. Yes, I am.

Q. Perhaps you would be good enough to tell us, doctor, what the pathological nature of the disease is? A. The pathology of paralysis agitans consists of a degenerative process in the part of the brain that is called the lenticular nucleus, or the sub-cortical ganglia, which means below the surface of the brain.

Q. What does it consist of? A. It consists of what is called the degenerative process, that is a process in which the cells gradually lose their form and function, and practically disappear, and go into various sorts of degenerative processes, some changing to fibrous tissues, and some of them changing to fatty tissue.

Q. And as they change from the normal to the abnormal they lose their function as brain cells? A. Yes.

Q. Doctor Mathers, I think, described it as a wasting away or melting away of those cells; would you describe it in the same way? A. Yes, they ultimately disappear entirely.

Q. What would you say as to the cause, as to the specific causes of the disease? A. There is no specific cause known. There may be a specific cause, but it is not known.

Q. That is to say, the study of the subject of the disease—

Mr. Chapman—I object. My learned friend has brought this witness here.

30 The Court—Ask the witness to put it.

By Mr. Guy—

Q. Would you put it then in language that is clear, Doctor, to the lay mind.

Mr. Chapman—What more can the man say than to say there is no specific cause known?

Q. I want you to explain what you mean by saying there is no specific cause? A. The general meaning of the word "specific" in medicine is that we can name one particular cause which causes this, that, or another lesion, such as a germ. Take locomotor ataxia, we know that its cause is always the same, and that is, suppurational infection of syphilis. There is no comparison with paralysis agitans. We know this degeneration occurs, but we can't put our finger on one particular cause.

JAMES DOUGLAS ADAMSON (Examination-in-Chief)

Q. You don't know what it is that causes paralysis agitans?

A. We do not know why.

Q. Assuming it to be true that you can't say now what is the cause of it, can you say that certain things are not the cause? Can you eliminate certain things as being the cause of it? A. Yes, we can.

Q. What ones, for example? A. It is generally agreed it is not due to an infection; it is not due to a germ; it is generally agreed it is not due to any sort of infection and not due to a hemorrhagic condition to which the brain is subject.

Q. What do you mean by "hemorrhagic?" A. One of the commonest diseases of the brain is apoplexy, and that is caused by a rupture of a vessel, or several vessels, in elderly people mostly; and of course another cause of hemorrhagic disease in the brain might be trauma or injury. In paralysis agitans there is no evidence of inflammation, and no evidence to support the existence of trauma or any other sort of injury.

Q. So you say it is agreed that it is not due to infection or not due to bruising of the blood vessels in the brain? A. Yes, that is the general consensus of opinion.

Q. That being the case then, doctor, what would you say as to the possibility of a man who receives a blow on the back of the head developing the disease as the result of the blow? A. I would say that he would not develop it as a result of the blow. He wouldn't have any more liability to it than anyone else.

Q. But if a man subsequently did develop paralysis agitans, what then would you say? A. How long after?

Q. Well, take it a few months? Three or four or five months? A. I would say that the only possible relation would be that the injury had anticipated his symptoms to some extent, but certainly not as being the chief causative factor.

Q. Not the chief causative factor, but what is the word you used? A. It may have anticipated them, moved them forward, antedated them.

Q. May have anticipated means, it may have brought about the symptoms a little sooner? A. May have made them evident a little while before they would become evident.

Q. That is, made them evident to a person examining him? A. Made them discoverable.

Q. Made them discoverable? A. Yes.

Q. A little sooner than they would. I believe you examined the plaintiff Geel; did you not? A. Yes.

Q. At what time? A. In February, I think it was, last February, 1929.

Q. And at that time what did you find? A. Well, I found that

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he was weak, and his arms and legs were both tremulous and stiff, and that he had several other symptoms and signs, but the chief thing was his weakness and stiffness, and his tremor.

Q. Did you diagnose his trouble? A. I said he had paralysis agitans at that time.

Q. Now the patient complains, or did complain, of headache and dizziness after the accident that he had on the 22nd April, 1928. Would you say that those symptoms or complaints—

10 The Court—What would you say?

Q. All right. What would you say as to those symptoms or complaints being connected with paralysis agitans? A. He complained of headache and dizziness?

Q. Yes, and weakness? A. I would say they probably had no connection with paralysis agitans. Paralysis agitans does not come on with subjective symptoms, with symptoms that the patient feels, or practically never. It is a disease not associated with subjective symptoms, headache and pains of various sorts.

Q. What do you mean by subjective symptoms? A. Something
20 that the patient feels himself as contrasted to what the doctor discovers by physical examination.

Q. What is the course of the disease paralysis agitans? A. Paralysis agitans? A. Paralysis agitans usually commences in an insidious, quiet way, and usually in a person who is otherwise comparatively well; and they first of all notice they have some stiffness and tremor usually in their hands, and then weakness follows, usually in the hands; it may be in one hand and one leg, or both hands, or in all four limbs, and then stiffness, weakness and tremor gradually progresses, sometimes slowly, and sometimes rapidly.

30 Q. In cases of blow or trauma, as it is called, is that the course or progress of injury? A. Trauma to the head?

Q. Or any kind of trauma? A. An injury to the brain, of course, it may be followed immediately by both; that is, it may be followed by a period of unconsciousness from which the patient may or may not recover. If they recover they usually recover nearly all their faculties gradually and slowly.

Q. But you have told us that paralysis agitans was a progressive disease, growing constantly worse. Take an injury, a blow to the body, is it progressive in the same sense? A. No, the effects of the
40 blow are retrogressive. The maximum effect will be felt immediately after, or very soon after, and you gradually recover from it.

Q. From what you know of the plaintiff Geel, and from your knowledge as a doctor of your experience, can you say when the symptoms of paralysis agitans would have occurred in the plaintiff had he not received a bump or shock on the 22nd April, 1928? A. One can't

JAMES DOUGLAS ADAMSON (Examination-in-Chief)

say absolutely within a week or within a month. My impression would be that he would have had symptoms within a year.

Q. Within a year? A. Certainly I should think that would be giving it a good wide margin.

By the Court—

Q. Let me understand that question or answer; within a year of what? A. Within a year, my lord, of the time that he actually did get symptoms.

10 Q. If there had been no injury at all or no accident at all, would you have expected these symptoms of paralysis agitans to appear within a year of the time they did actually here? A. Yes, my lord.

Q. Taking the converse of that, would you say that the injury anticipated the symptoms by about a year? A. I would say that the injury anticipated the symptoms by a year at the longest period.

By Mr. Guy—

Q. In your experience of paralysis agitans are you aware of any cases which develop without any accident at all, without any trauma?

A. Yes, indeed. I don't remember having personally examined a
20 person with paralysis agitans who had a history of trauma associated with the paralysis agitans.

Q. How many cases have you had under your observation, Doctor, during your experience? A. Oh, I have probably seen altogether 200 or 300 cases, but under my personal care and following them for any length of time, probably only fifty.

Q. Will you give the reasons why you have stated that you don't think trauma or accident causes paralysis agitans? Will you explain any other reason that you have for coming to that conclusion?

A. Well, one reason, of course, the first reason was on account of the
30 microscopic changes in the brain that have been referred to, and the second one is the course of the disease which is the reverse of cases of head injury. And then the incidence, the occurrence of the disease; it is a disease after middle life; it is a disease that comes on very rarely before 40. It does come on before 40, but rarely. It usually occurs with increasing frequency as age advances. On the other hand trauma or injury to the head is a condition that is far more common in youth than in old age. Children are always bumping their heads, and youths are playing games and damaging their heads, and in middle life, early middle life, artisans are subject to trauma, and
40 still paralysis agitans does not occur at those ages when trauma is common. Furthermore, if trauma had any particular relation to paralysis agitans one would think that a condition such as existed in the War, whenever everybody who was in the trenches had some concussion—not everybody, but a large number of people got a trauma or concussion, and some got very serious head wounds—we

JAMES DOUGLAS ADAMSON (Examination-in-Chief)

would expect now during the period since the War an increase in the amount of paralysis agitans; which has not occurred.

Q. Dr. Swan gave as an illustration tuberculosis, and compared the disease of paralysis agitans with tuberculosis, and said that we all had germs of tuberculosis in our systems, and if we had received a shock or bump or blow, that condition was liable to light up at any time. He likened paralysis agitans to tuberculosis in that respect.

Mr. Chapman—I think my learned friend is not correctly stating
10 the evidence.

Mr. Guy—I am trying to.

Mr. Chapman—That may be, but you may have misapprehended Dr. Swan in his illustration. I don't think the doctor stated it in that way.

Mr. Guy—Well, he certainly gave the comparison between tuberculosis and paralysis agitans.

The Court—He made a comparison, it is true, and if you want to quote his language, you have to do it pretty accurately or else put it in a suppositious form.

20 Mr. Guy—May I not, my lord, state what Dr. Swan said?

The Court—Unless you can use the exact words it is not quite right to quote him. You might put your question in a suppositious form, if Dr. Swan said so and so, and be as accurate as you possibly can, and you can get the same result, but you must be as nearly accurate as you can.

Mr. Chapman—I am not intimating that my learned friend is trying to mislead, but I think he misapprehended Dr. Swan in his illustration.

By Mr. Guy—

30 Q. If Dr. Swan by way of illustration compared tuberculosis and its incidence with paralysis agitans, would you agree with the comparison of these two diseases? A. No.

The Court—That is not quite all that was said. He compared them in this way, that there were possibly germs of tuberculosis in practically 95 per cent of the people, lying latent, and there was a possibility in practically most people of developing this paralysis agitans or tuberculosis, and that some accident might just bring out either. Isn't that about what he said?

Mr. Guy—Some accident?

40 The Court—Yes, some accident or injury might develop tuberculosis, or an injury might develop paralysis agitans. Isn't that about what he said?

Mr. Chapman—That is something about what he said.

JAMES DOUGLAS ADAMSON (Cross-Examination)

By the Court—

Q. If he said that, what would you say? A. If he said that injury had a great deal to do with the lighting up of tuberculosis I would think that was open to considerable question. Injury is not the common event in the lighting up of tuberculosis. It is true most of us have some healed tuberculosis about us, but unless it is following a prolonged period of innutrition and other things, I don't think injury has much to do in bringing on tuberculosis. If one has a large
10 healed lesion in the lung, and gets a broken rib, and makes the lung bleed it may possibly disseminate. But a person getting a broken limb does not light up tuberculosis.

By Mr. Guy—

Q. What is the cause of tuberculosis? A. It is a tuberculosis bacillus.

Q. A germ? A. A germ.

Q. You have already said that paralysis agitans is not due to a germ. A. Yes, there is no analogy; there is no parallelism between the type of disease paralysis agitans is and the type of disease that
20 tuberculosis is.

Mr. Guy—That is all.

Cross-Examination by Mr. Chapman—

Q. Speaking about the parallelism existing between different diseases, are there any other diseases which have any parallel with paralysis agitans? A. There are diseases that may affect the same part of the brain; there are diseases something the same in their affect on the brain.

Q. What are those? A. The disease of encephalitis lethargica.

Q. You mean sleeping sickness? A. Yes; there are many kinds
30 of encephalitis, and sleeping sickness is the most common.

Q. What is encephalitis? A. Any inflammation of the brain.

Q. Inflammation is caused by trauma or injury? A. A type of inflammation, yes.

Q. Would you say that the symptoms that are caused or follow this sleeping sickness are similar to the symptoms of paralysis agitans? A. Sometimes.

Q. Of course, sleeping sickness is not always followed by those symptoms? A. No.

Q. And there is a group of symptoms that are known as Parkin-
40 sonian syndrome? A. Yes.

Q. What are they? A. Parkinsonian syndrome is a syndrome that follows cases of sleeping sickness, that go on to the secondary manifestation, that is the critical condition, in which the basal ganglia and mid-brain are organically affected.

JAMES DOUGLAS ADAMSON (Cross-Examination)

Q. What are those symptoms? A. Stiffness, rigidity, weakness and tremor.

Q. Are there any other things that produce this Parkinsonian syndrome besides the regular paralysis agitans and sleeping sickness?

A. Yes, it can be caused occasionally by tumors in the brain, and not uncommonly by arteriosclerosis.

Q. That is another disease? Aren't they not produced sometimes by trauma? A. Parkinsonian syndrome.

10 Q. Yes? A. No.

Q. None of those symptoms? A. You can't say none of those. A man might get a trauma to the cortical part of his brain, but nobody would confuse that with Parkinsonian syndrome, although he may have stiffness.

Q. Would it not be possible for trauma to cause, say, this tremor? A. I don't think it would.

Q. You never knew of that? A. No, I never saw it yet.

Q. I think the part of the brain that is affected in what we call the old-fashioned or regular paralysis agitans is a little farther in than the
20 part that is affected by sleeping sickness, isn't it? A. No, I wouldn't say it is farther in; one is above the other. The brunt of the disease falls on the mid-brain, which is a continuation of the cord, and then right above that is the sub-cortical ganglia.

Q. Would it be possible for trauma to ever affect those portions of the brain that are affected by sleeping sickness and paralysis agitans? A. Why, yes, it would be possible for trauma to affect any part of the brain.

Q. Would it be possible for trauma to affect the brain without having any visible marks of injury on the outside of the head? A.
30 Yes.

Q. There is the thing that often happens to a person walking along, and stepping down suddenly, unexpectedly, and jerking his neck, and kind of hurting it that way; you would call that trauma? A. That is trauma, yes.

Q. That might set up an injury in the inner part of the brain? A. Not in a normal brain, I would not think.

Q. But if a brain was sub-normal? A. If a patient were badly arteriosclerotic, or had some other disease.

Q. If he had some other disease, something even as slight as that
40 might set up encephalitis? A. No, I would not say it would set up encephalitis.

Q. But it might affect the inner part of the brain? A. It might affect some pre-existing disease.

Q. I think you said it is possible, or, do you say, that it is not possible that trauma could set up some of these Parkinsonian syndrome? A. No.

JAMES DOUGLAS ADAMSON (Cross-Examination)

Q. There is a great difference of opinion on nervous diseases?

A. Some parts of them.

Q. There is what they call the German school? A. Yes, there is the German school.

Q. And they are largely of the opinion that trauma does produce or bring about paralysis agitans? A. No, I did not get that impression. There are individuals who will admit it may have something to do with it.

10 Q. Aren't they largely among the Germans? A. I did not get that impression.

Q. A few years ago everybody believed it? A. I don't think at any time everybody believed that the specific cause for paralysis agitans was trauma?

Q. I mean in some instances. A. It was stated by some authors as a possible contributory cause.

Q. Of course, there is a kind of paralysis agitans that is as common, or like grey hair, you don't know how it comes? A. That is usually the old fashioned paralysis agitans.

20 Q. And then there are others that the authorities used to believe were in some cases caused by trauma. It was a common belief in the medical profession at one time there were cases? A. Yes, but they did not pretend to divide them into two classes. They said that trauma would sometimes play a part in the production of paralysis agitans.

Q. And they based that opinion on the observance of cases that had had a history of trauma? A. I suppose so, yes.

Q. Don't you know that is a fact? A. They would state their opinion, but there is no article that I know of in the last—before
30 the last 15 years—which states so many cases showing an instance of trauma. It was an impression more than anything else.

Q. Do you know of any real accredited authority today that will state, or does state, that trauma will not produce paralysis agitans? A. Yes, there are authorities.

Q. Name one? A. Kineer Wilson says absolutely that it does not cause it, and the whole school—

Q. Now, we have Kineer Wilson's book here and I wish you would just point that out to us, Doctor, if you can? A. This is not Kineer Wilson's book, by the way.

40 Q. His article is in there? A. It was quoted here this morning.

Mr. Guy—Are you pulling out the mark, Mr. Chapman?

Mr. Chapman—I want him to find it. A. I can find it, although it may take a little time. Shall I read it?

Q. Yes, please. A. "We cannot allow any etiological import"—that means cause—

JAMES DOUGLAS ADAMSON (Cross-Examination)

Q. Just read what is there, Doctor? A. —“to previous infections, occupation; trauma, cold, fatigue, emotional upset, and all the rest of the list; with the exception, as has already been emphasized, that if the incidence of a virus is on the corpus striatum, as in not a few cases of epidemic encephalitis symptomatic paralysis may result.”

The Court—Do you suppose the jury understands that? Why not read it in Greek?

By Mr. Chapman—

10 “We cannot allow any etiological import to previous infections, occupation, trauma, cold, fatigue, emotional upset, and all the rest of the list; with the exception, as has already been emphasized, that if the incidence of a virus is on the corpus striatum, as in not a few cases of epidemic encephalitis symptomatic paralysis may result.”

The Court—That clears the point up beautifully.

Q. Do you say that is the authority on which you state that Dr. Kineer Wilson claims that trauma does not cause or produce paralysis agitans? A. No, that is not the only reason.

Q. What is it? A. Shall I read again the reasons?

20 Q. You said Dr. Wilson said it, and I ask you to point it out?

Mr. Guy—Shall I mark the book as an exhibit? My learned friend has asked the witness to refer to it, and I think that should be put in.

The Court—Oh, I don't think so. The witness has read it. It is read into the record.

Mr. Guy—I would like to read into the record the whole paragraph. He has introduced the book.

Mr. Chapman—We have just taken his answer.

The Court—The witness was given the book, and read out of it
30 that paragraph, and gave his opinion.

Mr. Guy—May I be allowed to have the witness read farther on?

The Court—As a matter of fact, all that language to me is zero. I don't know how the jury feel. It is rather too technical.

Mr. Guy—Taken by itself. The only reason I want it all to be in is that it makes it all clear, by having the preceding part of it.

By Mr. Chapman—

Q. You stated that one of your reasons for believing that traumatism cannot produce paralysis agitans is the microscopic conditions in that part of the brain? A. Yes.

40 Q. Just what do you mean by that? A. There are characteristic and peculiar changes take place in tissues that are injured by trauma, and there are characteristic and peculiar changes take place in tissue injured by infection. That is referred to there as virus infection;

JAMES DOUGLAS ADAMSON (Cross-Examination)

and different changes that take place in cases that suffer from degenerative process, or dying process.

Q. Isn't it possible that as the result of an accident this degenerative process may set up in the brain? A. May be initiated?

Q. No, but as the result of trauma? A. No, I don't think so.

Q. You don't think so? A. No.

Q. Here is a volume, "Archives of Neurology and Psychiatry"—

The Court—Are you going to put the volume in?

10 Mr. Chapman—I am asking him about this authority.

The Court—Ask him if he knows of this authority.

By Mr. Chapman—

Q. Dated 1927, dated July and December. Are you acquainted with that work? A. It is a journal, yes.

Q. Is it reliable? A. Yes, it is reliable. I would not vouch for everything that appears in it; I mean any more than any other medical journal.

Q. I will read a paragraph here and ask you what you say as to that?

20 The Court—Who is the author, and does the witness know the author?

By Mr. Chapman—

Q. Michael Osnato, M.D., and Vincent Gilberti, Director and Associate respectively, Department of Neurology, New York Post Graduate School and Hospital? A. I don't know them; I have heard of them.

Q. How do they rank as authorities? A. They are recognized neurologists.

30 Q. In this article on page 211 they say: "Anatomic and clinical investigations seem to show definitely that our conception of concussion of the brain must be modified. It is no longer possible to say that concussion is an essentially transient state which does not comprise any evidence of structural cerebral injury. Not only is there actual cerebral injury in cases of concussion, but in a few instances complete resolution does not occur, and there is a strong likelihood that secondary degenerative changes develop. When this happens, we have a condition which, clinically at least, resembles some of the reactions seen in encephalitis. We feel, therefore, that the post-concussion neurosis should properly be called cases of
40 traumatic encephalitis." What do you say as to that? A. I think that is all right; I agree to that.

Q. Does that bear out the theory that trauma would produce the same condition in the brain or similar conditions in the brain that exist in the case of, say, sleeping sickness? A. No, they would not be similar. Sleeping sickness is purely an inflammatory disease,

JAMES DOUGLAS ADAMSON (Cross-Examination)

inflammatory due to a virus. He said this is secondary inflammation to injury.

Q. A secondary degenerative process sets in? A. Yes, secondary to injury.

By the Court—

Q. That is, it follows as a result of injury? A. He says there that degenerative process following on the inflammatory process following an injury.

10 Q. In other words, caused by the injury? A. Yes.

By Mr. Chapman—

Q. That is correct; you agree with that? A. Yes, the encephalitis; but paralysis agitans is not an encephalitis.

Q. No, but it starts up the same effect in the brain. That is there when paralysis agitans results? A. No, it is not. Encephalitis is a diffuse thing, and paralysis agitans is absolutely a circumscribed thing. The area of the brain affected by paralysis agitans is very small. Encephalitis includes inflammation or infection of the whole brain.

20 Q. I know, but isn't the result of encephalitis sometimes a degenerative process in the brain? A. Yes.

Q. And there is a degenerative process in the brain that results in paralysis agitans? A. It results in paralysis agitans; it produces paralysis agitans. One is the paralysis agitans factor, and the other is the result.

By the Court—

Q. Just on that point, witness, I think you have expressed your concurrence with the view read to you from these New York authorities that trauma, injury, might in a secondary list of consequences
30 produce degeneration of some of the tissues of the brain? A. Yes, my lord.

Q. This paralysis agitans results from degeneration in some of the tissues of the brain? A. Yes.

Q. Is there any connection between those two degenerations? A. No, I don't think there is any connection, my lord.

Q. I might put it more specifically: If an injury caused the degeneration in that part of the brain which when injured by degeneration produces paralysis agitans, would you then say that the injury had caused paralysis agitans? A. Yes, if all that could be proved.

40 Q. But is that possible? A. I don't see how it is possible; I can't conceive it possible.

Q. Why should the degeneration resulting from injury not be possible in that particular part of the brain, when it is possible all over the brain? A. It could be possible in that particular part of

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the brain associated with changes all over the brain. Trauma can injure the brain in any way. If a person had a tremendous trauma that crushed the outside of the brain, it might cause hemorrhages in the inner parts of the brain, but the picture would not be one of a particular attack on the lenticular nucleus, it would be one of tremendous trauma to the brain. I can't see how it could be selected in that way.

By Mr. Chapman—

- 10 Q. You believe this man has paralysis agitans? A. Yes.
 Q. And that he will never recover? A. I don't think he will.
 Q. In your opinion, how long will he live? A. I wouldn't like to express an opinion. You can't tell. They sometimes have periods of intermission where they go on for months or years.
 Q. You would not express an opinion as to how long he may live at all? A. No.
 Q. You say you have had come under your personal observation fifty cases? A. I have had more than that under my personal observation, but cases that I have studied or followed carefully for
 20 any length of time.
 Q. You would not include people you meet on the street? A. No. I would include people I have seen actually in clinics.
 Q. It is a rare disease? A. Comparatively rare; not very rare.
 Q. Do you know of any cases in Winnipeg at the present time outside of this man? A. Yes.
 Q. How many? A. I should think in a couple of days I could collect 12 or 15 out of my own clinics, out of the outdoor clinics that I attend.
 Q. And in the whole province of Manitoba, how many do you
 30 suppose there would be? A. Oh, I don't know; I suppose there are 100 or 200, or something in that order of magnitude.
 Q. In the whole province of Manitoba? A. Yes.
 Q. Are there likely to be more outside of the city of Winnipeg, or inside? A. More in the city of Winnipeg. Chronic invalids come into the city.
 Q. You state there are probably how many in the city at the present time? A. I don't say how many in the city. I said there were perhaps 100 or 200 in the province.
 Q. Altogether? A. Yes.
 40 Q. And it is a slow progressive disease, and the patient lives years suffering that way? A. Yes, they may live for several years.
 Q. And it causes the patient a great deal of suffering, doesn't it, Doctor? A. I would not say a great deal of suffering, certainly a great deal of embarrassment. They do not have pain as a rule.

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Q. But isn't it very exhausting? A. No, they do not complain very much of subjunctive sensations until at the very last part, and then they have difficulties that are distressing.

Q. It must be exhausting to have the tremor night and day?
A. They have some difficulty sleeping sometimes.

Q. It must be irritable? A. They get emotional, yes.

Q. I suppose that the hope is in time that the cause of paralysis agitans, like any other disease, will be discovered? A. I hope so.

10 Q. At the present time there are cases of paralysis agitans that nobody can apparently tell what is the cause of it? A. Yes, quite.

Mr. Chapman—That is all, Doctor.

HENRY LEONARD ERHARDT, being first duly sworn, testified as follows:

Direct Examination by Mr. Guy—

Q. Mr. Erhardt, you are employed by the Winnipeg Electric Company and were operating the Transcona bus on the night of the accident on April 22, 1928? A. Yes.

Q. Do you remember the occasion? A. I do, sir.

20 Q. What was your trip on that occasion? A. From Transcona to Winnipeg.

Q. Had you made any other trips that same day? A. Yes.

Q. How many? A. Four, I believe; I am not sure, either four or five.

Q. Four or five trips on that day? A. Yes.

By the Court—

Q. Over the same route? A. Yes.

By Mr. Guy—

30 Q. And the route was from Hargrave Street, Eaton's depot, to Transcona and return? A. Yes.

By the Court—

Q. Hargrave Street being the first street west of Donald and parallel to Donald? A. Yes.

By Mr. Guy—

Q. When you say you made four or five trips that same day, had you been operating with that same bus during that time? A. Yes.

Q. What was the bus. What was the name of it? A. Do you mean the make of it?

Q. Yes? A. White bus.

40 Q. Is that a photograph of it? A. Yes, sir.

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Q. As it appeared at that time? A. To the best of my knowledge, yes.

(Photograph of bus referred to produced and marked "Exhibit 9.")

The Court—That photograph would be taken before?

Mr. Guy—I don't know when the photograph was taken, but it happened to be a photograph we had.

The Court—It doesn't show any damage.

10 Mr. Guy—No, the photograph has no connection with the accident.

The Court—Taken either before or after.

Mr. Guy—Yes, I am not sure when it was taken, either before or after.

By Mr. Guy—

Q. On this occasion you were proceeding west on Portage Avenue?

A. Yes.

Q. Having come from Transcona? A. Yes.

20 Q. Where had you stopped last? A. In front of Child's on Portage side.

Q. And then you proceeded west. Now, will you just tell his lordship and the jury what transpired from the time you left Child's until the accident happened? A. Nothing transpired from the time I left Child's until I neared Donald Street. Being about opposite the Commodore, the lights changed from "go" to "stop."

By the Court—

Q. What lights? A. The signal lights in the center of the intersection.

By Mr. Guy—

30 Q. And what did you do? Just proceed? A. In applying my brakes to stop in accordance with the light signal, the brake at first seemed to grip, that is, to take hold, and then snapped, allowing my brake pedal to go right down to the floor board. Realizing that something was wrong with my brake, the only opening I could see was to swerve in towards the kerb, to try and bring the car to a stop. At the moment that my right front wheel hit the kerb, my left front fender struck the back end, that is, the right fender of this car that was standing there, bending the fender down towards the wheel, and also bending the front portion of my left front fender in towards the 40 tire.

Q. You said you were proceeding west on Portage, and when you were opposite the Commodore the traffic signal changed to stop. What was your course on Portage with reference to the limits of the street; I mean between the kerb and the railway tracks, on what part

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of the street were you travelling? A. About the center of the opening lane between the cars and the car tracks.

Q. By the center of the opening lane, you mean in the center of the space? A. That was left between the cars that were parked on the north side of Portage and the street railway tracks.

Q. Now was there any other traffic ahead of you? A. Yes.

Q. What was it? A. Cars were in front of me proceeding in the same direction as I was.

10 Q. What did that traffic do? A. They stopped when the light changed.

Q. They stopped when the light stopped too? A. Yes.

Q. What cars were there that you know of? A. How many, you mean?

Q. Yes, how many and where were they? A. There were two or three cars in front of me, and when they all came to a stop they seemed to be like three abreast, just on the line of the intersection, on the white tape like.

Q. You say the white tape; that means on the stop line? A. On
20 the stop line.

Q. Then when did you start to turn? A. Towards the kerb, you mean?

Q. Yes, towards the kerb? A. After I realized there was something wrong with my brake—

Q. Where were you when you realized there was something wrong with your brake? A. About the west end of the Commodore.

Q. It was at that point, was it, that you applied your brake in order to slow up for the intersection? A. Yes.

Q. Did you do anything else besides when you applied your brake
30 and your foot went down on the floor board?

Mr. Chapman—This man has often given evidence, and I think my learned friend ought to ask this man what he did, and let him tell his story and not lead him. He is a willing witness.

The Court—Mr. Guy is entitled to bring out his evidence so long as he does it under the rule in any way he likes.

Mr. Guy—I am not trying to dig anything out of him.

By Mr. Guy—

Q. You told us you put your foot on the brake and it went down to the floor? A. It went right down through the floor board.

40 Q. Then what did you do? A. I turned the car to the right, and headed it for the kerb. As I was going for the kerb I put on my emergency brake.

Q. Where was the emergency brake? A. On the left side of the machine.

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Q. What effect did your pulling on the emergency have on the bus?

A. Not a very great deal.

Q. And with the result? A. That I hit the kerb, and the car, about the same moment.

Q. Now, as you approached the intersection, and at the time that you were about to put on your brakes, at what rate of speed were you travelling? A. Between 12 and 15 miles an hour.

Q. At what rate of speed did you strike the kerb? A. At the 10 moment of the actual impact?

Q. Yes, or will you describe what the speed of your bus was from the time you attempted to put on the brake? A. At the moment I hit the kerb, I would say I wasn't going any more than three, maybe three and a half miles an hour.

Q. Will you describe the speed from the time you were going from 12 to 15 miles an hour until the time you struck the kerb? A. In swinging my car to the right, and putting on the emergency, it checked my speed, checked my speed to a certain extent, but not enough to prevent me hitting the kerb or the car.

20 Q. Was it a gradual slowing down from the time you put on the brakes until you actually did stop? A. Realizing the brakes were useless, that was the only opening I could see, to try and bring the car to a stop without crashing into the cars that were directly in front of me.

Q. That was the only opening you could see? A. Yes.

Q. If you hadn't swerved to the side, what would you have done?

A. If I hadn't swerved—

Mr. Chapman—I don't know what that has got to do with it; he did swerve.

30 Mr. Guy—I want to know why he swerved.

The Court—That is all right.

By Mr. Guy—

Q. If you had not swerved what would have happened?

A. There is no doubt the car would have went right ahead and hit the car directly in front of me.

Q. Did your car mount the kerb? A. No, sir.

Q. What was the result of your striking the automobile in front of you? A. Bending down both fenders, the left front fender of my car and the right rear fender of the car that I struck in front of me, 40 and forcing it ahead a matter of about two feet, just shoving it ahead.

Q. Then, after your bus came to a stop, what did you do? A. I got out and the first thing was I went up and asked the driver of the car was there anybody hurt. He said, "No, I don't think so." And then the people started getting out of the car, and none of them complained of being hurt at that moment.

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Q. What did you do then? A. Just at that moment the policeman appeared on the scene. Where he came from I don't know. He naturally took all particulars. First of all he took my name, the number of the bus, and then he went to the back of the car to see what damage was done between us and he checked up the damage on the car. It was the fender bent down. A spring leaf was sticking out as though it had been broken, but the driver of the car mentioned that he could not say that it had been broken at that
10 moment, or if it was an old break. There was also a dent on the back of the car up about that high (indicating), and I happened to mention that to him, and he said emphatically that was an old bump. And then it was mentioned that there was somebody hurt. The gentleman, Mr. Geel, that was here yesterday, he complained of a pain on the right shoulder. The hospital was mentioned, and I said, all right I will take him to the hospital. The officer then went over across the street to phone for an ambulance. While he was phoning for an ambulance, I phoned to our local garage to come and get the bus to fix it, or do something with it, that the brakes were useless.

20 *By the Court—*

Q. Did you say it was useless? A. The brakes were useless.

By Mr. Guy—

Q. Did you stay there until the emergency truck came? A. By the time I came out from phoning to the garage, the officer came back from phoning for the ambulance. It was then we pushed the automobile across Donald Street to the other side, and by the time we got it over there the ambulance appeared. It was then Mr. Geel was put in the ambulance, apparently very much against his will. He mentioned the fact then he was all right and he did not think he
30 needed to go to the hospital. But seeing the ambulance was there he was prevailed on to go to the hospital for examination at least. After the ambulance had left the Reo car that was struck went west on Portage under its own power. I then went back to my own machine, expecting the service truck any moment. While waiting for it, I looked under the back end of the car to see if I could locate what was wrong. It was then I noticed a portion of a rod or something hanging down from the brakes. Just as I straightened up the service truck came along, and I told them there was something wrong with the brakes, to take the car back to the garage; which they did,
40 and I walked up to the bus station on Hargrave Street.

Q. The service truck took the bus back? A. As far as I know, yes; I wasn't there.

Q. How many passengers did you have? A. Just one passenger in the bus at that time.

Q. Do you know who it was? A. I do not. When he got out of

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the car he disappeared, and he was lost in the crowd. I never saw him since, and I don't know as I would even recognize him.

Q. Had you had any trouble with the brakes on the car before that? A. None at all.

Q. And you had been operating it, as you say, on four trips? A. Yes.

Q. What distance would there be between the point where you turned your car until you struck the kerb; when you started to turn
10 your car towards the kerb, until you touched it, what distance would your bus travel? A. Between 25 or 30 feet, I should say.

Q. Now, from the point where you started to apply your brake, if it had worked, as they had worked previously, would you have been able to have stopped your bus?

Mr. Chapman—I don't think that is a fair question, my lord.

By the Court—

Q. How far were you behind these cars when you applied your brake, these automobiles? A. About ten feet.

Q. They were still moving? A. They were still moving, but
20 slowing down gradually for the light.

Mr. Chapman—And at 15 miles an hour.

By Mr. Guy—

Q. At that time you were opposite the Commodore, you said? A. About opposite the Commodore.

Q. At what point did the automobile stop? A. They stopped at the intersection.

Q. Did you have time in that distance to bring your bus to a stop?

Mr. Chapman—That is a matter for the jury to decide.

30 The Court—There is no evidence on that, in what distance that car could have been stopped.

Mr. Chapman—This question should not be asked of the witness to decide.

Mr. Guy—Surely the witness has a right to say in what distance the bus will stop.

By the Court—

Q. Going at the speed it was going, loaded as it was, in what distance could you stop the bus if the brakes were working? A. In four feet.

40 Q. You must apply the brakes with some vigor? A. Not necessarily; they are great big brakes.

By Mr. Guy—

Q. Did you say you were going about 12 to 15 miles an hour when you approached? A. Between that speed.

HENRY LEONARD ERHARDT (Cross-Examination)

Q. At the rate of speed at which you were travelling at that time, when you did apply your brakes, in what distance could you have stopped your bus? A. I could have stopped in four feet.

Q. What was the nature of the impact between the bus and the automobile? A. Very slight.

Mr. Chapman—Just a kiss.

Cross-Examination by Mr. Chapman—

Q. You say that as you were going up there there were three
10 automobiles ahead of you? A. I didn't say three, two or three, I did not count them. There were three in a line when they stopped.

Q. Then there must have been three ahead of you before the signal turned to "stop"? A. There must have been; there were three there when we stopped.

Q. But you only noticed two? A. That is all I noticed at that time.

Q. You only saw two ahead of you as you were going along, but when you stopped there were three there, is that right? A. I only noticed two.

20 Q. But after the collision occurred and you stopped your bus there were three ahead of you then? A. Three in line.

Q. You were examined for discovery in this case, Mr. Erhardt, as an officer of the Company, on the 10th of January, 1929, were you not? A. Yes, sir.

Q. You were on your oath that day? A. Yes.

Q. Referring to question 89, my lord, in the examination for discovery, were you asked this question on that occasion: "89. Q. And you say there were two automobiles standing in front of you at the corner there? A. Yes." Did you say that on your examination for
30 discovery? A. Standing at the corner?

Q. Was this question asked you: "Q. And you say there were two automobiles standing in front of you at the corner there?" And did you answer to that question, "A. Yes."? A. I don't remember, it is a long time ago since that examination took place.

Q. Well, that was a year ago only. Isn't it last January? A. Close to it, yes.

Q. And you could remember the incident then better than you can today, couldn't you? A. I won't say I can remember it any better.

Q. Wouldn't you remember it better a year ago than you would
40 today? A. I don't know, sir.

Q. Was this question asked you: "90. Q. And they were directly in front of you, so that when your brake wouldn't work you couldn't avoid the collision and smashed into this one? A. That is the only way I could avoid it, try to hit the kerb to stop the car—the only opening I saw." A. That is the only opening I could see to bring the car to a stop; the other cars were directly in front of me.

HENRY LEONARD ERHARDT (Cross-Examination)

Q. You don't remember whether you said on your previous examination that there were two cars in front of you or not? A. I don't remember that, sir.

Q. Are you sure today? A. I remember the three after the accident. I noticed there was the one I hit and two others, that is, between the one I hit and the other one.

Q. That is only just saying there were three there. How long had you been driving this bus on this route? A. Seven years, on 10 that one route.

Q. Did you ever have an accident before? A. Yes, sir, but none of this nature.

Q. None in which you ran into the rear end of an automobile? A. None owing to the failure of a brake.

Q. What was the cause of the other accident? A. I was struck by a fire department truck at one time.

Q. You were the driver of the bus in February, 1927, when there was a collision between the bus and the fire truck that injured Mr. Lawton? A. Yes.

20 Q. And that case was tried, and there was an action tried in that case?

Mr. Guy—Why have we got to go into all the particulars of that case?

The Court—He did have the collision, that is the point.

Mr. Guy—Yes, he had the collision.

By the Court—

Q. There was a collision between the bus that you were driving and one of the automobiles of the fire department? A. That is right.

30 *By Mr. Chapman—*

Q. And injured a man by the name of Lawton? A. I believe he was injured.

Q. Then I would ask if there was not an action tried?

Mr. Guy—What difference does that make? Are we going into that?

The Court—It doesn't matter whether there was an action. The point is that there was an accident or collision.

Mr. Chapman—The witness knows.

The Court—You could ask him if he was in Court afterwards.

40 *By Mr. Chapman—*

Q. Did you give evidence in Court with reference to that accident? A. Yes.

Q. Do you know the verdict in that case? A. I do not, sir.

HENRY LEONARD ERHARDT (Cross-Examination)

Mr. Guy—I object to that; my learned friend is pursuing a course which he should not pursue.

By Mr. Chapman—

Q. Do you remember any other accident that you were in on that route? A. None, sir.

Q. Did you drive on any other route for the Winnipeg Electric? A. Not on any specified route. I have been out on chartered trips in the country to different places.

10 Q. Now, you say that as you came up there in front of the Commodore you saw the signal change to "stop"? A. Yes, sir.

Q. And you attempted to apply the brake, and the pedal on your foot brake went right down to the floor? A. Down to the floor board.

Q. Then you tried to put on the emergency brake? A. No, I turned first.

Q. You turned immediately towards the kerb? A. Yes.

Q. And at the time you saw the signal you were going 12 or 15 miles an hour? A. Yes, I was going 12 or 15 miles an hour.

Q. Then you turned towards the kerb? A. Yes.

20 Q. When did you try your emergency or foot brake, before you turned or after? A. Before I turned.

Q. And that would not hold? A. The foot brake would not hold.

Q. You tried your emergency, and it would not hold? A. Yes, I turned first, and then tried the emergency.

Q. And it would not hold? A. Not enough to stop.

Q. And you say going from the middle way on that line towards the kerb you slackened your speed from 12 to 15 miles an hour to 3 or 4? A. About that, sir.

30 Q. Isn't it a fact that where you were running towards the kerb there is a decline to the pavement? A. Yes.

Q. And you say notwithstanding that, and your brakes did not work, you slackened your speed from 12 or 15 miles an hour to 3 or 4? A. The emergency brake was holding it some.

Q. Why wouldn't it hold it altogether? A. Due to the fact that the foot brake being out of action lessens the power on the emergency somehow or other.

40 Q. Are the two connected? A. They are on what is called an equalizer or evener, I believe, underneath. They both work on the same rod, and when a certain amount of pressure is taken off one it lessens it on the other.

Q. What is your emergency brake for? A. To stop the car, I presume.

Q. Isn't the emergency brake supposed to stop the car when the foot brake does not work? A. I guess it would.

Q. The first brake that you used is your foot brake? A. Yes.

HENRY LEONARD ERHARDT (Cross-Examination)

Q. If that does not work you are supposed to have an emergency brake that will stop? A. Yes.

Q. But these were so constructed that when this was out of order and you tried to use the emergency it would not hold? A. Not good enough to stop immediately.

By the Court—

Q. If the emergency had been applied in the first instance before the service brake had been applied and broke, in what distance could
10 it have stopped the car going at the speed you were on that occasion?

A. I would have stopped it practically speaking instantaneously.

Q. Would it stop in less distance than the service brake? A. I won't say less, because I never had occasion to try it.

Q. You say instantaneously, and you told me four feet for the other? A. Four feet for the service or foot brake.

Q. And what for the emergency brake? A. I never had occasion to try how quick you could stop it.

By Mr. Chapman—

Q. And you say that after the accident you talked to the driver
20 of the car, Mr. Calsbeck, is it? A. I think that is his name.

Q. Do you see him here in court? A. I do not recognize him.

Mr. Chapman—Would you stand up, Mr. Calsbeck?

Q. Is that the man you spoke to as the driver of the car? A. That I would not swear.

Q. At any rate, you spoke to the man who was driving the automobile? A. The man who got up from behind the wheel was the man I spoke to.

Q. He told you that he did not know if it was an old break in the spring or not. A. Yes, he did not know if it was an old break in the
30 spring or not.

Q. And he told you positively and emphatically that the dent in the body of his car had been made before? A. Yes, sir; he did say that.

Q. Then when you went to put Geel, the plaintiff, in the ambulance to take him to the hospital, what did he say? A. He said he didn't feel bad enough to go to the hospital.

Q. Did he say anything else? A. Not that I can recollect at the moment.

Q. Whom did he say that to? A. To the sergeant that was going
40 to help him to get into the ambulance.

Q. Anybody else hear that besides you? A. I don't know.

Q. Were there others around that could have heard it if it had been said? A. The policeman was there.

GEORGE A. HOLMES (Examination-in-Chief)

Q. What policeman? A. The one that gave evidence here yesterday.

Q. Was Calsbeck there, the driver of the automobile? A. He may have been. There was such a mob around I don't know who was in the crowd.

Q. Was that all that Geel said? A. That is all I heard him say.

GEORGE A. HOLMES, being first duly sworn, testified as follows:

10 *Direct Examination by Mr. Guy—*

Q. What is your occupation? A. Superintendent of bus and brake equipment of the Winnipeg Electric.

Q. Are you familiar with the bus, the White bus, that operated on Transcona route in 1928? A. I am.

Q. Is that it? A. That is the one.

The Court—You refer to the photograph, Exhibit 9?

Q. Yes, Exhibit 9. What make of chassis, or what make of bus is this? A. A White, made by the White Motor Car Company.

Q. Can you tell me whether this diagram which I give you is a
20 correct diagram of the braking equipment on that particular bus?

A. That is; yes, sir.

Q. That is page 36 of the White bus chassis pamphlet. The diagram is a diagram of the braking equipment.

(Diagram of braking equipment, referred to, produced and marked "Exhibit 10.")

Q. This braking equipment, was that standard equipment of the White chassis? A. Standard equipment of that model chassis; yes, sir.

Q. What do the brakes on that equipment do, or what is the
30 braking system? A. You have your emergency brake, and your foot brake, commonly known as a service brake. The service brake acts for everyday driving, like every person would; the emergency brake is supposed to stop you quickly in an emergency. The service brake ordinarily on a bus or car is hooked up so that it will not quite skid the wheels. If they are hooked up properly, the emergency will ordinarily lock both rear wheels, or all four, like the four wheel brakes car today. The emergency brake will ordinarily seize the wheels and stop you. The emergency might stop you just a trifle quicker than the other one would, that is, on a dry street.

40 Q. Where is the application of the foot brake made? A. The application of the foot brake is made on the outside of the wheel drums.

GEORGE A. HOLMES (Examination-in-Chief)

By the Court—

Q. That is the service brake? A. Yes. The emergency brake operates on the inside of the wheel drums.

Q. And the service brake in this particular bus is operated by foot? A. Yes.

Q. And the emergency? A. The emergency by hand.

Q. By a lever? A. Yes.

By Mr. Guy—

10 Q. There is in connection with that braking equipment what is called an evener? A. An evener, or equalizer.

Q. What is the purpose of the equalizer?

By the Court—

Q. What is it, first of all? A. It is a short bar, about 12 inches long on this bus, to make your brakes come on even, so that one will not ordinarily come on ahead of the other; in other words, it has three points on it. Your pull rod from your pedal comes back and hooks to the center of the short 12-inch bar, on each side of the center; on each end they are hooked up direct with the brakes, and when you
20 pull your lever on it gives about the same pressure in each wheel.

By the Court—

Q. That is for the service brakes? A. Yes, for the service brakes.

By Mr. Guy—

Q. Is it connected in any way with the emergency brake?
A. Yes, your emergency brake with the White; on this particular model, and with a few other different companies, as far as that is concerned, their idea of the emergency brake was to have it so that, for instance if your foot brake was all grease, or you went through a bunch of mud or something, and it was not acting efficiently, you
30 would pull on your emergency brake, and you would get double action, on your service brake as well as your other brake. It would give you more capacity of action.

Q. Perhaps you can describe then from the diagram these various parts on the diagram, the various parts which you have referred to in your evidence?

The Court—Before you do that. I do not yet understand from what you have said how the emergency is linked up with the service brake so that if the failure of the service brake occurs it would put the emergency brake out of commission.

40 Mr. Guy—That is what I am going to explain. I am going to get the mechanism and explained how that goes.

By Mr. Guy—

Q. Would you just explain the various parts from the brake pedal?

A. It is pretty hard to see it on this particular diagram.

GEORGE A. HOLMES (Examination-in-Chief)

By the Court—

Q. Tell us so that it will go on the record, and the jury can hear it? A. On the brake rod, that is back towards the back wheels there is one rod that runs through, and there is a sleeve that runs over it. Projecting down from this about eight inches are two arms; one arm is hooked on the inside rod, which is your service brake, and the outside rod, which is your emergency brake. There is an evener that runs across from one of these arms to another. When you pull
10 on your hand brake it pulls this evener up, which pulls on both your emergency and hand brakes, that is, your inside and outside drum brakes. When one pin goes out, it would weaken it because you are pulling from the centre of this bar up this way. You see, if this pin comes out it leaves the other one come ahead, or *vice versa*, or if this goes out, the other goes ahead, and you are only getting part of your pull.

By Mr. Guy—

Q. You have been explaining the effect of a bolt coming out?
A. Yes.
20 Q. And the effect on both of your brakes? A. Yes.

Mr. Guy—We should have some evidence that the bolt came out first, my lord. I was wanting to get the equipment explanation. However, he says, if a bolt came out, what the effect would be.

By the Court—

Q. Is there only one evener? A. One only, evener.
Q. And that distributes your applied force over all the brakes, both the service and the emergency? A. There is the one evener that hooks up the hand brake and the service brake.
Q. The emergency brake and the service brake? A. Yes, is
30 hooked up with one evener.
Q. And the service brake is hooked up with an evener also?
A. Yes.
Q. But it is not hooked to the emergency brake? A. Yes, the service brake is hooked to the emergency brake.
Q. That is, they are both linked together? A. Yes.
Q. So that it does not matter which one you apply, you would apply both? A. You apply both, exactly.

By Mr. Guy—

Q. Now, perhaps you can explain where these parts are on the
40 diagram? A. There is a better cut there, Mr. Guy.

Q. Get the better cut.

The Court—What page is that?

Mr. Guy—The cut on page 50, my lord.

GEORGE A. HOLMES (Examination-in-Chief)

(Page 50 of instruction book referred to, produced and marked "Exhibit 11.")

A. This rod here (indicating) projects back pretty well towards the back end of the bus, or the chassis. On the inside here is a rod that runs clear through. Then over this is a rod that slides over it. This one arm is fastened to your outside here; the other one is fastened to the inside. Down here is your evener, fastened here and here with a pin. From here directly forward is a long rod that will pull both of these brakes on at the same time. This shows the hand lever that you pull back, and this shows a rod.

Q. Now go to your other diagram? A. On page 37 we have the same thing, only this rod, that shows it across on the outside here. This is looking right down on it. You don't get the same picture of it, but it means the same thing, pulling on your evener and pulling both brakes on at the same time.

Q. Do you know what bolt it was that broke out on this particular occasion? A. It was a bolt at one of the ends of the evener.

Q. That is on Exhibit 11, on one of the ends of the evener?
20 A. Yes.

Q. What would be the effect of a breaking of a bolt at that point on the braking apparatus? A. Here is your evener right here (indicating). Here is your pull rod. There is a pin in here, and in here. If this bolt broke and fell off it would throw that end farther ahead. This end would swing ahead and come up to here, or the same way on this side, which would loosen your rod.

Q. The breaking of a bolt, from your explanation, would have the effect of lengthening the rod and lessening the brake application?
A. Yes, that is right.

30 Q. And no matter which one of them broke, the effect would be the same? A. Yes, it would be the same.

Q. By the hand brake you mean the emergency brake? A. Yes.

By the Court—

Q. Just to summarize, the service brake would pull the bands to the outside of the wheel drum? A. Yes.

Q. And the emergency would pull the bands to the outside and inside? A. And the inside, both.

By Mr. Guy—

40 Q. Now the result of a broken bolt—perhaps you can better explain it. What would the result be of the breaking of the bolt on that equalizer, as you have explained, on the driver's operation of the foot pedal? A. Your evener comes on like this, with a pin going through. It would stay on maybe when he put on his pedal it would hold for an instant and then his service brake would go down to the floor board.

GEORGE A. HOLMES (Examination-in-Chief)

Q. It would go right down; there would be nothing to hold it?

A. No.

Q. When that happened and he pulled the emergency, that is, the hand brake, of what efficacy would that hand brake be? A. It would amount to about half of what it was originally supposed to do. That is, you would pull it on, but with the evener coming ahead at one end it would have the tendency of lengthening your rod out so you would only get probably fifty per cent braking efficiency.

10 Q. Can you tell me in the ordinary course of things how long one of these brake pins—I think is the technical term, is it not? A. Yes.

Q. How long one of those brake pins would last in a chassis or in an automobile? A. In the average automobile a person would never know it was there. It would last longer than the automobile. It would never wear out.

Q. Why would it never wear out? A. There is no particular wear on it. It is not a moving part. It is merely stationary. Your rod pulls on it, but there is no movement in it or no friction at all.

Q. It is because it does not move that it would not wear?
20 A. Exactly.

Q. Does it move to any extent? A. None whatever.

Q. It doesn't move to any extent? A. It does not move.

Q. Either around or sideways? A. Either way at all; it is just merely stationary.

Q. What inspection of your equipment do you make?

Mr. Chapman—I think, my lord, that question should be, what inspection was made on this particular car?

The Court—I think that is proper.

✓ *By Mr. Guy—*

30 Q. Yes, what inspection is made of this bus? A. It is inspected every 750 miles, and it is greased thoroughly by two men. Every 5,000 miles it is pulled into the shop and thoroughly gone over by a bunch of trained mechanics, mechanics trained for their particular job.

Q. What can you say as to the custom, or the usual inspection of automobiles? A. I do not believe there is another—

Mr. Chapman—I don't think that is in question at all, what other people do with their automobiles.

Mr. Guy—How are you going to know.

40 The Court—People individually and privately may be very careless about these matters, but those engaged in public service might make a better ground of comparison.

Mr. Guy—This is not a passenger case, my lord.

The Court—What is your question?

Mr. Guy—I said what is the customary or usual frequency of inspection of automobiles.

GEORGE A. HOLMES (Cross-Examination)

The Court—Does the witness know that?

The Witness—Yes, in the average transportation company, and I presume that is what he means.

By the Court—

Q. How do you know about the average transportation company? You know what your company does? A. Well, I have been with several others of the large transportation companies.

Q. All right, just tell us. A. I was with the Pickwick stages at 10 Los Angeles, the well known transportation company. Those busses and equipment were always greased every 1,500 miles, and inspected once every 10,000 miles. From there I was with the Shore Line Motor Coach line of Chicago, the Insull properties. Our greasing there was every 1,000 miles, and our inspection was every 7,500 miles.

Q. What is your inspection mileage here? A. 750 miles for greasing and inspection, and 5,000 miles for the other. The greasing is the same as what we call an inspection. Our greasers are mechanics that are familiar with this work, and they know a bus's breakdowns, and know what to look for. It keeps us from having road delays.

20 *By Mr. Guy—*

Q. Yes? A. That is all I can actually say about the outfits I have been actually with, where I had any jurisdiction over them. Other outfits, it may be different, but I actually know these.

Q. Do you know when the last inspection of the White bus was made prior to the accident? A. It was made on March 5, 1928.

By the Court—

Q. Was that a full inspection or a greasing inspection? A. That was the full inspection.

By Mr. Guy—

30 Q. How many miles did the bus operate subsequent to that inspection and before the accident? A. In the neighborhood of 1,000 miles. I can't be positive of that. I know it did about 500 miles in the month of March, and about 500 miles in the month of April.

Q. You have record of that? A. We have records of that, yes.

Cross-Examination by Mr. Chapman—

Q. You used the words "standard equipment" on this chassis; what do you mean by that? A. In a lot of companies, that is, a lot of different accessory houses you might term them, they sell different 40 kinds of equipment. This is standard equipment.

Q. This is regular equipment that comes on the White car? A. Yes; there are no patented features.

Q. It is not something you get from some place else? A. Yes.

GEORGE A. HOLMES (Cross-Examination)

By the Court—

Q. It is standard for this make of bus from this manufacturing company? A. Yes.

By Mr. Chapman—

Q. It was the equipment originally furnished with the bus when it was new? A. Yes.

By the Court—

Q. Do you know how old this bus was, or what model? A. Model 10 54. I couldn't give you the exact year, but I believe it was either 1924 or 1925. That model came in two different years.

By Mr. Chapman—

Q. These models are generally out the year before they are designated? A. Not in trucks. For instance, right now you would buy a 1930 car, but not in numbers. This model 54, or 60 whatever it may be, specifies the time that was actually purchased.

Q. You think this bus was not manufactured before 1924? A. I do not believe so. I know model 54, White, was manufactured in 1924 and 1925. I don't know when this was purchased.

20 Q. It may have been before that? A. I don't believe so, because I don't think it was manufactured before.

Q. You have described this evener, how it controls both brakes when you use the hand lever. Have you other makes of busses? Has the defendant company used other makes of busses? A. Yes.

Q. How about the evener or brakes on the other busses? A. We have quite a number of different busses. This happens to be the only White we have.

Q. How are the eveners on the other busses? A. Well, for instance, we have air brakes. They have no eveners on them, and 30 hydraulic brakes have no eveners on them.

Q. This was the only bus that the company had with these hand brakes? A. Oh, no.

By the Court—

Q. These were mechanical brakes? A. Yes.

By Mr. Chapman—

Q. This was the only one? A. No, we have 17 makes all having mechanical brakes.

Q. Is there an evener on them constructed the same? A. There is an evener on them, not constructed the same as this.

40 Q. Has it the same effect? A. Practically the same effect.

Q. If there should be a pin or bolt out on the one end of it it would make it so the foot brake would be of no use? A. No, the emergency brake on the Mack is on the drive shaft. The emergency hand brake is not hooked up the same.

GEORGE A. HOLMES (Cross-Examination)

Q. In this one now, when the driver goes to use his foot brake, when there is a bolt out of one end of it, and he finds it is no good, then he has got to try the emergency, and when he gets that, that is only fifty percent efficient? A. That is correct.

Q. So that, between the time that the driver tries to stop the car with his foot brake and the time that he tries to pull the emergency with his hand, the car is going ahead without being braked? A. It is being braked to some extent, but not very much.

10 Q. How could it if the foot pedal goes down to the floor? A. I misunderstood your question.

Q. If he tries the foot brake first, and finds that does not work, the bus would be going ahead without any braking until he would apply the emergency brake? A. Yes, that is true of any automobile or car; if the foot brake is out of order, it is out of order.

Q. You do not get any braking power? A. No, that is true of all of them, cars or trucks.

Q. I suppose you do not take any personal part in the inspection of these busses? A. I am not one of the mechanics who do the greas-
20 ing. I am a mechanic.

Q. So that when you said that this bus was inspected at a certain time, the 5th of March, you are only speaking from the custom in the shop? A. I am going from our records.

Q. You have no personal knowledge of that? A. Do you mean I would be out watching it?

Q. Yes? A. I would not.

Q. You don't know personally then that that bus was inspected on the 5th of March? A. That is, I couldn't say I stood there and watched it inspected?

30 Q. You don't know personally? A. No.

By the Court—

Q. Have you any other car with this sort of braking machinery?
A. No, your honor, that is the only White we have.

By Mr. Chapman—

Q. And no other car than the White has that type of evener and braking machinery in your service? A. Not in our service now.

Q. How many different types of busses have you in your service?

By the Court—

Q. Makes? A. Five.

40 Q. You have only the one White bus? A. That is all.

Q. How many busses have you altogether on your system?
A. 49.

Q. Did you buy this White new, or do you know? A. I don't know; it was bought before my time.

ALBERT COLYER (Examination-in-Chief)

Q. Someone has suggested it was a second hand car; do you know anything about that? A. I do not; it was bought before my time.

Q. How long have you been with the company? A. I came here in November, 1927.

Mr. Chapman—That is in the evidence, in the examination for discovery.

The Court—Yes, it was stated somewhere.

ALBERT COLYER, being first duly sworn, testified as follows:

10 *Direct Examination by Mr. Guy—*

Q. What do you do? A. I am a mechanic with the Winnipeg Electric, bus mechanic.

Q. In the bus department? A. Yes.

Q. I believe you were employed in the same department in March, 1928? A. That is right, yes.

Q. Are you familiar with the White bus? A. Yes.

Q. Have you inspected it? A. Yes, at different times.

Q. That is it? A. Yes.

Q. That is Exhibit 9. When you do your inspection, what part
20 do you take? A. It all depends; sometimes I get one part and some-
times another. Mostly brakes and rear end transmission, and all
that.

Q. Do you remember making an inspection of this White bus in
March, 1928? A. I can't remember that far back. We are doing
that work all the time, and it is pretty hard to remember that far
back.

Q. Have you any way of remembering? A. Just by the inspec-
tion sheets.

Q. What inspection sheets? A. Like you have in your hand.

30 Q. What is it? A. It covers all the different parts of the car to
be inspected.

Q. It is a record that you keep of your inspection? A. Yes.

By the Court—

Q. Who writes it down? A. Mr. Matheson looks after it.

By Mr. Guy—

Q. What did you do insofar as keeping a record is concerned?

A. We go over all the parts.

Q. What do you do in connection with keeping the record?

A. Nothing with keeping the record.

40 Q. But what do you do in connection with making the record?

A. What do you mean?

ALBERT COLYER (Cross-Examination)

Q. I mean to say if there is a record produced to you, I want to know what part, if any, you took in making the record?

By the Court—

Q. Or writing it down? A. I just initial the work if the car is handed to us. We check the bus and initial the card.

Q. When you are asked what would you do? A. I initialled the parts that I do.

By Mr. Guy—

10 Q. You initial the parts that you do? A. Yes.

By the Court—

Q. When you say you initial the part, you initial the entry on the record which refers to the work you do? A. Yes.

By Mr. Guy—

Q. You initial the entry on the record covering the work you have inspected? A. Yes.

Q. I produce to you this record? A. That is my initials.

Q. Those are your initials in two places? A. In two places.

(Record referred to produced and marked "Exhibit 12.")

20 Q. The date of it is March 5, 1928. This Exhibit 12, you have identified your initials in two places on that as opposite "brakes"? A. Yes.

Q. Did you do the work referred to on the brakes? A. Yes, if my initials are there I did the work.

Q. Now, there is a reference made on this to light inspection and also to heavy inspection. What is the term "light inspection" apply to? A. Light inspection just covers if we test the bus out if it needs brakes, we reline them; heavy inspection means we tear it down.

By the Court—

30 Q. What did you do on this 5th of March? A. I think it is light inspection, I am not sure.

By Mr. Guy—

Q. Could you tell from the record what you did? A. I think that must be just light inspection.

Q. Do you keep a record of the mileage that the bus runs? A. No, I do not keep it. They keep it down there.

Cross-Examination by Mr. Chapman—

Q. I understand then, Mr. Colyer, at this time you simply greased the parts? A. Oh, no, we examined the brakes and if the brakes 40 needed relining we relined them; we put them in good shape.

Q. If the brakes needed relining you would reline them? A. Yes.

HOWARD JOHNSTON (Examination-in-Chief)

Q. You would only do what you knew needed to be done?

A. What appeared to be bad on it.

Q. And it was at the time when you do the other inspection when you go over the different parts? A. Yes, we take everything down in the heavy inspection.

By the Court—

Q. Witness, in this Exhibit 12, the parts you have initialled are with the initials "A.C." and those are yours? A. Yes.

10 Q. "Examine all clevises and pins." Did you examine any pins on this occasion? A. Yes, we go over them all.

Q. How do you examine a pin? A. You can tell if there is any lost motion, whether it is worn at all.

Q. And that is what you do? A. Yes.

Q. You just attempt to see if there was any wear in it? A. Yes.

Q. If it is a pin that can't wear at all, what do you do? Some pins are in places where they won't wear at all? A. Well, we do not bother about them. If there is any lost motion anywhere we generally check it up and see where it is.

20 Q. But if it is a pin that won't wear you don't do anything with it? A. We just see it is all right, and has got a cotter pin in it.

(Court adjourned at 5 p.m. December 4, 1929, to 10.30 a.m. December 5, 1929.)

10.30 a.m. December 5, 1929.

HOWARD JOHNSTON, being first duly sworn, testified as follows:

Direct Examination by Mr. Guy—

Q. Mr. Johnston, you are employed by the Winnipeg Electric Company? A. Yes, sir.

30 Q. In what capacity? A. Mechanic.

Q. You were employed similarly in April, 1928? A. Yes, sir.

Q. Do you remember an accident which happened at the corner of Portage and Donald Street on the 22nd April, 1928? A. I remember the accident, but I don't remember the date.

Q. How did you come to know about it? A. I received a call at the office, and it was given to be as this bus being in trouble at the corner of Donald and Portage.

Q. And as the result of the message that you got, what did you do? A. I took the service truck out, and when I got there I asked
40 the driver what was wrong.

Q. You took the service truck out from where? A. From the garage.

Q. What garage? A. The Winnipeg Electric.

HOWARD JOHNSTON (Examination-in-Chief)

Q. Is there only one garage? A. Bus and truck garage on Assiniboine Avenue.

Q. On Assiniboine near Main Street? A. Yes, just back of the Main barn.

Q. And you took the service truck from there and went down to Donald and Portage? A. Yes.

Q. And when you got there what did you find? A. I asked the driver what the trouble was.

10 *By the Court—*

Q. You have a conversation with him?

By Mr. Guy—

Q. Tell us what you found and what you did? A. I took a quick glance—

Q. What did you see when you got there? A. I seen the bus standing near the corner on Donald and Portage.

Q. What corner, and tell us where it was? What corner? There are various corners to an intersection. Which corner was it?

The Court—Lead up to that.

20 Mr. Chapman—Yes, we know it so well, the northeast corner.

By the Court—

Q. It was on the north side of Portage, east of Donald? A. Yes.

Q. How far was the bus away from the kerb, the Portage Avenue kerb? A. I took no notice of that whatever.

By Mr. Guy—

Q. Do you know which bus it was? A. I do.

Q. Which one was it? A. The White bus.

Q. It is a white bus, but it is white in color and White by name.

Is that the one bus referred to in Exhibit 9? A. Yes.

30 Q. You say you had a conversation with someone; Mr. Erhardt, was it? A. Yes, the driver of the bus.

Q. As a result of that conversation what did you do? A. I wanted to get the bus away from there as soon as possible, so I just took a quick glance, and I seen a rod hanging down.

Q. You took a quick glance where? A. At the rear of the bus.

Q. Yes, then what did you do? A. Then I just took the service truck on and towed it in for further examination.

Q. Where did you take it? A. I towed it to the garage on Assiniboine Avenue.

40 Q. To the bus garage on Assiniboine Avenue? A. Yes.

Q. What next did you have to do with it? A. All I did, I replaced a broken—

Q. Were you directed to repair it, to fix it, or did you do it of your

HOWARD JOHNSTON (Examination-in-Chief)

own accord, or how did you come to have anything to do with it?

A. Yes, I put in a brake pin—

Q. How did you come to do it?

By the Court—

Q. Why did you do it? Anybody ask you to do it? A. Yes, I was asked to do it.

By Mr. Guy—

Q. Asked to fix it up? A. Yes.

10 Q. Then you went to fix it up, and what did you find was the trouble? A. I found a brake pin missing out of one of the rods.

Q. Are you familiar with diagrams? A. Not very.

Q. I want you to say if you can find where the brake pin was on the diagram, Exhibit 10, pages 36 and 37. Perhaps you can tell us first, if you don't understand the diagram, perhaps you can tell us first where this brake pin was or where it was missing? A. It was out of one of the brake arms of the foot brake.

Q. What do you mean by a brake arm? A. One of the rods leading from the brake equalizer back to the rear of the bus.

20 Q. One of the rods leading from the equalizer to the back part of the bus? A. Yes.

Q. That is, to where the brakes are applied? A. Yes.

Q. What did you do? A. I replaced that pin.

By the Court—

Q. What kind of a pin is it? A. It is a round pin, an inch and a quarter long and about three eighths in diameter.

Q. How is it fastened in, with a nut? A. No, it is fastened in with a cotter pin, a split pin.

Q. A sort of a key? A. Yes.

30 Q. There is no part of the pin left in the rod? A. I see nothing of it.

Q. Does the pin stand horizontal or vertical in its normal position in the car? A. It runs straight across, like.

Q. Parallel to the ground? A. Yes.

Q. With the head on one end? A. Yes.

Q. And a hole through the other end through which this split pin goes? A. Yes.

By Mr. Guy—

40 Q. Do you think you could find that on the diagram? Describe where the equalizer is that you have mentioned, on the diagram?

A. I know very little about these brakes. That is the only thing I had to do with it, replacing, the White brakes, was replacing that one pin.

HOWARD JOHNSTON (Cross-Examination)

Q. You can't identify on this diagram the particular one? A. I believe I can show which pin it is.

Q. That is what I want you to do, if you can do it? Mark it "E" where you think it was? A. Yes.

By the Court—

Q. "E" is shown on Exhibit 10? A. Yes.

By Mr. Guy—

Q. Do you know which is the front and which is the end of this 10 diagram? A. The front is to the left, and the rear is to the right.

Q. At any rate, whether you have marked it correctly on the diagram or not, are the equalizer bars in front of the rear axle or behind it? A. In front of the rear axle.

Q. You put your mark at the back of the rear axle? A. But the rod runs from the equalizer back to the brake arm.

Q. The rod runs from the equalizer back to the arm— A. On the rear axle.

Q. And it was the arm from the equalizer that the bolt was out of the arm, which you speak of? A. Out of the brake rod on the 20 arm.

Q. Which connected with the equalizer? A. Yes.

By the Court—

Q. The equalizer is the rod which is said to be about 12 inches long? A. Around that.

Q. And the bolt that was missing was out of the end or the middle of it? A. Out of one of the rods.

Q. At one end of the equalizer? A. Yes.

Cross-Examination by Mr. Chapman—

Q. Do I understand that this equalizer is in the front part of the 30 car underneath the front part of the car? A. Not underneath the front of it.

Q. Where is it? A. Well, it would be, oh—we will say four or five feet from the rear axle.

By the Court—

Q. In front of the rear axle or behind it? A. Like the middle of the car.

By Mr. Chapman—

Q. Isn't it directly under the foot pedal? A. No.

Q. Is that evener connected with the foot pedal and what we call 40 the foot brake or service brake? A. The evener is connected to the foot brake.

HOWARD JOHNSTON (Cross-Examination)

By the Court—

Q. Connected though by a long rod?

By Mr. Chapman—

Q. Connected by a long rod, and then it is connected in turn with rods leading to the rear wheels? A. Yes.

Q. And it was one of the rods leading from the evener to the rear wheel that was disconnected by this pin falling out? A. To the brake arm.

10 Q. Was it one of the rods leading from the evener to the rear wheel?

The Court—Not to the wheel.

Q. To the rod— A. The brakes do not connect to the wheels.

Q. What do they connect with? A. They connect to arms which operate your brakes on the drums.

Q. On the drums of the rear wheel? A. Yes.

Q. And this pin connected the evener with a rod leading to the brake arm, is that right? A. I do not quite get that.

Q. You say this is the only thing you ever did to a brake?

20 A. Yes, on the White bus.

(Jury retired from Courtroom.)

Mr. Guy— I have interviewed a party who has conveyed information to us that he saw the notice in the paper last night about the trial going on, and, of course, he can't give any first hand evidence on the matter, but the information that he does give me is that this man was in the Dutch Navy, and that he was let out, or got out, and got a pension for the trouble that he there pretended—or it was felt that he was insane.

The Court—It could not be paralysis agitans?

30 Mr. Guy—No, that could not be. No, not on the evidence of the doctors. He was not suffering from it at that time so far as we know. We don't know where the disease originates, how or when.

The Court—But if it has had its inception at that period, the doctors would have detected it before its appearance here in October and November last year.

Mr. Guy—Yes, as far as the outward symptoms are concerned. Then there is the question of his conduct when out on a homestead. His conduct out there was the subject of comment by the neighbours.

The Court—Well, it is well known that people who live on home-
40 steads, if they live alone, get very peculiar in their habits.

Mr. Guy—There is nobody that I can call to give first-hand evidence on the matter of these points. I have asked Mr. Chapman

if he would consent to an adjournment to enable me to complete an investigation as to his previous history. Of course, he says he could not consent; it has gone too far. All I can do is to ask for the adjournment, and report when the information is complete. I don't know now, I can't say now whether it is true or not true.

The Court—Even if it were true, you have not established by evidence anything that would show that insanity would cause this trouble, because the doctors say that they do not know.

Mr. Chapman—Not only that, but Dr. Mathers said there was no
10 suggestion in this man's case.

Mr. Guy—That is not the point. Even if a number of witnesses come to this Court and testify he was a perfect specimen of manhood—

The Court—In good physical health.

Mr. Guy—And he said he never had any illness in his life, and never saw a doctor, and nothing was ever the matter with him, if the fact is that is not so, and that there may have been—

The Court—Just assume if you will that he had been insane and confined for that trouble in the asylum, and gave evidences of it out
20 on the homestead, still that wouldn't really connect his present injury if you are liable for the injury.

Mr. Guy—No, it would only be relevant insofar as it might affect the weight to be given to the evidence of these parties who are testifying as to his perfect health. Was he in perfect health before, or was he not?

The Court—Well, the man as far as they know has been in the country for sixteen or eighteen years, and they have known him here all this time. As far as his wife is concerned, she is telling the truth as far as we know. There is nothing in your suggestion that would
30 contradict her, and it would seem that the other witnesses are about the same, that there is not anyone who said he wasn't in good health.

Mr. Guy—No one was called to give evidence as to his health in the old country or on the farm.

The Court—There is also the suggestion as to his family history.

Mr. Guy—That is in the rumor, but not in the evidence.

The Court—Even though you establish that?

Mr. Guy—As I say, it goes to the weight of his evidence, and of those people who say they have known him.

The Court—It would be only the length of time they have known
40 him. How could it assist you?

Mr. Guy—I think it might be of considerable assistance, my lord. If a man comes up and said he has never had anything wrong with him in his life.

The Court—The poor man wasn't in condition to say anything.

Mr. Chapman—He did go that far as to say he never had a doctor.

Mr. Guy—I am afraid I must leave it to your lordship. I have nothing further than I have already told you.

The Court—If it went to the heart of the case, it would be different; but even though you were to assume all the rumors were true, it would still be a question substantially as you have it now; are you liable for the injury to him, or for this particular form of injury. And even though the man had been insane in his early life, that would not lessen his damages for being rendered helpless for awhile. And the doctors have not said that previous insanity would cause or might lead to this present paralysis. If that had been connected up by any of the experts, then it would be fatal to the question of quantum
10 of damages.

Mr. Chapman—I think Dr. Mathers, in speaking about his experience in the psychopathic ward, said that those patients were not afflicted with paralysis agitans. I understood him to say there was no connection.

The Court—I think it is so far removed from the core and heart of the case that I would say it is not worth the expense and trouble involved in demanding an adjournment, even though it might go to mitigate damages in some respect. It would be very slight to the cost entailed by an adjournment at this stage. It would really mean
20 you would have to try the case over again. You could not dismiss this jury for any definite time and ask them to come back.

Mr. Guy—I appreciate that, my lord.

The Court—Is Mr. Chapman willing to do that on the usual terms?

Mr. Chapman—I could not do that because of the danger, my lord. This man may die. Any of the witnesses may die. It would be too great a risk for me on any consideration to run the risk of postponing it. From the information I have, believing this thing is a pure piece of gossip, any man may come in and injure a person
30 in this way from any motives.

Mr. Guy—It is all a matter of investigation; it is not a question of information.

The Court—In the circumstances, Mr. Guy, I do not think I am warranted in adjourning the case. Really, it would be dismissing the jury, and setting the case right back. I appreciate your position, and the desirability of investigating it if it were at hand, but it is something not very well founded, and it would be a long investigation, and would run into weeks.

Mr. Guy—Yes, it would run into weeks.

40 The Court—Weeks, even months. I think we had better go on then.

Mr. Guy—I want to recall Mr. Holmes, to clear up a point as to the location of the bolt.

The Court—Did Mr. Holmes actually see the bolt?

Mr. Guy—No, but he gave evidence of the bolt coming out of the equalizing bar.

Mr. Chapman—He didn't know where.

Mr. Guy—He didn't know where, but I think he pointed to a place on the other end of the rod.

The Court—Would it really matter? Some of the mechanism gave way.

Mr. Guy—The man who actually found and fixed it puts it at the other end of the rod; instead of the front part he puts it at the other part.

The Court—It seems to me it is just a point of a bolt gave way in the brake mechanism, which rendered the brakes ineffective.

10 Mr. Guy—Yes, that is the main factor.

Mr. Guy—I have an accurate record of the mileage that the brake had gone since its last inspection. I think Mr. Holmes said about a thousand miles.

The Court—Is that agreeable, Mr. Chapman? You have not got to, but if you consent to it it will avoid the necessity of calling a witness.

Mr. Guy—I might have to call twenty witnesses or perhaps thirty.

Mr. Chapman—That is just the thing.

20 The Court—If you don't feel like consenting, all right.

Mr. Chapman—I don't feel, especially under the circumstances of other matters connected with the case that just occurred a day or two before the trial, I do not feel like assisting my learned friend in any way.

Mr. Guy—It does seem to me my learned friend might very well do that, and avoid the necessity of calling a man who reads the meter day by day and puts on these records.

Mr. Chapman—We had a matter under similar circumstances that I wanted my learned friend to consent, but he would not.

30 The Court—It is a matter between counsel.

Mr. Guy—So far as the trial is concerned, I have admitted everything that my learned friend asked me to admit.

The Court—Except the liability.

Mr. Chapman—Except the records of the hospital.

Mr. Guy—You did not ask to put in the records of the hospital.

Mr. Chapman—I certainly did, and you point blank refused.

Mr. Guy—You didn't ask me at the trial. I have admitted everything that is relevant.

The Court—That is a matter between counsel. If you can't 40 admit it, I have no right to ask it.

Mr. Guy—There is evidence already in that it is a thousand miles, so I will just leave it at that.

The defense is closed.

The Court—Any rebuttal?

Mr. Chapman—I would like to recall the witness Calsbeck, my lord?

FRED CALSBECK (Recalled)

FRED CALSBECK, recalled.

Examined by Mr. Chapman—

Q. You have been sworn and have given evidence in this case?

A. Yes.

Q. You were the driver of the automobile in the accident?

A. Yes.

Q. Mr. Erhardt, the driver of the bus, has stated that after the accident he spoke to you, and that you told him that you weren't
10 sure whether the spring had been broken previous to the accident or not? Did you tell Mr. Erhardt that? A. I never said such a thing.

Q. He has also stated that you emphatically told him that the dent in the back of the body of the car was there previous to the accident? Did you tell him such a thing? A. No, I never told him such a thing at all. I had no conversation with the driver.

Q. You did not tell him that or words to that effect? A. No, I did not.

Mr. Guy—No questions.

Mr. Chapman—That is all the rebuttal, my lord.

20 (Mr. Chapman addresses the jury on behalf of the plaintiff, followed by Mr. Guy on behalf of the defendant.)

GEEL VS. WINNIPEG ELECTRIC COMPANY

MR. JUSTICE DYSART'S CHARGE TO JURY

December 5, 1929

Gentlemen of the Jury: You have listened to the evidence in this case, evidence which in some respects has been technical and very intricate, with a great deal of attention. You have now been favored with addresses on behalf of the plaintiff and the defendant which have very well summed up all the points in the case. My duty of
30 course is to summarize the case for you. Because of the completeness and excellence of the addresses which you have heard, I think I can dispense with some of the things which in other circumstances I might have felt it necessary to put before you.

The case before you is based upon negligence. Negligence is a failure to perform a duty. It is a breach of duty. The plaintiff's case is based upon some breach of duty on the part of the defendant. If there is no breach of duty on the part of the defendant, the plaintiff is not entitled to recover.

The sympathy and pity we feel, and we would be less than human
40 if we did not, for the unfortunate condition of the plaintiff is not a matter for consideration in a court of law. In the discharge of the

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duty which is imposed upon us, pity and commiseration have no part. My duty is to declare the law, and your duty is to find the responsibility upon the facts, and upon nothing else.

So I repeat, this action is based upon negligence. One thing is clear; there was no negligence on the part of the plaintiff himself. There was nothing that he did that was in violation of any duty towards the defendant, and there was nothing that he ought to have done in the circumstances. That narrows the field of inquiry down to the question, which I have already mentioned, "Was there any
10 breach of duty on the part of the defendant which caused the injury to the plaintiff?"

We have in this province for our guidance a Motor Vehicle Act, section 63 of which states:

"When any loss, damage or injury is caused to any person by a motor vehicle, the onus of proof that such loss, damage or injury did not arise through the negligence or improper conduct of the owner or driver of the motor vehicle . . . shall be upon the owner or driver of the motor vehicle."

In other words, by reason of that enactment the onus is now upon the
20 defendant to show that it was not negligent, whereas normally in other cases it would be upon the plaintiff to show that the defendant was negligent. The result of that is that if the evidence is evenly balanced both ways the defendant has not shewn that there was no negligence, and having failed in that, it could be held liable for negligence or a breach of duty, because the duty on the defendant is to free itself from the imputation of negligence. In doing that, the defendant has not to carry it to any unreasonable extremes; it is just a mere preponderance in the balancing of the evidence. If the weight is with the defendant, it should have the benefit.

30 That brings us to the matter of the accident. The defendant is liable for its own acts and for the acts of its servants when performed in their ordinary course of duty. I connect them up in this way. If the driver of the motor bus, who is a servant of the defendant, commits a wrongful act in the discharge of his duty, the defendant would be liable. But the driver was not apparently responsible for the upkeep and maintenance of the motor bus. Some other servant was, and the defendant would be responsible on its own behalf, or through other agents, for the proper maintenance and repair of the motor bus. The defendant would also be responsible for the conduct
40 of the driver of the motor bus on this occasion.

It must be evident that what brought about the accident—I won't say the only cause, but what really precipitated the accident—was the breaking of the bolt in the truck mechanism, which has been described to you by the driver.

Section 15 of the Motor Vehicle Act states that "Every motor vehicle shall be equipped with adequate brakes sufficient to control such motor vehicle at all times . . ." etc. While that is stated in

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those terms, it has been pretty uniformly held that such legislation does not impose an absolute duty. While the duty is placed upon the owner of the motor vehicle to have adequate and sufficient brakes, if there are on the motor vehicle such brakes, that discharges the duty and the onus thrown upon the owner by this section. And there is this further matter linked with it that even with that section an owner of a motor vehicle will not be liable for the failure of the brakes unless it is through some negligence on his part. Assuming for this purpose that the motor bus in question was a standard bus, compar-

10 tively new, in good condition, had passed all necessary inspections, and been taken out upon the road, that motor bus, if equipped with brakes such as have been described, would be such as to answer the necessities of the Act. But if the owner saw that something had gone wrong with the brakes, if he had known that some bolt was out, or something was lost, or that the bands were worn out, or something of that sort, and did not take the trouble to repair them and keep them in shape, he would be responsible. The whole case comes down, to dispose of this branch of it, to whether or not there was negligence on the part of the defendant. In other words, the defendant must

20 show that he was not negligent in any respect leading up to and causing this accident.

Dealing with those brakes, was there sufficient inspection? As has been said to you, and very fairly, all these things must be viewed from a reasonable point of view. We must not hold people up to unusual standards of vigilance. It is what the ordinary reasonable and prudent man would do in the circumstances. That serves as a guide. What do you say about the breakage of that bolt in the mechanism? Should that have been discovered? Whether the bolt actually broke or not, or whether it merely fell out, we do not know,

30 as it has not been stated. But is there anything in that occurrence which makes you think that a reasonable degree of care and inspection on the part of the company could have foreseen that event to happen? That is one thing for you to consider. If you think that the defendant company has not cleared itself upon that point you may hold it negligent. If you think the defendant company has exhausted all reasonable precaution, you ought not to hold it responsible upon that.

Another element which is said to have contributed to the accident is the speed of the motor vehicle. The evidence on speed is, I must say, moderate to what we usually find in such cases. Nobody has

40 stated the speed was more than fifteen or twenty miles an hour before the occasion was seen to stop the car. It was stated the speed was twelve to fifteen miles an hour about the time the driver applied his brakes. That in all the circumstances I leave for you to say whether it is reasonable or not. I need not express any opinion upon it. The traffic there all moves in one direction. The motor bus was following along in the same way, not overtaking anyone, and not following behind anyone, probably keeping pace with the traffic. Whether that

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was proper speed in the circumstances is for you to say. I mean proper speed up to the time he applied his brakes, when the necessity arose for stopping the car.

When the driver saw the traffic signal light turned against him, he applied his brakes, and the brakes gave way. It has been said that created an emergency. What ought the man to have done in the circumstances that he then found himself, going about twelve to fifteen miles an hour, and within about ten yards of the motor cars ahead of him? If his brakes were unable to stop the motor bus's
10 speed, a collision was inevitable unless he could turn out of the way. There were two ways possible for him to turn, one to the right, and one to the left. To the right no one has said it was possible to pass by, and to the left of the car in which the plaintiff was riding there were one or two automobiles. Most of the witnesses agree there were two automobiles lined up at a standstill at the line. Whether or not there was room to pass to the left of those is not clearly stated. The witness McBain said something which might throw some light upon it. He said he came out from the Commodore restaurant, and walked across the roadway to the safety island to step on to a
20 second street car. There was one car ahead of the one he was going to get on. From that you might infer that the leading street car was so near the standing automobiles there was no room to pass. But there is no evidence upon that. On the other hand, you may I think, without being inconsistent with the evidence, find there was nothing to close that way out. If there was any way out there you might consider whether the driver should have turned that way.

What the driver did was to turn to the right, in towards the kerb. With the little help he got from the emergency brake the car apparently slowed down, struck the kerb, followed along the kerb for a
30 few feet until it came into contact with the automobile in question.

I do not know how his action on this occasion appears to you. Most people nowadays drive automobiles. We all know every driver has had some experience in making quick decisions as to what he should do in an emergency. You will know from your own general experience whether what the driver did in this case was the reasonable thing to do. Did he exercise reasonable care considering the emergency he was in, and the short time he had for making the decision.

It is said that he did not sound his horn, and he admits he did not
40 sound his horn. Would the accident have been avoided had he sounded his horn? If the drivers of the automobiles lined up, stopped in obedience to a traffic signal, heard a horn sounding behind them, is it likely that they would move forward, thinking that there was an impending calamity? I leave that to you for your consideration.

It is stated that this car ought not to have been taken out on the street in the condition in which it was. That is largely repetition

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of what I have already said about whether or not the car had been properly inspected.

The incompetence or negligence of the driver upon other occasions is not very much to the point; because, after all, we are here to consider what he did on this occasion.

Those are the elements—there may be some others—which enter into the question of whether or not there may be some negligence on the part of the defendant. If you feel upon all those the defendant has not discharged the onus, has not freed itself from negligence, 10 you may find that it was responsible for the collision. On the other hand, if you are satisfied there was nothing in all this to warrant any thought of negligence on the part of the defendant, and everything was done that could reasonably be expected of people in all the circumstances, both in the equipment of that motor bus and the inspection of its brakes, and speed, and what was done by the driver, you will find in favor of the defendant.

One point I omitted to mention, and that is that the bus is one of forty-nine owned and operated by the defendant company, and it is the only one of that particular make. It was, on the evidence 20 submitted, bought as a second-hand car, several years ago. It is one of a few using mechanical brakes. The other are hydraulic or air brakes. Those things might be considered by you in determining whether or not that car of that age, and that type, was such a car as the defendant ought to use. That is for you to consider.

There is no question at all that if there was negligence on the part of the defendant, or if the defendant has not freed itself from the imputation of negligence, it is responsible for the impact and the injury resulting from it.

Dealing with the impact you cannot entirely free yourself from 30 the thought of speed. Speed is one of the elements that goes to govern the force of the impact. In this case you had a very heavy bus, a six-ton bus, coming up against a standing automobile. That is a very heavy weight to move against a standing body, and even though the speed were not very high, the force of that jar would be considerable, and, as a matter of fact, it is shewn by the damage to both vehicles. The automobile's right rear spring was broken. There is some little dispute on that. But there is evidence it was broken. The fender was crushed in, and the rear of the car was dented. The left front fender of the motor bus was bent down, 40 showing that there was some considerable force. Those things themselves indicate some force. There is evidence that the standing automobile was pushed ahead from four to six feet. Of course, the speed at which the motor bus struck the car was not very fast, but the blow was one that might be expected from a motor vehicle of that heavy character. Although the speed was not very great, the bus being pretty nearly at a standstill, the blow was sufficient to injure some of the occupants of the car. The blow was such as to

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give that shock to the automobile that it broke the windshield, and knocked the driver's hat off, which would indicate quite a jar.

Most of the occupants of the automobile were uninjured. One lady sitting in the back seat had her back injured, and it was troublesome for some time. The plaintiff was in the unfortunate position of moving about at that moment, changing his position, with one of the boys sitting on his knee. It may have been due to the fact that he was more or less relaxed and away from the support of the back of the seat that made his injuries more severe than the others, but that
10 is something which goes with the whole matter of the injury.

If the defendant was responsible at all for the injury, it cannot find any excuse in the fact that the plaintiff was not sitting as he should have been sitting. There is no question I think on the evidence that the plaintiff was severely injured. He was rendered more or less dazed. When he was taken to the hospital no external marks were seen. The injury is said to have been caused by a blow on the head. There is nothing to suggest that. It may have been the violent, quick movement of the car when the man was partly up and off the seat that may have hit him in the back in such a way as to
20 jar his head suddenly. But the mere absence of a blow in the head means nothing. There was some severe jar to the man, because long before this very painful disease developed he was confined to his bed. Several doctors visited him, and every doctor who looked at him thought he was a very sick man, and pronounced him very ill.

Prior to his injury the man had been going around on his ordinary work. He had climbed up on the roof of his house to repair the chimney on the very day of the accident. After that he seldom left his bed, and then only to hobble about. Finally, after some months he went out to Sturgeon Creek, and spent some weeks there. There
30 is no question but that the plaintiff must have been very severely injured.

The main questions as far as you are concerned on the question of damage to the plaintiff have to do with the subsequent developments. I take it, if you find that the defendant is responsible for the plaintiff's injury, if the defendant's negligence caused it, the plaintiff is entitled to all his special damages, that is, the doctors', hospital, and nurses' bills, and also for the pain and suffering he has undergone during this period as a direct result of the injuries he had received. All of that is for you to consider, in addition to the loss of time, wages, and so on.

40 The technical evidence in this case has been directed solely to determine whether or not paralysis agitans, from which the plaintiff is suffering, is the result of that injury. Experts have been called in and you have heard their testimony. I merely want to point out to you in connection with the evidence of the experts, that the function of the expert is in a way the function of the jury. He expresses his opinion upon the evidence adduced in exactly the way that you have to do. But it is always helpful to a jury to get the opinions on

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matters requiring expert knowledge from those skilled in those matters. However, you are not bound to take the evidence of the experts, of any of them or of all of them, you are to use your own judgment. Of course, you will be guided no doubt by expert testimony, but where experts differ you are not bound to take one side or the other, or either. Use your own judgment on the evidence, being guided by what they have told you as far as you can.

The experts for the plaintiff have given their opinion that this paralysis agitans is caused by injury, or, putting it another way, that 10 injury will cause it, and they therefore think that the present illness of the plaintiff, this disease of paralysis agitans is the result of that injury. The experts for the defendant take the opposite view, and they give you their authorities. It is for you to say. But it is to be noted that the experts for the company do say that while paralysis agitans cannot be caused by an injury, it may be accelerated—that is, brought on sooner than it otherwise would have been. They fix the period at any time within a year. In other words, if you accept that view, you could make the finding that the plaintiff has been made 20 one year, sooner than he otherwise would have had it, and for that acceleration you are entitled to award damages, and for all the attendant suffering, pain, discomfort, discouragement, loss, and trouble in every way.

If you accept the view that this dreadful disease is not at all caused by the injury, you would eliminate it from consideration in fixing damages, and confine yourself to the special damages—that is the various items that have been proven, and which amount to \$1,158.25, which are practically undisputed. You would take into consideration his illness, being confined to bed, and all the pain and suffering 30 up to the time when he ought to have recovered and would have recovered but for the oncoming of this additional disease.

There are three aspects of that branch of the case. If you find that the injury was not the cause of the paralysis agitans, then eliminate that disease and all its dreadful consequences from your calculations in making your assessment of damages. If you take the middle view that this disease was brought on at some period not exceeding a year earlier than it otherwise would, you may make some allowance for that period. If you take the third view, which is the plaintiff's view, that the disease was caused by the injury, you may 40 consider the full damages accruing to the plaintiff as the result of that. In that you take into consideration his present age, what his prospects might have been, what he may have been earning for himself and family, his pain and suffering, and so on.

I do not know that there is anything more I ought to say. In reaching your verdict, it is necessary that nine of you should agree, otherwise you cannot bring in a verdict.

You may retire and consider your verdict.
(Jury retired from courtroom at 3.40.)

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Mr. Guy—My lord, I think this is a case where it would be exceedingly proper to have the jury ascertain what the particular negligence, if any, the defendant is guilty of.

The Court—I hesitated at the end of my charge to ask you whether you wished questions put—at least, that is what I was hesitating for, and as there was no suggestion of that I did not put them; but, as a matter of fact, I had prepared questions.

Mr. Guy—We want to get at the real facts of this case. There are a very large number of allegations, down to R in the alphabet.

10 The Court—It is quite the usual thing to do.

Mr. Chapman—I submit, my lord, not in a case like this, because I think there is a difference.

The Court—We will hear what Mr. Guy has to say in making the application.

Mr. Guy—I am making application to have questions submitted. It does seem to me that this case is of sufficient importance, and there are sufficient allegations charged and referred to the jury, that we ought to have a clear-cut finding as to what constituted the negligence, because if we are responsible in its entirety for the amount of
20 money that the man would be entitled to under one phase of the case at least, it would be a considerable amount, and I think it would be only fair and just that we should know in what respect the jury considered that we ought to pay. Everyone knows that sympathy must play a certain part in cases of this kind.

The Court—Yes, in spite of all the warnings that are given.

Mr. Guy—Yes, in spite of all the warnings. And my learned friend has addressed the jury on quite a number of allegations of negligence which may have made some appeal to them which I do not agree with, and which may be in their minds still hovering. I
30 think in view of the great importance of the case, it would not be fair to the defendant if it did not get a clear-cut finding as to the specific acts of negligence of which it is guilty.

The Court—Would you suggest, in framing the questions, in order to make it specific that we ought to follow the allegations of negligence in the statement of claim and ask them which of those—?

Mr. Guy—No, I don't think that. They have already been charged, and they were referred to. I think the simple question should be asked, Was the plaintiff's injury due to the defendant's negligence, and if so, in what did such negligence consist? and that is all.

40 The Court—That is the usual question.

Mr. Chapman—I know that is so in ordinary cases, but in motor vehicle cases I think it is different. I know it wasn't done in that case of Lawton against the City of Winnipeg and Interurban Bus Company, I understand, on the principle of the onus being shifted, the duty of the defendant is to discharge that onus. It is not like as if the plaintiff had the onus of proving certain particulars in which the defendant was guilty of negligence. The onus is on the defen-

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dant to clear himself entirely. If they find he has cleared himself of negligence, then he has met that onus and is clear. If he has not, it may be that in a general way he was guilty of negligence. I think the verdict ought to be left in a general way. There is that danger of pinning a jury down. They do not understand these things and they might go to work and name some specific thing, thinking they had their fingers on it, and it would be contrary to the evidence, or something like that, and give rise to appeals, which I think ought to be avoided if possible. I think on that principle the jury ought to be
10 left to return a general verdict.

Mr. Guy—In reply to my learned friend on the question of onus, now that the evidence is all in, and we have given our explanation, and the jury know all the facts, I don't know whether or not the onus is on us in the same way now that the evidence is all in as it was. That clause with reference to onus has been dealt with by the authorities as a matter not of substantive law but of procedure. It simply means that you can't get a non-suit; you must place all the evidence before the jury. Now the evidence is all before them, they know all the facts, and they know what we have done.

20 The Court—Your duty as defendant is not to exhaust every possible avenue of negligence?

Mr. Guy—Absolutely not.

The Court—But merely to show by excuses that the particulars alleged have been satisfied?

Mr. Guy—Yes, the cases bear that out completely, my lord. So far as the Lawton case is concerned, which was tried by the late Mr. Justice Curran, in the very next case following I referred his lordship to the amendment in the King's Bench Act—I think it was in 1923—
30 where authority was given to the Court to submit questions to a jury, and make a finding in a special verdict, and he thanked me for advising him of that fact, and from that time on he did, but he said he wasn't aware of it at the time of the Lawton case. My learned friend says perhaps the jury doesn't understand. I think juries ought to understand. They should not make a finding against me on something if they do not understand what they are finding on. We are entitled to know before we are called upon to pay a large judgment what ground and what reason there was for it.

The Court—I think it would be fair to let the jury have the pleadings, and to point out the particulars they find from the list.

40 Mr. Chapman—I am quite willing to let them have the pleadings.

The Court—The reason I say that is sometimes they bring in particulars not framed exactly as they are in the pleadings, and the result is that their findings have no reference to the case. If we are going to ask for particulars it should be in the language of the pleadings.

Mr. Guy—I don't mind that; that is what we are called upon to meet.

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The Court—I would seem unfair to refuse questions. I had framed them with the expectation that they might be asked for. Perhaps we can agree upon the form of these questions. I have drafted them as follows:

- (1) Was there any negligence on the part of the defendant which caused the injury to the plaintiff?
- (2) If you find there was such negligence, in what particulars as alleged in the statement of claim did that negligence consist?
- (3) If you find such negligence, at what do you assess the damages
10 of the plaintiff?

Are those questions satisfactory?

Mr. Guy—Yes, my lord.

Mr. Chapman—As to form, my lord.

The Court—In submitting the statement of claim it would be the part of prudence to eliminate the prayer for relief. The first four pages would seem to cover all that is necessary. Is there anything else before calling the jury back?

Mr. Guy—Your lordship, on the question of onus, said that the onus is still on us to satisfy, but I think your lordship might have
20 said to the jury that the explanation of the accident was before them, and from that evidence they should find whether or not and in what way we were negligent. The question of onus in my view is a question of procedure only. As the evidence has been submitted to the jury, it is a question now, when they have heard the whole story, to decide wherein we were negligent.

The Court—Yes, but realizing that unless you tip the scale the decision would go against you, that is a little more than procedure.

Mr. Guy—Of course, we did give the explanation of the accident.

The Court—I am going to use the term that you have just sug-
30 gested. It had not occurred to me.

Mr. Guy—I would like to refer your lordship to one of the recent cases on this question of onus.

The Court—I had one of those recent cases myself, in which it was very closely contested, and in which the facts were very close.

Mr. Guy—The Saskatchewan Court of Appeal dealt with the question of onus.

The Court—Oh, yes, we have all dealt with it. I am satisfied I am substantially right on that. I may have quite properly added the word you have mentioned, and if the jury come back I will do
40 that, but I think it is a small point.

Mr. Guy—There is another matter. I think your lordship might have enlarged upon the duty that lies upon the driver, as upon the driver of any other motor vehicle.

The Court—I think our old friend the “reasonably prudent man” will cover that.

Mr. Guy—Yes, the reasonably prudent man.

The Court—That is our old stand-by in all these matters.

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Mr. Guy—Yes, the duty is that he must use reasonable care on the public highway, but so far as the plaintiff is concerned we are in no different position than any other ordinary motor vehicle driver.

Your lordship made reference to this being a second-hand bus. It is not perhaps a second-hand bus, my lord, unless what you buy from somebody else is second-hand. The fact was this was the Transcona bus before the Winnipeg Electric took over the other and took the bus with it.

Mr. Chapman—In the examination for discovery, my lord, at 10 question 114, the driver was asked:

"114. Q. Was it an old bus or a new one? A. About five years old, I think—four or five.

"115. Q. Was it brought here by the defendant company new? A. No, it was bought over from a private individual in Winnipeg at one time.

"116. Q. How long had the defendant company owned it? A. Since 1925.

"117. Q. About three or four years? A. Yes, the latter end of 1925 it was bought over.

20 "118. Q. And previous to that it had been run by a private individual? A. Yes.

"119. Q. Do you know how long? A. A little over a year, about 12 or 13 months; something like that.

"120. Q. And had it been in constant service from the time the defendant company got it until the accident? A. Not in constant service, not daily; we used it about half time, I guess."

The Court—Do you think now there is any substantial difference?

Mr. Guy—It all depends on whether your lordship considers there is a duty upon us to buy the latest kind of equipment.

30 The Court—If I call this a second-hand car, or a used car, or a car used by another concern?

Mr. Guy—Well, that is all right.

The Court—It is the same thing. You are afraid there is a certain stigma?

Mr. Guy—A stigma attached to "second-hand," and that the jury will infer from your lordship's remarks that we were doing something in buying the bus that we ought not to have done, that we ought to buy new equipment, because your lordship referred to this being different to some of the others.

40 The Court—I did.

Mr. Guy—My submission is that there is no duty upon the company to buy any particular kind of trucks; that the company is in the same position as an ordinary individual who can go and buy on the market any vehicle he likes.

The Court—That is true. What I had in mind was that this was not the usual kind of bus in use by the defendant, or not the

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—continued.

usual system of braking, rather, and that the car had been bought from somebody who had used it.

Mr. Guy—Assuming all that to be true, there are thousands of those busses in use.

The Court—I haven't any doubt; but I thought it was a matter that ought to be considered, whether or not this car should go out on the street.

Mr. Guy—If your lordship hadn't distinguished that bus from the other busses we had.

10 The Court—The other busses are not in issue; they may be bad for all I know.

Mr. Chapman—I have some remarks to make, your lordship.

The Court—Let me get down what Mr. Guy wishes. You want me to explain "second-hand"?

Mr. Guy—Yes, that is one.

The Court—What else?

Mr. Guy—On the question of onus.

The Court—What do you wish me to say on that?

Mr. Guy—The fact of the matter is now when all the evidence is 20 in it is for your lordship to tell the jury it is their duty to consider the case from the standpoint of the evidence that is now in.

The Court—I told them to weigh it.

Mr. Guy—Yes, you have done that, but that only, without considering whether we have or have not disproved any particular allegation of negligence.

The Court—How would that differ in substance from what I have said? I can't see it. Do you say it really differs in substance?

Mr. Guy—I don't see there is a question of onus now at all upon us. I don't see at the present time with all the evidence in, when the 30 case is submitted for the jury, but that it is a case for them to decide whether or not we have been guilty of negligence.

The Court—Supposing the evidence exactly balances, who loses? The man loses on whom the onus is placed. So the onus remains until the verdict.

Mr. Chapman—In connection with that matter that my learned friend talked of about the second-hand car, and another matter in connection with your lordship's charge—

The Court—Tell me what it is you wish me to do.

Mr. Chapman—I wish you to charge the jury that from the fact 40 of putting the car on the highway in the condition it was, with that bolt about to fall out, as it did, is evidence of negligence, it being a second-hand car. That is the term used in a judgment—

The Court—It is not an acceptable term.

Mr. Chapman—On account of being a used car, or bought from another party.

The Court—You want to plead *res ipsa loquitur* the fact that the bolt fell out is evidence of negligence.

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—continued.

Mr. Chapman—This judgment is very short—

The Court—We don't need that. That is enough, *res ipsa loquitur* the fact that the pin fell out is evidence of negligence.

Mr. Chapman—Is evidence of negligence. And notwithstanding that the inspection had been complete, and it had been skilfully handled, still driving a car like that, a thing did happen that was in itself evidence of negligence.

Mr. Guy—The breaking of the bolt may be *prima facie* evidence of negligence, which calls for an explanation, but we have given the explanation.

The Court—Call the jury back.

(Jury returned to courtroom at 4.25 p.m.)

The Court—Gentlemen of the Jury: I have called you back to discuss two small points. One is that I made use of the term "second-hand" in referring to this motor bus. The evidence is, as read to you, that the motor bus in question was purchased in about 1925 from some person who had previously used it, and used it for a year in a somewhat similar business. In using the term "second-hand" it may not be a fair statement of the fact.

20 The next point is that I perhaps should have mentioned to you, and I will mention it to you now at any rate, that the mere fact of the pin or bolt breaking or falling out is in itself evidence of negligence. That evidence, of course, may be met by the explanations offered against it, but in itself, if there was no explanation at all it is such that you could find negligence from it. However, the explanation has been given to you.

30 Speaking generally, you will determine, of course, the whole matter on all the evidence submitted. I repeat that the onus is still on the defendant, so that if the effect of all the evidence upon your minds was that it was an even result, an even condition, then because the defendant has the onus, he is obligated to discharge it, you would give the verdict for the plaintiff; but if upon all the evidence you are satisfied with the explanations offered that the defendant has overcome this onus that is against him, and has discharged it, you will find in his favor.

One other thing has been requested, and that is that we submit questions to you, and we are going to do that.

The first question is:

40 (1) Was there any negligence on the part of the defendant which caused the injury to the plaintiff?

You will consider an answer to that, yes or no.

(2) If you find there was such negligence, in what particulars as alleged in the statement of claim did that negligence consist?

We are going to let you have the statement of claim, in which a list of all the particulars are set forth, and you might run through that list and indicate which of those particulars you find to be constituted

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in the term negligence, and perhaps in your answer you might just for brevity refer to paragraph 5 for the sub-headings.

(3) If you find such negligence, at what do you assess the damages of the plaintiff?

You will now retire, and take with you these questions, and the statement of claim.

(Jury retired a second time at 4.30 p.m.)

(Jury returned to courtroom at 6.10 p.m.)

(Roll call of jury.)

10 Clerk of the Court—Gentlemen of the Jury, have you agreed on your answers to the questions? Are these the answers?

Foreman of the Jury—Yes.

Clerk of the Court (reading)—“(1) Was there any negligence on the part of the defendant which caused the injury to the plaintiff?

A. Yes.

(2) If you find there was such negligence, in what particulars as alleged in the statement of claim did that negligence consist? Answer: Paragraph (f), In not keeping brakes and braking equipment in proper repair, and insufficient inspection of said brakes.

20 (3) If you find such negligence, at what do you assess the damages of the plaintiff? Answer: Ten thousand dollars (\$10,000.00) plus expenses as agreed to by counsel.

The Court—What do you mean by that?

Foreman of the Jury—What was meant was the amount of \$1,100 odd for medical and hospital expenses.

The Court—Your verdict is \$10,000 general damages, and those special damages of \$1,158, and that is what you all mean.

Foreman of the Jury—Yes.

30 Clerk of the Court—There is a rider, my lord. “We find that the driver did everything possible under the circumstances to avoid this accident, and we wish to exonerate him from any blame.”

Mr. Guy—I would like to know if the jury are unanimous on this?

The Court—Are you unanimous?

Foreman of Jury—Yes, we are unanimous.

40 The Court—That rider is no part of the matter submitted to you, gentlemen. I think you covered the ground by putting your finger on that part of the negligence on which you base the liability. You were not asked, and I think it would be wrong for me to accept that other finding. You have impliedly found that by specifying the negligence, and I do not think I could accept that, and with your approval I will leave that out.

Foreman of the Jury—Yes. The reason we did that was it was in the list of the submitted particulars in the pleading, and we were answering that as we thought.

The Court—You were asked to put your finger on what you rely, and the conduct of the driver is not one of them; so that, with your permission, I will not enter that.

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Foreman of the Jury—All right, my lord.

Mr. Chapman—I would move for judgment, and would ask your lordship under the rule to remove the statutory bar with reference to costs on account of the difficulty.

The Court—I will not detain the jury with that now. Perhaps counsel might speak to me tomorrow about that.

Mr. Chapman—Yes, the verdict will be entered for \$11,158 and costs?

The Court—Yes, and I will reserve the question of the removal of the statutory bar.

Gentlemen of the jury, I thank you very much for the verdict. I am sure that it has cost you a lot of trouble. It has been an unusual and difficult case, both from the point of view of the negligence and of ascertaining the amount of damages, and I am sure you have given it very careful consideration, for which you are certainly entitled to the thanks of the Court and the parties. You are now discharged.
(Court adjourned.)

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—*continued.*

I hereby certify that the foregoing 343 pages of typewritten matter, contain a true and correct account of the evidence, proceedings, and judge's charge taken by me in shorthand in the above case, at the time and place first above written.

J. L. DONOVAN

Sworn Court Reporter.

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PART IV—JUDGMENTS, ETC.

In the King's Bench

BETWEEN

JACOB GEEL,

Plaintiff,

and

WINNIPEG ELECTRIC RAILWAY,

Defendant.

*In the
Court of
King's
Bench.*No. 32.
Formal
Judgment,
14th Decem-
ber 1929.

The 5th day of December, 1929.

10 This action having on the 3rd, 4th and 5th days of December, 1929, been tried before the Honorable Mr. Justice Dysart and a jury of the Eastern Judicial District of the Province of Manitoba, and the jury having found a verdict for the plaintiff for \$11,158.25 damages and the said Mr. Justice Dysart having ordered that judgment be entered for the plaintiff for \$11,158.25 and costs of suit.

Therefore it is adjudged that the plaintiff recover against the defendant \$11,158.25 and the costs of suit to be taxed.

Judgment signed this 14th day of December, A.D. 1929.

20

A. J. CHRISTIE,
Deputy Prothonotary.

The above costs have been taxed and allowed at \$647.17 as appears by a taxing officer's certificate dated the 13th day of December, 1929.

A. J. CHRISTIE,
Deputy Prothonotary.



In the Court of Appeal

BETWEEN

JACOB GEEL,

(Plaintiff) Respondent,

and

WINNIPEG ELECTRIC COMPANY,

(Defendant) Appellant.

*In the
Court of
Appeal.*

No. 33.
Præcipe
on Appeal,
19th De-
cember 1929.

Required to be entered and set down upon the list of causes, matters and proceedings for hearing before the Court of Appeal at
10 the next ensuing sitting thereof the (Defendant) Appellant's motion by way of appeal from the decision or verdict of the jury of the Eastern Judicial District, made, given, pronounced or rendered herein on the 5th day of December, A.D. 1929, at the trial of this action upon the questions submitted to them for determination, and the judgment entered thereon.

The nature of the motion intended to be made is that the said judgment be set aside and discharged and that judgment be entered in favour of the (Defendant) Appellant with costs, and in the event of the said motion not being allowed, for a new trial of the action on
20 the following grounds, amongst others:

1. That the said verdict and the judgment entered thereon was wrong and against law, evidence and the weight of evidence.
2. That there was no evidence to support the said verdict and judgment.
3. The evidence does not support the findings of the jury as set forth in their answers to questions 1 and 2.
4. That the uncontradicted evidence establishes that the defendant kept the brakes and braking equipment on its bus in proper repair, and that up to the time of the accident in question the said brakes and
30 equipment were in good and proper repair, and the jury should have so found.
5. That the uncontradicted evidence establishes that the defendant employed a regular, reasonable and sufficient system of inspection of the brakes and braking equipment on its bus, and the jury should have so found.
6. The jury should have found, as the uncontradicted evidence disclosed, that the accident in question was due solely to a latent defect in the brakes or braking equipment, which was not discoverable on any reasonable system of inspection.
- 40 7. That the verdict was one which the jury, viewing the whole evidence reasonably, could not properly find.
8. That the verdict of the jury in finding the defendant guilty of negligence herein was perverse.

9. That the jury erred in finding the Defendant guilty of negligence in not having an adequate system of inspection of its brakes and braking equipment, such a finding being in respect of a matter not charged in the Statement of Claim.

10. On the grounds of misdirection and non-direction.

11. The learned trial Judge failed to properly direct the jury as to the duty of the Defendant in regard to inspection of its said brakes and braking equipment in that he should have directed the jury that the Defendant was under no greater obligation to inspect its said equipment than the ordinarily careful motor car owner or driver.

12. The learned trial Judge erred in instructing the jury that the onus was on the Defendant.

13. The learned trial Judge should have told the jury that if the accident was due to the breaking of a bolt or other equipment of the bus due to a latent defect not discoverable on a reasonable inspection they should find for the Defendant.

14. That the damages awarded by the jury are excessive.

Dated at Winnipeg, this 19th day of December, A.D. 1929.

MESSRS. GUY, CHAPPELL & TURNER,

Solicitors for the (Defendant) Appellant.

20

To the Registrar of the Court of Appeal.

*In the
Court of
Appeal.*

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cember 1929
—*contd.*

180

In the Court of Appeal

The Honourable The Chief Justice of Manitoba The Honourable C. P. Fullerton The Honourable R. M. Dennistoun The Honourable W. H. Trueman The Honourable H. A. Robson	}	Tuesday, the 13th day of May, 1930.
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*In the
Court of
Appeal.*

No. 34.
Formal
Judgment,
13th May
1930.

BETWEEN

10	JACOB GEEL, and WINNIPEG ELECTRIC COMPANY,	(Respondent) Plaintiff, (Appellant) Defendant.
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The appeal of the above named (appellant) defendant from the decision or verdict of the jury of the Eastern Judicial District made, given pronounced or rendered herein on the 5th day of December, 1929, at the trial of this action upon the questions submitted to them for determination, and the judgment entered thereon having come on before this Court on the 2nd day of April, 1930, in the presence of
 20 Counsel as well for the said (respondent) plaintiff as for the (appellant) defendant, whereupon, and upon reading the pleadings and proceedings, and upon hearing what was alleged by Counsel aforesaid, the judgment of this Court was reserved, and the said appeal having come on before this Court this day for judgment.

This Court did order and adjudge that the said appeal should be and the same was dismissed without costs.

Certified,

A. J. CHRISTIE,
Registrar.

GEEL v. WINNIPEG ELECTRIC CO.

Prendergast, C. J. M.

The action is for personal injuries sustained by the plaintiff when the auto-car in which he was a passenger was struck from behind by an auto-bus owned and operated by the defendants.

The jury, finding the defendants negligent "in not keeping brakes and braking equipment in proper repair and insufficient inspection of said brakes," assessed the damages at \$10,000.00, and from the judgment which was entered accordingly the defendants 10 now appeal.

The auto-car owned and operated by a friend of the plaintiff, and in which the latter was a passenger, had been proceeding westerly on the north side of Portage Avenue, and was then stopped at the intersection of Donald Street in obedience to the traffic signal which stands in the centre of the intersection.

The driver of the company's omnibus, which had been following the car at a distance of about ten feet, observing likewise that the traffic signal was set against him, also tried to stop by using the foot brake, but realized at once that it did not work as the pedal went 20 down under his foot to the floor of the vehicle without any resistance. He then swung to the right so as to avoid striking the car ahead, and almost at the same time tried to apply the emergency brake, which, on account of the broken down condition of the other brake, yielded only about half of its normal pressure. The consequence of the bus thus proceeding almost unchecked was that, at the same time that its right front wheel struck the curb, its left front one struck the back of the car in which the plaintiff was a passenger, thereby injuring him.

These facts with respect to the collision, as testified to by Erhardt the driver of the auto-bus, are not controverted in any way. No 30 negligence is imputed to him, and it is common ground that the accident was wholly due to a failure of the brakes to work. The onus being thus twice cast upon the defendants—i.e., by the driver's evidence, as well as by section 62 of The Motor Vehicle Act, (Con. Am. 1924, cap. 131)—the question is whether they have discharged that onus.

Now, what evidence have the defendants offered of the condition of the braking mechanism at the time of and immediately after the accident, and of the cause which has or may have in reasonable probability caused it to break down?

40 Erhardt says that, immediately after the collision, he looked under the back end of his bus to see what was the matter, and then noticed a portion of a rod or something hanging down from the brakes. He also saw a small bolt lying near by on the pavement, but did not examine it or even pick it up, so that he could not know whether it was "broken," although he uses that expression manifestly in the sense that it had parted from the mechanism.

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Johnston, one of the defendant's mechanics, was on the scene with a service truck a few minutes after the accident, saw the bus with a rod hanging down behind, and towed it to the Company's garage, where he noticed that a bolt or brake pin was missing, and put a new one in. He also said that he found no part of the missing pin in the rod with which it had been connected.

We next have the evidence of Holmes, the defendants' superintendent of bus and brake equipment. He stated how the Company's system of periodical inspection is carried out and, having in hand an
10 illustrated instruction book issued by the makers of the bus and, with particular reference to page 50, pointed to the different parts of the brake mechanism and explained their relation to each other and how they function. The brake-pin, or brake-bolt, as he stated, is $1\frac{1}{4}$ by $\frac{3}{8}$ of an inch and is connected by a cotter-pin with one of the arms or rods of the foot brake leading from the brake equalizer to the rear of the bus, where the brakes are applied. The brake-pin never wears out and would last longer than the vehicle. It is not a moving part, it is stationary, the rod pulls on it but there is no movement to it and no friction at all so that it does not wear out. The dropping
20 off of the bolt would have the effect of lengthening the rod, which lessens primarily the application of the foot brake, and also of the emergency brake, as a consequence, as the two brakes are hooked together.

The evidence of Albert Colyer, one of the company's mechanics, only deals with the last inspection which he made of the bus on March 5, 1928, which was one month and a half before the accident.

But neither Holmes nor Colyer, as interesting as their testimonies may be with respect to the normal functioning of the braking apparatus of the bus, ever saw it since the accident, and consequently
30 know nothing of the condition of its several parts at that time.

So that all we have in respect to the condition of the braking apparatus at the time of and immediately after the accident, besides the evidence of the driver, which may be discarded as without importance, is that of Johnson, who, by the way, says that he knows "very little" about the kind of brakes on that bus, and this is the whole substance of it: that, after towing the bus to the garage, he found, first, the brake-pin missing; second, the end of a rod hanging down at the back; and third, that no part of the missing brake-pin was left in the rod with which it had been connected.

40 Nowhere can I find in the evidence, besides the foregoing, the least information as to the condition of the brake mechanism at the time.

The parties are agreed, as already stated, that the accident was due to a failure of the braking apparatus to work—i.e., to apply the proper pressing on the wheel-drums—and it is clear that it so failed because the brake-pin had dropped.

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But what caused the brake-pin to drop? We have no information whatsoever as to that, except the inconclusive statement by one witness that it is a piece that does not wear, and by another that he found no part of it in the end of the brake-arm, where it was connected.

The appellants were bound to satisfactorily explain to the jury the primary cause of the accident, which could only be that something was amiss in the braking machinery (including the brake-pin itself) or its supporting parts, possibly owing to some latent defect for which they were not responsible. Or, failing this, they had to show the impossibility of assigning a cause to the mishap, by establishing that each one of the parts which could in any way cause the brake-pin to drop was in proper order. But we do not even have the broad statement that everything, but for the absence of the pin, was in condition after the collision, nor even that the brakes functioned properly after a new pin was put in. The inference which might be drawn in this respect from the inspection made six weeks before cannot be given any weight in a case where evidence of the actual fact was in the appellant's possession.

In the leading case of Scott v. The London and St. Katharines Docks Co., 159 Eng. Rep. 665, Erle, C.J., said:

"There must be reasonable evidence of negligence. But where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care."

In his work on Negligence (4th ed., p. 135), Bevan, reviewing the cases, deals with the principal that where there is control, *res ipsa loquitur* in the absence of explanation, and refers to Ballard v. North British Ry., 1923, S.C. 43 (H.L.).

In Scottish Metropolitan Assurance Co. v. Canada Steamship Lines, 1930, C.S.C.R. 263, which applies specially here, it was held by Anglin, C.J.C., and Justices Rinfret, Lamont and Smith, that by merely establishing that there was in the material of the bolt a latent defect which was a probable cause of its breaking, the defendants did not discharge the burden of proving absence of negligence "unless the evidence also excluded other possible causes."

There is a certain duty on the part of counsel to cross-examine an adverse witness, and it is so that the learned counsel for the appellants did not question the defendants' witnesses on the condition of the brakes at the time of the collision. But these witnesses were not adverse on this particular point upon which they had not touched in their examination in chief, and the learned counsel quite properly and wisely refrained from bringing out matter which was necessary for the appellant's defence and they had not themselves dealt with.

Neither on this ground nor any other, as the appellants peculiarly possessed and had full opportunity to establish the facts which could

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have served them if there were any, do I see why a new trial would be in order.

I have some doubt, and do not find it necessary to say, whether there was justification for the verdict of "insufficient inspection of the brakes," although that may possibly be a proper inference from the other part. But the finding of negligence "in not keeping brakes and braking equipment in proper order," which of course only means that the appellants did not rebut the statutory presumption against them in this respect, is justified by the evidence and sufficient to support the judgment.

I would dismiss the appeal with costs.

Fullerton, J. A.

This is an action to recover damages for injuries suffered by the plaintiff through the alleged negligence of the defendants in the operation of one of its auto buses. While the plaintiff was sitting in an automobile at the corner of Portage Avenue and Donald Street waiting for the signal to change, the defendants' bus, coming up behind, ran into the automobile and the plaintiff received a shock from which he has suffered very severely.

20 The accident was due solely to a bolt on the brake evener of the bus giving way and rendering the brakes useless.

The case was tried before Dysart, J., sitting with a jury. Two questions dealing with the liability of the defendants were submitted to the jury. The questions and answers are as follows:

"Q. Was there any negligence on the part of the defendant which caused the injury to the plaintiff? A. Yes.

"Q. If you find there was such negligence, in what particulars as alleged in the statement of claim did the negligence consist? A. Paragraph (f), in not keeping brakes and braking equipment in proper repair and insufficient inspection of said brakes."

30 Paragraph (f) of the particulars of negligence alleged in the Statement of Claim reads: "In not having said bus equipped with proper brakes adequate to control said bus and in not keeping said brakes in repair and proper condition."

Nowhere in the particulars of negligence is "insufficient inspection of said brakes" charged.

40 The jury also found that there was no negligence attributable to the driver in the operation of the car. They said, "We find that the driver did everything possible to avoid the accident, and we wish to exonerate him from any blame."

In making his case, the plaintiff proved the happening of the accident, the nature of the injuries suffered by him, and then read portions of the examination for discovery of Erhardt, the driver in

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charge of the bus when the accident happened. This discovery evidence shewed that the cause of the accident was the giving way of the bolt when the driver went to apply his brakes, which permitted the brake pedal to go through the floor board and rendered the brakes useless.

For the defence, evidence was given of inspections of the bus made from time to time. Holmes, the defendant's superintendent of bus and brake equipment, testified that the bus in question was inspected and greased every 750 miles, and every 5,000 miles taken
10 into the shop and thoroughly gone over by trained mechanics. Holmes had previously been employed with the Pickwick Stages, of Los Angeles, and with the Shore Line Motor Coach, of Chicago. In the former company, he testified, buses were greased every 1500 miles and inspected every 10,000 miles, and in the latter company every 1,000 and 7,500. He further testified that there was no wear on the bolt that gave way, and that in the ordinary course it would last longer than the bus itself. Colyer, a mechanic employed by the defendant company, inspected the brakes on the bus in question on
20 the 5th March previous to the accident which occurred on the 22nd of April, verifying the date and the inspection by the time sheets initialled by him that were produced. Erhardt, the driver of the bus, was called and he stated that on the day of the accident he had made four or five trips to Transcona and back and had no trouble with the brakes up to the moment of the accident.

The question is whether on this evidence the verdict of the jury can be upheld.

Two sections of The Motor Vehicle Act, cap. 131, Consol. Amend. 1924, are revelant to the enquiry.

Section 62. "When any loss, damage or injury, is caused to any
30 person by a motor vehicle, the onus of proof that such loss, damage or injury did not arise through the negligence or improper conduct of the owner or driver of the motor vehicle shall be upon the owner or driver of the motor vehicle."

Section 15. "Every motor vehicle shall be equipped with adequate brakes sufficient to control such motor vehicle at all times"

This latter provision does not, of course, create an absolute duty on the part of the owner of the motor vehicle, although the failure of the brakes to control the motor vehicle may afford *prima facie* evi-
40 dence of negligence. See *Phillips v. Britania*, 1923, 1 K.B. 539, at p. 548-9.

At common law, what was the nature of the duty owed by the defendants in the present case to the plaintiff? Was it an absolute duty to keep their bus in a safe and proper condition at the risk of being liable to the plaintiff for damages in case of accident? The authorities shew clearly that no such absolute duty was cast upon the defendants. In *Bevan on Negligence*, 4th ed., at p. 688, it is

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said: "In addition to accidents arising from the conduct of the driver or the circumstances of the horse, they may arise from defects in the vehicle. When this is shewn some circumstances of negligence must still be shewn. The mere occurrence of an accident on a highway is not enough. Thus, where it was shewn that an axle-tree had broken, Willes, J., held that negligence was not thereby to be attributed to the owner." Citing *Doyle v. Wragg*, 1 F. & F. 7.

In *Hutchins v. Maunder*, 37 T.L.R. 72, the facts were that the defendant purchased a motor car which was twelve years old. While
10 the car was being driven by a competent man along the highway, the end of the driving shaft became separated from the ball joint socket wherein the steering gear was centered, with the result that the driver lost control and ran into the plaintiff. Darling, J., found that the accident was caused through the imperfect condition of the steering gear due to wear before the defendant purchased the car. He held that to place the car on the highway in its then condition was a thing necessarily dangerous to persons who used the highway and it amounted to negligence. This decision is clearly wrong. It was disapproved in *Phillips v. Britannia*, *supra*, McCardie, J., saying at
20 p. 551: "If Darling, J., meant to hold that the defendant's duty in the case before him was absolute, then it would follow that if a man is driving his newly purchased car from the works of makers of high repute and an accident at once occurs through some latent fault in the interior mechanism whereby damage is caused to a third person, he must be held liable, even though he was wholly unaware of the defect and had taken every possible care to assure himself that the car was in perfect order." See also *Bevan on Negligence*, 4th ed., p. 688 note, and *Slattery v. Haley*, 52 O.L.R. 95 at p. 97.

The case of *Phillips v. Britannia*, *supra*, has, I think, an important
30 bearing on the case now under consideration.

There the defendant's servant was driving their motor lorry when one of the axles broke in two, a wheel came off, ran along the road and struck the plaintiff's van damaging it. The defendants, who had had the motor lorry for some time before the accident, sent it about seven weeks before the occurrence to the makers to be overhauled and repaired. The latter effected various repairs, replacing one worn axle with a new one, and rethreading and annealing the other, which was seen to be defective, although they did not consider it necessary to replace it with a new axle. The plaintiff's particulars
40 of claim were based on negligence by the defendant, but at the trial the plaintiff also relied upon other grounds, the main one being that the defendants had been guilty of a breach of Art. 2 Reg. 6 of the Motor Cars (Use and Construction) Order 1904 made under the Locomotives on Highways Act, 1896, and that the breach of the regulations caused the damages. Art. 2 Reg. 6 provided that "the motor car and all its fittings thereof shall be in such a condition as not to cause, or be likely to cause, danger to any person on the motor car or on the highway." The County Court Judge held that the

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defendants were not negligent, but that the manufacturers were negligent in not having replaced the defective axle with a new one, and he gave judgment for the plaintiff basing his decision on the defendant's breach of the above-mentioned article.

It was held:

1. That the mere breach of Art. 2, Reg. 6, did not of itself afford a cause of action to the plaintiff.

2. That the defendants did not at common law owe an absolute duty to the plaintiff that the lorry should be in safe and proper condition.

5. That the plaintiff, having failed to establish knowledge or negligence on the part of the defendants, was not entitled to recover.

McCardie, J., in delivering judgment, deals, at p. 550, with the contention of the plaintiff, that, even apart from the Motor Car Regulations, the defendant owed an absolute duty at common law to the plaintiff that the motor lorry should be in safe and proper condition and that, for breach of this alleged duty causing damage, the plaintiff was entitled to recover. After discussing the authorities, he says, at the foot of p. 551: "In my opinion the law is correctly stated in Halsbury, vol. 21, par. 699, namely: Driving with defective apparatus, if the defect might reasonable have been discovered, or with a horse improperly harnessed . . . are negligent acts, which render a defendant liable for injuries of which they are the effective cause." So, too, in Clerk and Lindsell on Torts, 7th ed., p. 556, the law is, I believe, correctly stated as follows: "Foremost among the classes of cases in which, in the absence of wilfulness, negligence is an essential ingredient in liability, come cases of injury caused by chattels which, having been set in motion by the defendant, have come into collision with the plaintiff or his property." See also Bevan on Negligence, 3rd ed., vol. 1, pp. 541 *et seq.* I need not analyze the decisions cited in the above text-books. It is interesting to observe the case of *The European* (10 P.D. 99). There the defendant's steamship, fitted with a patent steering gear, ran into a vessel at anchor in the Thames, owing to the steering gear suddenly not acting owing to some derangement. It was held by Butt, J., that the defendant was not liable unless negligence was proved. The judgment of that learned judge is clearly adverse to the plaintiff's contention in the present case. So, too, I think that the reasoning of the Privy Council, upon somewhat different facts, in *Moffat v. Bateman* (L.R. 3 P.C. 115), is against the present plaintiff. Again I venture to point out that, if the plaintiff's contention be correct, he would possess a higher right than is possessed by a passenger for reward against a person who undertakes to convey him: See *Hyman v. Nye*, 6 Q.B.D. 685."

No question of inspection is mentioned and there is nothing to suggest that, apart from the repairs made seven weeks before the accident, any inspection had ever been made.

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The appeal was allowed and judgment entered for the defendants. This judgment was affirmed by the Court of Appeal. See 1923, 2 K.B.D. 832.

Moffat v. Bateman, L.R. 3 P.C. 115. This was an action for negligence by the defendant in conveying the plaintiff, who was a decorator and a gardener in his service, to perform for him certain work. The defendant drove, and while on the road the kingbolt of the carriage broke, the horses bolted, the carriage was overturned and the plaintiff injured. It was held that in the absence of any
10 evidence of gross negligence on the part of the defendant the plaintiff was not entitled to recover. In order to prove negligence on the defendant, the plaintiff called witnesses who proved admissions made by the defendant to the effect that it was neglect on his part, that the buggy was not looked to and after the accident he had discovered the defective state of the kingbolt. Lord Chelmsford, who delivered the judgment of the Privy Council, dealing with this evidence, at p. 123, said: "With regard to the proof of negligence by the admission of the appellant that he had not examined the vehicle and discovered the defective state of the kingbolt, their Lordships are of opinion that
20 this amounts to no proof whatever of negligence. It appears that the carriage was regularly examined by a blacksmith every three months, and it is very unlikely that the appellant before going out for a drive or using the buggy would examine very strictly and carefully, what was its state with regard to bolts and fastenings, or that he could fairly be accused of negligence for not having done so."

The appeal was allowed.

At the very outside, it would be the duty of the defendants in the present case toward strangers to take reasonable care to see that the brakes of their bus were in working condition. Reasonable care is
30 the care that a reasonably prudent man would take. Everyone who owns a car knows that private owners of cars do not have periodical inspections of their cars made with a view to discovering structural defects that may cause accidents. If brakes are not holding properly, the owner has them adjusted, but no one would ever think of taking his car to a mechanic to have his brakes examined unless he detected something wrong in the way they were operating. No one suggests that the defect that caused the accident in this case is a usual one or one that should have been anticipated and guarded against. A careful search among the cases dealing with automobile accidents
40 fails to disclose any case in which an accident was due to a similar defect. Cars today are so perfectly made that it is the rarest thing in the world to hear of defects either in steering gear or brakes. If then it can be safely said that no reasonably careful man has inspections made for defects how can it be said that failure to make inspections amounts to negligence?

In considering this case, one must not lose sight of the fact that this is not an action by a passenger that the defendants for reward

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have undertaken to convey. The plaintiff is a stranger to the defendant and towards him they owe no greater duty to take care than does the private owner of a motor car. In the present case the plaintiff made his *prima facie* case by proving that his injuries were caused by the defendant's bus and this case was, I think, met by the defendant shewing that the accident was due to a defect in the brakes that could not reasonably have been discovered by the defendants. The cases of Doyle v. Wragg, Phillips v. Britannia, and Moffat v. Bateman, referred to above, appears to me to bear out this proposition. True it is that in Moffat v. Bateman, Lord Chelmsford in his judgment refers to the fact that the carriage in question there was regularly examined by a blacksmith every three months, but as I read the judgment this fact was merely incidental and was not a factor in the decision.

Whether I am right in this view or not, the fact is that evidence of periodical inspections of the bus in question here were proved by the defendants. It is true that the witness Holmes, while stating that this bus was inspected and greased every 750 miles, went on to say that between the inspection on the 5th of March and the accident on the 22nd of April it had gone in the vicinity of 1,000 miles, might be suggested that, as the defendants had themselves fixed 750 miles as the standard and had failed strictly to live up to it, the jury were justified in finding that the inspection was insufficient. The answer to this is that the defendants are a public service corporation operating their buses for the carriage of passengers to whom they owed the duty of using "all due, proper, and reasonable care, and the care required is a very high degree of care." Their inspections were made with a view to meeting the heavy responsibilities cast upon them as carriers of passengers. Clearly, if inspection be required at all in the present case it would be of much more limited nature. Colyer's evidence proves that the bus was inspected forty-eight days before the accident. The witnesses who were called by the defendants were not cross-examined on the question of inspection and the plaintiff called no evidence on the point. The jury have found "insufficient inspection of said brakes." The jury cannot set up an arbitrary standard of their own as to what constitutes sufficient inspection. They must decide according to the evidence in the light of the duty that the defendants owed to the plaintiff.

I am of the opinion that the finding of the jury in the present case is not supported by the evidence.

I would allow the appeal with costs and dismiss the action with costs.

Dennistoun, J.A., concurred with Fullerton, J.A.

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The plaintiff was injured on April 22, 1928, at about 9 p.m., when an automobile in which he was driving was struck with considerable force from behind by a six-ton motor bus operated by the defendant company. Both vehicles, with other motor traffic, were proceeding westerly on Portage Avenue, Winnipeg. As they approached the Donald Street intersection, the automatic signal light at that point turned against Portage Avenue traffic. The driver of the bus applied the foot brake. It went to the floor without engaging the brake. He
 10 tried to use the emergency brake, but found it useless. He then turned the bus to direct it towards the curb. In making this movement the collision with the plaintiff's car occurred. The evidence disclosed that a bolt, secured by a cotter pin, connecting a rear rod of the foot brake with one of the brake drums had fallen out, leaving the rod useless.

The action was tried by Dysart, J., with a jury. The jury found, in answers to questions, that there was negligence on the part of the defendant, and that it consisted in not keeping brakes and braking equipment in proper repair, and insufficient inspection. They
 20 assessed the damages at \$11,158. The jury accompanied their findings with the observation that the driver "did everything possible under the circumstances to avoid the accident." Judgment was entered for the amount found. The defendant appeals.

Sec. 62 of The Motor Vehicle Act, ch. 131, C.A. 1924, provides (*inter alia*) that "when any loss, damage or injury is caused to any person by a motor vehicle the onus of proof that such loss, damage or injury did not arise through the negligence or improper conduct of the owner or driver of the motor vehicle . . . shall be upon the owner or driver of the motor vehicle."

30 The bus has a White chassis (model 50-A), and should therefore have standard equipment, including emergency hand brake and service or foot brake. If either brake had been in efficient condition, the collision need not have taken place. Not only was the foot brake useless, but the defendant sought to establish that the efficiency of the emergency brake was also affected by the cause that totally disabled the foot brake. To account for his failure to avoid the accident by the use of the emergency brake, Erhardt (the driver) says that when he turned the bus towards the curb he applied the emergency brake, and that it did not hold. Several times in his evidence he
 40 speaks of both brakes as being useless. At the speed at which he was travelling at the time he saw the signal and tried to stop, he says that had the foot brake been working, the bus could have been stopped within four feet, and instantaneously by the emergency brake had it been efficient. Following the accident the bus was towed away, presumably due to the lack of brakes, since the evidence discloses that the injury to the bus from the collision was slight.

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It should here be pointed out that prior to the accident the bus was in daily use in round trips between Winnipeg and Transcona, and that on April 22 (the day of the accident) the bus made four or five return trips, and that at no time was there indication to the driver of defect in the foot brake. The last inspection of the chassis, including brakes, was on March 5. No evidence was given for the plaintiff that a later inspection should have been made, nor was the sufficiency of the inspection then made questioned in cross-examination.

To meet the onus put upon them by the statute, and by the maxim *res ipsa loquitur* (Ballard v. North British Railway Co. (1923) S.C. (H.L.) 45), the defendant had to show that there had been no negligence on their part, not only with respect to the foot brake, but no negligence on the part of the driver in failing to avoid the accident by not using the emergency brake. As he gave evidence that he tried to use it but without effect, and described it as useless, it was incumbent on the defendant to show that its condition, as well as that of the foot brake, was not attributable to their negligence.

This defence was made by Holmes, the defendant's superintendent of bus and brake equipment. His evidence is that the emergency brake is tied up with an equalizing bar to which the foot brake is connected, and that on the rear rod of the foot brake attached to the equalizer becoming disconnected through the breaking of the bolt, the pull of the emergency brake through the equalizer was reduced fifty per cent. It is not necessary to state his evidence at length. What it seeks to demonstrate is that the emergency brake is not an independent brake, as would commonly be supposed. He stated that there "is but one evener that hooks up the hand brake and the service brake, and that it does not matter which one is applied, you apply both." Asked what would happen on the collapse of the foot brake for the reason assigned, and the emergency brake being applied, he said:

"It would amount to about half of what it was originally supposed to do. That is, you would pull it on, but with the evener (equalizer) coming ahead at one end it would have the tendency of lengthening your rod out so you would only get probably fifty per cent braking efficiency."

Why an emergency brake should be subjected to this untoward result is not intelligible. Holmes explains that the emergency brake and the foot brake were fastened to the same equalizer in order that the emergency brake could use not only its own braking system but that of the foot brake as well. In other words, an emergency brake with greater braking power than the other, and provided, among other purposes, to take the place of the foot brake in event of the latter meeting with mishap, would by the same casualty that put the foot brake out of commission find its own efficiency reduced one half, through not having an independent equalizing bar.

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Diagrams of the chassis in book form issued by the White Company were put in evidence by the defendant. In my opinion they show both brakes to be independent brakes. Each has its own equalizer shaft and its own brake equalizer thereon. Each brake lever has its dual independent rod connections working directly through its own equalizer to the rear wheel drums.

Johnston, a mechanic in the defendant's service, saw the bus before it was taken from the place of the accident. He says that he then saw one of the foot brake rods, which leads from the equalizer to the rear of the bus, hanging down, with a pin or bolt missing. He replaced the bolt later. He indicated its position on a diagram of the chassis to be on one of the wheel drum arms. Whether the bolt that fell out was in the evener, as stated by Holmes, or at the point indicated by Johnston, does not affect Holmes' position. It makes clear, however, that the mishap was to the foot brake. Looking at the diagram, one can see that the dropping of the rod, whether at the foot brake equalizer or at the rod's end opposite the wheel drum, would necessarily affect to a degree the pull of the foot brake. The other wheel drum connection was presumably still intact. Why the foot brake should have registered a total disability is not apparent, nor was it explained.

The evidence of Holmes, instead of acquitting the defendant, adds to their difficulties. The view of a jury might well be that the braking conditions described by him showed an unsafe and negligent system, of which the defendant had previous knowledge. See *British Columbia Electric Railway Co. v. Loach*, (1916) 1 A.C. 719; and *Columbia Bithulitic, Ltd. v. British Columbia Electric Railway Co.*, (1917) 55 S.C.R. 1.

Looking at the course of the trial, it can be gathered that the jury's finding of negligence was based on the breaking of the bolt and default in inspection. A verdict so found cannot in my opinion be upheld. The evidence is uncontradicted that it was not to be apprehended that the bolt would prove insecure or that a better inspection than that made was required. See *Phillips v. Britannia Laundry* (1923) 1 K.B. 539 at p. 552. Holmes' evidence, on the other hand, gave the case a complexion which apparently was not considered by either counsel in all its bearings. If its importance had been realized it can be assumed that it would have found a place in the learned Judge's charge. The issue that it raises should be passed upon by a jury. A further aspect of his evidence, in addition to the point that it reveals a faulty and negligent braking system, a question upon which I express no opinion, is that it is in vital conflict with the diagrams—evidence that was put in by the defendant. Whether his evidence is correct or mistaken should be determined by relating it to the diagrams, and by expert evidence, if required. That so far has not been done. If it appears that he is wrong, then the plaintiff is entitled to have the jury pass upon the question whether the emergency brake

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was defective for a reason other than that assigned by him, and whether negligence is thereby shown. If the emergency brake was in good working order then the jury, instead of acquitting the driver could be invited to disbelieve his evidence that he applied the brake.

The trial, in my opinion, for the reasons indicated, is abortive. Reading the verdict in the light of the charge, there is no finding on an essential branch of the case put forward by the defendant. The defendant needs a finding upon it in its favor, if it is to be exonerated from negligence, and is equally concerned with the plaintiff in having it dealt with by the jury. See rule 10 of The Court of Appeal Act, Ch. 43, R.S.M. 1913; and *Richards v. Lothian*, (1913) A.C. 263 at p. 274.

I would order a new trial. Costs of the appeal to be costs in the cause to the successful party in the new trial. Costs of the former trial to follow the result of the new trial.

Robson, J.A.

This is an appeal by defendants from a judgment of Dysart, J., upon the verdict of a jury, in favor of plaintiff for \$11,158.25, and alternatively a motion for a new trial on the ground of alleged non-direction.

The action is for damages for personal injuries sustained by the plaintiff when an automobile in which he was riding as a guest was struck from the rear by a motor bus of the defendants. The defendants are a transportation company on a large scale and operate a passenger motor bus line between Transcona and Winnipeg. Portage Avenue, Winnipeg, runs east and west. It is intersected by Donald Street, running practically at right angles to Portage Avenue. The scene of the accident in question was the north side of Portage Avenue immediately to the east of the Donald Street intersection. These are at that locality busy thoroughfares. There is an automatic stop and go signal in the centre of the intersection, changing at short intervals, and a police traffic constable is stationed there during heavy traffic periods. Immediately to the east of Donald Street and on the north side of Portage Avenue, business places run thus in order from Donald Street: United Cigar Store, Picardy's, Honey Dew restaurant, The Commodore Restaurant, The Capitol Theatre. The distance between the Capitol Theatre on Portage Avenue and the north-east corner of Donald and Portage is given at approximately 88 feet.

On the evening of Sunday, 22nd April, 1928, at about nine o'clock, the plaintiff had come from the Capitol Theatre and entered the Reo automobile of a friend, one Galsbeck, evidently to go home. The plaintiff was in the back seat. The Reo automobile proceeded a short space westerly towards the Donald Street intersection and stopped in a group of cars against which at the moment the signal

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was directed. While thus at rest, the Reo was struck from behind with considerable force by a motor bus of the defendants and plaintiff suffered injuries. His condition in time became very serious. He brought this action against defendants for damages, alleging negligence on the part of the defendants in a great many particulars. One of these was with regard to the brakes on the motor bus. Questions were put to the jury, and in answering they specified negligence on the part of the defendants causing the injury to plaintiff as follows: In not keeping brakes and braking equipment in proper repair and insufficient inspection of said brakes. The jury awarded plaintiff \$10,000 general and \$1,158.25 special damages.

The onus imposed by The Motor Vehicles Act, s. 63, on the defendants in favor of the plaintiff was to show that the injury "did not arise through the negligence or improper conduct of the owner or driver" of the bus. *Carter v. Van Camp*, 1930, S.C.R. 156, is a recent instance of the application of this usual statutory onus. The defendants are also faced with the familiar principle stated by Erle, C. J., in *Scott v. London and St. Katharines Dock Company*, 3 H. & C. 596, also the subject of recent application in *Ellor v. Selfridge*, 2046 T.L.R. 236, where it is quoted as follows:

"There must be reasonable evidence of negligence. But where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care."

The plaintiff called as witnesses certain occupants of the Galsbeck car and bystanders and medical men. The plaintiff also introduced as evidence part of the examination on discovery of Erhardt, the driver of the defendants' motor bus. This latter was the only testimony dealing with the bus mechanism adduced by plaintiff. The other witnesses on that phase were called by defendants and were Erhardt, Holmes, a bus and brake superintendent, Colyer, a mechanic, and Johnston, also a mechanic.

In the portion of the Erhardt examination introduced by plaintiff, Erhardt said the bus was of the "White" make and was about four or five years old; that defendant had had it since late in 1925; that they bought it from a private individual in Winnipeg and used it about half time; that at the time of the accident he (Erhardt) was on his regular route between Winnipeg and Transcona and was just on his way from Transcona to the Winnipeg terminal on Hargrave Street; that the bus was a twenty-five passenger one, but that he had only one passenger at the time. The bus was gas propelled, and weighed, Erhardt thought, between five and six tons. He said he had been proceeding along Portage Avenue at about twelve or fifteen miles an hour; that that was his usual speed and he couldn't go any faster in that traffic; that he was about to stop for the intersection

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when something gave way and the brake was then ineffective, hence the collision. This was attributed to the giving way of a small bolt or pin in the braking appliances, but whether it was the breaking of the bolt or its loss from its position, is not clear. To quote from Erhardt's examination:

"Q. When you came up to the Capitol Theatre, did you swing over to the curb to the north—to the north curb on Portage? A. I didn't swing over into the north curb until I noticed the light change, and I went to apply my brakes to stop myself as the cars in front 10 were stopped.

"Q. Whereabouts were you at that time; west of the Capitol? A. Oh, yes, just a trifle west of it.

"Q. You would be in front of the Commodore? A. Yes, about that.

"Q. At that time you swung over to the curb? A. To slow up as the light changed; there were cars in front of me.

"Q. Do you remember how close you got to the curb? A. I hit the curb with my right front wheel.

"Q. Why did you do that? A. As I went to stop, and the light 20 changed, in applying my brakes it seems as though all of a sudden something broke at the same time, I don't know what it was, and the brake pedal went right through the floor board. I realized something had gone wrong. I couldn't go straight ahead because there were two cars alongside one another, directly in front, so I hit for the curb to bring the car to a stop. As I hit the curb with my right front wheel I hit the rear fender of the Reo car with my left front wheel, just with the fender, bending the fenders down on both cars, on mine and also the Reo.

"Q. And that was the automobile the plaintiff was sitting in? 30 A. Yes.

"Q. Well then, the cause of the accident was the trouble with the brake? A. The little bolt. It is in the brake evener on the brake rods. I call it the brake mechanism. I don't know whether it was in the brake evener or the rod itself; it broke as I applied the brakes, letting my brake pedal go right through the floor board with no pressure on the brake.

"Q. This is the mechanism that is connected with the pedal? A. Yes.

"Q. Didn't you have an emergency brake on? A. The emergency 40 and the pedal brake of that car are on the one brake evener.

"Q. Did you try to use the emergency? A. I did put it on; as soon as I hit the curb I put the emergency on.

"Q. And that didn't hold up? A. It held it up but not enough to stop me in time.

"Q. To avoid a crash with the automobile? A. With the curb and the automobile at the same moment.

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“Q. Did you find this bolt that had broken? A. I saw it lying on the pavement afterwards.

“Q. You didn’t take care of it? A. No, I didn’t. That is, I saw a bolt lying, I can’t say it was the bolt out of my car.

“Q. You don’t know where that is? A. No.

“Q. At any rate the bolt came out and disconnected the mechanism so that the brake wouldn’t work at that time? A. Yes.

“Q. You didn’t stop from the time you left the corner of Main and Portage until you got up to Donald Street? A. No.

10 “Q. How fast were you running at any time on that stretch?
A. Not over fifteen, because it was heavy traffic that night on the street.

“Q. How far were you from the automobile when the connection broke on the foot brake? A. About fifteen feet.

“Q. That would be all? A. It may have been a foot or two either way, more or less, but about that.

“Q. And it was after the connection broke that you swung your car over so that the wheel came in contact with the curb? A. Yes.

20 “Q. Putting it another way, the connection with your brake was severed before you swung your car over so that your wheel came in contact with the curb? A. Yes, it was after the bolt broke I realized the brakes were useless.

“Q. So, whether it was 15 or 150 feet, the connection on your brake was severed before your wheel came over to the curb and scraped along the curb? A. You mean that I was travelling alongside the curb at the time?

30 “Q. I mean, isn’t this a fact, that no matter how far you were away from these cars when the connection was severed, before you came over to the curb so that your wheel scraped along the curb, the connection had been severed? A. Yes, it had been severed before that.”

The defendants called witnesses in defence. Johnston, a mechanic, described taking the car over from Erhardt after the accident and replacing the lost brake pin. He described the brake pin for that position as a round pin an inch and a quarter long and about three-eighths in diameter fastened in with a cotter-pin, a split pin; he said there was no part of the brake pin left in the rod; that the pin runs straight across parallel to the ground, with the head on one end and a hole through the other through which the split pin goes.
40 Erhardt was called but said he had nothing to do with construction, repair or inspection, and his evidence in the defence case was, subject to minor differences, similar to that given on discovery. This leaves for consideration the evidence of Holmes, defendants’ superintendent of bus and brake equipment, and Colyer, a mechanic, who did greasing

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and inspection. Holmes said the defendant had forty-nine buses and that no other car than the White in their service had that type of braking machinery; that the braking equipment on the White bus was the standard equipment of the White chassis. He said there was the emergency brake and the foot (or service) brake; that the service brake ordinarily is hooked up so that it will not quite skid the wheels; if they are hooked up properly the emergency will ordinarily lock both rear wheels; that the emergency brake might stop you just a trifle quicker than the other one would on a dry street; that there is
 10 in connection with the braking equipment an evener or equalizer, being a bar about twelve inches long, to make the brakes come on evenly, so that one will not come on ahead of the other; that it has three points on it; that the pull rod from the pedal comes back and hooks to the centre of the twelve-inch bar on each side of the centre; that on each end they are hooked up direct with the brakes, so that "when you pull your lever on it gives about the same pressure on each wheel;" this, he says, is for the service brakes. Being asked whether the service brake was in any way connected with the emergency brake, this witness replied that it was so connected, and that the idea of the
 20 emergency brake was to have it so that, for instance, if the foot brake (service brake) was all gerase or had been through mud and was not acting efficiently you would pull on the emergency brake and get double action, that is, on the service brake as well as on the hand brake; it would give more capacity of action.

It is possible that the explanation of the brake system on the White bus was not clear and not much assisted by the small catalogue diagrams that were filed. It was, however, clear on all hands that the presence of the particular bolt or pin was necessary to the use of the brake equipment and to the safe operation of the car in traffic.

30 The testimony of defence witnesses assumes the breaking of the pin. The defendant's argument was that the evidence shewed that the brake pin had broken from latent defect and further that such a break was not an occurrence to be anticipated by them.

The case of the breaking of a brake pin or bolt holding a brake rod in place being put to the witness Holmes by defendants' counsel, the following resulted:

"Q. Now, the result of a broken bolt—perhaps you can better explain it. What would the result be of the breaking of the bolt on that equaliser, as you have explained, on the driver's operation of the
 40 foot pedal? A. Your evener comes on like this, with a pin going through. It would stay on maybe, when he put on his pedal, it would hold for an instant and then his service brake would go down to the floor board.

"Q. It would go right down; there would be nothing to hold it?
 A. No.

"Q. When that happened and he pulled the emergency, that is, the hand brake, of what efficacy would that hand brake be? A. It

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would amount to about half of what it was originally supposed to do. That is, you would pull it on, but with the evener coming ahead at one end it would have the tendency of lengthening your rod out so you would only get probably fifty per cent braking efficiency."

On the question of durability of the brake pin, Holmes' evidence contains the following, to defendants' counsel:

"Q. Can you tell me in the ordinary course of things how long one of these brake pins—I think is the technical term, is it not? A. Yes.

"Q. How long one of those brake pins would last in a chassis or in
10 an automobile? A. In the average automobile a person would never know it was there. It would last longer than the automobile. It would never wear out.

"Q. Why would it never wear out? A. There is no particular wear on it. It is not a moving part. It is merely stationary. Your rod pulls on it, but there is no movement in it or no friction at all.

"Q. It is because it does not move that it would not wear? A. Exactly.

"Q. Does it move to any extent? A. None whatever.

"Q. It doesn't move to any extent? A. It does not move.

20 "Q. Either around or sideways? A. Either way at all. It is just merely stationary."

Defendants also through Holmes entered on the subject of inspection. Holmes gave evidence as to the practice of inspection followed both by the defendants and by concerns in the United States with whom he had been employed. The latter inspected, he said, much less frequently than did defendants, but it is to be noted that they were in climatic and probably road conditions different from those here. Holmes said that this White bus was inspected by defendants every 750 miles and greased thoroughly by two men, and
30 that every 5,000 miles it is pulled into the shop and thoroughly gone over by trained mechanics, mechanics trained for their particular job. He said the last inspection of this bus before the accident (22 April, 1928) was on 5 March, 1928, and that it was the full inspection. Holmes admitted that he did not do the work himself. It may be noticed that the witness Colyer who actually did part of the inspection of 5 March, 1928, and had a record sheet before him, thought it must have been just the light inspection. Defendants' counsel asked Holmes how many miles the bus operated subsequent to that inspection and before the accident. He answered, "In the neighborhood of
40 1,000 miles. I can't be positive of that. I know it did about 500 miles in the month of March and about 500 miles in the month of April." He said they had records of mileage.

The witness Colyer, a mechanic, knew the White bus; he had inspected it at different times, doing mostly brakes and rear-end transmission and all that. He could remember only with the aid of the inspection sheet which was shewn to him and which was without objection marked as Exhibit 12. He recognized his initials opposite

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certain parts of the form, one entry being opposite "brakes" and said he did the work thereon under headings including brakes and brake rods: (a) adjust brakes, reline if necessary; (b) equalize all rods; (c) examine all clevises and pins; (d) oil all joints, clevises and pins; (e) see that foot pedal works free.

He distinguishes the light inspection from the heavy inspection wherein they take everything down. As already remarked, he and Holmes differ apparently as to whether the inspection of March 5, 1928, was a light or heavy inspection. Colyer's evidence closed with 10 answers to the learned trial Judge as follows:

"Q. Witness, in this Exhibit 12, the parts you have initialled are with the initials 'A.C.' and those are yours? A. Yes.

"Q. 'Examine all clevises and pins.' Did you examine any pins on this occasion? A. Yes, we go over them all.

"Q. How do you examine a pin? A. You can tell if there is any lost motion, whether it is worn at all.

"Q. And that is what you do? A. Yes.

"Q. You just attempt to see if there was any wear in it? A. Yes.

"Q. If it is a pin that can't wear at all, what do you do? Some 20 pins are in places where they won't wear at all? A. Well, we do not bother about them. If there is any lost motion anywhere we generally check it up and see where it is.

"Q. But if it is a pin that won't wear you don't do anything with it? A. We just see it is all right, and has got a cotter pin in it."

Plaintiff called no evidence in rebuttal as to the brake question. The trial judge in his charge referred to section 15 of The Motor Vehicles Act, which states that every motor vehicle shall be equipped with adequate brakes sufficient to control such motor vehicles at all times, etc. He told the jury, in effect, that even with that section an 30 owner of a motor vehicle once adequately equipped with brakes will not be liable for the failure of the brakes unless it is through some negligence on his part. In short, Section 15, according to this, did not increase defendants' obligation. That matter can for the present purpose be accepted at that. Then the learned Judge said to the jury:

"The whole case comes down, to dispose of this branch of it, to whether or not there was negligence on the part of the defendant. In other words, the defendant must show that he was not negligent in any respect leading up to and causing this accident.

40 "Dealing with those brakes, was there sufficient inspection? As has been said to you, and very fairly, all these things must be viewed from a reasonable point of view. We must not hold people up to unusual standards of vigilance. It is what the ordinary reasonable and prudent man would do in the circumstances. That serves as a guide. What do you say about the breakage of that bolt in the mechanism? Should that have been discovered? Whether the bolt actually broke or not, or whether it merely fell out, we do not know, as it has not been

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stated. But is there anything in that occurrence which makes you think that a reasonable degree of care and inspection on the part of the company could have foreseen that event to happen? That is one thing for you to consider. If you think that the defendant company has not cleared itself upon that point, you may hold it negligent. If you think the defendant company has exhausted all reasonable precaution, you ought not to hold it responsible upon that."

Reference was made before as to cases in which there was discussion as to onus of proof in automobile accident actions. I have
10 already mentioned the late case of *Carter v. Van Camp (supra)*. I would apply the rule laid down in *Canadian Westinghouse v. C.P.R.*, (1925) S.C.R. 579, (mentioned in *Schonberner v. Barron*, (1927) 2 W.W.R. 417). That was a case of a shipper against a carrier for loss of goods destroyed in a railway accident. The carrier was by the contract to be exempt from liability if it shewed there was no negligence on its part. There was therefore an onus of proof on the respondent there (for which should be read the appellant here) in practically the same terms as those of *The Motor Vehicles Act*. Mr. Justice Duff, delivering the judgment of the majority of the
20 Court, said (p. 584): "We think it is of some importance to notice rather particularly this point touching the burden of proof. We think the last words of section 3, 'the burden of proving freedom from negligence shall be on the carrier,' cast upon the respondents the burden of proof in point of substantive law; that is to say, if, when all the evidence is in, the tribunal of fact has not been satisfied upon the point but is left in a state of real doubt as to negligence or no negligence (negligence here of course means negligence causing the damage in respect of which the claim is made) then the issue must be decided against the respondents. The respondents are of course
30 in a vastly more favorable position as touching knowledge and means of ascertaining facts bearing upon this issue than the appellants and that is a circumstance which may very materially affect the decision of the question whether on any given state of the evidence the respondents are entitled to ask the court to hold that the evidence produced is sufficient to support a conclusion that the accident was not due to a failure on the part of their servants to exercise proper care in relation to the sufficiency of the company's cars or equipment or the working of their railway."

Although *Canadian Westinghouse v. C.P.R.* was not an action of
40 simple tort, it was, as intimated, a case where there was an obligation on a carrier to prove freedom from negligence, and I use the language of Duff, J., under that head. He points out that the defendants there were not required to shew how the accident was brought about or to demonstrate "freedom from negligence." In that respect, this present case starts possibly more heavily against the defendants. But Mr. Justice Duff's measure of the obligation that attached to the defendant there is helpful. After mentioning their favorable position

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as to knowledge, he says: "It is sufficient if they produce evidence reasonably satisfying the tribunal of fact that all proper precautions have been taken in order to provide against risks which might reasonably be anticipated."

It seems to me that in the light of section 63 and the cases above referred to, the charge of the learned trial judge to the jury in this case put this matter before them very fairly.

The finding was that the defendants were negligent in not keeping brakes and braking equipment in proper repair and insufficient
10 inspection of said brakes. The injury was attributed to that negligence.

Defendants' latent defect theory was very forcibly presented to us, and evidently so also at the trial. If a latent defect producing the injury were established, it would probably exonerate the defendants. Unfortunately, perhaps for the defendants, the displaced pin, broken or whole, was not recovered. Erhardt, though he calls it a break, merely says "something broke. I don't know what it was." He thought he saw the pin on the street, but was not sure of it and did not pick up what he saw. Holmes gives long life to these brake pins
20 "in the average automobile," and he told why as above related. He put it as strongly as he could that there could be no breakage from use. It is on this evidence that the defendants say latent defect was unquestionably the cause. Put in another form, the defendants' contention is that such a collapse could not be anticipated and therefore there could be no negligence. Holmes' practical experience with that form of brake equipment in that type of chassis is left largely to inference; his language suggests that he was merely testifying from experience of brake pins in an average automobile. No one swore that there would be an absence of wear and tear on that
30 brake fastening in the heavy White bus used in that Winnipeg-Transcona service.

Defendants' system of inspection was described as stated. Clearly these inspections are to detect the effect of wear and tear. Colyer said that even on light inspections they at least see that any stationary pin is "all right and has got a cotter pin in it." So there is evidently something to watch in that connection; some risk to anticipate. The jury had heard defendants' witness, Holmes, say that the bus at the time of the accident, had gone approximately one thousand miles since inspection, as against their own prescribed seven hundred
40 and fifty miles. Defendants did not follow that up further and cannot complain if the jury thought an inspection was past due on 22nd April, 1928. I do not see how the jury could be expected to treat the latent defect theory as anything higher than one possible explanation. They could either reject Holmes' testimony as to the stability of the brake fastening or consider it inapplicable to the White bus. They could find a failure to inspect and therefrom could infer omission to observe and cure defects and conclude that that failure was the cause of the injury. *Evans v. Astley*, (1911) A.C.

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687, cited by Duff, J., in *Canadian Westinghouse v. C.P.R.* (*supra*).

In exercising their functions as the tribunal of fact, "the jurors are not bound to believe the evidence of any witness, and they are not bound to believe the whole of the evidence of any witness." Per Lord Blackburn in *Dublin, Wicklow and Wexford Ry. Co. v. Slattery*, 3 A.C. 1155, at 1201; applied, for example, in *British Columbia Electric Ry. Co. v. Dunphy*, 59 S.C.R. 263, and *Laporte v. C.P.R.*, 1924, S.C.R. 278.

It does not appear to me, therefore, that the jury went against
10 the evidence in finding, in effect, that the defendants had not satisfied them, as the tribunal of fact, that all proper precautions had been taken in order to provide against risks which might reasonably have been anticipated.

Although insufficient inspection is not charged in express language in the Statement of Claim, it is naturally involved in clause (f) of paragraph 5, to which the jury alluded in their finding: the matter of inspection was introduced by defendants in seeking to meet the onus on them.

The defendants, both at the trial and here, urged a distinction
20 between this and cases of injury to defendants' passengers, and contended that there was here a much lighter obligation: *Alliance Insurance Co. v. Winnipeg Electric Ry. Co.*, 31 M.R. 251, was referred to. I do not see how that point comes into this case. Plaintiff had a right to be on the street, and it was simply a question for the jury whether the defendants discharged the onus that was on them. Nor do I see any basis for complaint that the learned Judge did not in his charge advert to the distinction referred to. Inspection is only a part of care and may be necessary even against a stranger: *Kearney v. L.B. & S.C. Ry.*, 40 L.J.Q.B. 285.

30 There is still full force in the principle stated by Lord Herschell in *Metropolitan Railway Company v. Wright*, 11 A.C. 152, at 154: "The case was one within the province of a jury, and in my opinion the verdict ought not to be disturbed unless it was one which a jury, viewing the whole evidence, reasonably could not properly find." See per Lamont, J., in *Victory (R.M. of) v. Sask. Guar. & Fidelity Co. Ltd.*, (1928) S.C. 264, at 269.

At the hearing of this appeal, the objection was taken as raised
40 in the praecipe that the award of damages, \$10,000 general and \$1,158.25 special, was excessive, but this Court expressed the view as to that phase that if the plaintiff was entitled to recover at all, the verdict could not be interfered with on that ground. Plaintiff was 45 or 46 in April, 1928, and a married man with four young children; there is considerable evidence that he was in good health and active; he was a painter; he is described as a good worker; there is not much evidence as to his earnings, in 1920 he made about \$1,700; the wage rates per hour have not varied greatly. Plaintiff was not able to tell much in the witness box, owing to his physical condition. It seems

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that at the time of the accident he was in the rear seat and on the right side in the Galsbeck automobile. He was rising to adjust himself in the crowded auto when the collision happened and he was thrown back and got a blow on his head. His doctor called on plaintiff next day. The doctor testified that plaintiff was suffering greatly from pain in the head and neck and that his general appearance was very bad. Plaintiff had been entirely incapacitated ever since. Various physicians looked at the case, it being of an unusual nature. Ultimately paralysis agitans became manifest; there seems 10 to be professional agreement as to that, but pronounced disagreement as to whether it resulted from the blow which the plaintiff had received. The jury heard the medical men and were carefully directed by the learned trial Judge. It is evident from the amount awarded that they preferred the testimony of the medical experts who gave the opinion that the paralysis was the result of the blow. There was strong evidence the other way, but the jury could find as they did. On that basis, and in the light of plaintiff's age and position, it cannot be said that the figure was one that no twelve men could have reasonably awarded.

20 I would dismiss the appeal and motion for a new trial with costs.

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Between

JACOB GEEL (Plaintiff) Respondent,
 and
 WINNIPEG ELECTRIC COMPANY (Defendant) Appellant.

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 Appeal to the
 Supreme
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 Canada,
 27th May
 1930.

Take notice that Winnipeg Electric Company, the above named Defendant, hereby appeals to the Supreme Court of Canada from the judgment, decree, rule, order or decision, rendered given or pronounced in this cause by this Court on the 13th day of May, A.D. 1930, and entered
 10 herein whereby the appeal of the said Winnipeg Electric Company from the verdict of a jury of the Eastern Judicial District and the judgment directed to be entered thereon by Mr. Justice Dysart, and entered in the Court of King's Bench for the Province of Manitoba on the 14th day of December, A.D. 1929, was dismissed without costs.

Dated at the City of Winnipeg this 27th day of May, A.D. 1930.

GUY, CHAPPELL & TURNER,

Solicitors for Winnipeg Electric Company,
 (Defendant) Appellant.

To the above named Plaintiff Jacob Geel, and
 20 to Messrs. Chapman, Thornton & Chapman, his Solicitors.

-8-

Know all men by these presents that the Northern Assurance Company Limited is held and firmly bound unto Jacob Geel, of the City of Winnipeg, in the Province of Manitoba, painter, in the sum of twelve thousand, five hundred dollars (\$12,500,00) good and lawful money of Canada to be paid to the said Jacob Geel, his attorney executors, administrators or assigns, for which payment well and truly to be made we bind ourselves, our executors and assigns, firmly by these presents. Sealed with our seal, attested by the proper officers in that behalf this 17th day of June, A.D. 1930.

10 Whereas a certain action was brought in the Court of King's Bench for the Eastern Judicial District for the province of Manitoba by the said Jacob Geel, as plaintiff, against Winnipeg Electric Company, as defendant.

And whereas judgment was given in the said Court against the said Winnipeg Electric Company, who appealed from the said judgment to the Court of Appeal for Manitoba.

And whereas judgment was given in the said action in the said last mentioned Court on the 13th day of May, A.D. 1930.

20 And whereas Winnipeg Electric Company complains that, in giving the last mentioned judgment in the said action upon the said appeal, manifest error hath intervened, wherefore, the said Winnipeg Electric Company desires to appeal from the said judgment of the Court of Appeal for Manitoba to the Supreme Court of Canada

Now the condition of this obligation is such that if the said Winnipeg Electric Company shall effectually prosecute its said appeal and pay such judgment, costs and damages as may be awarded against it by the Supreme Court of Canada, then this obligation shall be void, otherwise to remain in full force and effect.

30 In witness whereof the colonial (Canada) seal of the Northern Assurance Company Limited is hereto affixed by Alexander Hurry and Charles Henry Mott, acting as attorneys of The Northern Assurance Company Limited under and by virtue of a power of attorney dated the 11th day of October, 1928.

Seal No. 649.

(sgd.) A. HURRY
(sgd.) CHAS. H. MOTT

*In the
Court of
Appeal.*

No. 37.

Bond
deposited as
security
for costs,
17th June
1930.

-0-

In the Court of Appeal for Manitoba

In Chambers

The Honourable C. P. Fullerton

BETWEEN

JACOB GEEL,
(Plaintiff) Respondent,
and

WINNIPEG ELECTRIC COMPANY,
(Defendant) Appellant.

*In the
Court of
Appeal.*

No. 38.
Order
approving
security,
23rd June
1930.

10 Upon the application of the above named appellant, and upon reading the consent of the solicitors for the respondent, and upon hearing what was alleged by counsel for the appellant,

It is ordered that the bond entered into the 17th day of June, A.D. 1930, in which the Northern Assurance Company Limited is obligor and the above named respondent is obligee, duly filed, as security that the appellant will effectually prosecute its appeal from the judgment of this Court pronounced the 13th day of May, A.D. 1930, and pay such judgment, costs and damages as may be awarded against it by the Supreme Court of Canada, be and the same is hereby
20 allowed as good and sufficient security herein.

And it is further ordered that all proceedings under the said judgment be and the same are hereby stayed until the determination of the said appeal.

Dated at the City of Winnipeg, this 23rd day of June, A.D. 1930.

CHARLES P. FULLERTON, J.A.

Consented to
CHAPMAN, THORNTON & CHAPMAN,
Solicitors for the Respondent.

~~10~~

In the Supreme Court of Canada

BETWEEN

JACOB GEEL,

(Plaintiff) Respondent,

and

WINNIPEG ELECTRIC COMPANY,

(Defendant) Appellant.

*In the
Supreme
Court of
Canada.*

No. 39.
Agreement
settling
Case,
28th July
1930.

The parties hereto agree that the following shall constitute and form the case on appeal herein.

10

PART I

1. Statement of Claim as amended.
2. Statement of Defence.
3. Praecipe on Appeal to the Court of Appeal for Manitoba.
4. Notice of Appeal to the Supreme Court of Canada.
5. Bond Deposited as Security for Costs of Appeal.
6. Order Approving Security.
7. Agreement Settling Case.
8. Certificate of the Registrar of the Court of Appeal for Manitoba.

20

PART II

1. Evidence given at the trial including Judge's charge to the jury and questions put to and answers made by the jury.

PART III

1. Exhibits filed at the trial.

PART IV

1. Formal judgment entered in the Court of King's Bench for Manitoba.
2. Formal judgment entered in the Court of Appeal for Manitoba.
3. Reasons for judgment of the Court of Appeal for Manitoba.
 - (a) Prendergast, C. J. M.
 - (b) Fullerton, J. A.
 - (c) Dennistoun, J. A.
 - (d) Trueman, J. A.
 - (e) Robson, J. A.

30

Dated at the City of Winnipeg this 28th day of July, A.D. 1930.

GUY CHAPPELL & TURNER,

Solicitors for the (Defendant) Appellant.

CHAPMAN, THORNTON & CHAPMAN,

Solicitors for the (Plaintiff) Respondent.

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In the Supreme Court of Canada

BETWEEN

WINNIPEG ELECTRIC COMPANY

(Defendant) Appellant

and

JACOB GEEL

(Plaintiff) Respondent

I, Frederick James Turner, hereby certify that I have personally compared the annexed print of the case in appeal to the Supreme Court with the originals, and the same is a true and correct reproduction of such originals.

F. J. TURNER

Solicitor for the Appellant.

*In the
Supreme
Court of
Canada.*

No. 40.
Certificate of
Appellant's
Solicitor.

In the Supreme Court of Canada

BETWEEN

JACOB GEEL,

(Plaintiff) Respondent,

and

WINNIPEG ELECTRIC COMPANY,

(Defendant) Appellant.

*In the
Supreme
Court of
Canada.*

No. 41.
Certificate of
Registrar of
Court of
Appeal.
28th August,
1930.

I, the undersigned Registrar of the Court of Appeal for the Province of Manitoba, do hereby certify that the foregoing printed document numbered from page 1 to page 204, inclusive, is the case stated and agreed upon by the parties hereto, pursuant to section 68 of the Supreme Court Act and the Rules of the Supreme Court of Canada in an Appeal to the said Supreme Court of Canada in the certain case pending in the said Court of Appeal between the said Winnipeg Electric Company, appellant and Jacob Geel, respondent.

And I do further certify that the said Winnipeg Electric Company has given proper security to the satisfaction of the Honourable Charles P. Fullerton, Judge of the Court of Appeal for Manitoba, as required by the 70th section of the Supreme Court Act, being a bond to the amount of \$12,500.00, a copy of which said bond may be found on page 8 of the annexed case and a copy of the order of the said the Honourable Charles P. Fullerton allowing the same may be found on page 9 of the annexed case.

And I do further certify that I have applied to the Judges of the Court of Appeal for Manitoba for their opinions or reasons for judgment in this case and the only reasons delivered to me by the said judges are those of the Honourable J. E. P. Prendergast, Chief Justice of Manitoba, the Honourable Charles P. Fullerton, the Honourable W. H. Trueman, and the Honourable H. A. Robson, Judges of Appeal.

And I do further certify that I am informed that the Honourable R. M. Dennistoun, Judge of Appeal, concurred in the judgment of the Honourable Charles P. Fullerton, allowing the defendant's (appellant's) appeal.

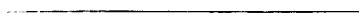
And I do further certify that I received a certificate from the registrar of the Court of King's Bench to the effect that no reasons for judgment had been delivered by the Trial Judge, namely, the Honourable Mr. Justice Dysart.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said Court of Appeal for the Province of Manitoba, this 28th day of August, A.D. 1930.

A. J. CHRISTIE,
Registrar.

No. 42.
Appellant's Factum.
(Separate Document.)

*In the
Supreme
Court of
Canada.*
—
No. 42.



No. 43.
Respondent's Factum.
(Separate Document.)

No. 43.



No. 44.

Formal Judgment.

In the Supreme Court of Canada.

Friday the 12th day of June, A.D. 1931.

Present :

THE HONOURABLE MR. JUSTICE LAMONT.

THE HONOURABLE MR. JUSTICE CANNON.

The Right Honourable Mr. Justice Duff, P.C., The Honourable Mr. Justice Rinfret, and The Honourable Mr. Justice Maclean, *ad hoc*,
 10 being absent, their judgments were announced by the Honourable Mr. Justice Newcombe, C.M.G., pursuant to the statute in that behalf.

Between

WINNIPEG ELECTRIC COMPANY (Defendant) Appellant,
 and
 JACOB GEEL (Plaintiff) Respondent.

The appeal of the above named Appellant from the judgment of the Court of Appeal for Manitoba pronounced in the above cause on the 13th day of May in the year of our Lord 1930 affirming the judgment of the
 20 Honourable Mr. Justice Dysart sitting with a Jury in the Court of King's Bench for Manitoba rendered in the said cause on the 5th day of December in the year of our Lord 1929 having come on to be heard before this Court on the 10th day of February in the year of our Lord 1931 in the presence of Counsel as well for the Appellant as the Respondent, whereupon, and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment, and the same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for Manitoba should be and the same was affirmed and
 30 that the said appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondent.

(Sgd.) J. F. SMELLIE,
 Registrar.

*In the
 Supreme
 Court of
 Canada.*

—
 No. 44.
 Formal
 Judgment,
 12th June
 1931.

No. 45.

Reasons for Judgment.

*In the
Supreme
Court of
Canada.*

(A) DUFF J. (concurring in by LAMONT J.): The facts are outlined in the judgment of Mr. Justice Robson in these passages:—

No. 45.
Reasons for
Judgment.
(A) Duff J.

10 “ On the evening of Sunday, 22nd April, 1928, at about nine
“ o'clock, the Plaintiff had come from the Capitol Theatre and
“ entered the Reo automobile of a friend, one Galsbeck, evidently
“ to go home. The Plaintiff was in the back seat. The Reo auto-
“ mobile proceeded a short space westerly towards the Donald
“ Street intersection and stopped in a group of cars against which
“ at the moment the signal was directed. While thus at rest, the
“ Reo was struck from behind with considerable force by a motor
“ bus of the Defendants and Plaintiff suffered injuries.

* * * * *

20 “ The Plaintiff called as witnesses certain occupants of the
“ Galsbeck car and bystanders and medical men. The Plaintiff
“ also introduced as evidence part of the examination on discovery
“ of Erhardt the driver of the Defendant's motor bus. This latter
“ was the only testimony dealing with the bus mechanism adduced
“ by Plaintiff. The other witnesses on that phase were called by
“ Defendants and were Erhardt, Holmes, a bus and brake super-
“ intendent, Colyer, a mechanic, and Johnston, also a mechanic.

30 “ In the portion of the Erhardt examination introduced by
“ Plaintiff, Erhardt said the bus was of the 'White' make and was
“ about four or five years old; that Defendant had had it since late
“ in 1925; that they bought it from a private individual in Winnipeg
“ and used it about half time; that at the time of the accident
“ he (Erhardt) was on his regular route between Winnipeg and
“ Transcona and was just on his way from Transcona to the Winnipeg
“ terminal on Hargrave Street; that the bus was a twenty-five
“ passenger one, but that he had only one passenger at the time.
“ The bus was gas propelled, and weighed, Erhardt thought, between
“ five and six tons. He said he had been proceeding along Portage
“ Avenue at about twelve or fifteen miles an hour; that that was
“ his usual speed and he couldn't go any faster in that traffic; that
“ he was about to stop for the intersection when something gave
“ way and the brake was then ineffective, hence the collision. This
“ was attributed to the giving way of a small bolt or pin in the
“ braking appliances, but whether it was the breaking of the bolt
40 “ or its loss from its position, is not clear.”

The defence of the Appellants in substance was, that the equipment of the motor bus was adequate, and that the collapse of the brake mechanism by reason of which the driver lost control of the vehicle, was due to the fracture of a brake pin, owing to a latent defect in the pin, not dis-

coverable by careful inspection; and, that the bus and its equipment had been subjected to a proper inspection, which had revealed nothing pointing to any deficiency in the machinery. The trial judge directed the jury thus:—

10 “ So I repeat, this action is based upon negligence. One thing
 “ is clear; there was no negligence on the part of the Plaintiff
 “ himself. There was nothing that he did that was in violation of
 “ any duty towards the Defendant, and there was nothing that he
 “ ought to have done in the circumstances. That narrows the field
 “ of inquiry down to the question, which I have already mentioned.
 “ ‘ Was there any breach of duty on the part of the Defendant
 “ which caused the injury to the Plaintiff ’.”

We have in this province for our guidance a Motor Vehicle Act, section 62 of which states:—

20 “ ‘ When any loss, damage or injury is caused to any person
 “ by a motor vehicle, the onus of proof that such loss, damage or
 “ injury did not arise through the negligence or improper conduct
 “ of the owner or driver of the motor vehicle . . . shall be upon
 “ the owner or driver of the motor vehicle.’ In other words, by
 “ reason of that enactment the onus is now upon the Defendant to
 “ show that it was not negligent, whereas normally in other cases it
 “ would be upon the Plaintiff to show that the Defendant was
 “ negligent. The result of that is that if the evidence is evenly
 “ balanced both ways the Defendant has not shown that there was
 “ no negligence, and having failed in that, it could be held liable
 “ for negligence or a breach of duty, because the duty on the
 “ Defendant is to free itself from the imputation of negligence. In
 “ doing that, the Defendant has not to carry it to any unreasonable
 “ extremes; it is just a mere preponderance in the balancing of the
 “ evidence. If the weight is with the Defendant, it should have the
 “ benefit.”

The verdict of the jury was given in answer to specific questions which with the answers were these:—

40 “ (1) Was there any negligence on the part of the Defendant
 “ which caused the injury to the Plaintiff?—A. Yes. .
 “ (2) If you find there was such negligence, in what particulars
 “ as alleged in the statement of claim did that negligence consist?
 “ A. Paragraph (f), In not keeping brakes and braking equipment
 “ in proper repair, and insufficient inspection of said brakes.
 “ (3) If you find such negligence, at what do you assess the
 “ damages of the Plaintiff?—A. Ten thousand Dollars (\$10,000.00)
 “ plus expenses as agreed to by counsel.”

I have no doubt that the learned trial Judge was right in directing the jury as he did, that by force of the statute cited, the Plaintiff, having proved that he had suffered injuries caused by a motor vehicle owned by

the Appellants and driven by their servant, was entitled to recover reparation from the Appellants unless they established that these injuries "did not arise through the negligence or improper conduct" of the Appellants or their driver. The statute creates, as against the owners and drivers of motor vehicles, in the conditions therein laid down, a rebuttable presumption of negligence. The onus of disproving negligence remains throughout the proceedings. If, at the conclusion of the evidence, it is too meagre or too evenly balanced to enable the tribunal to determine this issue, as a question of fact, then, by force of the statute, the Plaintiff
10 is entitled to succeed.

This does not mean of course that the Defendants "must demonstrate their case." They must give reasonable evidence in rebuttal of the legal presumption against them, and the evidence must be such as to satisfy the judicial conscience of the tribunal of fact. Nor does it mean that it is necessarily, in all cases, incumbent upon the owner or driver, against whom the statute is invoked, to adduce evidence, showing precisely how, through the agency of the motor bus, "the loss, damage or injury" was brought about, the circumstances may be such that the proper course, or, indeed, the only course open to the Defendants, is to
20 prove affirmatively that the duty cast upon them by law to exercise proper care in order to avoid such "loss, damage or injury" was duly discharged. The sufficiency of the explanations advanced will be considered by the tribunal in light of the opportunities of knowledge possessed by the parties respectively, and due consideration will be given to care or absence of care in respect of the preservation and production of available material evidence.

I do not enter upon a discussion of facts. Sufficient is said in the judgment of Mr. Justice Robson, to show that on the evidence, a finding by the jury that the Appellants had not acquitted themselves of the
30 onus cast upon them, could not, as the law governing such matters stands, be set aside by an Appellate Court as a perverse or unreasonable verdict.

As to the form of the verdict, the finding of the jury in answer to the first question is really conclusive. The answer to the second question could only be regarded as material, if it tended to show that, in answering the first question, the jury had been misled into error. For the reasons given by Mr. Justice Robson, that is, I think, a proposition which cannot be maintained. But I think it should be noticed, perhaps, that the learned trial Judge, while his charge to the jury left nothing to be desired in point of fairness, went beyond what was demanded of him in requiring
40 the jury to specify the negligence of the Appellants. In saying this, it must be added, that counsel for the Plaintiff, as well as counsel for the Defendants, proceeded from the beginning of the action, in their pleadings and down to the end of the trial, upon the assumption that notwithstanding the statute, it was the duty of the Respondent to give particulars of negligence, and to establish the existence of negligence as particularised. In truth, it is not incumbent upon the Plaintiff, proceeding under the statute, to charge negligence in terms; for the reason

*In the
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No. 45.
Reasons for
Judgment.
(A) Duff J.
—continued.

that the law presumes negligence in his favour, and the burden of rebutting the presumption lies upon the Defendant. Marginal Rule, 334, ch. 46. R.S.M. 1913 reads thus :—

“ Neither party need in any pleading allege any matter of fact which the law presumes in its favour, or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied.”

The appeal should be dismissed with costs.

(B) MACLEAN J. : The appeal should be dismissed with costs, 10 for the reasons stated by Mr. Justice Cannon, in whose judgment I concur.

(c) CANNON J. (concurrent in by RINFRET J. and MACLEAN J. *ad hoc*) :

The Respondent sued the Appellant Company to recover damages for injuries suffered by him, on or about the 22nd day of April 1928, by reason of a collision between a bus operated by the Appellant and an automobile in which the Respondent was driving. The version of the accident, as given by the driver of the bus, was adopted by both parties as follows :—

20 “ Q. Well, then, the cause of the accident was the trouble with
“ the brake ?—A. The little bolt, it is in the brake evener on the
“ brake rods, I call it the brake mechanism ; I don’t know whether
“ it was in the brake evener or the rod itself ; it broke as I applied
“ the brakes, letting my brake pedal go right through the floor
“ board with no pressure on the brake.

“ Q. This is the mechanism that is connected with the pedal ?—
“ A. Yes.

“ Q. Didn’t you have an emergency brake on ?—A. The
“ emergency and the pedal brake of that car are on the one brake
“ evener.

30 “ Q. Did you try to use the emergency ?—A. I did put it on
“ as soon as I hit for the curb I put the emergency on.

“ Q. And that didn’t hold up ?—A. It held it up but not enough
“ to stop me in time.”

The Respondent’s solicitor, before the case went to the jury, insisted that the jury should be left free to return a general verdict, because, in this case, the onus being on the Defendant to clear itself entirely, if the latter did not do so, the jury might find in a general way that the Appellant was guilty of negligence. The Judge however asked the jury to answer certain questions, to which they did as follows :—

40 “ 1. Was there any negligence on the part of the Defendant
“ which caused the injury to the Plaintiff ?—A. Yes.

“ 2. If you find there was such negligence, in what particulars
“ as alleged in the Statement of Claim did that negligence consist ?—
“ A. Paragraph (f)—in not keeping brakes and braking equipment
“ in proper repair and insufficient inspection of said brakes.”

*In the
Supreme
Court of
Canada.*

No. 45.
Reasons for
Judgment.
(A) Duff J.
—continued.

(B) Maclean J.

(c) Cannon J.
(concurrent in
by Rinfret
and Maclean
JJ.)

Thereupon judgment was entered for the Respondent for \$11,158.25 and costs.

The Defendant appealed from this judgment and verdict to the Court of Appeal for Manitoba, which dismissed the appeal without costs, dismissal of the appeal being favoured by Prendergast C.J.M. and Robson J.A., while Fullerton and Dennistoun J.J.A., would have allowed the appeal; Trueman, J.A., held that the verdict and judgment could not be upheld, and favoured a new trial.

The Appellant alleges the following reasons to support the appeal :—

10 “ 1. There was no negligence on the part of the Defendant, and the verdict and judgment are not supported by the evidence.

“ 2. The learned trial Judge failed to properly or sufficiently direct the jury as to the duty of the Defendant to keep brakes and braking equipment in repair and proper condition, and as to inspection thereof, and should have told the jury the Defendant was under no higher duty to the Plaintiff than the ordinary careful motor car owner or driver.

20 “ 3. The learned trial Judge should have instructed the jury that, inasmuch as the evidence submitted established the cause of the accident, the question of onus as a determining factor of the liability did not arise.

“ 4. The Court of Appeal having differed in opinion, the majority in favour of the Appellant should have allowed the appeal and set aside the verdict and judgment, failing which a new trial of the action should have been ordered.

“ 5. The damages awarded by the jury were excessive.”

The learned counsel for the Appellant gave up the branch of the appeal concerning the quantum of damages, and very ably gave reasons why the verdict of the jury should be set aside as contrary to the evidence.

30 He also acknowledged the onus imposed upon the Appellant by the Motor Vehicle Act at the time in force in Manitoba, cap. 131, 1924 Consolidated Amendments, section 62, which provides :—

40 “ 62. When any loss, damage or injury is caused to any person by a motor vehicle the onus of proof that such loss, damage or injury did not arise through the negligence or improper conduct of the owner or driver of the motor vehicle, and that the same had not been operated at a rate of speed greater than was reasonable and proper, having regard to the traffic and use of the highway or place where the accident happened, or so as to endanger or be likely to endanger the life or limb of any person or the safety of any property, shall be upon the owner or driver of the motor vehicle.”

Section 15 of the same Act says :—

“ Every motor vehicle shall be equipped with adequate brakes, sufficient to control such motor vehicle at all times, and with a windshield wiper, and also with suitable bell, gong, horn or other

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No. 45.

Reasons for
Judgment.
(c) Cannon J.
(concurring in
by Rinfret
and Maclean
JJ.)

—continued.

“ device which shall be sounded whenever it shall be reasonably
 “ necessary to notify pedestrians or others of the approach of any
 “ such vehicle.”

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 Supreme
 Court of
 Canada.*

According to the evidence of the Appellant's own witnesses, the bus
 in question was not provided with independent service and emergency
 brakes ; but both the emergency and the pedal brakes of that car were
 dependent on one simple brake evener, which was found to be out of
 commission when a certain bolt broke or left its place. The Appellant,
 in its attempt to exculpate itself, proved that the car had been inspected
 10 on the 5th of March 1928 by one Albert Colyer. It appears that, on the
 above date, a “ light ” inspection took place when all clevises and pins
 in the brakes and brake rods were supposed to be overhauled. The
 pin in question, according to the Appellant, was in a place where it would
 not wear at all, and this witness Colyer, who is supposed to have made
 the inspection, says :—

No. 45.
 Reasons for
 Judgment.
 (c) Cannon J.
 (concurring in
 by Rinfret
 and Maclean
 JJ.)
 —continued.

“ Q. How do you examine a pin ?—A. You can tell if there is
 “ any lost motion, whether it is worn at all.

“ Q. And that is what you do ?—A. Yes.

“ Q. You just attempt to see if there was any wear in it ?—

20 “ A. Yes.

“ Q. If it is a pin that can't wear at all, what do you do ? Some
 “ pins are in places where they won't wear at all ?—A. Well, we do
 “ not bother about them. If there is any lost motion anywhere we
 “ generally check it up and see where it is.

“ Q. But if it is a pin that won't wear you don't do anything
 “ with it ?—A. We just see it is all right, and has got a cotter pin
 “ in it.”

The accident took place on the 22nd April 1928, and the car had not
 been inspected at that time since the 5th March. It was also proven
 30 by the Appellant that the cars should be inspected after running 750 miles.
 Holmes, Appellant's superintendent of bus and brake equipment, said
 that this White bus was to be inspected every 750 miles and greased
 thoroughly by two men. He says however :—

“ Q. How many miles did the bus operate subsequent to that
 “ inspection and before the accident ?—A. In the neighbourhood of
 “ 1,000 miles. I can't be positive of that. I know it did about
 “ 500 miles in the month of March, and about 500 miles in the month
 “ of April.

40 “ Q. You have record of that ?—A. We have records of that,
 “ yes.”

The jury on this evidence could reasonably reach the conclusion
 that, at the time of the accident, an inspection was past due ; that if it
 had been made with thoroughness, the defect in the bolt in question
 might have been located and remedied. The Appellant acknowledges
 that they had to prove to the satisfaction of the jury that they had not

been negligent; or, to use the words of my brother Duff in *Canadian Westinghouse Co. v. C.P.R.* 1925, Can. S.C.R. 579, at p. 585, they had:—

“to produce evidence reasonably satisfying the tribunal of fact that all proper precautions had been taken in order to provide against risks which might reasonably be anticipated.”

The tribunal of fact in this case, the jury, thought there was negligence on the part of the Appellant, which consisted in not keeping brakes and braking equipment in proper repair, and insufficient inspection of said brakes.

10 A company using buses of a capacity of twenty-five persons for the conveyance of the public was bound to inspect minutely the braking apparatus, especially in view of the fact that this particular White car was not provided with two independent braking systems and that both service and emergency brakes were dependent entirely for their operation on a perfect state of maintenance and repair.

The legislature of Manitoba has laid down an imperative rule which is in very clear terms; we do not need in order to understand them to have recourse to the interpretation given by English or other tribunals to regulations which are not perhaps couched in the same terms. The
20 courts' discretion was restricted by the Legislature when it imposed the duty on the driver of having brakes sufficient “at all times” to control these dangerous machines. It was the duty of the Defendant to equip all its motor vehicles with adequate brake service to control such vehicles at all times. In order to be sure that the brakes were efficient and sufficient at all times, it may be necessary to inspect them daily or even several times a day. The only evidence brought forward by the Appellant was that they had done a “light” inspection of the car several weeks before the accident. The jury found this defence insufficient and took the trouble to say so in answering the question which requested particu-
30 lars of negligence. Although insufficient inspection did not appear in the particulars given by Respondent, the learned counsel for the Appellant very fairly stated that Appellant would not quibble on this point, as inspection was discussed by the Judge and was before the jury. The latter, in finding that the brakes and braking equipment were not kept in proper repair, added, as a necessary consequence, that the inspection of the brakes had been insufficient, in view of the statutory obligation to keep the braking apparatus sufficient, i.e., efficient at all times to control Appellant's motor bus.

For these reasons, I would dismiss the appeal with costs.

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—
No. 45.

Reasons for
Judgment.

(c) Cannon J.
(concurring in
by Rinfret
and Maclean
JJ.)

—continued.

Order in Council granting special leave to appeal to His Majesty in Council.

(L.S.)

At the Court at Buckingham Palace.

The 17th day of December, 1931.

Present :

THE KING'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT.

SIR FREDERICK PONSONBY.

SIR BOLTON EYRES-MONSELL.

10

MR. CHANCELLOR OF THE DUCHY OF LANCASTER.

Whereas there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 12th day of November 1931 in the words following, viz. :—

“ Whereas by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Winnipeg Electric Company in the matter of an Appeal from the Supreme Court of Canada between the Petitioners Appellants and Jacob Geel Respondent setting forth (among other matters) that the principal questions involved in the Appeal which are of some general importance in most of the Provinces of the Dominion are as to the effect of the provisions of the Manitoba Motor Vehicle Act 1924 as to the onus of proof and in particular as to whether such provisions increase the actual degree of care required apart from the statute from owners and drivers of motor vehicles and as to whether the section of the statute dealing with brake equipment creates an absolute liability to individual citizens in respect of any failure of brakes that is to say whether, as stated in the Judgment of three Judges of the Supreme Court :— ‘ The Courts' discretion was restricted by the Legislature when it imposed the duty on the driver of having brakes sufficient “ at all times ” to control these dangerous machines. It was the duty of the Defendant to equip all its motor vehicles with adequate brake service to control such vehicles at all times. In order to be sure that the brakes were efficient and sufficient at all times, it may be necessary to inspect them daily or even several times a day ’ : that the Action was brought by the Respondent against the Petitioners in the Court of King's Bench for Manitoba for damages

30

*In the
Privy
Council.*

No. 46.
Order in
Council
granting
special leave
to appeal to
His Majesty
in Council,
17th De-
cember 1931.

Order in Council granting special leave to appeal to His Majesty in Council.

(L.S.)

At the Court at Buckingham Palace.

The 17th day of December, 1931.

Present :

THE KING'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT.

SIR FREDERICK PONSONBY.

SIR BOLTON EYRES-MONSELL.

10

MR. CHANCELLOR OF THE DUCHY OF LANCASTER.

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 20 “ principal questions involved in the Appeal which are of some
 “ general importance in most of the Provinces of the Dominion are
 “ as to the effect of the provisions of the Manitoba Motor Vehicle
 “ Act 1924 as to the onus of proof and in particular as to whether
 “ such provisions increase the actual degree of care required apart
 “ from the statute from owners and drivers of motor vehicles and as
 “ to whether the section of the statute dealing with brake equip-
 “ ment creates an absolute liability to individual citizens in respect
 “ of any failure of brakes that is to say whether, as stated in the
 “ Judgment of three Judges of the Supreme Court :—‘ The Courts’
 30 “ ‘ discretion was restricted by the Legislature when it imposed the
 “ ‘ duty on the driver of having brakes sufficient “ at all times ”
 “ ‘ to control these dangerous machines. It was the duty of the
 “ ‘ Defendant to equip all its motor vehicles with adequate brake
 “ ‘ service to control such vehicles at all times. In order to be sure
 “ ‘ that the brakes were efficient and sufficient at all times, it may
 “ ‘ be necessary to inspect them daily or even several times a day’ :
 “ that the Action was brought by the Respondent against the
 “ Petitioners in the Court of King's Bench for Manitoba for damages

*In the
Privy
Council.*

No. 46.
 Order in
 Council
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 in Council,
 17th De-
 cember 1931.

“ for personal injuries : that immediately before the accident the
 “ automobile in which the Respondent was a passenger had stopped
 “ at a crossing owing to an adverse (automatic) traffic signal : that
 “ while stationary it was struck from behind by the Petitioners’
 “ motor-bus : that the driver of the bus stated that immediately
 “ before the accident his speed was from twelve to fifteen miles per
 “ hour : that at this speed he could ordinarily have stopped in four
 “ feet ; that on the day of the accident he had made four or five
 “ trips in the bus : that a short distance before arriving at the place
 10 “ of the accident the brakes had worked properly : and that the
 “ effect of the collision was to push the car ahead a distance of about
 “ two feet : that the questions submitted to the jury at the trial
 “ and the answers thereto were as follows :—‘ (1) Was there any
 “ ‘ negligence on the part of the Defendants which caused the injury
 “ ‘ to the Plaintiff ?—A. Yes. (2) If you find there was such
 “ ‘ negligence in what particulars as alleged in the statement of claim
 “ ‘ did that negligence consist ?—A. In not keeping brakes and
 “ ‘ braking equipment in proper repair and insufficient inspection
 “ ‘ of said brakes : (3) If you find such negligence at what do you
 20 “ ‘ assess the damages to the plaintiff ?—A. Ten thousand dollars
 “ ‘ (\$10,000.00), plus expenses as agreed to by Counsel ’ : that on
 “ this verdict judgment was entered for the Respondent for \$11,158
 “ on the 13th May 1930 : that it is submitted that the duty of the
 “ Petitioners was to exercise only the reasonable and proper care
 “ which would be due at common law from the ordinary prudent
 “ motor-car owner and driver : that the Petitioners were not under
 “ an absolute duty to the Respondent to have the brakes in proper
 “ order and were not responsible to the Respondent for a breakage
 “ or defect in such brakes : that the breakage was not one which
 30 “ reasonable precautions or inspections would have discovered or
 “ prevented : that the trial Judge ought to have directed the jury
 “ that inasmuch as the evidence established the cause of the accident
 “ the question of onus of proof did not arise and that the only evi-
 “ dence as to the proper frequency of inspection being as was
 “ shown in evidence the jury’s finding as to insufficient inspection
 “ cannot be sustained : that on the Petitioners’ Appeal to the Court
 “ of Appeal for Manitoba judgment was delivered on the 13th May
 “ 1930 : that Prendergast C.J.M. and Robson J.A. would have dis-
 “ missed the Appeal : that Trueman J.A. would have ordered a
 40 “ new trial : that Fullerton and Dennistoun JJ.A. would have
 “ allowed the Appeal : that in the result the Appeal was dismissed
 “ but without costs : that the Petitioners appealed to the Supreme
 “ Court of Canada (Duff, Rinfret, Lamont, Cannon and Maclean JJ.)
 “ and on the 12th June 1931 judgment was delivered dismissing the
 “ Appeal : that it is submitted that the answer of the jury to the
 “ second question shows that they had been led into error : that
 “ the Motor Vehicle Act does not on its true construction impose on

*In the
Privy
Council.*

No. 46.
Order in
Council
granting
special leave
to appeal to
His Majesty
in Council,
17th De-
cember 1931
—continued.

- “ motor owners or drivers a special degree of care or responsibility
 “ for equipment greater or other than that required at common law
 “ apart from the Act from the ordinary citizen : and that the Judg-
 “ ment of Cannon Rinfret and Maclean JJ. in the Supreme Court
 “ in effect construes the Act as imposing a practically absolute duty
 “ to have brakes operating adequately at all times : And humbly
 “ praying your Majesty in Council to order that the Petitioners
 “ shall have special leave to appeal from the Judgment of the Supreme
 “ Court dated the 12th June 1931 and that Your Majesty may be
 10 “ graciously pleased to make such further or other Order as to Your
 “ Majesty may appear proper :
 “ The Lords of the Committee in obedience to His late Majesty’s
 “ said Order in Council have taken the humble Petition into con-
 “ sideration and having heard Counsel in support thereof and the
 “ Appellants by their Counsel undertaking to pay the Respondent’s
 “ costs of the Appeal as between Solicitor and Client whatever may
 “ be its result and agreeing that the Orders as to costs made in the
 “ Courts below are not in any event to be disturbed Their Lordships
 “ do this day agree humbly to report to Your Majesty as their
 20 “ opinion that leave ought to be granted to the Petitioners to enter
 “ and prosecute their Appeal against the Judgment of the Supreme
 “ Court of Canada dated the 12th day of June 1931 upon depositing
 “ in the Registry of the Privy Council the sum of £400 as security
 “ for costs. And Their Lordships do further report to Your Majesty
 “ that the proper officer of the said Supreme Court ought to be
 “ directed to transmit to the Registrar of the Privy Council without
 “ delay an authenticated copy under seal of the Record proper to
 “ be laid before Your Majesty on the hearing of the Appeal upon
 “ payment by the Petitioners of the usual fees for the same.”
 30 His Majesty having taken the said Report into consideration was
 pleased by and with the advice of His Privy Council to approve thereof
 and to order as it is hereby ordered that the same be punctually observed
 obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Govern-
 ment of the Dominion of Canada for the time being and all other persons
 whom it may concern are to take notice and govern themselves accordingly.

M. P. A. HANKEY.

*In the
Privy
Council.*

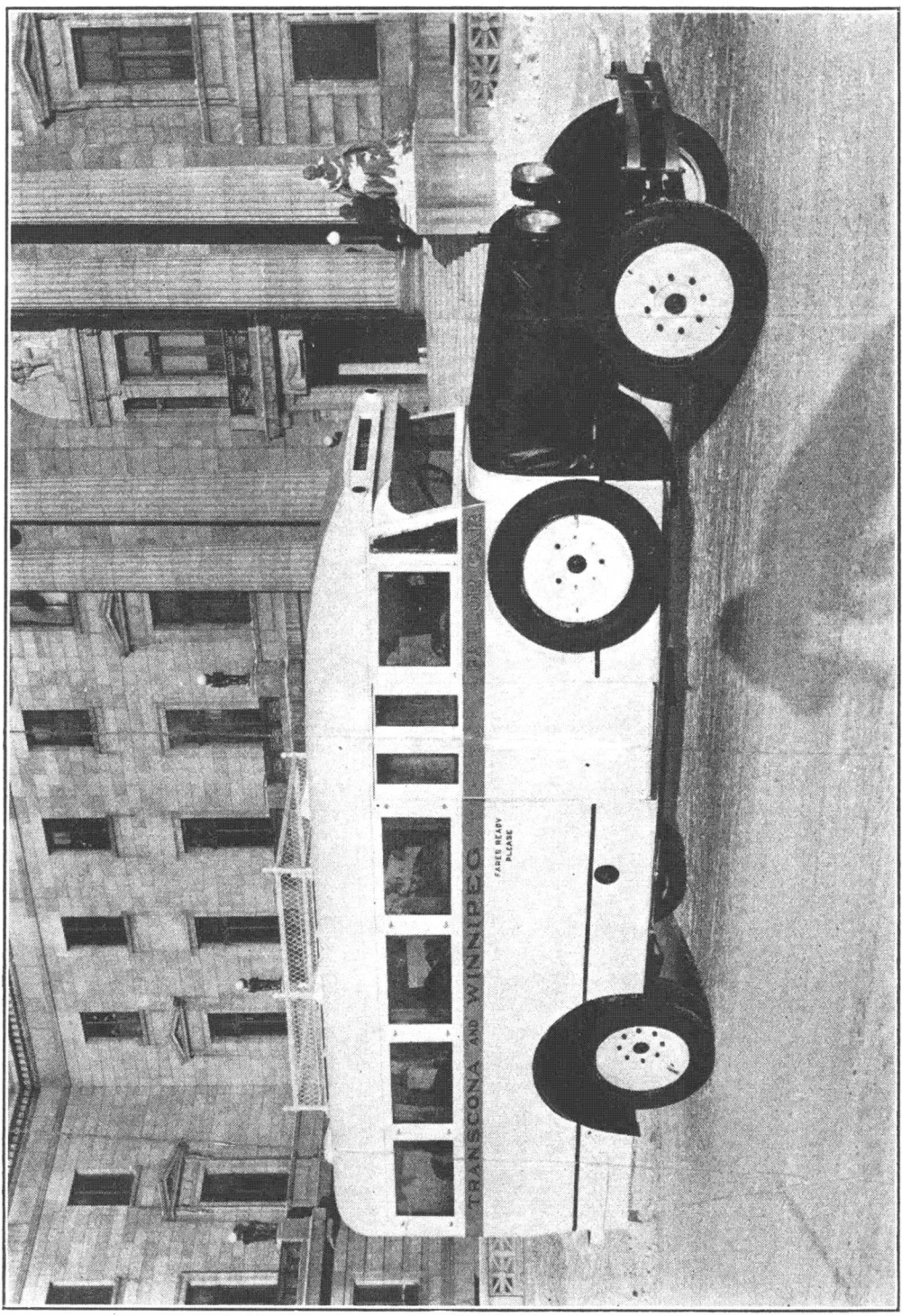
No. 46.

Order in
Council
granting
special leave
to appeal to
His Majesty
in Council,
17th De-
cember 1931.
—continued.

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PART III—EXHIBITS
EXHIBIT No. 9

Exhibits.
9.
Photograph
of White Bus.



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EXHIBIT No. 10

Exhibits.

10.
Diagram of
braking
equipment.

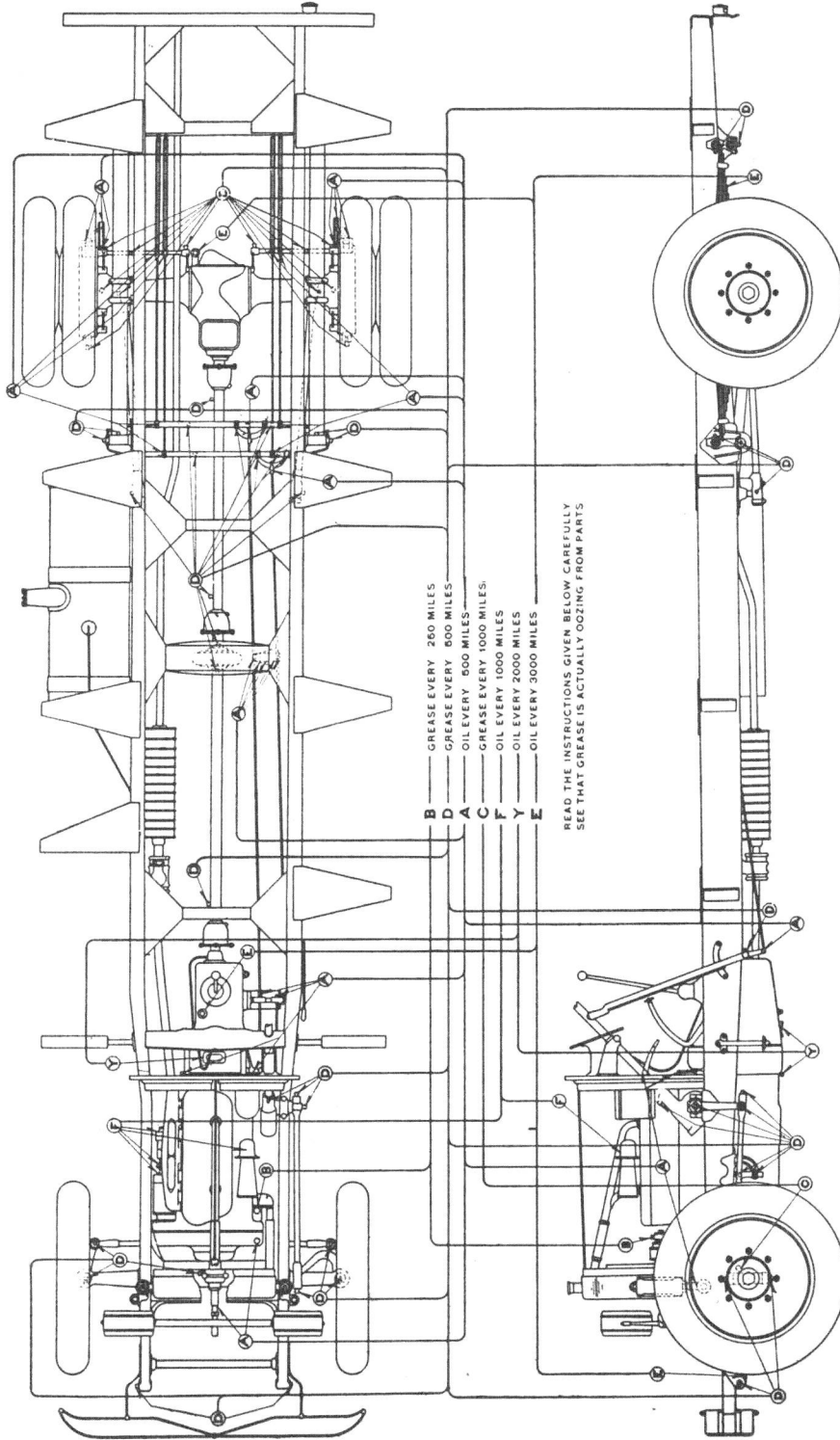
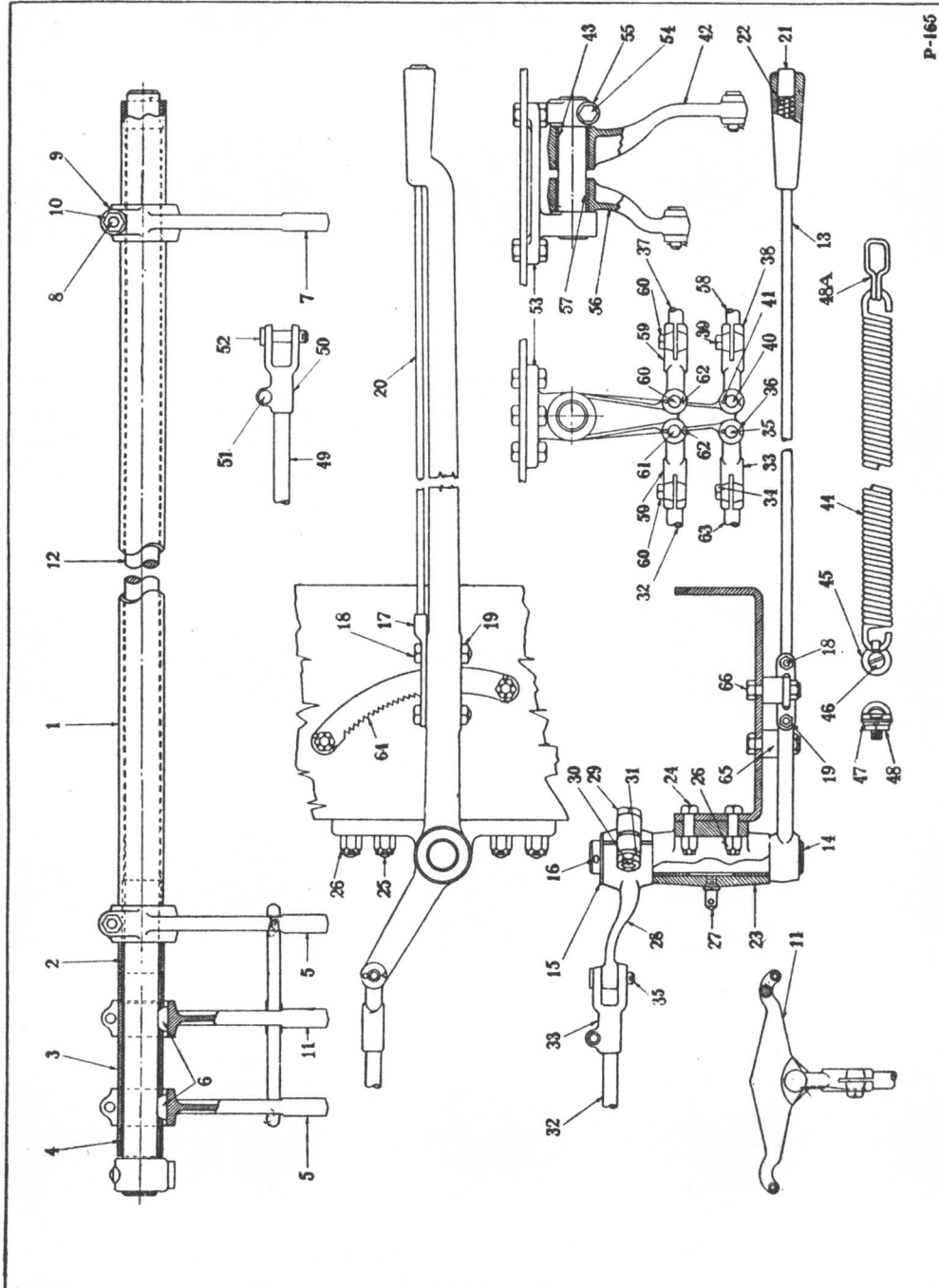


EXHIBIT No. 11

Exhibits.
11.
Diagram of
braking
equipment.



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Form 352

EXHIBIT NO. 12
WINNIPEG ELECTRIC COMPANY

Bus No. 1

Date heavy inspection.....

Date light inspection Mar. 5, 28

Mech.	Description	Mech.	Description
L. B.	1. Cooling System— a. Examine for leaks b. Check tie rod and hold-down bolts c. Examine water pump packing d. Check fan bearings e. Check fan belt f. Grease fan g. Examine all hose connections	A. C.	8. Brakes and Brake Rods— a. Adjust brakes, reline if necessary b. Equalize all rods c. Examine all clevises and pins d. Oil all joints, clevises and pins e. See that foot pedal works free
	2. Motor— a. Check bearings b. Grind valves c. Inspect rings and wrist pins d. Clean carbon e. Replace gaskets where necessary f. Clean oil strainer g. Check oil pressure h. Examine all oil lines i. Tighten motor hold-down bolts		9. Front Axle— a. Examine steering knuckle and king pins for wear b. Check wheels for alignment c. Check tie rod and drag link for bends d. Grease all moving parts f. Examine front wheel bearings
	3. Carburetor and Gas System— a. Clean carburetor b. Check choker c. Clean filter d. Check vacuum tank e. Blow out gas line, check for leaks f. Examine filler pipe and gas tank for leaks		10. Chassis— a. Check spring clips and center bolts b. Check spring pins c. Paint spring leaves with old oil d. Check frame for looseness e. Check front and rear bumpers f. Check all wheel nuts and lugs g. Examine exhaust line for leaks
	4. Generator, Starter and Ignition— a. Examine generator and starter brushes b. Examine generator and starter armature c. Clean and adjust ignition points d. Oil all electrical units		11. Starting and Lighting System— a. Check battery for gravity b. Clean terminals c. Check hold-down bolts d. Check head and tail lights e. Check all body and marker lights f. Check step light
	5. Clutch and Transmission— a. Examine and grease throw-out bearing b. Check for slipping or grabbing c. Check shifter assembly d. Examine transmission gears e. Check shafts for end play f. Check for leaks g. Tighten all support bolts		12. Body— a. Examine door and operating device b. Check for loose windows c. Check for loose or broken seats d. Examine windshield wiper e. Check for anything that may tear passengers' clothing f. Repair all damaged panels or fenders g. Tighten all body bolts
	6. Propeller Shaft— a. Examine all universal joints b. Check for worn or twisted spline shaft		
	7. Rear Axle— a. Check pinion and ring gear for wear or loose bearings b. Check ring gear rivets or studs c. Check for leaks		

1st Speedometer Reading.....

2nd Speedometer Reading 90966

F. H. MATHESON,
Foreman OK.

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EXHIBIT NO. 1
 CITY OF WINNIPEG.
 TRAFFIC BY-LAW NO. 12783
 (Passed March 19th, 1928)

"39. Where a traffic light signal is in operation all vehicular traffic must obey all signals therefrom, as follows:

(a) Green Light—All vehicular traffic toward which it is directed may proceed.

(b) Red Light—All vehicular traffic towards which it is directed shall stop at the nearest crossing or white line indicating place of stop, and shall not again proceed until a green light is shown.

(c) An interval of several seconds is given between the red and green lights, and *vice versa*, to permit pedestrians who are crossing at the moment the lights change to reach the sidewalk in safety and to permit vehicles which have entered the area of intersection to pass beyond that area.

(d) All vehicular traffic approaching a street or avenue controlled by traffic signal lights shall come to a full stop back of the nearest crossing unless such signal light directs it to proceed. Such traffic wishing to cross a light controlled street or make a left turn shall wait until the light on such traffic light controlled thoroughfare is set to permit it to proceed."

"9. A vehicle overtaking another vehicle shall pass on the left side of the overtaken vehicle and shall not pull over to the right until entirely clear of it.

Exhibits.

1.

Winnipeg
 Traffic
 By-law
 No. 12783,
 Sections 9
 and 39,
 19th March
 1928.

EXHIBIT NO. 4

334 Aldine St., Sturgeon Creek, Manitoba.

Dec. 5, 1928

Mr. Jacob Geel,

30

Dr. to Mrs. D. Hopman

To nursing, board and room from July 19, 1928, to October
 18, 1928. 13 weeks @\$8.00 per week \$104.00

MRS. D. HOPMAN

Exhibits.

4.

Account of
 Mrs. Hopman,
 5th De-
 cember 1928.

~~170~~

EXHIBIT NO. 6

Winnipeg, Man., 12th Dec., 1928

Mr. Jacob Geel,
161 MagnusExhibits.
6.
Hospital Bill,
12th December 1928.In Account with THE WINNIPEG GENERAL HOSPITAL
For Hospital Board and Nursing—
From 4th to 12th Dec.

	From	Days at	to	Per Day	
		8 days at 3.50 per day			\$28
10					
		Ambulance Service			
		Operating Room Service and Services of Anaesthetist			
		Nitrous Oxide and Oxygen			
		Laboratory Service	2.00	5.00	7
		X-Ray Examination			12
		Board of Special Nurses—			
		Day		To	
		Night		To	
		Physiotherapy			
20					\$47

EXHIBIT NO. 5

Folio

Nov. 27, 1929

Mr. Geele
161 Magnus, Wpg.In Acct. with WHITE OWL DRUG STORES (Limited)
WINNIPEG, CANADAExhibits.
5.
Drug Bill,
27th November 1929.

	1928				
	April 23	RX 34915.....			.50
30	" "	RX 34916.....			.65
	May 12	RX 34937.....			1.00
	" "	Rubbing Alcohol.....			.35
	" 29	RX 34947.....			1.25
	June 4	RX 34959.....			1.50
	" 11	Medicine.....			1.20
	Aug. 28	RX 35009.....			1.50
	Dec. 25	Medicine.....			.50
	Dec. 31	Asparin.....			.50
	1929				
40	Jan. 10	RX 36167.....			1.25
					\$10.20

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EXHIBIT NO. 8

Winnipeg, Nov. 27, 1929

Mr. J. Geel,
Magnus.

To DR. H. YONKER Dr.

Exhibits.

8.
Dr. Yonker's
Account, 27th
November
1929.

To Professional Services:

Amount account rendered	-	-	821.00
Amount account paid	-	-	
Amount account due to date	-	-	

10

EXHIBIT NO. 7

Winnipeg, 95 Sherbrooke Street (cor. Westminster)

DR. A. M. CAMPBELL

and

DR. R. RENNIE SWAN

Mr. Jacob Geel, Dr.
161 Magnus St.

To Professional Attendance to Nov., 1929.....\$76.00

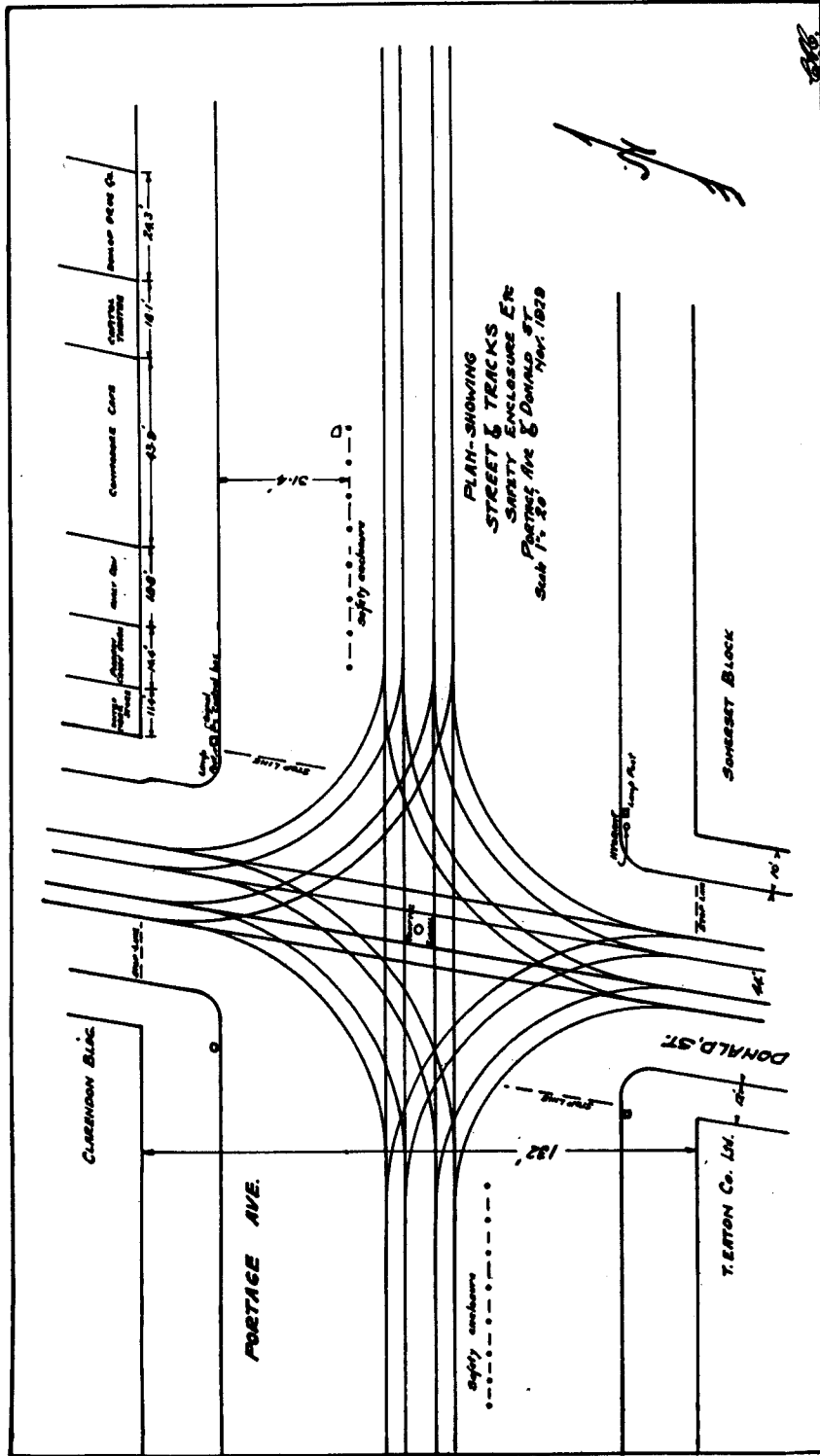
Exhibits.

7.
Dr. Swan's
Account.

EXHIBIT No. 2

Exhibits.

- 2.
- Plan of Intersection, Donald Street and Portage Avenue.



In the Privy Council.

No. 13 of 1932.

ON APPEAL FROM THE SUPREME COURT
OF CANADA.

BETWEEN

WINNIPEG ELECTRIC COMPANY

(Defendant) Appellant,

AND

JACOB GEEL - - *(Plaintiff) Respondent.*

RECORD OF PROCEEDINGS.

BLAKE & REDDEN,

17, Victoria Street,

Westminster, S.W.1,

for Appellant.

MAUDE & TUNNICLIFFE,

Arundel House,

15, Arundel Street, W.C.2,

for Respondent.