

Q. And you got through that job in ten minutes' time; that would be ten minutes after four?

A. In that proximity; yes, sir.

Q. Now, you have got forty minutes. Where did you go for those forty minutes?

[fol. 237] A. I don't know just what happened. I know what I do on certain occasions when I get time like that, I just sit down and take a rest.

Q. Well, take a rest; what do you think you did?

A. Took a rest in the car inspector's shanty.

Q. You did what?

A. Took a rest in the car inspector's shanty.

Q. And that shanty is where?

A. Why, it is located down in the yard, Ashley yard.

Q. Can you roughly draw that yard, putting your own tracks in, that refers to the Jersey Central, put in where your Jersey track comes in, and what was this last thing you mentioned, the car inspector's shanty?

A. Yes.

Q. Will you put that in too, and then put the direction in which your office was?

A. (Witness draws a sketch.) There is the east, here is the west.

Q. You have one track listed as the main track?

A. That is the main track; yes, sir.

Q. That is the main track of the Jersey Central?

A. It is the branch main.

Q. It is the branch main, yes, I understand.

A. That is the correct name of it.

Q. And where does the Erie track come in?

A. Why, that comes over here on the lines up here (indicating). We have another branch, what they call the Empire Branch, that comes down through Miners Mills this way.

Q. What I want to do is to point out to these gentlemen, if I can, how this Erie train comes into your yard; do you understand?

A. Yes. Well, it comes over the branch and then it crosses our main line.

Q. Yes?

A. Then it goes down into what we call the coal yard here (indicating).

[fol. 238] Q. Yes?

A. And there is only two tracks that he can come in, 3 and 4.

Q. Yes?

A. And as a rule I don't know which track he came in on, 3 or 4, and he picks up his train going out in what we call the freight yard, Track 4.

Q. You have made, and see if I am doing this so that we can save time, I will just extend this track across that—

A. What we call the main track.

Q. Do you see what I mean?

A. Yes.

Q. You don't know on this night whether he came in on Track 2 or 3?

A. Yes.

Q. Or possibly you say he might have come in on Track 4?

A. Yes, sir.

Q. Now I will put 4 there (marking); is that right?

A. Yes, sir.

Q. These other tracks I suppose join up down here (indicating)?

A. Yes, they all meet down there.

Q. And these tracks meet down here (indicating)?

A. Yes, sir.

Q. And so on. Now then, he went over to get his train out, he went over to what track?

A. He went over to Track 4. You see he pulls in on this and goes over to Track 4 (indicating).

Q. That is Track 4 which you marked, and I will put the word "outbound," that means the outbound train?

A. Yes, sir.

Q. And he came in on either 3 or 4, opposite where I write "in"?

A. Yes, sir.

Q. That is the in train?

A. Yes, sir.

Q. Now, your office was in what direction?

A. My office was up here in this direction (indicating).

Q. I will put an arrow pointing towards "Office".

A. Yes.

[fol. 239] Q. What is that other building you mentioned you went over and took a rest?

A. The car inspector's shanty.

Q. Where is that?

A. It is located right near Track 7, down in the yard.

Q. You have Tracks 6 and 7 over here, have you?

A. Yes, sir.

Q. Over near Track 7 there is a building?

A. Yes, sir.

Q. That is where, when you had a little time yourself, you go in there and rest; is that right?

A. Yes, sir.

Q. Now, you had finished your work, obviously, if you got there at four o'clock, you had finished your work on this outgoing 4 track in about ten minutes?

A. Yes, sir.

Q. Twenty-one cars?

A. Yes, sir.

Q. Now, there came a time when you either heard or somebody told you the Erie was in?

A. Oh, I get a report of the time he leaves Avoca.

Q. Well, you got a report that he left Avoca on this morning at ten minutes after two, didn't you?

A. No. He goes in service and waits for a connection to come from Susquehanna.

Q. Well, I mean you are over here in the shanty now, resting?

A. Yes, waiting for him to come in.

Q. And while you are over in the shanty resting you are advised in some way that the Erie is in?

A. Well, I know when he arrives.

Q. How do you tell that?

A. Why, mainly through his blowing of the engine. That is a big whistle other than a Jersey Central engine.

Q. You mean the blowing——

A. A big whistle.

Q. So that you are over here in the shanty around about four-fifty and you hear a big whistle, and you say that is the Erie?

A. Not at four-fifty.

[fol. 240] Q. I thought you said he came—didn't you say——

A. He clears the yard.

Mr. Kiendl: He said he cleared and stopped at four-fifty.

The Witness: He cleared and stopped, his train stopped. That is the time I start checking, at 4:50.

- Q. Well, what time did he get in the yard?
- A. His rear end cleared the yard at 4:50 a. m.
- Q. Yes; and when you say cleared the yard, you mean—
- A. All the main switches.
- Q. That means he got his entire train in on Track 4—that is a simple way of putting it, isn't it?
- A. Yes.
- Q. And that was at 4:50?
- A. Yes, sir.
- Q. And you were still over in the shanty?
- A. No, sir.
- Q. Had you left the shanty?
- A. Yes, sir.
- Q. And you started walking how far east from the shanty over to cross these outgoing tracks, across the main track and over to track 4; how long a distance is that?
- A. Oh, I would say about five minutes.
- Q. You say that shanty is—No. 7 track is—being located alongside of Track 7 and Track 7 doesn't start for some considerable distance above this main junction down here, does it?
- A. Yes, Track 7 is a shorter track, yes, sir.
- Q. It starts away up the line?
- A. No, it starts down here. That is what we call a leader.
- Q. At any rate, that shanty is opposite 7?
- A. Yes, sir; right parallel; right adjoining it.
- Q. Did you know what track this Erie was coming in on?
- A. No, I don't know.
- [fol. 241] Q. You just went over there to look?
- A. I went over and just checked it when he stopped.
- Q. I mean you just walked over there and did not know what track you expected to find it on?
- A. Sure I did. I got the bills from the conductor and gave him my bills, and I know what cars to check.
- Q. I know, but did you know what track—did you know whether he was going on 3 or 4 or 5?
- A. There is only two tracks he can come in on, 3 or 4.
- Q. So you knew you would find him on either 3 or 4?
- A. Yes, sir.
- Q. When you got over—you remember this particular night, do you?
- A. No.

Q. And you hadn't heard anything about any accident at that time, had you?

A. No, sir.

Q. This Erie train was how many cars long?

A. Thirty-eight.

Q. And it had the caboose and the tender and the engine in addition?

A. Yes, sir.

Q. Each car is approximately how long?

A. Oh, they run anywhere from—well, that would be up to the car department to know that, but I would say about forty feet, some of them run sixty-five feet.

Q. Well, your average car is sixty feet, isn't it?

A. No, I would say the—

Q. Isn't the average car sixty feet?

A. No, sir.

Q. Is the average car fifty feet?

A. There is no average.

Q. The average car is forty feet; I will stand corrected.

A. Around that; yes, sir.

Q. Some are longer than that?

A. Oh, yes; they are up to sixty-five feet, gondolas.

Q. So that you had a train about—forty times forty, a minimum of 1600 feet long?

A. Yes, sir.

[fol. 242] Q. 1600 feet on one side, 3200 feet walking both sides?

A. Yes, sir.

Q. You told these gentlemen you did about the same thing on the outgoing train as you did on the incoming?

A. Yes, sir.

Q. Correct. Had to make your same record?

A. Yes, sir.

Q. And you had twenty-one cars that you did in ten minutes; did you?

A. Yes, sir; but I want to correct you on that.

Q. You want to correct me?

A. I want you to understand it. It takes more time to take seals and car initials and numbers than it does to take just single car and initial as I did in the twenty-one cars, see? You will take notice of that. Here these are all seal records and those additional records.

Q. Yes. Now, when you are pointing to here, which train are you pointing to?

A. This is the inbound train. Here is the outbound train that I took, as we say, in ten minutes.

Q. Yes.

A. Notice how many seals are there?

Q. Yes; how many are there, and how many on the inbound train? As long as you have called it to my attention, you say you can tell from this how many seals are there and how many are not there, can you?

A. Yes, sir.

Mr. Hunt: This page, gentlemen, that he has shown me, for twenty-one cars, has that amount of hand-writing on it (indicating). The amount you see that he took in ten minutes, and the other—is this one page or two pages?

The Witness: That is the entire page.

[fol. 243] Mr. Hunt: Yes, and the same amount at any rate taking the same amount, we find over here; in other words, taking down to that total that would take us down to this line here, you can see how much writing that page has on it in proportion, going down as far as that (indicating). That seems to be a little heavier in here.

Q. Now, Mr. McGrath, there isn't any question, you have thought it over and you have thought it over not once but twice, as to the reasonable length of time, knowing your experience that you have had, that it took you ten minutes to walk both sides of the twenty-one cars and do this writing; correct?

A. Yes, sir.

Q. And you got that all done in ten minutes' time, and I have asked you that three times, and you said that was true?

A. About ten minutes; yes, sir.

Q. Now, twenty-one cars average forty feet?

A. Forty feet to a car.

Q. Now then, you notice, since you have called it to my attention, you notice on the page over here, and just help me a minute.

A. Yes, sir.

Q. That is what you did?

A. Yes, sir.

Q. You inspected that train in ten minutes; twenty-one cars?

A. Yes, sir; and checked the seals.

Q. Now you see, until you have taken the same proportion of this page——

A. Yes.

Q. —that you have over here, that is down to that line (indicating)?

A. Yes.

Q. You see there isn't over one or two more notations at the most down as far as that, is there?

A. No, sir; but that is not the way the train stands.

[fol. 244] Q. I am only taking one at a time. Now, it does get a little heavier in this portion, doesn't it?

A. Yes.

Q. I mean it is a little heavier here to what it is in here (indicating)?

A. Yes, sir.

Q. So that the only difference, the only allowance that you want to fairly make is that you had a little more writing to do, therefore it would take you a minute or two more in proportion?

Mr. Kiendl: I object to that, if your Honor please. The question sounds to me to be absurd.

Mr. Hunt: Well, I can't help it, Mr. Kiendl.

Mr. Kiendl: All I can do is make the objection.

Mr. Hunt: I can't be responsible for your state of mind.

Q. Now, let's see if that is not the fact. The only difference you want to point out to these gentlemen, really, is that you had a little more writing to do?

Mr. Kiendl: Difference between what?

Mr. Hunt: Between the examination of these two trains. He knows what I mean, your witness knows.

Mr. Kiendl: Well, I would like to know. I am trying the case for the defendant.

Mr. Hunt: I assume you could follow me as well as the witness.

Mr. Kiendl: Well, I don't follow you.

Q. Is that the only distinction you wish to make?

[fol. 245] A. The time varies there. You see, you have to make a check of the train and the cars and find out whether they are loaded or empty.

Q. Well, start it over again.

A. I said that I took the twenty-one cars in ten minutes.

Q. When you got over to this train that had come in you did not slow up in your work, did you, for any reason?

A. No, sir.

Q. You had no reason for slowing down. As a matter of fact, you got through your work about what time?

A. I am through in the morning at nine a. m.

Q. And there is no occasion why you should slow yourself up and rest, was there?

A. I don't know; I don't remember anything.

Q. Well, at any rate, you know of no reason why you slowed up when you were going over this train?

A. Not anything in particular; no, sir.

Q. So that you went right along examining this Erie train, did you not?

A. Yes, sir.

Q. At about the same rate as you examined the train that was going out, except that you had to make a few more notations?

A. Yes, sir.

Mr. Hunt: Now maybe Mr. Kiendl understands it.

Mr. Kiendl: I think I have always understood the facts.

Q. Now, as a matter of fact, it took you, then, to examine these thirty-eight cars, and for fear of being checked I will make it accurate, your Honor,—in other words, had there been forty-two cars the time would have been, of course, twenty minutes; but there being thirty-eight cars, it would not take you quite that long except for this additional [fol. 246] writing which we ourselves can see on the book; is that right?

A. Yes, sir.

Q. So you know, do you not, by your own answer, that whatever time you spent on this incoming Erie train was not more than twenty minutes; that is true, is it not?

A. I would say about twenty minutes; yes, sir.

Q. And you know that in that twenty minutes you walked a distance, irrespective of anything else you did in that twenty minutes, you know you walked a distance of 3200 feet, do you, minimum?

A. Yes, sir.

Q. And you know how, you can recall when you were in school, you know how many feet there are in a mile, don't you?

A. Yes, sir.

Q. How many?

A. 1280.

Q. 1280 in a mile?

A. No.

Q. Well, you didn't go to Bucky Harris's school, did you?

Mr. Kiendl: Not in Hughestown, no.

The Witness: That is getting personal.

Q. No, I don't mean to be personal. Don't take it that way. No, I will correct you.

Mr. Kiendl: How many do you say, Mr. Hunt?

Mr. Hunt: I happen to know there are 5280 feet in a mile. Did you ask because you didn't know?

Mr. Kiendl: I wanted to find out for my information; I had forgotten.

Q. Well, you do know now you traveled, just mere walking, you walked about five-eighths of a mile, don't you?

A. Five-eighths of a mile?

[fol. 247] Q. Yes, to go around the train?

A. Yes, sir.

Q. Just in walking?

A. Yes, sir.

Q. And in addition, did you make this record as you went along?

A. Yes, sir.

Q. When you got over from this place where you had rested, have you the slightest recollection as to whether—when you first came around the Erie train were you near the head end of it or near the engine or down near the rear end?

A. I don't have any—I can't recall that.

Q. You can't recall that at all?

A. No, sir.

Q. Taking the position of the rest house, assuming you walked straight across and found the Erie train on Track 4 pulled clear in on Track 4, you would be where with respect to the engine?

A. Oh, I would be——

Q. (Interrupting.) Assuming you did just go in——

A. I would be in the clear here, near the leader, the main.

Q. You would be beyond the main?

A. Over on the main, yes, sir.

Q. Then you would have to walk back in order to get here?

A. Oh, no; I would be up here the end of Track 4.

Q. You would be up near the end of Track 4?

A. Yes, sir; in the coal yard.

Q. Beg pardon. In the coal yard?

A. As I explained.

Q. And that is the end that the engine was on?

A. No, sir. While he pulled in.

Q. Yes.

A. That is the end the caboose was on it where I started checking.

Q. I am not saying where you started checking yet. If you will follow me—if you had to go in and walk straight over, you would be up near the coal yard, wouldn't you?

[fol. 248] A. If the train would be stopping there, I mean as the train stopped, if I walked straight over, I would meet the train about in the center, approximately.

Q. I thought you said a minute ago that you walked straight over?

A. From the shanty, now.

Q. From the shanty, yes.

A. Yes, I was up near the main, I said, the branch main.

Q. You were up near the main?

A. The branch main; yes, sir.

Q. You were in the shanty, were you?

A. Oh, I guess I was. I was in there, and when I heard the Erie coming in——

Q. Don't you remember that less than two minutes ago I asked you if you had any idea up against what part of that Erie train you came when you got over there and——

A. (Interrupting.) I started on the fourteenth or fifteenth car to check this.

Mr. Hunt: May I refer back, your Honor, to refresh this witness's recollection, just a few questions back?

(Portion of the testimony referred to read by the stenographer.)

Q. Now, you heard the gentleman read that to you, didn't you?

A. Yes, sir.

Q. And you understood, when I asked you when you got over there did you come up near the engine or down near the

rear end and whether you had the slightest recollection, and you said you could not recall that. Was that true then?

A. No, that is not true. I went over and started on the 14th or 15th car.

Q. You told us a dozen times you started on the 14th car?

A. Yes, sir.

[fol. 249] Q. So do I understand by the 14th car that you just walked up against the side of the car or the train and started at whatever car you happened to be opposite; is that the way you did?

A. I got the bills on that train list——

Q. (Interrupting.) Please let me——

Mr. Kiendl: I submit, if your Honor please, Mr. Hunt wants to understand what this is about, and he asks the question, the witness begins to explain to him, and then he says, "Please" and stops him.

The Court: Let the witness answer the question.

Mr. Hunt: I will withdraw the question.

Mr. Kiendl: I ask the witness be permitted to answer.

Q. Now I ask you if you can answer this question yes or no, say so——

Mr. Kiendl: I submit that Mr. Hunt is not the man to tell the witness to answer yes or no. That happens to be the prerogative of this Court.

The Court: I can tell him.

Q. I ask you, if you can answer that yes or no, please do so, and if not, please say so.

The Court: Proceed.

Q. When you got up against the side of the train, no matter what number it is, the 14th or 28th or 1st car, do you start there or not?

A. I start whichever is convenient for me.

[fol. 250] Q. So on this night it was convenient to start on the 14th?

A. Yes, sir.

Q. This list that you have here, this Erie Railroad list of cars, that you have nothing to do with?

A. No, sir.

Q. That is something that is handed to you?

A. A copy of it; yes, sir.

Q. And that list is prepared by the Erie Railroad and turned over to your company?

A. Yes, sir.

Q. And comes into your possession?

A. Yes, sir.

Q. And it is against that list that you check?

A. Oh, no.

Q. You don't check against that list?

A. No, I just put that on file as a record; I don't bother with that at all; my actual record is in the book.

Q. But just a minute, then. At the time—When did you first see this list?

A. When the caboose—I see that—I mean the copy of it—

Q. Yes.

A. And the conductor is in the caboose, and I meet the conductor and hand him the bills that I have, and he hands me his bills, then I look at the list and see how the train is shaped up, then I start in checking.

Q. Then you look at this list?

A. Yes, sir, and see how it is shaped up.

Q. You see a paper with a lot of names on it like that?

A. Yes, sir.

Q. When you say you see how it is shaped up, what do you mean by that?

A. How the train is in order. I can tell whether they are loaded or empty through the contents of the car.

Q. Well, you have loaded cars and empty ones?

A. Yes.

Q. Or any other species, all the way down, do you not?

A. Yes, sir.

[fol. 251] Q. Wherever you find the blank cars, those are empties; is that right? A. That may be a ditto mark; is it not?

A. I don't know; I can't say.

Q. Now, sir, you spoke about seeing that list? How long do you spend looking at it?

A. Oh, just a minute, or so, I guess.

Q. Then you take that and put it in your pocket?

A. Yes, sir.

Q. And then what do you do?

A. Start checking the train, taking the—

Q. (Interrupting.) This list is never looked at again?

A. It is kept on file in case there is any dispute about my record.

Q. It is kept on file, but I mean so far as you are concerned in your work, you are through with it once you have looked at it a minute or two; is that correct?

A. Yes, sir.

Q. And does this list—one of the gentlemen asked you how you knew, how you were able at this time to come here and say that you started on the 14th car, and you said it was because of that list.

A. Yes, sir. Not that list. The copy of that list.

Q. Oh, yes, the same thing as this list?

A. Yes, sir.

Q. Because you could look at that and in some way determine that on this particular night you had started on the 14th car?

A. Yes, sir.

Q. Correct?

A. Yes, sir.

Q. And then you took a blank piece of paper and you went to work some way, didn't you?

A. I took a book.

Q. Yes; I mean you took a book?

A. No, I get bills. I write these interchanges. Is that what you mean, the interchange report?

Q. You have some paper with you besides this book when [fol. 252] you start your work?

A. That is the actual book.

Q. This book is what you have?

A. That is the actual book.

Q. And you walk alongside of the car, do you?

A. Yes, sir.

Q. And the first thing you write down is what?

A. The initial of the car.

Q. And you start at some car, and the first thing you put in the first column, you put in an initial, do you?

A. Yes, sir; initial of the railroad.

Q. Initial of the railroad?

A. That owns the car.

Q. Then you stand there and you put down two numbers, do you not?

A. I put down the number of the car.

Q. Well, why are there two numbers here, or is that all one number?

A. That is the entire number, 5—oh, that is the wrong—you want the date—you have a different date there. Here it is.

Q. Where you have two numbers, the same thing here, where you have two numbers—

A. Two numbers?

Q. First you put down “Erie TCX”; what is that?

A. Oh, that is another car. “TCX”; that is a tank car line.

Q. But they all looked to be in one line.

A. That is all in one block.

Q. There are two numbers in a block?

A. Yes, sir.

Q. One number which represents a car?

A. Yes.

Q. Now we have got it straight. Now then, your first—after writing down here “Erie,” you then wrote down 76315?

A. Yes, sir.

Q. Then you wrote down, standing alongside of the car, “CASE 66088”?

[fol. 253] A. No, 67233. I did not write that down until I got around the other side of the train.

Q. But on that particular car that was written down some time. Then what else did you do while at that car?

A. See that the car is properly sealed, took the seal record and go to the next car.

Q. What do you mean by the seal record?

A. That seal that is there, Casco.

Q. What does that mean?

A. Casco Milling Company.

Q. What is that?

A. The Casco Milling Company.

Q. What does that mean, the type of seal, or what?

A. Yes, that is the owner’s seal.

Q. The owner’s seal?

A. Yes, sir.

Q. That means you found a seal on that car?

A. Yes, sir.

Q. Then you come down to TCX; what does that mean?

A. That is some tank car company. X is for company. I can’t recall what individual company it is.

Q. Well, maybe Texaco?

A. Yes.

- Q. 23922?
- A. That is the number of the car.
- Q. Then we have the letter "T" there.
- A. That indicates a tank car.
- Q. Then we have AJ 17521.
- A. That is CNJ—Central Railroad of New Jersey.
- Q. "B"?
- A. Box.
- Q. "UR"?
- A. "URT".
- Q. What is that?
- A. Union Refrigerator Transfer; I think that is what it stands for.
- Q. 26643; right?
- A. Yes, sir.
- Q. Erie B 90435?
- A. Yes.
- Q. Dash 36?
- A. Yes, sir; that is the other seal on the other side.
- [fol. 254] Q. Of the fourth car on your list, isn't it?
- A. Yes, sir.
- Q. On your list it is the fourth car, isn't it? Just answer yes or no?
- A. Yes, sir.
- Q. But of course it would not be the fourth car if, for some reason, you started back at the 14th or 28th or some other place; is that it?
- A. It would not be the 4th.
- Q. No, it would not be the 4th car on your list if you started back there, would it?
- A. I usually start at the head of the page when we start checking, regardless of where we start in the train.
- Q. And if you started where, possibly, the ordinary person would start, at the head end of your train, and worked back, it would be right there where we find it?
- A. Yes, sir.
- Q. The fourth car from the head, wouldn't it?
- A. The fourth car there on the sheet; yes, sir.
- Q. And the only reason that you say that you can find for claiming here in front of these gentlemen that instead of starting from the head end of your train and working down one side and up the other is because of this train slip that is in evidence; is that right?

A. Yes, sir.

Q. And there is nothing on that train slip; you did not make any notation on this train slip—in fact, there isn't any of your handwriting on that, please, from beginning to end, is there?

A. No, sir.

Q. But you say that by looking at that you are going to deduct that you—you are going to draw the conclusion that on this particular night, we will say, that although you were at the head end of the train, that on this particular night you went down and started at the 14th car because you have some empties on the rear end?

A. Yes, sir.

[fol. 255] Q. That is right?

A. For my convenience, yes, sir.

Q. For your convenience?

A. Yes, sir.

Q. What is so important—you had to walk over half a mile as it was. Suppose you had been up at the front end at that time,—now, you only had to start down one side and up the other; that is what your job amounted to, wasn't it?

A. No, there is lots more to it.

Q. But I mean on this particular job?

A. Yes.

Q. You have to go down one side and up the other; is that right?

A. Yes, sir.

Q. And you say for your convenience you walked down to the caboose and got that slip to see whether or not they had any empties on the tail end?

A. No, sir; those copies—

Q. Lets assume you were at the front end; what would you do?

A. Start at the front end.

Q. You would not care where the numbers were?

A. I would start any place as long as I got—I had my seal record; from the front end also.

Q. Start at either end?

A. Yes, sir.

Q. If it so happens you were at the front end this night—

Mr. Kiendl: What is that?

Q. I say if it so happens that he was at the front end this night when he came from the rest billets, if he happened to strike the front end of it, you would have started right there?

A. Yes, sir.

Q. And now you say that you went down to the rear end, down where the caboose was; is that where you got this from, somebody in the caboose?

A. Why, the caboose, when it comes in, they drop it down right onto Track 4 in the freight yard.

[fol. 256] Q. Yes.

A. This caboose rides down; I came out the shanty to get them and got on there.

Q. Did you get on this night?

A. I don't know in particular whether I did or not. As a rule I do.

Q. But you would not go looking around for the caboose if you happened to be at the head of Track 4 when it came in, would you?

A. No; start down one side the train and up the other. I would get the tickets and that list.

Q. And if you were near the head end you would start down one side and up the other?

A. Yes.

Q. And if you were near the rear end you would start up one side and down the other?

A. Yes.

Q. You never before in your life started at the 14th or 16th or 28th car unless you happened to come right up to it at that point?

A. Yes.

Mr. Kiendl: What is the answer?

The Witness: I start at any part of the train for my own convenience.

Redirect examination.

By Mr. Kiendl:

Q. And you have done that night after night while you have been seal inspector of the Central Railroad of New Jersey?

A. Yes; sir.

Q. You have inspected the Ashley freight, this Erie train?

A. Yes, sir.

Q. A great many years?

A. I have been working there since March 3rd or 4th, 1933, if I can recall.

Q. Right down to date?

A. Yes, sir.

Q. And sometimes you have started at the middle, sometimes at one end and sometimes another end, at any place that suited your convenience?

A. Yes, just so I had a record of the train.

[fol. 257] Q. And your job was to make a complete record of every car in that train?

A. Yes, sir.

Q. And on the night of July 27, 1934 you made that record and you have your original record here?

A. Yes, sir.

Q. Of every number?

A. Yes, sir.

Q. Every number of every seal, every car that you examined is shown in this record, is it?

A. Yes, sir.

Q. May I have it?

The Court: That record indicating Defendant's Exhibit E?

Mr. Kiendl: Yes, sir.

Q. You don't, Mr. McGrath, just guess the numbers of these seals and put down any numbers that come into your head, do you?

A. I take the actual record on the car.

Q. From the car door itself?

A. Yes, sir.

Q. And you take the actual initial and the actual number?

Mr. Hunt: Well, I object to leading.

Q. Do you take the actual number?

The Court: Overruled.

Q. Do you get the actual initial and actual number from each car itself?

A. Yes, sir; in order to protect the railroad company.

Mr. Kiendl: That is all.

(Witness excused.)

(Informal recess.)

[fol. 258] GEORGE ADAMS, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. Kiendl:

Q. Mr. Adams, you are the division car foreman of the railroad company, the Erie Railroad Company?

A. At Jersey City; yes, sir.

Q. And have been for how many years?

A. The last three years.

Q. And have you at my request made any examination to ascertain the extreme width of thirty-eight cars, the number and initials of which were furnished to you?

A. I have.

Q. Now, have you got such a thing as an official equipment register?

A. Yes, sir.

Q. And does that show the extreme width of various types of freight cars in various series of all the railroads of the United States?

A. Yes, sir.

Q. In the list of cars which I gave you or which were given to you by my associates, did you have each and every car in this train, Defendant's Exhibit F, beginning with car marked "1"; "MC 81706"?

A. Yes, sir.

Q. And ending with Car No. 38, "MCLX 3133"?

A. "MPLX 3133."

Q. Have you figured the width, the extreme overall width of each and every one of those thirty-eight cars?

A. All except the tank cars that we don't report.

Q. The tank cars you haven't any record in your official railway equipment register?

A. No, sir.

Q. But all the box cars you have those measurements?

A. Yes, sir.

[fol. 259] Q. Can you tell us, Mr. Adams, what was the extreme width of the narrowest car in those thirty-eight?

A. Nine feet ten inches.

Q. And what was the extreme width of the widest car in those thirty-eight?

A. Ten feet ten inches.

Q. Now can you give us the initials and numbers of the car that was ten feet ten inches wide at its most extreme point?

A. C&NW Car 35692.

Q. Is that the car that is marked No. 32 on Defendant's Exhibit F, CNW 35692?

A. Yes, sir.

Q. So that those cars, the thirty-eight cars, average between nine feet ten inches for the narrowest car to ten feet ten inches for the widest one?

A. Yes, sir.

Mr. Kiendl: Will you concede, Mr. Hunt, that the thirty-eight cars that he has on his list are the thirty-eight shown on Defendant's Exhibit F, without taking them one by one?

Mr. Hunt: Your associate had them checked?

Mr. Kiendl: Yes.

Mr. Hunt: Yes, I will concede.

Mr. Kiendl: It is so conceded.

Mr. Hunt: May I take the photographs that are in evidence?

Mr. Kiendl: Yes.

Cross-examination.

By Mr. Hunt:

Q. Will this official record you have, Mr. Adams, aid us in telling us the width between the—what is the standard gauge of the railroad?

A. I don't know that. That comes under a different department.

Q. Don't you know what the standard gauge railroad is?
[fol. 260] Mr. Kiendl: Maybe we can agree on that.

Mr. Hunt: What is it, do you know?

Mr. Kiendl: Yes; it is 4.71.

Mr. Hunt: And is that from the outside of the rail to the inside?

Mr. Kiendl: That is from the inside of the rail to the inside of the rail.

Mr. Hunt: And the rails themselves are what?

Mr. Kiendl: About two and one-quarter inches to three inches on the tops. The widest rail is three inches on top.

Mr. Hunt: Three inches?

Mr. Kiendl: That is the widest.

Mr. Hunt: Three inches and three inches would be six inches. And what is the other?

Mr. Kiendl: 4.71 feet. That would make 5.31.

Mr. Hunt: That would be five feet; and what is that, three inches?

Mr. Kiendl: A little less than that, approximately.

Mr. Hunt: A little less than three inches. Five feet and a little less than three inches.

Q. And then do you happen to know the—can you see those ties there, Mr. Adams?

A. Yes.

Q. Outside of the rail?

A. Yes.

Q. Of course the bottom of your rail is wider than the top, isn't it?

A. Yes, sir.

Q. What is that distance, that usual distance?

Mr. Kiendl: The width of the ties?

Mr. Hunt: Outside of the bottom part of the rail; how much is that? Do you have it, Mr. Kiendl?

[fol. 261] Mr. Kiendl: The ties are eight foot ties.

Mr. Hunt: So the—

Mr. Kiendl: Is that conceded, Mr. Hunt?

Mr. Hunt: If you say so; if you know that is the fact; and I assume you do.

Mr. Kiendl: I say so.

Mr. Hunt: So that the center line of the tie, from the center line to either side of course is four feet?

Mr. Kiendl: That is conceded and stipulated.

Q. Now, then, what was the widest car you got?

A. Ten feet ten inches.

Q. So that drawing a straight line through the center of that car to the outside would be five feet five inches?

A. Right.

Q. So that on that particular type of car, if those measurements are accurate, there would be an overhang—do we agree, Mr. Kiendl,—an overhang of one foot and five inches beyond the end of the ties? Am I right or wrong?

Mr. Kiendl: Oh, you are perfectly right. We not only agree upon it, but I have proven that fact.

Mr. Hunt: What?

Mr. Kiendl: I have proven that fact, the overhang of one foot five inches on either side of the car ten feet ten inches wide.

Mr. Hunt: If that is the widest car you have mentioned.

Mr. Kiendl: That is correct.

Q. And how many of those are there on that train?

A. There is only one of them.

[fol. 262] Q. What is that?

A. There is only the one car of that width.

Q. Now, there is only one car at that width?

A. Yes, sir.

Q. And you gave us the number of that car as what?

A. C&NW 35692.

Mr. Hunt: Your Honor will have to indulge me here. I am not familiar with this.

Q. And is that, according to your way of figuring, the 21st car on the train?

Mr. Kiendl: No, it is, according to our way of figuring, the 32nd car from the engine.

Mr. Hunt: That would be a way back to the rear end of the train?

Mr. Kiendl: Yes. Are you accepting my statement of it?

Mr. Hunt: No, I am asking you.

Q. You understood now Mr. Kiendl said according to your way of figuring—will you kindly help us and save time, and tell me where that car would be on the train?

A. Yes, sir.

Q. The 32nd car?

Mr. Kiendl: The 32nd car from the engine.

Q. And you know in this case the blood was found on the fourth or fifth car, do you not?

Mr. Kiendl: I object to anything about that. This witness knows nothing about that.

[fol. 263] Q. Haven't you been told about it?

A. Well, I have been told, but—

Mr. Kiendl: I object to what he has been told.

The Court: Objection sustained. Strike it out. The jury will disregard it.

Q. Were you given the dimensions of the engine in this case?

A. No, I was not.

Q. Were you given the number of the engine?

Mr. Kiendl: Mr. Hunt, if I may interrupt, and simply to save time, we have a man here who will testify to the over-all dimensions of the engine.

Mr. Hunt: That is all I want, sir.

Mr. Kiendl: I thought maybe I could save you time. That is all, thank you, Mr. Adams. Now, Mr. Whitney, will you take the stand? And this is a man who will testify to the engine.

LEONARD WHITNEY, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. Kiendl:

Q. Mr. Whitney, you are an engine inspector in the employ of the defendant, Erie Railroad Company, are you not?

A. Yes, sir.

Q. Are you familiar with the type of engine, Erie engines No. 2400?

A. Yes, sir.

Q. And particularly Engine No. 2499?

A. Generally familiar with that type of engine; yes, sir.
[fol. 264] Q. What type is that called in relation to number?

A. J-2.

Q. That is called the J-2 engines?

A. Yes, sir.

Q. And you have seen and inspected and know all about J-2 engines, I suppose?

A. Yes, sir.

Q. Have you ascertained for me the over-all width of the J-2 engine of the class we are talking about of which 2499 is one, the extreme width?

A. Yes, sir.

Q. What is it?

A. Ten feet three inches.

Q. That is 123 inches?

A. Yes, sir.

Q. And where is that at, the cylinder heads?

A. At the cylinders.

Q. And where are the cylinders?

A. On each side of the engine, at the front end.

Q. And you say it is ten feet three inches?

A. Yes, sir.

Mr. Kiendl: That is all.

Cross examination.

By Mr. Hunt:

Q. Ten feet three inches?

A. Yes, sir.

Q. Is that from the outside cylinder to the outside cylinder?

A. Yes, sir.

Mr. Hunt: That is all.

WATSON B. BUNNELL, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. Kiendl:

Q. Mr. Bunnell, you are a photographer by occupation?

A. Yes, sir.

[fol. 265] Q. You live in Scranton, Pennsylvania?

A. Yes, sir.

Q. You are in the employ of the Erie Railroad Company?

A. Not generally, only as a free lance photographer.

Q. Do they employ you from time to time to take pictures?

A. They do.

Q. And you have done that?

A. Yes, sir.

Q. Did you take pictures of the territory in the vicinity of Rock Street and the railroad tracks there?

A. I have.

Q. At the request of the Erie Railroad Company?

A. Yes, sir.

Q. I show you certain pictures marked Defendant's Ex-

hibit D and ask you if you can tell us whether or not you took those pictures on the fifth day of April, 1933?

A. I did.

Q. Now I show you the defendant's exhibit, six pictures containing Defendant's Exhibit C, and ask you if you took those pictures on the 18th day of April, 1935?

A. I did.

Q. Now I show you, Mr. Bunnell, two pictures marked Plaintiff's Exhibits 2 and 3. Did you take those two pictures?

A. I did.

Q. Can you tell us what date you took those?

A. September 5, 1934.

Q. I show you two more pictures marked Defendant's Exhibits A and B, and ask you if you can tell us when you took those pictures?

A. Those were taken April 5, 1933.

Q. At the same time did you take Defendant's Exhibit D?

A. Yes, sir.

Q. Now, Mr. Bunnell, all these photographs that you took were taken at the request of the railroad company, you told us?

A. Yes, sir.

[fol. 266] Q. Do they represent the conditions which they purport to represent photographically?

A. They do.

Q. Showing pictures taken from the south side of Rock Street across the crossing?

A. Yes, sir.

Q. And pictures taken from the other side across Rock Street to the south?

A. Yes, sir.

Q. Showing the ditch that has been spoken about here?

A. They do.

Q. The territory between the fence and the first rail of the track between Rock Street and Hughes Street?

A. Yes, sir.

Mr. Kiendl: Your witness.

Cross-examination.

By Mr. Hunt:

Q. Mr. Bunnell, they show the conditions photographically you said?

A. Yes, sir.

Q. You mean by that, what?

A. The general appearance of the ground as you would see it at that particular point.

Q. Just as an illustration I want to—here is one of your pictures; that is looking to the north along the railroad, do you say?

A. Yes, sir.

Q. And you can see this bank that lies here between Rock Street and Hughes Street; this bank in here?

A. Yes, sir.

Q. Can you see that?

A. Yes, sir.

Q. Well now, this is not by way of criticism at all, but that bank from your picture looks smooth, and very smooth indeed, doesn't it?

A. Looking across the ditch, which only shows the upper portion of it.

Q. It looks smooth?

A. It looks like it did that day.

[fol. 267] Q. It looks like a roadbed that has been recently constructed and smoothed off?

A. No, I would not say that.

Q. Well, the point is that the reason—that doesn't show that bank the way it was, in any respect whatsoever, due to the angle at which your camera was focused; it is looking down the slope, and when you look across, if you take some ruts and put in the street here, and if you get your camera back and take a view across those ruts, it just fore-shortens it, therefore it looks smooth—that is a photographic expression, isn't it?

A. To a certain extent, to the naked eye, too.

Q. Yes. And here is another picture, looking at another of your pictures, Exhibit 3, as you look down towards the corner here, why, it looks relatively smooth, doesn't it, due to the angle at which your camera is furnished for that particular picture?

A. What you would see from the naked eye from this point.

Q. From the particular point your camera was stationed at?

A. Yes, sir.

Q. Now then, when you want to show, and I am only asking you this, in other words, in a camera such as you

have, you have to be very careful to consider the angle at which it is stationed, do you not?

A. Well, it is what you see from the point it is taken.

Q. Well, I show you this picture. Now you see when you get right down here to this bank now we have got more of an idea of exactly what it looks like?

A. Yes, sir.

Q. You can see your different grades, the grade varies all along, doesn't it?

A. Yes, sir.

Q. You can see this particular part that is almost a ditch in there, isn't it?

A. There is a break there; yes, sir.

[fol. 268] Q. And a bad break, isn't it?

A. A large break.

Mr. Kiendl: Do you mean up against the fence, Mr. Hunt?

Mr. Hunt: No, just where I am pointing to right here.

Mr. Kiendl: Let me see it.

Mr. Hunt: Right along there (indicating).

Mr. Kiendl: I see.

Q. And then it shows the difference in contours as you go along through there?

A. Yes, sir.

Q. That is the nearest to an accurate view that we have got from your picture?

A. I would not say that; they are all accurate views.

Q. Accurate views considering where the camera is located?

A. Yes. That is a better view of this particular spot.

Q. Yes; that is what I mean, of this particular place.

A. Yes.

Mr. Hunt: That is all.

Redirect examination.

By Mr. Kiendl:

Q. And you took the pictures from various spots?

A. Yes, sir.

Q. Looking north, looking south, looking east and looking west?

A. Yes, sir.

Q. And you have here a total of sixteen different photographs, have you not?

A. Yes, sir.

Q. Now I show you Plaintiff's Exhibit 5, taken by some other camera and some other photographer. Does that show substantially the same condition between the track and the fence that is shown in your photograph?

[fol. 269] A. It does, with the exception that the Kodak picture is always taken low.

Q. That is always taken low. That shows the surface of the ground in the space I am now describing to you?

A. Yes, sir.

Mr. Kiendl: That is all.

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

Direct examination.

By Mr. Kiendl:

Q. Mr. Alworth, what is your occupation?

A. Car inspector.

Q. What company?

A. Central Railroad.

Q. And how long have you been employed by the Central Railroad Company of New Jersey?

A. About 25 years.

Q. And always in the capacity of a car inspector?

A. Yes, sir.

Q. And how much of those 25 years did you spend as car inspector at Ashley, Pennsylvania?

A. Well, that is where the work is.

Q. All the time?

A. Yes, sir.

Q. And you were working there, were you, on the night of July 27, 1934?

A. Yes, sir.

Q. Working there that whole month?

A. Yes, sir.

Q. Did you know about the Erie train coming in there that night, the Ashley Special?

A. Yes, sir.

Q. That train came in almost every night, didn't it?

A. Yes, sir.

[fol. 270] Q. Sometime late in the morning?

A. Always after midnight.

Q. Were there any other Erie trains that came in there during the night from Avoca?

A. No, sir.

Q. That was the only one?

A. Yes, sir.

Q. On your shift?

A. Yes, sir.

Q. You are sure of that?

A. The only one on my shift; yes, sir.

Q. When did you go on duty?

A. At eleven o'clock at night.

Q. So from eleven o'clock—when did you go off duty?

A. Seven o'clock in the morning.

Q. From eleven to seven there was only one Erie train that would come in there while you were working?

A. Yes, sir.

Q. In 1934?

A. Yes, sir.

Q. Now as a car inspector your duties consisted of inspecting cars, didn't they?

A. Yes, sir.

Q. And how did you do the work, generally? I don't mean in connection with this particular train, but when you had a train of cars to inspect, did you do it alone or did you work in teams, or how did you do it?

A. Worked in teams. I have a buddy that works with me.

Q. Who was working with you, do you recall, on the night of July 27, 1934?

A. Steve Prabola.

Q. He is dead now, is he?

A. Yes, sir.

Q. And were you stationed at the car inspector's shanty that some witness talked about here?

A. That is where we keep all the material and our tools, yes, sir.

Q. Now, when you inspect cars coming in there do you keep records for your company?

A. Yes, sir.

Q. You keep a record of the inspection that you make of cars?

A. Yes, sir.

[fol. 271] Q. At Ashley?

A. Yes, sir.

Q. And you did keep and maintain such a record in the regular course of your duties and performance of your duties?

A. Yes, sir.

Q. As a car inspector?

A. Yes, sir.

Q. You have never been employed by or paid by the Erie Railroad Company in any way, have you?

A. No, sir.

Q. Now, tell us generally as a car inspector what inspection do you make of these cars or trains coming into the yard there at Ashley?

A. We inspect them for all safety appliances and see that the car is in fit and safe condition to move.

Q. On the night of July 27, 1934, after midnight, did you and your teammate, Prabola, inspect the Ashley Special that came into the Ashley yard from the Erie Railroad?

A. Yes, sir.

Q. And did you maintain and keep a record of that inspection?

A. Yes, sir.

Q. And is this it (handing)?

A. Yes, sir.

Q. This book that I show you is your car inspector's book of inspections, is it not?

A. Yes, sir.

Q. And it contains a record of the inspection on July 27, 1934?

A. Yes, sir.

Q. Of this Ashley Special?

A. Yes, sir.

Q. And is the handwriting, pencil writing on the pages of that book for that train your handwriting?

A. No, sir.

Q. Whose handwriting is it in?

A. Prabola's, my buddy.

Q. Prabola, your buddy, who is now dead?

A. Yes, sir.

Q. Now, this record and this car inspection book record consists of about two and one-half pages, does it not?

A. Yes, sir.

[fol. 272] Q. For this particular train?

A. Yes, sir.

Q. And it shows, does it not, the car numbers, the car initials, the condition of each car in the train?

A. Yes, sir.

Q. There are thirty-eight cars on that list, as I have just counted them; if you will take my count.

Mr. Kiendl: Mr. Hunt, do you accept that?

Mr. Hunt: All right.

Mr. Kiendl: And will you stipulate also, to save time, that the car initials and numbers of each one of those thirty-eight cars correspond with the car initials and numbers on the train list, Defendant's Exhibit F?

Mr. Hunt: If you have checked them.

Mr. Kiendl: I have checked them.

Mr. Hunt: All right, sir.

Q. Now will you tell us how you and your buddy, Mr. Prabola, inspected these thirty-eight cars? What did you actually do?

A. Well, we put our blue lights on the rear end of the Erie train, that is the caboose end, and as we go along he takes the number of the car, or he took it, rather, and when we got between them we hollered to one another "O. K." and he marks down "SAOK".

Q. So you start from the caboose end, do you?

A. Yes, sir.

Mr. Hunt: Just a moment.

Mr. Kiendl: I will try and clear it up.

Mr. Hunt: I object to any leading on where he started.

Mr. Kiendl: Well, he said he started at the caboose end.

[fol. 273] The Court: Overruled.

Q. You just told us you started at the caboose end.

Mr. Hunt: No, he said he put some lights on the caboose end.

The Court: He said also that he started at the caboose end.

Q. And the first car that you come to that you inspect would be the first car put down in the book?

- A. Yes, sir.
- Q. What was the first car in that train, according to the book, in the handwriting of your deceased buddy, 31—
- A. 3133, MPLX.
- Q. And that would be the car next to the caboose?
- A. Yes, sir.
- Q. And then the cars would be listed as they appear in the train coming up to the engine?
- A. Yes, sir.
- Q. Is that right?
- A. Yes, sir.
- Q. Now take the first car, which was MPLX 3133.
- A. Yes, sir.
- Q. You started to inspect that?
- A. Yes, sir.
- Q. Did you inspect this particular car and these particular cars on that particular night?
- A. Yes, sir.
- Q. You don't remember the numbers of any cars or their location in the train?
- A. No, sir.
- Q. Or the type of cars or anything of that kind, do you?
- A. No, sir.
- Q. But when you would inspect the first car beginning at the rear end, 3133, you would be on one side of the car?
- A. Yes, sir.
- Q. And where would your buddy be?
- A. On the opposite side.
- [fol. 274) Q. And what would you do; would you walk around the car or alongside the car, or just what would you do?
- A. We would walk alongside of the car.
- Q. You would walk on one side and your buddy on the other?
- A. My buddy on the other; yes, sir.
- Q. And would you continue that process as you inspect each car until you got right up to the head end?
- A. Yes, sir.
- Q. And you said when you got in, you would yell across "O. K.," or something of that sort?
- A. Yes, sir.
- Q. By that do you mean that when you had come to the end of the car—
- A. The end of each car.

Q. The end of each car, where there is an opening where the couplers and drawheads are?

A. Yes, sir.

Q. Then you would proceed to the next car and do the same thing?

A. Yes, sir.

Q. And you did that for each and every one of the thirty-eight cars in this particular train?

A. Yes, sir.

Mr. Kiendl: Now I offer the record consisting of three pages just described in evidence.

Mr. Hunt: No objection.

(Marked Defendant's Exhibit G.)

Q. In this record Defendant's Exhibit G you have got various notations that I want you to explain to the Court and Jury. For instance, against Car 3133, the car we were just talking about, you have——

A. T.

Q. TE——

A. P.

[fol. 275] Q. What does that mean, "TEP"?

A. Tank empty.

Q. And then you have "DC" and "OCOK".

A. That means dump cap and outlet cap O. K.

Q. And then you have over here right under the heading of condition "SAOK."

A. That means safety appliance O. K.

Q. Now, against various other of these cars you have the initials "BE." Does that mean box car empty?

A. Yes, sir.

Q. And "GONE." Does that mean gondola empty?

A. Yes, sir.

Q. And under Car 14145 you have "Cotter in brake pin."

A. Yes, sir.

Q. "A"?

A. Yes, sir.

Q. What does that mean?

A. Cotter in brake pin, A; that means that we came to that car and saw a cotter missing out of it.

Q. And what is a cotter?

A. A cotter pin; a brake cotter pin that is put in to hold the brake pin in from coming out.

Q. You put in a new cotter pin; is that what that means, in that car?

A. Yes, sir.

Q. Now against Car 4011 you have "Ref L." Does that mean refrigerator loaded?

A. Yes, sir.

Q. Now against Car 2664, URT, you have the same notation, refrigerator loaded?

A. Yes, sir.

Q. "REF L."

A. Yes, sir.

Q. And then against Car 85412 you have refrigerator loaded?

A. Yes, sir.

Q. And were there any refrigerator cars in that train other than the three I have just called your attention to?

A. No, unless they are in the book.

Q. Well, there are no more in the book, are there?

A. No, sir; I don't see any there.

Q. And where the words "Prabola and Alworth" are [fol. 276] written on the third page, is that the end of the inspection of the Ashley Special or the beginning of your next inspection?

A. That is the beginning of the next day on, the other side is.

Q. Where do the book entries end of the inspection of the Ashley Special, above this Prabola?

A. Above the name; yes, sir.

Mr. Kiendl: Now I will put a line across there, if I may.

The Court: Certainly.

Mr. Kiendl: I will put a slightly wavy line across there to indicate that that is the end of the Ashley Special.

Q. Against 21639 you have a notation in Prabola's handwriting?

A. Yes, sir.

Q. "1 sh." That is one secondhand, is it?

A. Yes, sir.

Q. "Bk"; that is brake?

A. Yes, sir.

Q. Shoe?

A. Yes, sir.

Q. "R 2."

A. Yes, sir.

Q. What does that mean?

A. That means that he put a secondhand brakeshoe on the R-2 brake beam of that car, the central box car.

Q. 21639?

A. Yes, sir.

Q. Now, with the exception of the insertion of the cotter pin and the putting on of the secondhand brakeshoe, did you make any repairs or did Prabola make any repairs to any of the cars in that train?

A. No, sir.

Q. Were there any defective conditions that you discovered when you went along your side of these thirty-eight cars?

A. No, sir.

Q. Were there any defective conditions that Prabola discovered when he went along his side of the cars that he told you about?

A. No, sir.

[fol. 277] Q. How long had Prabola been working with you?

A. About four or five years, I judge.

Q. And what are the purposes of these inspections that you and your teammate or buddy make of incoming trains from other railroads; do you know? For ascertaining defects, you say, to see that they are in proper running order. Do you know what the purpose of that is?

A. To see that they are safe when we accept them from the Erie Railroad.

Q. And if they are defective, what do you do after that, when you inspect them?

A. I shop them.

Q. Shop them?

A. Put shop tickets on them.

Q. And when those cars, if they come in in defective condition and are shopped, are those defects charged against your railroad or Central Railroad of New Jersey or against the delivering carrier, the Erie Railroad Company in this case?

A. Against the Erie.

Mr. Kiendl: You may examine.

Cross-examination.

By Mr. Hunt:

Q. Mr. Alworth, you knew about this accident for the first time when?

A. Oh, the next day, I think it was.

Q. After your work was over at seven o'clock you went home, I take it?

A. Yes, sir.

Q. So you didn't know anything about an accident until when you got back to work the following night?

A. Yes, sir.

Q. That is the first you knew of any accident?

A. Yes, sir.

Q. And by that time these cars had already gone or been shipped on their way, had they?

A. Yes, sir.

[fol. 278] Q. So that at that time when you were making your inspection you were not making any inspection because an accident had happened; you were doing your routine work?

A. Yes, sir.

Q. And you had—let's see, in the nighttime you have a lantern, don't you?

A. Yes, sir.

Q. You are familiar with the requirements of the so-called Safety Appliance Act?

A. Yes, sir.

Q. And you know all the different parts of a car that are mentioned in that Act that you must look at?

A. Yes, sir.

Q. There is nothing about any door?

A. Nothing about any door in the Safety Appliance Act?

Q. Is there?

A. Yes, sir; there is, or I presume there is; yes.

Q. In the Safety Appliance Act about a door?

A. Well, if it extends out in any way at all, yes, or would hit anything at all.

Q. I guess you didn't understand me at all. You know I am talking about grab irons and steps and those things. You always make an examination of those, don't you?

A. Yes, sir.

Q. Do you have a lantern?

A. Yes, sir.

Q. As you go along do you swing your lantern under the train as you go along it?

A. Yes, sir.

Q. And you have to look after your cotter pins—those cotter pins are mentioned in the Safety Appliance Act?

A. Yes, sir.

Q. And you have to look at your couplings in there to see that they are all right?

A. Yes, sir.

Q. And you have got to look at your steps, if it is a box car?

A. Yes, sir.

Q. Those are all mentioned in the Safety Appliance Act?

A. Yes, sir.

Q. And those are at the end of the car?

A. Yes, sir.

[fol. 279] Q. Those steps and grab irons are at either end of the car?

A. Yes, sir.

Q. So after you get one end inspected, then you come down around the trucks?

A. Yes, sir.

Q. Go along there?

A. Yes, sir.

Q. And then you go over to the other end and do the same thing at the other end?

A. Yes, sir.

Q. How long does it take you to go down along forty cars, we will say; about how long would it take you to go down along forty cars?

A. That depends. Sometimes it will take an hour and a half, an hour and three-quarters.

Q. Well, you are assuming that you possibly found some trouble. Let's assume that you went down a side of a train where there was no trouble and you move right along; it would take you about how long to go down one side of the train of forty cars where you find everything all right?

A. Oh, half an hour or three-quarters.

Q. By the way, where were you when this train came in?

A. I was at the inspector's shanty.

Q. Well, is that your rest place that the last one of the witnesses was talking about?

A. Yes, sir.

- Q. You were over in the rest place?
A. Yes, sir.
- Q. How long had you been over in the rest place?
A. Oh, I don't know how long I was over there.
- Q. Well, an hour or two hours?
A. I could not say that; I could not swear how long I was there.
- Q. Who else was in the rest place besides you and——
A. Well, this car checker came there and this partner of mine that is dead now.
- Q. Anybody else?
A. Not that I recollect.
- Q. Well now, what happened was this—when were you first asked by anybody about this particular inspection that you made on this particular night; how long after the accident [fol. 280] before anybody from the railroad came around to ask you about it?
A. Oh, that I was notified about it, do you mean?
Q. No, no; somebody from the claim department, some investigator or somebody came up to ask you about this.
A. We were subpoenaed to go to Pittston.
- Q. Was that the first time you had ever been asked about this particular inspection?
A. No, I don't think it was.
- Q. Well then, tell me; take your time, don't hurry,—about how long after this accident before anybody came around to ask you about the inspection that you made on this particular night?
A. I could not tell you how long after it was.
- Q. Well, was it a month or two months?
A. I don't remember for sure.
- Q. Haven't any idea?
A. I haven't any idea. I was going home from work one morning.
- Q. When somebody came up and asked you about it?
A. Yes, sir.
- Q. And, of course, if I were to ask you about any inspection that you made on a particular night, you would have to say, "I can't tell you anything until I get the book." That would be the fact, would it not?
A. Yes.
- Q. So after you had been asked you went and saw the book sometime, did you?
A. Yes, sir.

Q. So all your testimony here, whatever you said about the work you did and so on, all depends entirely upon what you found here in this book; is that correct?

A. Yes, sir.

Q. You assumed that your buddy, as Mr. Kiendl called him, did his work right and made the notations?

[fol. 281] Mr. Kiendl: Not as I called him; as he called him.

Mr. Hunt: Well, that is all right; no criticism, Mr. Kiendl.

Mr. Kiendl: No, I know that, Mr. Hunt, but let's keep the record straight.

Q. You assumed that he did his work right, and from this book you gave this testimony that you have given here in court; is that correct?

A. Yes, sir.

Q. Now then, is there anything in that book—I will withdraw that question. The first thing Mr. Kiendl asked you about was whether you started at the rear end of this train; did you?

A. Yes, sir.

Q. And your memory is no better now, is it, than the time that you testified down in Scranton? Nothing has happened in the meantime to make your memory any better today than it was down there?

A. I don't think so.

Q. Your name is Alfred Alworth, is it?

A. Yes, sir.

Q. Well, you testified under oath before the Commissioner, or whatever they call him down there, did you?

A. Yes, sir.

Q. And were you asked this question, page 4:

“Q. Did you examine that train starting from the engine, or did you start from the end of the train?

“A. I don't recollect which way I started from that morning”?

Did you answer that?

A. I don't remember, but if it is in that——

Q. Well, I will show it to you. It will be conceded that you so testified, I take it.

[fol. 282] Mr. Hunt: It is conceded, is it not, Mr. Kiendl?

Mr. Kiendl: The first question and answer on the record of his deposition is exactly the way you read it.

Q. "Q. Did you examine that train starting from the engine or did you start from the end of the train?"

"A. I don't recollect which way I started from that morning."

Do you remember answering that?

A. No, I don't now.

Q. Well, if you testified then, you were telling the truth then, weren't you?

The Court: Now, Mr. Hunt, isn't it a matter of concession by Mr. Kiendl that that is the question and that is the answer?

Mr. Hunt: Exactly, your Honor. Now I want to ask my next question.

Q. Has anything transpired since you so testified that makes your memory any better at the present time?

A. No, sir.

Q. So your memory is no better at the present time?

The Court: He has already testified to that.

Mr. Hunt: All right.

Q. Now, sir, Mr. Witness, you either started at one end or the other, didn't you?

A. Yes, sir.

Q. All railroad men who go over a train, just as a matter of habit if not custom, start at one end or the other, don't they?

A. Yes, sir.

Q. And that has been your observation, for any kind [fol. 283] of an inspection they start at one end or another?

A. Yes, sir.

Q. Every railroad man you ever saw going along taking numbers of the cars, the common sense of it is he either starts at one end or the other, doesn't he?

A. Yes, sir.

Q. He doesn't go up and start at any 14th car, does he? Just tell me the truth about that?

A. Well, in my line of work I could not do that.

Q. I am talking about your general observation as a railroad man; you never remember a man who is going

along and taking numbers of the cars going up and picking the 14th or 18th and starting there, do you?

A. Oh, yes; I do.

Q. You do?

A. Yes, sir.

Q. When? Stop and think before you answer. One occasion or more?

A. Yes, on different occasions.

Q. Well, give me any one of the occasions.

A. I can't tell you just what occasion, but I saw the checker do it.

Q. Were you watching him?

A. Oh, yes; checking.

Q. Were you interested in what he was doing?

A. Yes; the checker checks the train with the inspector.

Q. Your first answer is, however, that as a general proposition anybody that is going over a train to get either numbers or inspect it or anything else usually starts from one end or the other. That answer still stands, does it?

A. Yes, to my line of work.

Q. Well, let me ask you, Mr. Alworth? They start to break this train up, do they not, right after it gets in there?

A. No.

Q. What?

A. No, not right after it gets in there.

Q. When do they start to break it up?

A. Well, they don't start to break it up until I notify [fol. 284] the yard master.

Q. Yes. Well, how long after this accident was it before they started to break this train up and put parts of it on one siding and parts on another, depending on where they want the cars to go?

A. Well, I don't know that.

Q. You don't know how long it was?

A. No, I don't know that.

Q. Now, you in your work occasionally, and frequently every day of your life, you are walking through the yards, are you not?

A. Yes, sir.

Q. Now, you may be going to lunch or you may be on your way to some work or something of that kind?

A. Yes, sir.

Q. And if you were passing by a train with which you

had nothing to do, you were not to inspect it or anything of that kind; do you understand?

A. Yes, sir.

Q. You pass many a car and many a train in the yard there that you had nothing to do with it at that particular time?

A. Yes, sir.

Q. And if you were going along and you found a car with a door open, you would, I presume, as a common sense man, go up and close it, would you not?

A. Yes, sir.

Q. And if it was a box car, would you close a box car door or leave it open?

A. I would close it.

Q. Just push it to and close it?

A. Close it and put the latch on.

Q. And if it was a reefer door you would close it, and that has a little latch that just drops in a slot there?

A. Yes, sir.

Q. Something like the handle on a refrigerator snap?

A. Yes; and it goes through a staple there.

[fol. 285] Q. Yes, just drops in something like a refrigerator door that you have with a lock as you have in your home?

A. Somewhat the same type, on that order, yes.

Q. And you would go over and close it and go on your way?

A. Yes, sir.

Q. And as a matter of fact, you have done that many times, I mean as a man,—

Mr. Kiendl: Oh, I object to that line of inquiry, if your Honor please. It is not what happened in other cases; we are interested in what happened here. It is not proper cross examination.

Mr. Hunt: What I am leading up to is that—

The Court: Cross examination. I will allow it.

Q. How many years have you been with the railroad?

A. About 25.

Q. And you have done something like that or similar in innumerable instances, over this period of years, have you not?

A. Well, I can't recollect that.

Q. Well, you don't wish to tell me how many times,

but you know you have done it, and that is what you would do or any other railroad man would do?

A. If I saw a door open I would close it, naturally.

Q. Certainly; and you have in your experience handled or inspected old cars as well as new ones?

A. Yes, sir.

Q. And tell me about this. One of your box cars that has a slide door and it has little casters on the top, and it is suspended by a rod and it rolls along that rod at the top?

A. Yes, sir.

[fol. 286] Q. And there is likewise a similar rod at the bottom.

A. Yes, sir.

Q. A rail, you might call it?

A. A track.

Q. A track, single rail, just a single rail, is it not?

A. Yes, sir.

Q. And I direct your attention particularly to the cars when they get of some age where they are old cars,—you understand what I mean?

A. Yes, sir.

Q. You know from your work as an inspector, do you not, the fact to be, on an old car, one of the common things you have to contend with is because that door jumps the lower rail. You know that as a fact, do you not?

A. They do.

Q. Yes, sir; and then you know when they jump, on the old cars, when they jump that lower rail, when you are going around a curve, that door just swings right out like that (illustrating), doesn't it, if you are going around a curve that way (indicating); if you are going around a curve as I am indicating now, and on those old cars where it jumps the lower rail, you know that door just swings right out away from the car, doesn't it?

A. Not when the door is latched.

Q. Latched, but if it is an empty car there is no latch on the door, is there?

A. Yes.

Q. But in nine times out of ten if it is an empty car the man who just closes that door never bothers to latch it; isn't that the truth about it?

A. No; empty cars is supposed to be latched.

Q. Yes, they are supposed to be, but I am talking about the practical side of it.

The Court: It is half-past four. If you think you can finish with this witness in five minutes, I will permit you to continue.

[fol. 287] Mr. Hunt: I am through right now, your Honor.

Mr. Kiendl: Then may I have a minute? This man comes from another railroad company, and I want to finish with him.

The Court: You may have five minutes.

Mr. Kiendl: I won't need that long, your Honor.

Redirect examination.

By Mr. Kiendl:

Q. In common sense practical railroading, Mr. Alworth, that Mr. Hunt has asked you about, have you ever seen a man close doors on reefer cars that had been opened with the seals intact? Could such a thing ever happen?

A. With the seals on the car broken?

Q. The seals on the car unbroken?

A. Unbroken?

Q. Unbroken; what would be the condition of the doors, as a practical railroad man? They would have to be closed, wouldn't they?

Mr. Hunt: Don't tell him.

A. Yes, and they are closed, and properly so.

Q. And when the seals are unbroken, the doors cannot open, can they?

A. No, sir.

Q. Now, assuming that the three reefer cars in this train you have told us about, that one had Erie seals on and the other had Erie seals on and the third had Erie seals on, was there any way in which any man in the employ of the Central Railroad Company of New Jersey in Ashley could put Erie seals on those cars, that you know of?

A. Not that I know of.

[fol. 288] Mr. Kiendl: That is all.

The Court: Gentlemen, don't discuss this case amongst yourselves or with anyone else, and we will adjourn until tomorrow morning at ten-thirty a. m.

(Adjourned to October 7, 1936, at 10:30 a. m.)

New York, October 7th, 1936,
10.30 o'clock a. m.

(Trial Resumed.)

Mr. Kiendl: If your Honor please, the defendant desires to read in evidence the deposition of the witness Stephen Probola, who is now deceased, and whose evidence was taken on deposition by the plaintiff in this action.

The Court: All right.

Mr. Kiendl (reading):

STEPHEN PROBOLA, a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

“Direct examination.

“By Mr. Kaufman:

“Q. Will you please state your name and address?

“A. Stephen Probola, 85 Barney Street, Plymouth, Pa.

[fol. 289] “Q. What is your occupation?

“A. Car inspector with the Central Railroad of New Jersey.

“Q. Were you on duty on the morning of July 27, 1934?

“A. Yes, sir.

“Q. Did you inspect the Erie freight train that came in the Ashley yard from Avoca on that morning?

“A. Yes, sir.

“Q. Will you please tell me how you inspected this train, exactly what you did?

“A. My buddy and I, Mr. Alworth, were the only two men who inspected this train. We put our both flags up on both ends of the train and we started inspecting all parts of the car. We looked over the cars.

“Q. Where did you start?

“A. I just don't remember. Sometimes we start on the east and sometimes on the west end. Sometimes we are

down the lower end of the car and start on both ends of the train. The first thing I do is take the number of the first car and the initials, whether it is loaded or empty and put that in the record book.

“Q. Did you do that with this train.

“A. Yes.

“Q. Do you have the record book here where you made these notes?

“A. Yes.

“Q. Is this the record book (indicating)?

“A. Yes. That is my handwriting.”

Mr. Kiendl: And the book in question is a book that is now evidence, three pages of it, Defendant's Exhibit G.

(Continuing reading:)

“Q. Now you say that you and Mr. Alworth separate at the end of the train and you proceed to examine both [fol. 290] sides of the train and when you get to the first car you make a note of the car number and initial?

“A. Yes, whether it is a box car or tank, and whether it is loaded or empty.

“Q. And you put this notation in Plaintiff's Exhibit A (which is Defendant's Exhibit G)?

“A. Yes.

“Q. All of the entries in Plaintiff's Exhibit A (Defendant's Exhibit G) are in your handwriting, is that correct?

“A. Yes, all in my handwriting.

“Q. Do you remember exactly the manner in which you examined that car on July 27th?

“A. I do not.

“Q. What phases of the examination is it that you don't remember exactly?

“A. I don't know what you mean. Do you mean examining the train?

“Q. Yes.

“A. Well, I examined it for all defects.

“Q. How did you examine it for all defects?

“A. By looking for defects.

“Q. How did you look for defects?

“A. I bent down and looked at the cupboard, the wheels.

“Q. When you look at the wheels, what do you look for?

“A. Cracks or blood or anything I find. If I find any-

thing wrong I take a record of it or if my friend on the other side finds anything.

“Q. Is that all you looked at?”

“A. I looked at the sides, the safety appliances.

“Q. What are the safety appliances?”

“A. Grab handles, foot steps, cut levers, see that no siding is loose, nothing hanging.

“Q. What do you mean by ‘siding’?”

“A. The side of the car.

[fol. 291] “Q. Is that all you examine?”

“A. I look to see that the doors are on their runners.

“Q. When you say you look at all these things, do you mean you just look at them and you can tell by a glance whether they are in condition?”

“A. I look to see that they are on their runners.

“Q. Is that what your examination consisted of, your merely looking at them?”

“A. Yes. We look at them and if something is wrong we repair them.

“Q. Would it be possible, Mr. Probola, to borrow this book, Exhibit A, until we get the testimony?”

“A. I have no rights with that book.

“Q. And that’s what your examination of the first car consisted of?”

“A. Yes.

“Q. And after you examined the first car, what did you do?”

“A. Take the number of the second car, the initials, whether it is loaded or empty. I did the same thing as the first.

“Q. And I assume that you did that with the balance of the cars in the train?”

“A. Yes.

“Q. Do you recall whether or not, of your own recollection, you discovered any defects in the cars on that train?”

“A. I didn’t discover nothing. There were no defects. I don’t think so. If there were they would be in the book.

“Q. Can you tell from an examination of the book?”

“A. Yes.

“Q. Will you please tell me from an examination of the book whether there were any defects discovered?”

“A. There was a cotter pin applied in Central N. J. 14145 Central N. Y. box empty cotter and brake pin on A. N. and

[fol. 292] 21639 Central New Jersey box empty one second-hand brake shoe and R. tube. That's about all we did.

"Q. Those are the only defects that were found in that train that evening?

"A. Yes, sir.

"Q. All the entries in Plaintiff's Exhibit A are in your handwriting?

"A. Yes.

"Q. In those cases where you found defects, you made entries in Plaintiff's Exhibit A?

"A. Yes.

"Q. Will you please explain to me how a record was obtained of those defects which Mr. Alworth found?

"A. He yells to me.

"Q. Did you repair the cotter pin and the brake shoe?

"A. Yes.

"Q. How long did it take you to repair the brake shoe?

"A. According to what luck you have with it.

"Q. Do you remember how long it took that morning?

"A. No.

"Q. About how long does it generally take to repair a brake shoe?

"A. Sometimes three minutes, five minutes, according to what luck you have.

"Q. Do you recall how long it took you to repair the cotter pin?

"A. No.

"Q. How long does it generally take to repair a cotter pin?

"A. A minute or two.

"Q. Does Plaintiff's Exhibit A indicate the order in which the cars were in relation to the locomotive? Was this car attached to this one (indicating)?

"A. Yes, sir.

"Q. Then Plaintiff's Exhibit A contains the order in which the cars were in relation with each other, is that correct?

"A. Yes.

[fol. 293] "Q. Do you remember which car was nearest the locomotive?

"A. No.

"Q. Will you please tell me the numbers, beginning from one end of the train of the respective cars making up that

train. With relation to cars numbered 81706, 109569, 7123, 92607, 11170, do you recall whether you discovered any defects in those cars that evening?

"A. I don't recall.

"Q. Does Exhibit A indicate whether there were any defects in those five cars?

"A. No, sir.

"Q. Do you recall how long it took to inspect this freight train on the morning of July 27, 1934?

"A. No, sir.

"Q. Approximately how long in your opinion would it take to inspect a freight train containing 35 cars with a crew of two men?"

An objection to that question and it was not answered.

"Q. How long have you been working for the Central Railroad of New Jersey?

"A. Thirteen years.

"Q. How long have you been a car inspector?

"A. Thirteen years.

"Q. Approximately how long in your opinion would it take to inspect a freight train containing 35 cars with a crew of two men?

"A. That is something I don't know.

"Q. Approximately how long for this type of train?

"A. It is according to what kind of weather it is.

"Q. Do you recall the weather conditions on July 27th?

"A. I do not recall.

"Q. How long in your opinion would it take to inspect [fol. 294] a train containing 35 freight cars on an early morning in July which was clear?

"A. I don't know.

"Q. Well, would it take about five hours?

"A. It wouldn't take five hours. It would take at least two hours.

"Q. Well, a train of this type with 37 cars?"

There was an objection to that question and it was not answered.

"Q. How long would it take to inspect a 35 car train of the character of the train in question with a crew of two men on a clear morning in July, notwithstanding only

several cotter pin repairs and several brake shoe repairs, in your opinion?

“A. About two hours.

“Q. That is all.”

I will now read the cross-examination by Mr. Hyde, of counsel for the Railroad Company in this case:

“Q. Mr. Probola, you are not in any way connected with the Erie Railroad?

“A. No.

“Q. You say you inspected this train on the morning of July 27th, 1934?

“A. Yes, sir.

“Q. And you found no defects in any of the cars of this train except the cotter pin and brake shoe which you enumerated in your direct examination?

“A. Yes.

“Q. Did you test the grab-irons on this train?

“A. Yes.

“Q. How did you test them?

“A. With my hand to see if it is loose.

“Q. The two defects which you testified to, how would [fol. 295] you classify those defects, are they minor defects?

“A. They are only minor defects.

“Q. Could they in any way project to protrude from the side of the cars, the defective cotter key or the other?

“A. No.

“Q. Each train that comes into the Ashley yard is made up of this type of car, isn't it?

“A. Yes.

“Q. Do you recall any instance of two trains consisting of the same number of cars or types of cars?

“A. No, sir.

“Q. And your time of inspection necessarily depends upon the type of car, the number of cars in the train and the time that it takes to make any necessary repairs, if any, is that not correct?

“A. Yes, sir.

“Q. And you don't recall how long it took you and Mr. Alworth to inspect this particular train, do you?

“A. I do not.”

Mr. Hyde said that is all, and then the witness was examined on redirect examination by Mr. Nemeroff, the attorney of record for the plaintiff:

“Q. Do you remember in particular the train of the Erie that came in on the morning of July 27th at about 4:40 A. M.?”

“A. Yes.

“Q. You remember that train?”

“A. Yes.

“Q. Could you tell me without looking at the book what that train consisted of, how many cars and exactly how many cars of each type in that train?”

“A. Not that way. I remember the train coming in the yard.

“Q. Do you remember how long it took to inspect that particular train?”

“A. No.

[fol. 296] “Q. Do you recollect whether you inspected the train starting from the engine or the end of the train?”

“A. I don't remember.

“Q. You know that a train came in and you don't remember anything except what the Plaintiff's Exhibit A indicates?”

“A. Yes. Just what the book shows.

“Q. Do you recollect the engineer who drove that train that night?”

“A. I couldn't swear to that because I don't bother the engine crew. I have nothing to do with it.”

Then Mr. Hyde asked this question:

“Recross-examination.

By Mr. Hyde:

“Q. But you do recall that this train did come in the Ashley freight yard on the morning of July 27th, 1934, and that you inspected it?”

“A. Yes, sir.”

Then Mr. Kaufman, the attorney for the plaintiff asked this question:

“Q. Do you recall whether you discovered any blood stains on any of the wheels of the cars?”

“A. If we would have discovered it we would have made a notation of it but our records don't indicate it.”

That is the entire examination.

[fol. 297] VICTOR H. DEPPI, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. Kiendl:

Q. Mr. Deppi, you are a car inspector in the employ of the Central Railroad Company of New Jersey?

A. Car inspector foreman.

Q. Car inspector foreman?

A. Yes, sir.

Q. Located where?

A. Penobscot, Pennsylvania.

Q. At Penobscot?

A. Pennsylvania.

Q. And were you such car inspector foreman at Penobscot on July 27, 1934?

A. I was acting car inspector foreman.

Q. Did there come a time on that morning when you got a request to inspect certain cars in that yard?

A. Yes, sir.

Q. Did you get that request from someone in the Erie Railroad Company?

A. The request for that inspection came over the telephone to my office to the attendant there and he did not determine from whom it came. He gave me the information.

Q. When you got the information do you remember what time it was in the morning, about?

A. Well, I would say about 11 o'clock when I got the information.

Q. When?

A. About 11 a. m.

Q. About 11 a. m.?

A. Yes.

Q. Had the train come into that Penobscot yard that morning from Ashley?

A. Not a train.

Q. Had some cars come in from Ashley?

A. Some cars had come in, yes, sir.

Q. And do you know if those cars were cars that came from the Ashley special?

A. Some were.

Q. Some were?

A. Yes, sir.

[fol. 298] Q. Well, when you got the call what did you do about it? Will you tell the Court and jury?

A. When I got the call I was occupied at the time and I got a car inspector to go out in the yard, and I instructed him to find the cars that came from the Erie Railroad and examine for defects, because there was someone evidently injured and he should inspect the cars closely, and he went out and inspected the cars in the yard.

Mr. Hunt: I will have to object to this, your Honor. He is now apparently telling us what someone else did.

Mr. Kiendl: Yes, don't tell what he did.

The Court: Objection sustained.

Q. Then did you see him again?

A. The inspector returned and said——

Mr. Hunt: No; pardon me.

The Court: Objection sustained.

Mr. Kiendl: Consented to.

Q. The inspector returned, then what happened?

A. The inspector returned and said there was——

Mr. Hunt: No; I beg pardon.

The Court: Objection sustained.

Q. Don't say what he said. The inspector returned and had a talk with you?

A. The inspector returned and reported finding some cars.

Q. And what did you do?

The Court: As a result of that report what did you do?

[fol. 299] The Witness: On his report him and I went back out and inspected the cars again.

Q. And did he point out certain cars to you?

A. Several.

Q. And did you inspect those cars for defects?

A. Yes, sir.

Q. Did you find any?

A. No, sir.

Q. Did you find any blood stains on any of the cars?

A. Yes, sir.

Q. And did you make a record of the cars on which you found blood stains?

A. Yes, sir.

Q. And have you that record with you?

A. I have given the record to you, I think.

Q. About how many cars, do you recall, showed blood stains?

A. I think there were seven.

Q. You think there were seven?

A. Yes, sir.

Q. Now, those seven cars you personally inspected for defects?

A. Yes, sir.

Q. Did you find any car doors open or swinging or off the tracks or broken?

Mr. Hunt: I object to any condition that existed at 11 o'clock in the morning, your Honor, as absolutely no evidence.

The Court: I will overrule the objection.

Mr. Hunt: Exception.

A. No, sir.

Q. Did you examine any other cars in the yard outside of those seven that morning?

A. In my regular tour of duty, yes.

Q. And did you find in your regular tour of duty that there were any cars in that yard with broken or defective doors?

[fol. 300] Mr. Hunt: I object to it as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Hunt: Exception.

A. No, sir.

The Court: This inspection took place at 11 a. m., did you say?

The Witness: Approximately 11 a. m.

Q. You were examined as a witness by the plaintiff in Pittston, Pennsylvania?

A. Yes, sir.

Q. And there the numbers of these cars were given?

A. Yes, sir.

Q. As part of the testimony?

A. Yes, sir.

Mr. Kiendl: And subject to finding those books I am through with this witness.

Cross-examination.

By Mr. Hunt:

Q. Anything that you did in regard to any cars was done at 11 o'clock in the morning, as I understand it, or approximately that time?

A. Approximately, yes.

Q. Now, sir, at the time this train——

The Court: You will pardon me, Mr. Hunt. 11 o'clock in the morning of what date?

The Witness: July 27th.

The Court: July 27th?

The Witness: Yes, sir, the same morning the Erie Special arrived.

[fol. 301] Q. And at the time this Erie train, this Ashley Special, had been all broken up, to use the railroad language, broken up, and a part of the cars had gone on their way, is that right, part of those 38 cars were already out of your yard and on their way somewhere?

A. No, sir.

Q. They were not?

A. Out of my yard, no, sir.

Q. What is that?

A. They were not out of Penobscot yard.

Q. The 38 cars were all there at 11 o'clock?

A. No, sir.

Q. Where were they?

A. I don't know.

Q. Well, some of them—where were these 38 cars at 11 o'clock?

A. Some were at Penobscot.

Q. Well, Penobscot, is that where you were?

A. That is where I was.

Q. At that time somewhere at Penobscot?

A. Yes.

- Q. Where were the rest of them?
A. I don't know.
Q. Then they were not at Penobscot?
A. No, sir.
Q. They had gone somewhere?
A. They had not arrived at Penobscot.
Q. Oh, some of them did not arrive at Penobscot, is that correct?
A. Yes, sir.
Q. How far is Penobscot from Ashley?
A. Well, by way of the highway it would be about four miles; over the plains it would be about four miles, and by the back track I would say it is about thirteen miles.
Q. Well, by railroad.
A. Well, the plains is by railroad.
Q. Well now, this gentleman yesterday that told about inspecting the grab irons and the brake shoes, where was that inspection made?
[fol. 302] Mr. Kiendl: That was at Ashley.
Mr. Hunt: I want to get it straight.
Q. That was at Ashley?
A. Yes, sir.
Q. And then at Ashley this train—where is this train originally broken up, at Ashley?
A. Yes, sir.
Q. And there the part of it that is going in one direction is put on one track and the part that is going in another direction is put on another track, and finally they get them on the way out of Ashley?
A. Yes, sir.
Q. Now then, a part of that train came into Penobscot?
A. Yes, sir.
Q. Have you any idea how many cars came into Penobscot?
A. No, I have not.
Q. Have you any record to show how many cars came into Penobscot?
A. There is a record at Penobscot, but I don't have it.
Q. And wherever the rest of the cars went, wherever they may have gone, the balance of that train, there would also be a record of those, would there not?
A. Not at Penobscot.

Q. Not at Penobscot, but wherever they went there would be a record?

A. Yes, sir.

Q. Somebody somewhere knows as much about the other cars as you know about those that came into Penobscot, correct?

A. Yes, sir.

Q. Now, sir, you are classified as a chief inspector?

A. Car inspector foreman or foreman car inspector.

Q. And if you are going along the yard and you see a door open, you close it, do you not? That is common practice?

A. No, sir, I go to the inspector that did not close it and have him close it.

Q. Oh, you go to him?

A. Yes, sir.

[fol. 303] Q. Well now, at any rate somebody closes it, do they?

A. Yes, sir.

Q. An empty car or loaded car, either one?

A. If it is a loaded car he reports immediately.

Q. Yes; and the record is kept of that?

A. Yes, sir.

The Court: On that day that you inspected the cars, you were acting as an acting inspector?

The Witness: Yes, sir, acting foreman.

The Court: Acting foreman?

The Witness: Yes, sir; foreman car inspector.

The Court: And was it your duty to inspect cars as foreman?

The Witness: Well, in a case of this kind I was too—any decision that the inspector—to be made, I was to make it. I have charge of all the inspectors.

Q. You say, Mr. Deppi, if you found a car door open going through the yard, you go to the inspector whose duty it was to see that the doors were closed, and it is in the nature of a complaint against him, is it not?

A. Yes, sir.

Q. You tell him so, don't you, being foreman?

A. He knows it.

Q. He knows it. Now then, if any one of those inspectors themselves, or any railroad man, whether he is a brakeman

or anybody else, if he sees a door open, he doesn't come and tell you some other inspector did not do his work just right, does he? They don't squeal on each other or anything of that kind?

A. No, sir.

Q. But on the other hand there is a tendency for the [fol. 304] brakeman and all the men to sort of cover these things up?

Mr. Kiendl: I object to that, if your Honor please, as pure speculation.

The Court: Objection sustained.

Mr. Hunt: That is all.

Redirect examination.

By Mr. Kiendl:

Q. Mr. Deppi, the record books that you referred to are these two which I now have in my hand, are they not?

A. Yes, sir.

Q. And they show blood stains on various cars?

A. Yes, sir.

Q. Will you just read the initials and numbers of those cars so we will have them?

A. CNJ85571; L1 and 4, south side flanges, most L2 and 3; PRR52659, south side R1, 2, 3 and 4; D & H 15110, left side L3—that is on the south side; Erie 75983 south side R1, 2, 3 and 4; Erie 79543, L1, 2, 3 and 4 south side; Erie 84036, south side R1, 2, 3, and 4; Erie 92607 south side L1, 2, 3 and 4.

Mr. Kiendl: I think Mr. Hunt will be willing to stipulate that the cars just mentioned by the witness, all with the exception of two, were cars enumerated in the various exhibits containing a list of the cars in the Ashley Special.

Mr. Hunt: Yes, but there were two cars mentioned that were not found on the list.

Mr. Kiendl: That is right.

Q. Now, Mr. Deppi, where did you find the bloodstains?

A. On the flanges of the wheels on the inside.

[fol. 305] Q. Inside flanges of the wheels of these cars?

A. On the inside of the flanges of the wheels.

Q. That is where the flanges run along the inside of the rail of the track?

A. That is what I referred to as the flange, but I would say on the inside of the wheel back of the flanges.

Recross-examination.

By Mr. Hunt:

Q. It had been raining very, very hard that morning, had it not?

A. It had rained that morning, yes.

Q. Hard?

A. Well, it rained hard in the morning early and was foggy and misty and the rails and the wheels were mucky.

Mr. Hunt: That is all, sir.

(Short recess).

ROY MYERS, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. Kiendl:

Q. Mr. Myers, you are an employee of the Central Railroad Company of New Jersey?

A. Yes, sir.

Q. Been in the employ of that company for some years?

A. 11 years.

Q. You are a car inspector?

A. Yes, sir.

Q. At Penobscot, Pennsylvania?

A. Yes, sir.

Q. Were you car inspector on July 27, 1934, the day when this accident happened?

A. Yes, sir.

[fol. 306] Q. And were you performing your duties as car inspector?

A. Yes, sir.

Q. Did you get some instructions from your superior, acting car foreman Deppi, the man who was on the stand before you?

A. Yes, sir.

Q. Did you go out and inspect certain cars in the Penobscot yard to find evidence of any defects, bloodstains or things of that kind?

A. I found bloodstains but I did not find any defects.

Q. And did you report back to Mr. Deppi?

A. Yes, sir.

Q. And give him the numbers of the cars?

A. No, I did not.

Q. You did not?

A. No.

Q. Did you take him out with you afterward?

A. Yes, sir.

Q. And did he look at the cars with you?

A. Yes, sir.

Q. And where were the bloodstains?

A. On the inside of the wheel right above the flange.

Mr. Kiendl: That is all.

Mr. Hunt: No cross.

ALBERT HOWELL, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. Kiendl:

Q. Mr. Howell, what is your occupation?

A. Car inspector.

Q. Where?

A. Avoca yard.

Q. Of what railroad?

A. Erie Railroad Company.

[fol. 307] Q. How long have you been such a car inspector, Mr. Howell?

A. About 18 years.

Q. Were you car inspector the night when this Ashley Special went from Avoca to Ashley?

A. Yes, sir.

Q. Did you have anything to do with the inspection of the cars in that train?

A. Yes, sir.

Q. Did you work alone or did you work with somebody else inspecting?

A. I worked one side of the train and my buddy worked on the other.

- Q. And who was your buddy?
A. Joe Cook.
- Q. And is he here in court?
A. Yes, sir.
- Q. Where did you and Mr. Cook inspect the train, Mr. Howell? Where was it?
A. On the back leader, what we call.
- Q. That is what you railroad men call the back leader track?
A. Yes, sir.
- Q. And is that the place where the Ashley Special, when it is made up, departs from Ashley for Avoca?
A. Generally, yes. Of course they make it up on different tracks, but this particular night it was on the back leader.
- Q. On the back leader?
A. Yes, sir.
- Q. Did you and your partner, Mr. Cook, inspect every car in that train?
A. Yes, sir.
- Q. You on one side?
A. Yes, sir.
- Q. He on the other?
A. Yes, sir.
- Q. What did you inspect it for?
A. We inspected it for general defects.
- Q. And did you find any?
A. No, sir.
- Q. Did your partner find any that he reported to you?
A. No, sir.
- Q. Did you find any evidence of any broken doors on any of the freight cars where the doors were off the runners on the bottom and you slide them?
A. No, sir.
- [fol. 308] Q. Did you find any evidence of any doors on any refrigerator cars being left open and swinging?
A. No, sir.
- Q. Did you keep a record of the inspection?
A. No, sir.
- Q. Did you in your car inspector's record book make any notation of the inspection at any time?
A. The only notation I make of a car that would be a crippled car set out of the Ashley train.
- Q. Were there any crippled cars set out of that Ashley train on that night?

A. No, sir.

Q. Is this your original record (handing)?

A. Yes, sir.

Q. And that was made in your own handwriting?

A. Yes, sir.

Q. Was it made that night or the next day or when?

A. It was made the next morning.

Q. Was it made before or after you had heard anything about the occurrence of any accident?

A. It was made after I heard of the accident.

Q. Now, will you read out from that record what you wrote in the book about your inspection?

Mr. Hunt: I object to anything written after he knew about the accident.

The Court: Yes, there is something to that.

Mr. Kiendl: Well, it is a record made—may I ask another question?

The Court: Yes.

Q. Was that record made by you in the performance of your duties in the course of your employment as a car inspector?

A. Yes, sir.

Q. Was it made for the purpose of maintaining an original record of the inspection you had made the night before?

[fol. 309] A. It was made—I made that record after I heard about the accident. I made the record in the book for reference to the accident.

Mr. Kiendl: I renew my offer in evidence.

Mr. Hunt: May I just ask one question before your Honor passes on it?

The Court: Yes.

Preliminary cross-examination.

By Mr. Hunt:

Q. You would not have made any record at all if you had not heard about this accident, would you?

A. Not unless I had a crippled car to set out.

Q. All right. There was no crippled car that you took out of this train, was there?

A. No, sir.

Q. All right, sir. Now, you would not have made any

record at all in this case had it not been that somebody told you there was an accident. Is that correct?

A. I heard about the accident, and that is why I put that notation in the book.

Q. If you had not heard about any accident the next morning you never would have made any record, you never would have made any writing at all, would you?

A. No, sir.

Q. So that this writing was not made in the regular course of your business, but it was made because somebody told you there had been an accident on the Ashley Special, am I correct?

A. That is right.

Mr. Hunt: I again object.

[fol. 310] Direct examination resumed.

By Mr. Kiendl:

Q. And when you are informed about the occurrence of an accident on a train that you inspect, do you make a record of that in your book?

A. The only record I make in my book is a car that I set out of the Ashley train as a cripple.

Q. Let's approach it another way. You made an inspection of the Ashley Special?

A. Yes, sir.

Q. If you find any defective or if you find any cars that have to be shopped, do you or do you not make a record?

A. I do.

Mr. Hunt: I object to that.

The Court: I will overrule the objection.

Mr. Hunt: Will your Honor listen to me a moment?

The Court: Yes.

Mr. Hunt: I have no objection to the question, but he has incorporated two things in that question. He says "if you find any defects or if you found a crippled car."

Mr. Kiendl: That is what I meant to ask.

Mr. Hunt: I want him to separate it, that is all I ask.

The Court: All right; counsel can do that.

Q. In the regular performance of your duties, when you inspect a train, if you find any defects in any of the cars in the train, do you make a record of it?

A. The only record I make is of a car set out of the train.

Q. Well, if you find any defects in any car do you make any record of them—if you find a broken door, a broken seal or anything of that kind?

[fol. 311] Mr. Hunt: I object to that as leading and suggestive.

The Court: Overruled.

Mr. Hunt: Exception.

A. Yes, sir.

Q. You do, don't you?

A. Yes, sir.

Q. That is part of your duties as a car inspector?

A. Yes, sir.

Q. If you find anything wrong in a car to record it?

Mr. Hunt: I object to that as leading.

The Court: Overruled.

A. Yes.

Q. Now, if you shop a car, you record that in the book, don't you?

A. Yes, sir.

Q. And if there is nothing wrong with the cars in the train you do not make any record of it?

A. That is right.

Q. But if you hear there is an accident to the train that you have inspected before it departed, you do make a record of that?

A. Yes, sir.

Q. And that is what you did in this case?

A. That is right.

Q. And that is the original record?

A. That is right.

Mr. Kiendl: I renew my offer.

Mr. Hunt: Objected to.

The Court: Objection overruled.

Mr. Hunt: Exception.

Mr. Kiendl: I offer it in evidence from the book, maybe I may read it in and it won't clutter the record, it is not very long:

[fol. 312] "Ashley Special departed 2.10 a. m., 38 cars and 38 brakes, train O. K., conductor Keller, engine 2499."

You may inquire.

Cross-examination.

By Mr. Hunt:

Q. Mr. Howell, in the railroad business when you find a car that has got to be shopped—you know that is an expression, isn't it—it has got to go to the shop?

A. That is right.

Q. And you take that out of the train?

A. That is right.

Q. And that you make a record of?

A. That is right.

Q. What was your expression—in going down through this train—did you find any car that had to be taken out?

A. No, sir.

Q. Now, do you make any record except in cases where a car has to be removed from the train?

A. I make a record in my book of the defects of the car.

Q. Now, sir, we will say you go along until you come to something that you yourself could fix right then and there, you understand?

A. Yes, sir.

Q. So that you would not have to take the car out of the train, in your judgment, understand?

A. Yes, sir.

Q. Do you make any record of that? Can you answer that?

Mr. Kiendl: He is trying to answer it if you give him a chance.

A. I make a record of that in my book.

Q. You do, sir?

A. Yes, sir.

[fol. 313] Q. Well, I have your book here, haven't I?

A. Yes, sir.

Q. Will you take your book and take any day you wish and show me any record in that book where you did not take the car out of the train, any record of any defect of any kind where you did not pull that car out of the train? Can you do that, sir?

A. Well, if I have a record of it I can show you that; if I have none, I can't.

Q. Well, you said you made a record of defects.

A. When the cars are O. K. there is an O. K.

Q. What is that?

A. I take records of the cars——

Q. Look carefully and find us any record, any repair that was made to a car where you did not take the car out of the train.

A. I don't find any here that I have made any repairs to.

Q. You don't find a record of a single thing except the cases where you took the car out of the train?

A. Where we set a car out.

Mr. Kiendl: A little louder, please.

The Witness: No record, only except where we set the car out. That is the only record we have in that book.

Q. All right, sir.

A. That I could find.

Q. You have been an inspector how many years?

A. About 18.

Q. And you are a foreman inspector?

A. No, sir.

Q. And if you find—what do you do if you are walking along and you find a door of a car open, what do you do?

A. Close it.

Q. Yes; just push it, if it is the old side door palace car, you just get behind it and push it closed?

[fol. 314] Mr. Kiendl: Side door what?

Mr. Hunt: Side door palace car, box car—if it is a box car you just push the car door too, do you?

The Witness: And close it and hook it.

Q. Do you hook it?

A. Yes, sir.

Q. Well, if you were going by and happen to see a door open, you hook it, do you?

A. Yes, sir.

Q. And you are supposed to hook it, are you?

A. Yes, sir.

Q. How tall are you?

A. Oh, about 5 feet 4, something like that.

Q. And these box cars are loaded from a platform that is about approximately the level of the car floor or from a truck that is approximately the level of the car floor, correct?

A. Well, I don't know where they are loaded or how they are loaded.

Q. Well, come right down to it. This hook on a box car door is how high from the ground?

A. Oh, I should judge about maybe four feet, something like that.

Q. Well, how high is the floor of the car from the ground?

A. Well now, there is different spots on the ground, you know; there is spots where it is higher and spots where it is lower.

Q. Yes, but let's try to hurry along and get it as nearly as we can. Standing alongside of a box car, how high is the floor from the ground, the floor of the car?

A. I told you there is different spots in the ground where it may be higher and maybe lower.

Q. All right. Now we are going to assume a spot, we are going to assume a place that is absolutely level with the road-bed. Do you follow me?

A. Yes.

[fol. 315] Q. Now, assuming you are standing on a spot that is level with the road-bed, how high is the floor? Won't you tell these gentlemen how high is the floor of a car?

A. Oh, I should judge about probably three feet.

Q. How much?

A. Probably three feet.

Q. And after all your years of experience you think the floor of that car is just a yardstick from the ground, right?

A. All, I am just giving a rough estimate, that is all.

Q. Let's see now, then. The door, how high is the door, what is the height of the ordinary box car?

A. Oh, I should judge about eight feet.

Q. And your latch is where on that door, what part of it, about the middle?

A. No.

Q. What?

A. No.

Q. Isn't the latch on that door approximately half way up that door?

A. No, sir.

Q. It is not?

A. No, sir.

Q. It is not?

A. No.

Q. No?

A. No.

Q. Well, where is it, sir?

A. It is about three-quarters down.

Q. Three-quarters down, so it would be one-quarter of eight feet, about two feet up from the bottom?

A. Probably about a foot and a half.

Q. All the box car doors in your experience that you have seen, the latch on the door is about a foot and a half from the bottom. Now, that is true, is it?

A. Yes. Well, giving a rough estimate, about a foot and a half or two feet.

Q. It could not possibly be three feet from the floor of the car, the latch, could it?

A. No, sir.

Q. What?

A. No, sir.

Q. All right. Now, one of your difficulties with your old cars is that after they have been running over the roads for [fol. 316] thousands of miles and around the curves and all that, one of your difficulties is, you know as a railroad man that—I am referring to a box car—your lower part of that door jumps that track on which it rides; that is one of the common complaints, is it not?

A. No, sir.

Mr. Kiendl: If your Honor please, I have no objection to this line of cross-examination if it is done with the understanding that Mr. Hunt is making the witness his own witness for this purpose. It involves matters concerning which the witness was not examined on direct examination at all.

The Court: I don't say that they were, Mr. Kiendl, but I will overrule your objection.

Mr. Kiendl: May I have an exception, just to reserve that point, that contention?

The Court: Yes.

Q. In your experience as a railroad man, you say you don't know about the lower end of these box cars doors jumping that rail?

A. Yes, sir.

Q. You mean when you say yes, sir, you mean what, that you know about it or you don't know anything about it?

A. I know that I have not heard or seen any of them do it.

Q. You have not heard and you have not seen anything?

A. No, sir.

Q. You never heard—now, as an inspector—were you here in court yesterday?

A. Yes, sir.

Q. You didn't even hear about it yesterday?

A. I mean in my experience.

Q. You mean you never with your own eyes actually saw them?

A. No, sir.

[fol. 317] Q. Have you heard about the lower end of these box car doors jumping the rail?

A. No, sir.

Q. As a railroad man, do you know anything about the proposition that where it usually occurs is when a train is distorted in going around a bend? Did you know that is when it most frequently happens?

A. No, sir.

Q. Now, where is the latch, sir, on your reefer cars, how high, about, from the floor of the car?

A. Well, I would say probably about two feet.

Mr. Hunt: That is all.

Redirect examination.

By Mr. Kiendl:

Q. And you have been an inspector for this railroad company for 18 years?

A. Yes, sir.

JOSEPH J. COOK, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. Kiendl:

Mr. Hunt: Your Honor, in the light of the cross-examination and what developed, I mean, I think I would have to ask this book now to go into evidence and have it marked in evidence.

Mr. Kiendl: I have no objection. I will put the whole book in evidence.

Mr. Hunt: That is what I mean.

The Court: All right.

(Marked Defendant's Exhibit H.)

[fol. 318] Mr. Kiendl: May I call the Court's and the jury's attention to the fact that the book covers a period beginning on June 25, 1934, and ending on August 1st, 1934, a period of two months and five days.

Q. Were you the man that worked with the last witness as a car inspector?

A. Yes, sir.

Q. On the night of this accident?

A. Yes, sir.

Q. How long had you been a car inspector, Mr. Cook?

A. 17 years.

Q. And all that time at Avoca?

A. Yes, sir.

Q. And did you with Mr. Howell make a joint inspection?

A. Yes, sir.

Q. Of this Ashley freight train that went to Ashley?

A. Yes, sir.

Q. And was it on this back leader that Mr. Howell mentioned?

A. Yes, sir.

Q. Now, what did you do and what did Mr. Howell do in the way of inspecting that train before it departed from Avoca?

A. Well, we started from the caboose and worked towards the engine and made a general inspection of the cars, safety appliances, wheels, trucks, anything that was protruding from the cars and the doors and looked that the doors were all hooked, and safety—that is safety appliances, ladders, couplers and so forth.

Q. And that was in the performance of your duties?

A. Yes, sir.

Q. And that was the job you were supposed to be performing and the job you were doing and being paid for?

A. Yes, sir.

Q. You went down one side of the train yourself?

A. Yes, sir.

Q. It was at night, wasn't it?

A. Yes, sir.

[fol. 319] Q. Did you and Mr. Howell have any kind of lights with you?

A. Yes, sir.

Q. What kind?

A. Carbide lamps.

Q. Carbide lamps?

A. Yes, sir.

Q. Are those the lamps that burn carbide gas and have reflectors?

A. Yes, sir.

Q. Any difficulty of seeing conditions with those lamps?

A. Oh, no.

Q. Did you find any defects?

A. No, sir.

Q. Anywhere along this train when you examined it and inspected it that night?

A. No, sir.

Q. Did you keep any record or did Mr. Howell keep it?

A. Mr. Howell keeps the record book.

Mr. Kiendl: You may examine.

Cross-examination.

By Mr. Hunt:

Q. I just want to ask you, we have not inquired about the nature of this so-called seal. You close the door of a car, and what is this seal made of?

A. Well, it is made of some kind of a tin, some of them, some of them is made of wire and a piece of lead.

Q. It is either a little piece of wire and then it has a piece of lead on the end that you take and there is some kind of—

A. Well, I don't exactly know what they do. They fasten it in there some way.

Q. Well, it is a thing that you hold in your hand and pull that lead in, if you get it in just right, you take both ends there where there is a piece of lead on one end, and then you clamp the lead and that squeezes them together, do you not?

A. Just about that way. I have never seen it done, but I imagine it is that way.

[fol. 320] Q. And the other piece is a little thin piece of tin, sometimes they use a little thin piece of tin?

A. Yes, sir.

Q. And clamp it?

A. Yes, it automatically clamps itself, as I understand it. I have never seen it done.

Mr. Hunt: That is all.

LA VERNE E. ROSE, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. Kiendl:

Q. Mr. Rose, you are in the employ of the Railroad Company?

A. Yes, sir.

Q. In what department?

A. Engineering department.

Q. Are you a civil engineer?

A. Yes, sir.

Q. And have been for how long?

A. In the employ about 18 years.

Q. And at the request of the Railroad Company did you as an engineer do anything in the territory we are interested in here between Avoca and Rock Street?

A. I did.

Q. Did you go down there to the Rock Street crossing?

A. Yes, sir.

Q. Did you take certain measurements and make certain observations of conditions there?

A. I did.

Q. Location of the tracks, the grades, the levels and things of that kind?

A. I did.

Q. Now can you tell us, Mr. Rose, how far Rock Street crossing is——

[fol. 321] Mr. Hunt: May we have just one question as to when he made these measurements?

Q. When did you do these things? Did you do them in 1936 or prior or when?

A. On several occasions.

Q. In what years, do you remember?

A. I will have to look at my notebook before I can tell you that. I was in that vicinity on June 25, 1934.

Q. June 25, 1934?

A. Yes; August 27, 1934; September 5, 1934; April 19, 1935. That is all that I have record of.

Q. The first one was June 25, 1934?

A. Yes, sir.

Q. Before the accident that we are here involved with ever occurred?

A. Yes, sir.

Q. Now will you tell us first, Mr. Rose, how far it is from Avoca freight yard of the Erie Railroad Company to the Rock Street crossing, about? I don't want it in feet or inches.

A. From Avoca yard to Rock Street it is about two miles.

Q. And you are familiar with the railroad track that comes through from Avoca to Rock Street?

A. Yes, sir.

Q. Do you know and can you tell this Court and jury whether that railroad is double-track or a single-track through there?

A. Single-track.

Q. Do you know, and will you tell us whether it is a track that is on the level or up-grade or down-grade running from Avoca to Rock Street?

A. From Avoca to Rock Street it runs up-grade.

Q. All the way?

A. All the way.

Q. Do you know what the grade is, the average grade through there, that distance of close to two miles?

A. It will average about .82 per cent.

[fol. 322] Mr. Hunt: May I have that again?

The Witness: 82/100 per cent.

Q. Well, a 1 per cent grade is a rise of 1 foot in a hundred feet, isn't it?

A. Yes, sir.

Q. And this rise, the average would be 82/100 of a foot for each 100 feet of track?

A. That is right.

Q. And that continues about that average all the way up to Rock Street?

A. Yes, sir, that is about the average.

Q. And after Rock Street, across Rock Street, some distance down the track, does the track level up?

A. Why, there is a vertical curve about a half mile beyond Rock Street, the grade starts to descend toward Plains Junction, and there would be a vertical curve in between the two grades.

Q. And that up-grade from Avoca to Rock Street, is the track all straight, or is there any curve in it as you approach Rock Street?

A. No, there is a curve, level curve.

Q. And that curve, part of it shows on the map that you prepared, that has been offered in evidence here as Plaintiff's Exhibit 1, does it not, to the right of the lower part of the map?

A. Yes, sir.

Q. And that shows the curve of the track approximately to a point 300 feet from Rock Street, does it not?

A. That is right.

Q. Now, can you tell us, Mr. Rose, if you know, from a point opposite Hughes Street on the railroad track, about how far down the track can you see in the direction of Avoca?

A. Opposite Hughes Street?

Q. Yes.

A. If I was standing in the track I could probably see about 400 feet.

Q. And standing alongside the track?

A. If I was standing east—

[fol. 323] Q. To the west of the track?

A. To the west of the track I could see further than that.

Q. Can you tell us about how much further?

A. Well, if I was standing, say, 8 or 10 feet away from the rail I could probably see 600 feet.

Q. Now, that curve continues, does it not, down toward Avoca, a portion not shown on this map?

A. Yes, sir.

Q. And what curve is that?

A. Why, it varies.

Q. And the average of it, is it a large curve, a small curve, or what do you call it as an engineer?

A. Well, at that locality it would be a medium curve.

Q. A medium curve?

A. Yes.

Q. That is the way you would describe it?

A. Yes.

Q. Now the portions you have not shown here, Mr. Rose, have you examined particularly the land that lies between the railroad tracks to the east, the picket fence to the west, Hughes Street to the north and Rock Street to the south?

A. Yes, sir.

Q. And have you seen these pictures that have been offered in evidence of that territory?

A. Some of them.

Q. Some of them you have seen, haven't you?

A. Yes, sir, I have seen some.

Q. Now, do you find a ditch or drain running from the crossing sign at Rock Street down toward the edge of the fence at Rock Street?

A. Yes, sir.

Q. And does that ditch or drain, whatever you call it, show in this photograph, the fifth one in Defendant's Exhibit C? Is that the one you are talking about?

A. Yes, sir.

Q. Now will you tell us, if you can, Mr. Rose, what is the depth of that ditch there that is right here in this picture [fol. 324] (addressing jury).

A. Well, it varies, the depth.

Q. What is its deepest depth? I am speaking below the level of the ground as it is there.

A. About one foot and 9/100ths.

Q. Slightly over 12 inches deep?

A. About 13 inches.

Q. At its deepest point?

A. Yes, sir.

Q. Have you walked across that ditch?

A. Yes, sir.

Mr. Hunt: Objected to as irrelevant, incompetent and immaterial.

The Court: Overruled.

The Witness: I have.

Q. Once or frequently or how often? A number of times?

A. A number of times.

The Court: Can anybody walk over that ditch without having any assistance?

The Witness: Oh yes.

Q. Any able-bodied man that is able to walk, would he have any difficulty in walking over that ditch?

Mr. Hunt: I object to the form of the question.

Mr. Kiendl: Well, maybe it is defective.

Q. Would any able-bodied man, in your opinion, from your examination and inspection of that ditch, have any difficulty in walking over it?

Mr. Hunt: I object to it on the same ground, it is incompetent.

[fol. 325] The Court: Overruled.

A. No, sir.

Q. In addition to the ditch, there has been some testimony here to the effect that there was a ditch alongside the fence running from Hughes Street to the south—from Rock Street to the south to Hughes Street from the north. Did you find any ditch there of any size or consequence?

A. No, sir.

Q. Was there any depression running along that fence,—a little low ground or something of that kind?

A. Well, there are some irregularities.

Q. Some irregularities?

A. Yes, but no defined ditch.

Q. Now, leaving the ditch, the Rock Street ditch, if I may call it that, and leaving the fence, the territory between the railroad track and the fence, is that level land or does it slant downward toward the fence?

A. It slants downward from the track to the fence.

Q. And from Rock Street on the one hand to Hughes Street on the other, that slant is about how much, measured from the railroad track, the last part of the ties of the railroad track to the fence, about what is it?

A. An average of about 4 feet.

Q. It averages about 4 feet?

A. Yes.

Q. And what is the average distance by actual measurement from the fence to the ties?

A. To the ties?

Q. To the ties.

A. That would be about 32 feet.

Q. About 32 feet?

A. Yes, sir.

Q. Did you at any time walk over any portion of that part of land between the fence and the railroad tracks Hughes Street and Rock Street?

A. Oh yes.

[fol. 326] Q. Have you walked over all that, practically?

A. Yes, sir.

Q. Have you examined and inspected all of it?

A. Yes, sir.

Q. Now tell the Court and jury in your own way, if you will, Mr. Rose, what you found there.

Mr. Hunt: May I have the date of this inspection, please.

Mr. Kiendl: Well, you have had the dates of all the inspections.

Mr. Hunt: Well then, I object to any inspection made before this accident. I object to any inspection made at a time that is remote after the accident.

The Court: Overruled.

Mr. Hunt: Exception.

The Court: You may state. Go right on.

The witness: Well. I made the inspection of the ground on each and every occasion that I was down there.

Q. Yes. Now, what did you find? Tell us in your own way.

A. The ground slopes from about 2 inches below the top of the tie toward the fence at an average probably about 4 feet down-grade to the fence, which is about 32 feet away from the end of the ties. It is not a sharp slope. You can walk down it without any difficulty.

Mr. Hunt: I move to strike out the last part of the answer.

The Court: You can walk down without any difficulty from where?

The Witness: From any point from the track to the fence between Rock and Hughes Street.

[fol. 327] The Court: I will let it stand.

Mr. Hunt: All right.

Q. Now, what sort of material is there in there, Mr. Rose? Is that all earth or is it a fill, or do you know?

A. Why, that is what we call a side hill cut.

Q. A side hill what?

A. A side hill cut in that vicinity. The top at the present time is mostly cinders.

Q. Can you state, Mr. Rose, what the condition of the surface of that land is in there leaving out the ditch that I was talking about and that unevenness toward the fence, is

it all perfectly level like a billiard table, or what is the condition of it as you found it to be?

A. It is not level like a billiard table, but it is uniform.

Q. And are there any depressions of any size in there, any ditches or drains or holes or things of that kind?

A. There is no depressions of any extent. I would not say any depression over two or three inches.

Q. Now, did you take levels at various places along that land?

A. I did.

Q. To get the exact slope, to get the level of the ground?

A. I did.

Q. And in order to do that did you personally look at and inspect the place on which you took the levels?

A. Yes, sir.

Q. And did you personally walk over those places.

A. I did.

Q. Now, have you prepared and is this a blueprint of a map of the cross sections of the north side of the track between Hughes and Rock Street here in Hughestown, Pennsylvania?

A. I believe it is. I can't see it.

[fol. 328] Q. Well, I have got the back to you (handling). That is it, isn't it?

A. Yes, sir.

Q. Now, on that blueprint you show a cross section of the two rails of the track, cross section of the ties, and you show the slope downward, do you not?

A. Yes, sir.

Q. Now just for the identification purposes, will you tell us where these various levels were taken, and what they purport to show?

A. This first section is taken along——

Mr. Kiendl: May I say that the witness is referring to the section to the left and to the top of this blueprint.

The Witness: At station 11.70.

Q. Station 11.70 means nothing to me or any of these jurors. What is it?

A. That section is taken at the north edge of Rock Street.

Q. At the north edge of Rock Street?

A. Yes.

Q. Now, what is the next one coming down from the first one?

A. That is taken along the culvert and ditch.

Q. The ditch we were just talking about and the depth of which I just asked you?

A. Yes, sir.

Q. Now the next one?

A. That is taken 3 feet further north of the ditch.

Q. And the next one?

A. That is taken 25 feet further north of the ditch.

Q. And the ones on the right side?

A. Well, that would be taken about 65 feet north of the ditch.

Q. And the next one?

A. That is about 95 feet north of the ditch.

Q. And the next one?

A. That is about 135 feet north of the ditch.

[fol. 329] Q. Then do I understand, Mr. Rose, that these cross sections you have taken show the territory, the ground line, from the rails down toward the fence at various points beginning from Rock Street and going north up to Hughes Street?

A. Yes, sir.

Mr. Kiendl: I offer this blueprint in evidence.

Mr. Hunt: I have no objection.

(Marked Defendant's Exhibit I.)

Mr. Kiendl: You may examine, Mr. Hunt. I will just show this to the jury so that they will get a little better idea of what we are talking about. (Showing Exhibit I to jury.)

Cross-examination.

By Mr. Hunt:

Q. Mr. Rose, you have been with the railroad how many years?

A. About 18 years.

Q. You have been in court frequently, I assume?

A. Yes, sir.

Q. You are the man that is called in on court matters, are you?

A. Yes, sir.

Q. Now, you were asked to characterize the curve, as to whether it was small, large or medium?

A. Yes.

Q. Well now, in characterizing the curve, we can get a fairly accurate conception of what that curve was, although we haven't a picture showing it, but by just looking into the picture and watching the line of the telephone poles, can we?

A. Yes, to a certain extent.

Q. Fairly accurate?

A. Yes.

Q. So that what you might call a medium curve some-
[fol. 330] body else might think is a large curve? You know what I mean; that is a matter of opinion?

A. Yes.

Q. Now, I say if we take these different pictures and just follow the line of telephone poles here that we see in the pictures, we have got a fairly accurate conception of it, correct?

A. Yes.

Q. Now I will show you a picture taken further back, Mr. Rose,—I will first show you the first picture we see here. You can follow the poles around, and that makes it look like a very decided curve, doesn't it?

A. Yes.

Q. Now to be fair about it, then, you take a picture taken farther back and the poles does not look to turn so abruptly?

A. You mean farther back where?

Q. Further to the—

A. South?

Q. To the south; you can look at it (handing); I say it doesn't look so sharp from that angle.

A. I would say it did.

Q. Well, all right. Either one of them fairly represents it?

A. Yes, sir.

Mr. Hunt: I will put this little picture in evidence.

Mr. Kiendl: Let me see it, Mr. Hunt. (Examining picture.) I have no objection.

(Marked Plaintiff's Exhibit No. 6.)

Q. Now, Mr. Rose, in regard to the next part of your testimony, whatever you saw at any time that you were

ever there, you don't wish to add anything to what any layman can see right here in this picture?

[fol. 331] Mr. Kiendl: I object to the form of that question whether he wishes to add anything to what a layman can see.

Mr. Hunt: Let me finish the question.

Q. (Continuing) Except as to the depth of the ditch. Of course you can't see that here from this angle.

The Court: Change the form of the question, if you will.

Q. Do you wish to add anything to this part of that terrain except what we see right here in this picture? I refer to the cinders and that much of the ditch as you can see and the difference in the—and the other details, and the embankment; do you wish to add anything to what is seen right there?

A. No, sir.

Q. Now then, in regard to the condition lying between the stanchion, the upright stanchion on which the crossing sign is on the railroad track, I presume you saw the tracks of the automobiles that have been going through there, did you?

A. Yes, sir.

Q. And I presume you noticed, while you were there, that they gradually tapered off towards Hughes Street farther and farther from the track? Do you notice that?

A. Yes, sir.

Q. And you see if an automobile ever got down over this ledge here it would in all probability, where I am pointing now, if it ever got there, it in all probability would tip right over, would it not?

A. I would not say so.

Q. Well, it would be very likely to; would you go that far, Mr. Rose?

A. No, I could not.

Q. You could not go that far?

A. No.

[fol. 332] Mr. Kiendl: What point are you pointing to?

Mr. Hunt: I am pointing to some car right directly in back of the upright stanchion, is that correct?

The Witness: Yes.

Mr. Kiendl: Up near Rock Street?

Mr. Hunt: Yes.

Q. In other words, you think an automobile could ride on the part that I am showing you here?

A. Yes, sir.

Q. Pointing to the same place, an automobile could ride half way up that bank going towards Rock Street, could it, without tipping over?

A. Yes, sir.

Q. Now, I suppose when you went there you were not asked by Mr. Kiendl anything about the paths, were you? You were not asked just now by Mr. Kiendl anything about the paths?

A. No, sir.

Q. Well, will you look at that photograph—will you look at it?

A. I have.

Q. After you get beyond the entrance, if we call that the entrance, that is the place where the stanchion is and the tracks and after the road departs off towards Rock Street, did you see the path, there, and exactly the same as you see it there in that little picture? Did you or not, please?

A. I don't just get your question.

Q. Did you see that path that is shown here in the picture?

A. I saw several paths.

Mr. Hunt: That is all, sir.

[fol. 333] Redirect examination.

By Mr. Kiendl:

Q. Mr. Rose, is the cross section that you show on your exhibit which has just been offered in evidence,—does that show whether or not the land below the railroad track is more level up against the ties or more level as you go down? Do you know what I mean?

A. Well, different sections vary, of course.

Q. But substantially?

A. It has a slope down.

Q. It has a slope down beginning right from the ties, hasn't it?

A. Yes, sir.

Q. As shown in these sections?

A. Yes, sir.

Q. But the slope is more pronounced as you get farther away from the track, isn't that so?

A. Yes, sir.

Mr. Kiendl: That is all.

FRANK KELLER, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. Kiendl:

Q. Mr. Keller, you are a railroad conductor, aren't you?

A. Yes, sir.

Q. And have been most of your life?

A. Yes, sir.

Q. Working for the Erie Railroad Company?

A. Yes, sir.

Q. How long have you been a conductor in the employ of the Erie Railroad Company?

A. 33 years.

[fol. 334] Q. And during those 33 years did you spend any part of your time on that portion of the Wyoming Division that runs from Avoca down to Plains Junction?

A. Yes, sir.

Q. How long, about?

A. From Avoca to Plains Junction?

Q. Yes.

A. About 33 years, from Avoca to Plains Junction.

Q. And have you, as conductor, had charge of freight trains?

A. Yes, sir.

Q. Running from Avoca to Plains Junction?

A. Yes, sir.

Q. And from Plains Junction on to the Ashley yard of the Central Railroad Company of New Jersey?

A. Yes, sir.

Q. And have you been over that territory as such conductor by day and by night?

A. Yes, sir.

Q. Were you the conductor on this Erie train which we

call here the Ashley Special that left Avoca a certain time on the night of July 27, 1934?

A. I was.

Q. And what did your train consist of, Mr. Keller, how many brakemen with you in it?

A. The train.

Q. How many brakemen were in the train crew?

A. Three.

Q. And they are all here in court, are they not?

A. Yes, sir.

Q. And in addition to the three brakemen you had an engineer and fireman, of course?

A. Yes, sir.

Q. Six railroad men on your train?

A. Yes, sir, six on the crew.

Q. When did that train leave Avoca?

A. 2:10 a. m.

[fol. 335] Q. And is it part of your duty as conductor to keep a record of the time when a train leaves a certain point?

A. I do, yes, sir.

Q. And did you keep such a record of this train?

A. I did.

Q. Now, when that train left Avoca was it or was it not part of your duties to maintain a train list of the cars in that train?

A. Yes, sir.

Q. And when the train was made up and ready to depart, were such things as waybills given to you as the conductor of the train?

A. Yes, sir.

Q. Will you tell the Court and jury what these waybills are?

A. Why, they are a bill, some are manifest bills, some are card waybills. The manifest bill has the car number, the initial and the contents and the destination, such as the consignee and consignor and the like of that is on the waybills.

Q. And did you as conductor in charge of the train departing from Avoca have such a waybill for each car in your train?

A. Each car in the train.

Q. Are you duty-bound to check those card waybills

against the train to see that you have all the cars in the train for which you have waybills?

A. Yes, sir.

Q. And did you do that on the night in question before this train left Avoca?

A. I did.

Q. And did you then or with someone else prepare a train list of the cars in this train?

Mr. Hunt: I object to the form of that question.

Mr. Kiendl: I will withdraw it.

Q. Was a train list prepared?

A. Yes, sir.

[fol. 336] Q. And a train list prepared for freight trains in the regular and usual course of duty and performance of duties?

A. Yes, sir.

Q. I show you Defendant's Exhibit F. Is that the train list of this particular train?

A. That is the one.

Q. Is that in your handwriting, Mr. Keller?

A. That is not in my writing, that is my flagman.

Q. And what is his name?

A. Jimmie Dooner.

Q. And what did you have to do with the preparation of that train list, if anything?

A. Nothing, only to see that I had bills and the like of that for the train.

Q. Was that one of the regular jobs of your flagman, to prepare the train list?

A. Yes, sir.

Q. Did he check it with you against the bills, or did he not?

A. Not the train list.

Q. Oh, he did not?

A. Not the train list.

Q. Before the train departed did you have anything to do as conductor to see what condition the train was in?

A. Yes, I had to check it.

Q. You had to check it, and I would like you to tell the Court and jury what, if anything, you did about checking it?

A. Well, when the train came in it consisted of 35 cars, that is the train coming in from Susquehanna, and we picked up three cars. When our engine came up at the

other end of our yard she would be about a half mile from where this train came in. When I got the waybills for the train the flag man took the train book and I took the bills while the engine and the two brakemen were pushing three more cars on the rear end of the train. We checked from the rear end to the head end, and he put the number and initials in his book, and I gave him the contents and the destination as we passed up the train, so we went from the rear end of the train right to the head car.

[fol. 337] Q. Were you both on the same side of the train?

A. Both on the same side, yes, sir.

Q. And as you went along there you checked by looking at the car doors, the car numbers and so on?

A. Yes, sir, we looked at the car number and initial and also looked to see that the doors were closed or if there was anything dragging along or if there was anything projecting from the train; if we had open cars, to see that they were properly loaded, that they were not high where anything could roll off and injure anybody or that they were not shifted or that there was no bulged sides of cars where there would be danger of anything falling out, and such as that.

Q. Now, when you and your flagman did that on one side of the train from the back to the front end of it, did you do that on the other side too?

A. No, we did not, just the one side.

Q. And which side of the train was that, the right side as the train went out, or the left side?

A. The westerly side.

Q. Well, as the train went forward, would that be on the right side?

A. The right side, yes, sir.

Q. The right side of the train?

A. Yes, sir.

Q. And did you find anything wrong?

A. Nothing.

Q. On that side of the train when you checked it?

A. No, sir.

Q. And your flagman went along checking it?

A. Yes, sir.

Q. You mean for yourself that you did not find anything wrong, I take it?

A. No, we didn't find nothing wrong.

Q. Now, do you know, Mr. Keller, whether the train

list is kept with the cars in the order in which they were in the train as it departed from Avoca?

[fol. 338] A. The way the cars were in the train, yes, sir, I do.

Q. The train list has the cars all numbered from 1 to 38 on the left side of your train list?

A. Yes, sir.

Q. Would car No. 1 be the car next to the engine?

A. On the slip, yes, sir, it will.

Q. And does that train slip show the car numbers in the order in which they were actually in this train when it left Avoca?

A. Yes, sir.

Q. The train left at 2:10 a. m., I think you have already told us.

A. Yes, sir.

Q. Where did it stop first, if it stopped at all?

A. The first stop was at William Street, Pittston. That was in Pittston.

Q. Now, is William Street beyond Rock Street as the train was proceeding?

A. Yes, sir, it is.

Q. Did your train make any stop of any kind between the time it left the yard at Avoca until after it passed over Rock Street crossing in Hughestown?

A. No, sir.

Q. It continued on to William Street in Pittston?

A. Yes, sir.

Q. And stopped there for what purpose?

A. It is a road crossing that you have to flag, you have to stop and put a brakeman off there to protect the crossing while you are going over it.

Q. And then on signal I suppose the train started up again?

A. Yes, sir.

Q. And did it have, on its way down to Ashley, a few more stops for that same purpose of flagging a crossing?

A. Yes, sir.

Q. Now, when did the train arrive in Ashley on the morning of July 27, 1934, if it did arrive there that morning?

A. I believe it was 4:40.

Q. And you made a record of that, didn't you?

A. I did.

[fol. 339] The Court: 4.40 a. m.?

The Witness: 4.40 a. m.

Q. How far is Ashley from Avoca, about?

A. I would say 16 miles, or probably a trifle more.

Q. You left Avoca at 2.10 and arrived at Ashley two hours and a half after leaving Avoca?

A. Yes, sir.

Q. And that is a distance of about 16 miles?

A. About 16 miles. It may be a quarter of a mile further, and it may not.

Q. Such detentions as you have in your operation of freight trains, do you keep records of those for the Railroad Company?

A. I do.

Q. Did you keep such a detention report on the night in question of this particular train?

A. I did.

Q. And is this the original of it (handing)?

A. Yes.

Q. Is that in your handwriting?

A. Yes, sir.

Q. Outside of the mimeograph printing on it?

A. Yes, sir.

Mr. Kiendl: I offer it in evidence.

Mr. Hunt: May I see it, please.

Mr. Kiendl: Yes (handing).

Mr. Hunt: What do you call this Mr. Kiendl:

Mr. Kiendl: The detention report. I don't know whether that is artistic, railroad-wise, but that is what I call it.

Mr. Hunt: No objection.

(Marked Defendant's Exhibit J.)

Q. Now, this detention report is dated July 27, 1934, and [fol. 340] shows your engine number, your engineer's name, your name as conductor?

A. Yes, sir.

Q. It shows the departure and arrival at various points on that trip, does it not?

A. Yes, sir.

Q. And it shows the arrival at Ashley at 4.40 a. m.?

A. Yes, sir.

Q. Now I call your attention to the fact, Mr. Keller, that

in the train slip the time of arrival at Ashley is given as 3.56 a. m. Do you see that?

A. I do.

Q. That is written by your flagman on that?

A. Yes, sir.

Q. And is that written at the time the train list is made up at Avoca?

A. Yes, sir. We generally get in Ashley around an hour and forty-five minutes.

Q. I see.

A. Or two hours; and when we leave Avoca he figured that length of time.

Mr. Hunt: Oh, just a minute. I object to any——

The Witness: He figured that length of time we would arrive in Ashley, and he marked that.

Q. Of course you can't give that, he will have to give that himself, but I call that fact to your attention. Now, Ashley you have "Arrived Ashley 4.40."

A. That is our real time.

Q. Now, you have on this detention report "Delays." Do you see that?

A. Yes, I know what that is.

Q. Against that you have written in your own handwriting—what is that, CA?

A. "CA" is Avoca.

Q. Then you have got "40M." Does that mean 40 minutes?

A. 40 minutes.

[fol. 341] Q. "For South Ashley KV."

A. That is Miners Mills.

Q. Miners Mills "one hour," is that right?

A. That is right, one hour.

Q. "Blocked off"—"One hour blocked off."

A. Yes.

Q. "By," is that right?

A. No "blocked off one hour with a train."

Q. I see.

A. That was standing on the main line where we come out on the main line, there was a train standing there and we could not get by, and we were blocked at Miners Mills one hour.

Q. By a Central Railroad of New Jersey train?

A. By a Central Railroad of New Jersey train, yes.

Q. Now you have got "AY," that is Ashley, isn't it?

A. That is Ashley.

Q. "10 minutes."

A. 10 minutes.

Q. "Leaving cars."

A. Leaving cars.

Q. "15 minutes."

A. Yes, 15 minutes.

Q. "Taking on."

A. Taking on cars.

Q. Then what is this 5 minutes.

A. 5 minutes.

Q. "Testing air."

A. Testing air.

Q. "5 minutes taking water."

A. That is right.

Q. So the only detentions you have in your detention report from Avoca to Ashley are the 40 minutes you waited for your train to be made up at Avoca and your one hour at Miners Mills where the Central Railroad freight train blocked you out?

A. Yes, sir, that is all the delay we had.

Q. Now, in addition to the one hour delay leaving at 2.10, the only delay you had outside of flagging these crossings that you flagged, was this one hour stop at Miners Mills?

A. Yes, sir.

Q. And that is on the Central Railroad of New Jersey tracks, isn't it?

A. That is on the Central Railroad of New Jersey tracks.

[fol. 342] Q. About how long in all, would you say, it took you to flag the crossings that you had flagged all the way down through these 16 miles, were there four of them, six, eight, ten or what?

A. There is three that we have, from the time the caboose stops until it is moving again it would be a minute or less.

Q. And taking off your hour's delay, the fact is that the running time for these 16 miles was close to an hour and a half that night.

A. Yes, sir.

Q. And on the way from Avoca to Rock Street, do you know whether the tracks are up-grade or on the level or down-grade?

A. They are up-grade.

Q. On that trip did you learn of the occurrence of any accident at or near Rock Street in Hughestown?

A. Not until I got back from Ashley to Avoca.

Q. When you got back to Avoca?

A. Yes, the next morning; the next morning when I got back to Avoca.

Q. Did you then get a report that somebody had been hurt near the Rock Street crossing?

A. Well, one of our Erie police showed me a paper, the Scranton Republican, where a man at Rock Street lost his arm.

The Court: What time did you get back? You say when you got back. When you got back to where?

The Witness: Avoca.

The Court: What time was that?

The Witness: I can't tell now without—it is on that train report there, the time we arrived back at Avoca.

[fol. 343] Q. "Arrived at Avoca 6.45 a. m."

The Court: The same day?

The Witness: The same day, yes, sir.

Q. When that was called to your attention the next morning you recalled making this trip the night before from Avoca to Ashley?

A. Yes, sir.

Q. Do you recall at about what rate or speed your train proceeded from Avoca to Rock Street?

A. We could not go any faster——

Q. Not what you could not do. What you did do.

A. I would say about 8 to 10 miles an hour.

Q. And did that continue until you got beyond Rock Street?

A. Yes, it continued until the engine had passed over Rock Street.

Q. And some place beyond Rock Street you come to a point where there is a down-grade?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Now, when you approached Rock Street where were you?

A. I was in the caboose.

Q. And were two of your men there with you?

A. There was two men in there with me.

Q. And were the other men, so far as you know? They were all up in the locomotive, weren't they?

A. All the brakemen.

Q. The head brakeman and the engineer and the fireman?

A. They were in the engine.

Q. Now, did you remember the next morning, when your attention was called to the fact that someone had been hurt in that particular locality, whether or not the engineer blew a whistle for the Rock Street crossing?

A. Yes, sir.

Q. Did you hear it in your caboose?

A. Yes, sir, I could hear the whistle in the caboose.

[fol. 344] Q. 38 cars behind the locomotive?

A. Yes, sir.

Q. Do you remember and can you tell us whether or not the bell on the locomotive was ringing as that train approached Rock Street?

A. I could not hear the bell, that is too far, and the engine was making too much noise pulling the train up, you could not hear a bell back there.

Q. You could not tell in the caboose whether or not the locomotive headlight was lit?

A. Not from the caboose.

Q. Did anybody report to you as the conductor in charge of that train, at any time, that there was anything wrong with any part of it?

Mr. Hunt: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Hunt: Exception.

A. No, sir.

Q. You have been a conductor for how many years?

A. 33 years.

Q. Have you seen freight car doors, during those 33 years, almost every day of your life?

A. Oh, yes.

Q. And you are familiar with those that run on runners at the bottom of the door, are you not?

A. Yes, sir.

Q. And are you familiar with those that open outward on the refrigerator cars?

A. Yes, sir.

Q. And those are the two types of doors on freight cars generally, isn't that right?

A. That is right, those are the two, yes.

Q. How long has it been, if ever there was an occasion, when you as a conductor saw one of those sliding doors on runners that came off the track so that the door would be able to swing outward?

[fol. 345] Mr. Hunt: I object to that as not part of the cross-examination.

Mr. Kiendl: It is not intended to be cross-examination.

Mr. Hunt: Not part of the direct examination.

The Court: Objection overruled.

A. Yes, I have seen it.

Q. Did you see that frequently or occasionally?

A. No, very seldom.

Q. When is the last time that you recall having seen one, Mr. Keller?

A. Oh, I don't remember; maybe seven, eight, ten years ago; I could not say.

Q. You could not say exactly, but give us your best impression.

A. Seven, eight or ten years ago.

Q. It has been, according to your best impression, seven or eight to ten years ago, since you have seen one of these sliding doors of a freight car that was off the rail at the bottom and swinging?

A. Yes, sir.

Q. Now, how about the doors on the reefers; have you seen those swinging at any time that you recall recently?

A. I have seen them, but not recently.

Q. Well, about how long has it been since that occurred, that you remember?

A. Oh, five, six or seven years.

Q. Five, six or seven years?

A. Yes, sir.

Mr. Kiendl: Well, it is not particularly funny, is it, Mr. Hunt?

Mr. Hunt: I didn't smile at all, and I didn't laugh. That was Mr. Walsh.

Q. You are familiar with the sealing system for doors [fol. 346] of freight cars, aren't you, that the railroads of this country generally employ?

A. Yes.

Q. Now, if a door is swinging open, the seals can't possibly be intact, can they, and would have to be broken, isn't that so?

A. If they are open?

Q. No; maybe I am confusing you. A car door that is closed and has a seal applied to it, that is one with a lead and a number on it, that door cannot be opened without breaking that seal, can it?

A. Not without breaking the seal, no, sir.

Q. And that is true of all freight cars,—reefers, box cars and every freight car that has doors that are sealed, isn't that so?

A. Loaded cars, yes; empty cars are different.

Q. Well, empty cars would not have seals on?

A. No.

Q. But if they had seals on, then to open the door of an empty car you would have to break the seal to enter the car, wouldn't you?

A. Yes, sir.

Mr. Kiendl: You may inquire.

The Court: It is ten minutes to one. You will probably take more than ten minutes.

Mr. Hunt: Yes, your Honor. I will probably take more than ten minutes.

The Court: All right. We will take a recess, gentlemen. You are not to discuss this case among yourselves or with others. Be back at two o'clock.

(Recess until two o'clock p. m.)

FRANK KELLER, resumes the stand:

Cross-examination.

By Mr. Hunt:

Q. Now, Mr. Witness, you were supposed to leave Avoca at what time?

A. 2.10.

Q. What was your usual time that you left Avoca?

A. Usual time?

Q. Usual time that that train left Avoca.

A. 2.10 was the time that we left.

Q. You didn't usually leave Avoca at 1.30?

A. No. We have no regular time. Sometimes our train is late, but we leave over two hours late.

Q. Were you delayed at Avoca this night?

A. Yes, sir.

Q. You were delayed there 40 minutes?

A. Yes, sir.

Q. By reason of what?

A. Waiting for the South Ashley to get in.

Q. Otherwise you would have left at 1.30?

A. Approximately 1.30.

Q. Now, was there certain switching done there in Avoca before you started out?

A. Yes, we took three cars.

Q. And that train arrived—the major part of the train arrived at Avoca at about what time?

A. Oh, probably about 1.40.

Q. You were delayed at Avoca 40 minutes, so it must have arrived before 1.30, didn't it?

A. About 1.40.

Q. And part of this train came up from where?

A. Avoca. The train that came in, you mean?

[fol. 348] Q. The train came in and you took part of that train out and added some other cars, did you?

A. Yes, we took the whole train and added three cars on to it.

Q. The train came in at what time?

A. About 1.40.

Q. You said you would have left—you were held up at

Avoca 40 minutes because of something, some southbound train?

A. Yes.

Q. You said if you had not been held up 40 minutes you would have left Avoca at 1.30, didn't you?

A. Yes; we would have left 1.40, or probably before.

Q. Well, it didn't get there, the train you took out didn't get there, or the major part of it didn't get there until 1.40, you say?

A. Certainly not; that is what caused the delay.

Q. That is what you were waiting for?

A. That is what we were waiting for.

Q. And when it got there, it got there at what time?

A. About 1.40.

Q. What is this delay of 40 minutes, is that because it wasn't there?

A. Because it wasn't there.

Q. Now, how long after it got there—there was no occasion for any further delay after it arrived there, was there?

A. Oh, yes.

Q. What?

A. We had to check our train and such as that.

Q. Now, how long did it take you to check the train?

A. Possibly 30 minutes.

Q. What are these other delays that you have listed on this paper that Mr. Kiendl called attention to, that he calls the detention slip?

A. What other delays?

Q. I don't know; read them to me.

A. There is 40 minutes for South Ashley, that is at CA, Avoca; KV is Miners Mills.

[fol. 349] Q. Yes.

A. One hour blocked off. Ashley—

Q. Yes.

A. 10 minutes leaving cars; 15 minutes taking on cars; 5 minutes testing air; 5 minutes taking water. That is in Ashley yards.

Q. So you spent five minutes testing air and five minutes taking on water?

A. Yes, sir.

Q. And some time after it got in there and you got ready to go, you and one of the brakemen took and walked along the side of the train?

Mr. Kiendl: At Ashley?

- Q. Some place; at Avoca, did you not?
- A. Yes, when the train pulled into Avoca.
- Q. When the train pulled into Avoca. That is when you took the walk?
- A. That is when we checked up the train.
- Q. And are you handed anything from the conductor that comes in on that train?
- A. We are handed the waybills.
- Q. Are you handed any train sheet?
- A. No, sir.
- Q. The train sheet—there is a train sheet for that train that came into Avoca, was there not?
- A. There is what?
- Q. There is a train sheet, is there not, somewhere?
- A. From Susquehanna to Avoca they leave one there at Avoca, yes, for the train coming in.
- Q. There is a train sheet of the train that you took out of Avoca except for the three cars?
- A. Yes, sir.
- Q. That train sheet, of course, is on file with the company?
- A. Yes.
- Q. That is not the train sheet that is in evidence here?
- A. No, not the one we had, no.
- Q. And then when you and your brakeman started to take that walk, you started from the rear end of the train, [fol. 350] if your recollection is correct?
- A. Yes, sir.
- Q. Your whole testimony, did I understand, Mr. Keller, amounts to telling us what you usually do, how you usually do it. Do you remember this particular night? Yes or no?
- A. I remember the particular night.
- Q. Well, what did you do—do you make this run every night?
- A. Yes, sir.
- Q. What did you do the night before when the train came in?
- A. Possibly the same thing.
- Q. And the night before that?
- A. Possibly the same thing.
- Q. And so on?
- A. The same work probably every night.
- Q. So you are really telling us what you usually did?
- A. Yes, sir.

Q. And as you went along the train there is no doubt that at one end of that train there was car 3113, is that correct?

A. Yes, sir.

Q. And you started like all railroad men, you started either from the front or the rear, didn't you?

A. Start in at the rear end, we generally do, checking up a train, because the train pulls up and I have to wait for the caboose to get my bills.

Q. Yes; so you usually start at the rear end?

A. Yes, sir.

Q. And you don't go up along the twenty-sixth car or anything like that and start in, do you?

A. No.

Q. And you went along one side of this car?

A. Yes, sir.

Mr. Kiendl: Train.

Q. Train. And you made notations of the numbers of the cars, did you?

A. Yes, sir.

[fol. 351] Q. And you would know the contents of the cars, would you, also?

A. Yes, sir.

Q. You said you looked at the doors as you went along?

A. Yes, sir.

Q. Your inspection was, if it was an inspection, took place at night time, did it?

A. It took place in the night, in the morning, yes.

Q. Well, I mean it was dark; that is what I am trying to get at.

A. Yes, sir.

Q. And you had a light?

A. Yes, sir.

Q. Of some kind?

A. Yes.

Q. What kind of a light was it?

A. Kerosene lantern.

Q. The old-fashioned lantern we know of, that runs with a kerosene wick?

A. A small railroad lantern.

Q. Who carried that, you or the brakeman?

A. We each had one.

Q. And did you inspect any of the hand-grabs or—you had nothing to do with that?

A. Handbrakes?

Q. Yes.

A. No, no, we didn't do any of that kind of stuff.

Q. You were getting the train list of the cars you had on your train, and the contents, were you?

A. Yes; we were putting them in the book at the time.

Q. But you have come here, you realize, to assure these gentlemen that you also were looking out for doors.

A. I did when I checked up; that is part of my duty.

Q. That was part of the purpose in taking this check, wasn't it?

A. No, we took the ordinary—we were checking the train, and we do that while we are doing that, we look over the different parts of the cars to see if they are safe to run and properly loaded.

[fol. 352] Q. And you did that up one side of this train, and you knew it was important, as conductor of the train, to see if these doors were actually sealed and actually closed, didn't you? You knew that was important?

A. Yes, sir, the side I go up on I always do.

Q. As an old railroad man you know from your experience the danger in case either a door is off the rail or if one of them is either opened or closed without being latched? There are three dangerous conditions that you are familiar with, aren't you?

A. Yes, sir.

Q. So you looked along to see if they were latched and closed, did you?

A. To see that they were closed as I went by.

Q. And then your work was over, as far as that job was concerned?

A. What do you mean?

Q. I mean you had completed your work?

A. Yes, we had completed.

Q. So far as going over the train was concerned?

A. So far as going over the train was concerned.

Q. Now then, did you think that it was more dangerous to have a door off a rail or to have it open or to have it closed and unlatched—did you think that that was more dangerous if that condition happened on one side than on the other side of that train? Did you or did you not?

A. It would be just the same.

- Q. It would be just the same on one side as the other?
- A. Yes.
- Q. But you did nothing so far as one side of that train was concerned, correct?
- A. Not for me.
- Q. Yes.
- A. We had a car inspector.
- Q. That is what I am asking you about, yourself.
- A. All right.
- Q. And so what I am getting at, as you walked along there, [fol. 353] the plain fact of the matter is that you didn't have in mind any doors or whether they were closed or latched or anything of that kind, did you?
- A. Oh, yes, I did.
- Q. You thought it was important?
- A. Certainly I thought it was important.
- Q. Well then, just explain to these gentlemen why don't you go up the other side of the train, if you thought it was important, to see what the condition was over there?
- A. Because there were car inspectors to do that.
- Q. That is just my point, sir.
- A. I am not supposed to walk around the train. My duty, when I am passing by the train, is to see whether it is closed on that side.
- Q. You are not supposed to do that at all, are you?
- A. What?
- Q. Look at these doors and see their condition; that is not part of your work?
- A. Yes I am, when I am passing up, certainly, when I am passing by them; and always do.
- Q. And the doors were all right the night before, were they?
- A. Yes, they were all right the night before.
- Q. And they were all right the night before that?
- A. So far as I know, yes.
- Q. They had been all right for years?
- A. They had been all right right along, they had been closed.
- Q. They had been all right for the few years, seven or eight, I think you told me.
- A. How many?
- Q. Seven or eight, didn't you say before lunch?
- A. Yes, since—five, six, seven or eight years since I saw them swinging a door off the rail.