

and took care of the children. Never left them alone at the house. Jimmy was never on the track before to my knowledge. He would be either up-stairs or in the back yard. I had no talk with Macomb the day after the accident. I was away, you know, up at the hospital. I did not talk to him at all. I was not there to talk to him. I always tried to keep Jimmy off the track. When boys came to play with him, I always sent them in the yard, and they played in the yard and in the shed.

*James Hughes*, the plaintiff, being called as a witness in his own behalf, testified:

Mr. GRIFFIN—Well, gentlemen, is there any objection to the boy's being sworn?

Mr. RUSSELL—Yes, sir, we object to his being sworn. We think he is not of sufficient age to understand the nature of an oath.

Q. (By Mr. ENGLE.) How old are you?

A. Six.

Q. Six what?

A. Six, going on seven.

Q. Do you know what you have got to do when you tell about being hurt—what you must tell?

A. Yes, sir.

Q. What?

A. Tell how I got run over.

Q. Do you know how you must tell it—whether you must tell the truth or not?

A. Tell the truth.

THE COURT—You say you must tell how you got hurt?

A. Yes, sir.

Q. How must you tell that?

A. Tell how I got run over.

Q. Suppose you tell what is not true about it?

A. I must tell the truth.

Q. Suppose you don't tell the truth, do you know what will happen to you?

A. Go to hell.

THE COURT—He seems to have good Presbyterian doctrines, Mr. Jerome.

Mr. JEROME—That has been abolished. Ask him what would be done to him here.

Q. Would you be punished here, if you did not tell the truth?

A. Yes, sir.

Q. Do you know what would be done to you here?

A. Be punished.

Q. Do you know what punishment you would get?

A. I would be punished.

Q. How would you be punished?

A. God.

Mr. ENGLE—How would you be punished here, if you did not tell the truth?

A. I don't know.

[The Court hears argument as to the propriety of allowing the boy to be sworn, during which Mr. Griffin, on behalf of the plaintiff, cites a case in 44 Mich.]

Mr. JEROME—That case that Mr. Griffin has referred to was as to a single fact, the identification of a person. Here is a boy who is asked to detail an occurrence which is made up of many circumstances.

THE COURT—I think we will ask him some further questions?

Q. You say that you will go to hell if you don't tell the truth. Who told you that?

A. My mother.

Q. When did she tell you that?

A. Yesterday.

Q. Did she tell you must speak the truth here?

A. Yes, sir.

Q. Did she tell you you would go to hell if you didn't?

A. Yes, sir.

Q. Do you believe that?

A. Yes, sir.

Q. Are you going to speak the truth here ?

A. Yes, sir.

Q. Do you remember what took place at the time you were run over ?

A. Yes, sir.

THE COURT—I don't know, gentlemen, I think I will have to receive the testimony for what it is worth. The jury can judge as to the competency of his statement. My experience and observation has been—and it has been quite extensive—that where children have to tell a complicated story, if they make mistakes, the mistakes are very apparent to the jury. You have the power of cross-examination, and such cross-examination, if conducted kindly and fairly, as I know it would be in this case, will lay before the jury quite accurately the intelligence of the boy, and the degree of credit that he ought to receive. I know very well that the views of Judge Campbell upon this subject are very liberal and broad. I very well remember this decision, in which he expressed those views very broadly, and I am inclined to think I must receive the testimony.

To the above ruling defendant's counsel accepted.

The witness was then sworn, and testified as follows:

By Mr. ENGLE:

Q. Do you remember the time you got hurt ?

A. Yes, sir.

Q. Can you tell me about how long ago it was ?

A. Yes, sir.

Q. How long ago do you think it was ?

A. I think it was last summer.

Q. Do you mean this summer that is just passed ?

A. No, sir.

Q. Do you mean the summer before that ?

A. Yes, sir.

Mr. JEROME—I must object to this method of examination as grossly leading.

THE COURT—Avoid leading questions. I think the last answer must be stricken out on that ground.

Q. What summer do you mean ?

A. The summer before this.

Q. Where were you living at the time ?

A. At the foot of Hastings street.

Q. What house were you living in ?

A. A brick house.

Q. How near Hastings street was it ?

A. Right by the railroad-track.

Q. I ask you how near Hastings street it was ?

A. I don't exactly know.

Q. What street did you live on ?

A. On Hastings street.

Q. Do you know how near the house was to Hastings street ?

A. No, sir.

Q. What street did the front door of your house open on ?

A. On Hastings street.

Q. Do you remember what time of the day it was when you got run over ?

A. Near six o'clock.

Q. In the morning or afternoon ?

A. Evening.

Q. Where were you and your mother just a little while before you got hurt ?

A. I was sitting by the side of my mother on the sill.

Q. State whether your mother got up and went away or not ?

A. She got up and went in the house to make a cup of tea for my pa.

Q. What did you do then ?

A. I went around by the track and jumped on the engine; then I went across to the pig pen; came back and jumped on again; walked across and stepped off; and the last time I jumped on, I stayed on. The engine started up and gave a jerk and I fell off.

Q. Was there anybody on the engine ?

A. No, sir.

Q. Was there anybody in the cab—do you know what the cab is?

A. Yes, sir.

Q. What is the cab?

A. It is the little place like a house.

Q. Was there anybody in there?

A. Yes, sir.

Q. Who?

A. The fireman and the engineer.

Q. Do you know what the engineer does there?

A. He makes the engine go.

Q. Where were you standing on the plank when the engine started?

A. I was standing at the end.

Q. Which end?

A. On the left side.

Q. Tell us what you mean by the left side.

A. That side (indicating with his left hand.)

Q. Which way was your face when you stood there?

A. Toward the cab.

Q. Which way was the engine headed?

A. Up.

Q. What do you mean by up? Was it headed toward Hastings street or away from Hastings street?

A. Away from Hastings street.

Q. Which is your left hand?

A. This one (indicating his left hand.)

Q. How did you lose your thumb?

A. By the cars.

Q. At the same time you lost your leg?

A. Yes, sir.

Q. You stood looking toward the cab then, you say?

A. Yes, sir.

Q. And you say you were standing on the left hand of the plank?

A. Yes, sir.

Q. Do you mean at your left hand?

A. Yes, sir.

Q. (By Mr. RUSSELL to Mr. ENGLE.)—Was this the last time he was on the engine, do you mean?

(By Mr. ENGLE.) A. Yes, sir.

Q. What do you say made you fall off?

A. It gave a jerk.

Q. What gave a jerk?

A. The engine.

Q. When you were standing there could you see into the cab window?

A. Yes, sir.

Q. Did you see the engineer there?

A. Yes, sir.

Q. Will you tell us whether he was looking at you or not?

A. He looked at me once.

Q. When was that?

A. That was when I was going on.

Q. Do you know whether he saw you?

A. No, sir.

Q. Did you hear the engineer say anything about your being there?

A. No, sir.

Q. Did you hear him say anything about your getting off?

A. Yes, sir.

Q. What did you hear him say?

A. He said "Not to ring the bell until the little fellow gets off."

Q. To whom did he say that?

A. To the fireman, at the side of the engineer.

Q. Did you know the name of the engineer or fireman, either of them?

A. No, sir.

Thereupon counsel for plaintiff asked the following question:

Q. Have you ever seen boys and girls riding on that step, on the engine?

To which defendant's counsel objected as immaterial and irrelevant. The objection was overruled and defendant's counsel then and there excepted.

The witness then answered, Yes, sir.

Mr. RUSSELL, counsel for defendant, then said: I have ceased making objections to that class of testimony, as I understood that all testimony on that subject would be taken subject to our objection and exception.

THE COURT—Yes, sir, I think you have record enough on that already. If it comes up in any new aspect, you may call attention to it; but everything in regard to the subject may be considered as taken subject to your objection—the entire evidence as to what other boys and girls did upon that track.

Q. Have you seen boys and girls on the freight cars and hanging on them?

A. Yes, sir, I have seen them hanging on them.

Q. What were they hanging by?

A. By the ladder.

CROSS-EXAMINATION.

By Mr. RUSSELL:

Q. How long had you been sitting on the sill there with your mother before you got up to go away?

A. I think about an hour.

Q. While you were sitting there at that time, did you see the cars passing back and forth?

A. Yes, sir.

Q. When you got up in what direction did you go?

A. I went right around.

Q. Around what?

A. Around the house.

Q. Between the house and the first track?

A. Yes, sir.

Q. How far did you go along next to the wall there?

A. I went up a little way, by the switch.

Q. I am asking about the time when you left the sill where you were sitting. You say you went around the corner of the building?

A. Yes, sir.

Q. And up between the wall and the track?

A. Yes, sir.

Q. How far did you go up that way?

A. Near the switch.

Q. Do you know where Miss Bushey lives?

A. Yes, sir.

Q. Did you pass by her house that time?

A. No, sir.

Q. Didn't you have to pass by her house to get to the switch?

A. Yes, sir.

Q. Did you pass by her house at that time?

A. No, sir.

Q. When you turned to go across the track, did you get onto the engine at that time?

A. Yes, sir.

Q. Was the engine standing still when you got on?

A. Yes, sir.

Q. How long did the engine stand still?

A. It was standing still about an hour.

Q. Do you mean it was standing still where you got on about an hour?

A. Yes, sir.

Q. What did you do when you got on the engine?

A. I went across to the pig-gen.

Q. Did you get onto one end of the board and walk across it?

A. Yes, sir.

Q. And get off at the other end?

A. Yes, sir.

Q. All this time the engine was standing still, was it?

A. Yes, sir.

THE COURT.—Where was the pig-pen?

MR. RUSSELL.—He means the cattle-yards on the other side.

Q. Tell us about that pig-pen, just where you went.

A. I went over to it.

Q. What did you do when you got there?

A. Looked at the pigs a little while.

Q. Did you climb up on the fence and look at them?

A. No, sir.

Q. Look through the fence at them?

A. Yes, sir.

Q. Were there many pigs there?

A. Not very many.

Q. Was there anything else there but pigs? Any cows there?

A. No, sir.

Q. Nothing but pigs?

A. No, sir.

Q. How far were those pigs from Hastings street—down near the street or up some distance?

A. They were a little further from the side-walk.

Q. Were they down near Hastings street, or were they farther away?

A. They were farther away.

Q. When you left the pig-pen where did you go?

A. I came across, jumped on the engine again and walked across to the other end of the step.

Q. Where was the engine standing then?

A. Standing right at the side of our house.

Q. Do you mean standing beside the front of your house, at Hastings street?

A. Right at the side.

Q. At the side of your house?

A. Yes, sir.

Q. Your house is a pretty big one, isn't it—there is a great long wall there?

A. Yes, sir.

Q. The engine was standing alongside of that wall, then was it?

A. Yes, sir.

Q. When you got off this time, did you get off between the engine and the brick wall?

A. Yes, sir.

Q. Then where did you go?

A. Then I went over by the brick wall, turned around and came back.

Q. Went alongside of the wall?

A. Yes, sir.

Q. Then what did you do?

A. Went over by the other cars and came back.

Q. This was three times you got on and off. Where were the other cars then? Were they down by Hastings street?

A. They were on a side-track.

Q. Over toward the pig-pens?

A. Yes, sir.

Q. Did you go under the cars, or did you go around them?

A. I went around them.

Q. At that time were there any other boys and girls there?

A. No, sir.

Q. Didn't you see any men or women there?

A. No, sir.

Q. How long did you stay there at that time?

A. Until I came back and jumped on and stayed on.

Q. How long do you suppose that was?

A. I just got on a minute before it went.

Q. How long were you over there by the cars at that time by the side-track?

A. I was over there about half an hour.

Q. When you got on the last time and stayed on, which side of the engine did you get on, the side toward the river or the side toward the brick wall?

A. The side toward the river.

Q. Do you know which is the south side and which is the north side?

A. No, sir.

Q. You got on the side toward the pig-pen?

- A. Yes, sir.
- Q. Where were you standing all the time?
- A. Standing on the end.
- Q. When you got on the last time, where was the engine standing?
- A. Standing in the middle of the wall.
- Q. You mean this brick house?
- A. Yes, sir.
- Q. During the time you were going back and forth had you seen the engine go up and down the track?
- A. No, sir.
- Q. How long did you stand on the board there the last time, before the engine started?
- A. About a minute.
- Q. How long did you stay on there after the engine started? How far did you ride?
- A. I rode down to the switch.
- Q. How near the switch were you when you fell off?
- A. Just about half a foot from it.
- Q. Didn't you tell some one about the time of the accident, that you got on the engine and thought it was going back towards Hastings street, and when you saw it was going the other way, you jumped off?
- A. No, sir.
- Q. Is not that the fact? Didn't you think when you got on there that the engine was going back toward your house?
- A. No, sir; it was just going down.
- Q. Do you mean it was just going down when you got on?
- A. No, sir, it was standing still when I got on.
- Q. Did you know which way it was going when it would start?
- A. Yes, sir.
- Q. Which way was it going?
- A. Going up.
- Q. What made you think it was going toward the switch when it started again?
- A. Because I saw it.

- Q. But before you saw it start, and when you got on there, did you know which way the engine was going when it started?
- A. Yes, sir.
- Q. How did you know?
- A. It was pushing up that way.
- Q. Was it pushing when you got on?
- A. No, sir, it was standing still.
- Q. You thought it was going toward Hastings street, didn't you, when you got on there?
- A. Yes, sir.
- Q. Thought it was going down toward where you lived?
- A. Yes, sir.
- Q. As you stood there on the foot-board, how much higher was your head than the cylinder? Could you see over the top of the cylinder.
- No answer.
- Q. Do you know what the cylinder is—the big round thing that is on the side of the engine?
- A. No, sir.
- Q. Do you know the big round thing right on the outside of the engine near the end of the board? Do you remember that?
- A. Yes, sir.
- Q. Was not your head lower than the top of that?
- A. I could see over it.
- Q. Do you remember about half an hour before you left your mother, seeing one of these men back there working about the train? (Mr. Macomb was requested to stand up.) Do you remember seeing that man there about half an hour before?
- A. Yes, sir.
- Q. Do you remember of his telling you to get off the ladder on one of those cars, and to go away?
- A. No, sir.
- Q. Didn't he tell you if he caught you around there again on that car he would spank you?
- A. No, sir.

Q. Didn't the man working on the train about half an hour before you left your mother, drive you away from the cars?

A. No, sir.

Q. Didn't any of them tell you that if you came there again, or got onto those cars, they would spank you?

A. No, sir.

Q. Are you sure about that?

A. Yes, sir.

RE-DIRECT EXAMINATION.

Q. Were you ever on the step of that engine before that day?

A. No, sir.

Q. Did you ever hang on the cars or ride on the ladder?

A. No, sir.

RE-CROSS EXAMINATION.

Q. You used to go up and down those tracks considerably, almost every day, didn't you?

A. I used to go three or four times.

Q. Every day?

A. No, sir.

Q. Didn't you use to go along down the side of that brick wall there, down below toward the switch sometimes?

A. No, sir.

Q. And over to the cars on the other side of the side-tracks?

A. No, sir.

Q. When were those three or four times you spoke of having been there? How long before?

A. That was before I got hurt.

MR. GRIFFIN.—He means the same day.

MR. RUSSELL.—No matter what he means.

Q. How long before this did you go up and down the tracks there?

A. About twice.

Q. How long before? A week before or a day before?

A. A week.

Q. Didn't you go up there a few times about a month before that?

A. Yes, sir.

Q. And didn't you go up and down the tracks a few times soon after your mother moved into that house?

A. No, sir.

Q. Didn't you use to go over to the pig-pens to see the pig<sup>s</sup> soon after your mother came there to the house?

A. No, sir.

Q. How did you know there were pigs there?

A. I have seen them over there.

Q. Where were you when you saw them?

A. Standing on the sidewalk.

Q. Where?

A. In front of our front door.

Q. Can you see the pigs from your front door?

A. Yes, sir.

Q. You are sure about that?

A. Yes, sir.

Intermission until 2 P. M.

*Peter Tean*, a witness produced and sworn on behalf of the plaintiff, testified:

Examined by MR. ENGLE:

I live in Detroit. I was living in the vicinity of this accident at the time it occurred. It was in the month of June or July a year ago last summer, between six and half-past six in the evening. I have been living in that vicinity between three and four years; was living right in front of where the accident occurred. It occurred about fifty-seven feet from my back door. I live in the east half of the same house in which Miss Bushey lives who has been a witness here. Our back doors are side by side. That afternoon I was in the back yard talking to Miss Bushey. The pony engine came down, and I jumped on it and rode down a little way, went into the freight shed and tried to get some bananas. I could not get any, so I came up again. I was in my back yard at the time of the accident. The yard is on the side where I lived, the east side, six or seven

feet away from Miss Bushey. From my back door it is fifty-seven feet to the first track. The engine was on the first track. I could pretty nearly locate the spot where the accident occurred. I have been to the premises since the court adjourned this morning. There was no fence on the east line of the Bushey lot. Since the accident one has been put there along the east line. The fence runs down to within two or three feet of the railroad grounds. The accident occurred on the west side of it right opposite the lot where the Bushey and Tean house stood right in the rear of where I lived, and that would be fifty-seven or fifty-nine feet from Bushey's back door, down to the place. The place of the accident was about three or four feet west of the fence inside. I was there this afternoon, and saw this little boy when he was on the plank. He was standing on the south side when I saw him. That was the time he got hurt. He was standing on the plank. There is a railing in front of the engine. He had his arms around it like that (illustrating). They were pulling the cars out from the freight shed. The switchman gave his signal for the engineer to stop. I guess he wanted to cut the cars. He hollered and put his hand up to stop, and when it stopped it stopped with a jerk and jerked the boy off. The boy got under the wheel. When he fell the wheel caught him. When the engineer gave the engine the jerk, it threw the boy off, but it didn't stop the engine quite still. It kept going and caught the boy. So the switchman over there, I don't know his name, asked him where he lived, and he said, "In the brick house on the corner." Then he asked him, "Do you want to go home?" He said, "Yes." He would say "yes" to every question he asked him. I could see him on that plank from where I was. He could have been seen from that point three or four feet west of the switch. I could see him anyhow, because there was no fence there or anything. I could see him standing up by my back door, three or four feet west of the frog.

Mr. JEROME—We must object to such questions as that as leading.

THE COURT (to plaintiff's counsel)—You ought not to do that. Mr. ENGLE—Then strike it out.

THE COURT—Striking it out does not do any good. I will not strike it out.

The witness proceeded:

I mean the frog where the tracks cross. I could see him until he was very near that. There is not anything else along the east line of that lot now beside the fence, that was not there then, and besides some sheds and things since put there so that you can't see.

Q. Will you state to the jury what you have seen with regard to children running and being and playing upon those grounds and on the cars and engines?

Objected to as immaterial and irrelevant.

THE COURT—All the testimony upon that point is taken subject to your exception.

A. Yes, sir. Mary Steele, Annie Tean, my own sister, and a couple more girls would be riding on the cars, on the side ladders, inside of the cars and in front on the pony. I have been riding on them myself nearly every day until of late, the weather has been cold and I have not been down there.

Q. Have you seen any other children riding there?

A. No, sir, not to my knowledge.

Q. At the time when these other children were riding, and at the times when you were riding, where were the engineer and fireman?

A. They would be at their posts in the cab.

Q. I ask you about the children being on the grounds and tracks playing there?

A. I have seen them there playing pitch, marbles, and tag, around the cars, little children two or three years old, and those that go to school, during the vacation.

Q. Confine yourself to this summer that the accident happened and previous to the accident?

A. I have seen them there this summer too, playing marbles, pitch, and tag and everything. I have been one of them myself.

Q. Which summer?



A. The summer gone by.

THE COURT—What took place this summer is incompetent. The testimony about this summer will be stricken out. I withdraw that from the jury.

Mr. ENGLE—I ask concerning the summer of the accident and before the accident. Confine yourself to what you saw then.

A. They were playing pitch and marbles the summer the accident occurred, the summer before that, and the summer after that.

THE COURT—You have just been told not to tell anything about the summer after that.

Q. How far was it from the east fence to the frog?

A. About 18 feet.

Q. How far was it from the fence east of the Bushey lot to the switch?

A. About 69 feet.

Q. How far from the place where the accident occurred to the switch?

A. I should judge about 80, 81 or 82 feet.

CROSS-EXAMINATION.

I had been sitting at my back door about five minutes when the accident happened, and Miss Bushey, the witness who testified here, was there also. No one else. The first I saw of the boy, he was on the engine, which was going up with the cars, and when the man gave the signal to stop, that was the time when he got hurt, and that I saw him. I had not seen him at all before that day. I did not see him get on. He was standing on the further end of the foot-board, on the side the engineer was on, and the engine was moving, and he was riding on it, going east up toward Rivard street. I was about 58 feet from the place of the accident, and a little east, near the east line of our lot. I could see the foot-board as far west as the east end of the brick building. The boy got hurt west of the frog. When I first saw the boy, the engine was going

up on the north track by the brick building. I first saw him as the engine was going east by the corner of the brick building. I watched him until the accident occurred, from the time I saw him by the brick building until he was hurt. That was about a minute, I guess. He was on the south end of the foot-board. I saw him right there. He was hurt about 18 or 20 feet west from the frog, and the frog is about 17 or 18 feet east from the east line of the lot where I lived, and the boy was hurt about two or three feet from the east line of the lot where I lived, and about 69 or 70 feet from the switch west. I was looking right at him when he fell off. The fellow gave a signal to stop; he gave a jerk to the engine, and he fell over like that (illustrating). He was looking east when he fell with his back to the engineer. He had his hands under the iron rail like that (illustrating by standing up and putting his arms behind him as though grasping a support).

During the cross-examination of this witness, plaintiff's height was measured, and found to be two inches less than four feet.

Mr. RUSSELL—Four feet is near enough.

The witness continuing, said:

The hand-rail of which I have spoken is about two feet from the foot-board where the boy was standing. He fell over kind of on his side. He was standing maybe four or five inches on the plank. I know he fell sideways. I do not know if he struck the rail or not. When I saw the accident I said, "Look there! the little nigger is run over." I do not know what Miss Bushey did; I ran over there and went round the engine. It was standing about two or three feet west from the east line of the fence where I lived.

Q. The engine was standing two or three feet east from the west line of your lot?

A. Two or three feet west from the east line. It had stopped there and was standing still. The frog is about 20 feet east from where the engine was standing. The engine had not crossed the frog. I heard Miss Bushey testify the accident

happened within two or three feet of the switch. That is not correct to my knowledge. When I got there the boy was lying on the rail under the two wheels on the south side right by the engine. Macomb, one of the switchmen, was there, and Jack Graney came running. The engineman was on the engine. He had not got down yet. The switchman asked him where he lived. He was bending over him to pick him up.

Q. Did not you know that the boy was not by the side of the engine at all when you got there? Did you not know that he was picked up in another place?

A. You must know better than I do; I was right there.

Q. Did you not know, as a matter of fact, that the boy was run over by the forward truck of the freight-car behind the engine?

A. I am sure he was picked up beside the engine-drivers. Then I went over and told Mr. O'Keefe to telephone for an ambulance, while Macomb was bending over to pick him up. The next time I saw the boy was when the switchman was carrying him into the house, and the next time after that, when they were taking him into the ambulance. I had never seen the boy on the track at any other time, except one Sunday over at the cattle-yards about two weeks before the accident. I am sixteen years old.

*John Graney*, a witness produced and sworn in behalf of the defendant, testified as follows:

Examined by Mr. ENGLE:

In the summer of 1884 I was living on Congress street, at Mr. Campau's house, between Riopelle and Orleans streets. I am familiar with the premises at the foot of Hastings street. I worked around there for O. W. Shipman for about five years. He has a dock down there, and a yard at the corner of Franklin and Antoine streets. I passed the corner of Hastings street frequently. I was down there on the afternoon of this accident. A train stopped me. I was going across from the Lake

Shore depot with a load of coal, and had to stop. It was a little after six o'clock.

Q. Will you state to the jury what you saw there?

A. First I saw a little boy on the train.

Q. Where were you?

A. Stopping at the railroad-crossing. I said to the watchman, "Why don't you throw that boy off—"

Mr. RUSSELL—We object to that as incompetent.

THE COURT—I will sustain the objection.

Q. Did you see the watchman there?

A. Yes, sir, I did; spoke to him and got a chew of tobacco from him. I don't know the watchman's name. I call him Sandy.

Q. Where was he standing?

A. There where Ross lives, on the corner.

Q. Where does Ross live?

A. As you come out from Atwater street it is right on the corner of the track. He is a watchman there. It is on the down river side of Hastings street, toward the river.

Q. How near the corner was it you saw the watchman?

A. About half way in the middle of the track. There were two or three coal wagons waiting to get across.

Q. Who else did you see beside the watchman, beside Sandy?

A. In a few minutes I saw Ross come down.

Q. Who is he?

A. He claimed to be head watchman. I don't know whether he is or not. He is the one that lives in that brick house.

Q. How long before the accident was it that you saw Sandy there and got the chew of tobacco from him?

A. I guess about ten minutes or so.

Q. Will you state to the jury what occurred that you saw?

A. I saw the little boy—I am not acquainted with him—I know he was a little colored boy; he was on the platform, where you step up in front of the pony. I think he was trying to get off or something. She was starting up. I saw him on there and saw the engineer over there. I saw the boy on the engine,

and I heard Sandy say, "Oh, my God! that boy fell off!" I jumped off my wagon, ran up the track and was going to pick the boy up. This fellow over here picked the boy up first. So I picked the leg up and the boy's thumb, which was lying on the rail, and carried then into the house. His leg was entirely severed from his body. His thumb was hanging on the rail and his leg was alongside the track.

Q. What can you say as to the fact of children being allowed on that track, to play around and on the cars and engines?

MR. RUSSELL.—We wish it understood that this is taken subject to our exception.

THE COURT.—It is all taken subject to exception.

Q. I speak as to that summer, prior to the accident.

A. Go down there any time. I will bet you can go down there and get all the kids you want.

Q. During that summer, prior to the accident? Tell what you know about that.

A. I saw them around there playing marbles and everything all the time, running over into the cattle-yards and playing quoits and one thing and another on the railroad premises.

Q. East of Hastings street?

A. Right there by the cattle-yards.

Q. What do you know, if anything, about children riding on the cars? You have answered about their being on the track.

A. I have seen them in the box-cars getting bananas and one thing and another.

THE COURT.—You are asked about children riding on the cars.

A. Yes, sir. I have seen them riding on the cars, some of them riding up from the depot, swinging their baskets out of the car doors.

Q. How old were the children?

A. Some, I guess, six, seven, eight and nine years old.

Q. What else do you know about it?

A. I have seen them hanging on the steps that are to run up the cars with.

Q. State where else you have seen children, if anywhere, upon these premises?

A. I have seen them down around the Lake Shore yard, picking up coal, and in all these yards.

THE COURT.—What has the Lake Shore got to do with this?

MR. ENGLE.—Nothing. It is not what I wanted.

THE COURT.—Strike it out.

Q. Where else upon this company's premises or property, if anywhere, have you seen these children riding?

A. I have seen them playing in the yard, and some of them were riding.

Q. Where?

A. Around in there on the side-track as you leave Franklin street.

Q. Riding on what?

A. On the engines and on the cars.

Q. You said before that you said something to the watchman?

A. Yes, sir.

Q. When you first saw the boy, state how near the watchman was standing to you?

A. When I first saw him, I guess, about as near as that end man there (referring to one of the jurymen).

Q. About that distance from you?

A. Yes, sir.

CROSS-EXAMINATION.

I will be 25 years old in July. As quick as I knew of the accident, I jumped off the coal-cart and ran up there. Ross, the watchman, got there in a few minutes. The first I knew of the accident was when I heard Sandy say, "My God, that boy has got his leg cut off." I saw the boy on the ground near the engine. Did not see him fall. I carried the boy's leg into the house. Children there on the railroad ground played marbles, pitch-penny and tag.

Q. If children go and play there, would they not be bad children in your estimation?

A. Yes, sir, but I think the watchman ought to keep the children off the track. I have driven that way lots of times.

I think that is the man over there (pointing to a person in the Court Room), who picked him up. I did not see him pick him up until I ran over there, after Sandy hollered. His leg was lying there, his leg on the rail, and his thumb sticking to the rail. He was lying alongside the drive-wheels, alongside the engine. I was going to pick him up, but the switchman stooped first. No one picked up his leg, so I picked up his leg.

*Joseph Bushey*, a witness produced and sworn on behalf of the plaintiff, testified:

I am a brother of Rosa Bushey. I live at the same place she does, did in summer of 1884. Did not see this accident. Was not there at the time he was run over. I was there when he was picked up. A few minutes before the accident, I came through the lot toward my house from Atwater street. I had been down at the river, and was on my way home. From Atwater street, as far as the middle of the block, I came through the empty lot, from the cattle-yard, up toward my place.

Q. Where were you when you first saw anything of the occurrence?

A. Right on the other side of the track, right by the cattle-yard, on the river side of the track.

Q. What did you see?

A. I saw the switchman pick him up. He was carrying him away and I followed him to the house.

Q. Where was he when they were picking him up?

A. About 69 or 70 feet from the switch.

Q. Can you identify the spot very clearly where he lay?

A. Yes, sir, it was on the east side of Tean's house, between my house and Tean's.

Q. That is the double-house we have spoken of?

A. Yes, sir, ours is the west half.

Q. Was it directly opposite your half?

A. No, sir, near to Tean's half, nearer to the east.

Q. Up about opposite Tean's half?

A. Yes, sir.

Q. And that is the east half, you say, or the west half?

A. The east half. From the rear door of our house you could see a boy standing on the plank in front of an engine facing eastward at that point.

THE COURT—Why do you ask that at this stage of the case? Your witnesses swear that they did see it.

Mr. ENGLE—If your honor will allow us to rebut in case they contradict it, that will be satisfactory.

Q. Who picked him up?

A. One of the switchmen.

Q. What condition was he in when they picked him up?

A. I was not there when he was picked up. They were carrying him away. The man had him in his arms.

Q. That summer before the accident, not afterward, state what you know about children being upon the grounds there.

Objected to as leading.

THE COURT—Ask him if he knows anything about it; let him answer yes or no.

Q. Do you know anything about children being upon the ground?

A. Yes, sir.

Q. State what you know about it.

Objected to as irrelevant and immaterial; objection overruled; exception for defendant.

THE COURT—Before the time of this accident?

A. Yes, sir, and that same summer. I have seen boys and girls picking up coal around the track, and running across there on Sundays, playing around the cattle-yards and up and down the tracks from one corner to the other. That is all I know about it.

Q. Do you know anything about children being upon the cars?

THE COURT—Answer yes or no.

A. Yes, sir.

Q. State what you know about that.

A. I have seen them quite a few times, riding on the cars and hanging on the ladders. I have seen boys hanging on the ladders of the cars on the main track.

Q. State whether or not the cars were moving.

A. Yes, sir, the cars were moving.

Q. Do you know anything about their being on the engines?

A. No, sir, I could not say as to that.

CROSS-EXAMINATION.

This little colored boy was not among the other children around there. Never saw him there until time of accident. I know who picked him up. It was one of the switchmen; that man there (pointing to Macomb).

*William Richardson*, a witness, produced and sworn in behalf of the plaintiff, testified :

In the summer of 1884 I lived on Franklin street, three doors from these premises in question. I was in that locality on the afternoon of this accident. I was standing on the corner of the crossing there, next to McDowell's saloon, at the time it was done, right across Hastings street from that brick building. I was standing at that corner. It was somewhere in the evening; it was not dusk yet, but it was getting on in the evening though. I saw the train pull up and stop and uncouple to let some teams pass down Hastings street. This little colored fellow was coming across from those stock-pens, and he came up toward the engine. That was the last I saw of him until the accident happened. The engine was heading up away from me. The last I saw of the little boy, he was going toward the engine from the cattle-pens. The engine started up. When he came up to the engine, that cut off my sight from seeing him. I was to the rear of the engine, down at the corner. When she pulled up, after she started up east, the accident occurred.

Q. About how long a space of time from the time he passed out of your sight?

A. It did not seem a second hardly. I then heard some loud talking, the brakeman ran, and I started up too. One of the watchmen, I believe, was standing near where I was, and some teams were on the other side. The watchman was on the crossing on the other side of the train, toward the river. I went up to the place of the accident. The boy was there, and the brakeman. The boy was missing of a limb, that is all I know. I have lived there about three years. I have seen children riding on the cars, in the cars, on the ladders and hanging on the doorways. I have seen them playing around the tracks. I have seen them on the engine and the cars behind it. You could see them almost every day. The children were from seven to eight, nine and ten years of age, I should think.

CROSS-EXAMINATION.

I am a married man. I live at 126 Franklin street. At the time I speak of seeing children there from seven to ten years old, I was living right there. It was a few steps from my back door to the crossing.

*Moses Woodlyn*, sworn on behalf of plaintiff, testified :

I am the step-father of Jimmy Hughes. We lived in the brick building at the corner of the railway track and Hastings street. I drive a coal wagon. Was not at home at the time of the accident. I first saw Jimmy at the hospital. During the time he was there, I stayed every night with him. I guess for over four weeks. He was in very bad condition. He did not know me at all. He was in great agony. They kept him under the influence of something. He acted as if he was dead when I first saw him. He was lying in bed in the D. & M. room at the Medical College at the corner of Antoine and Gratiot. We would give him medicine that would ease him for two or three minutes, and then he would begin to pitch and toss and scream; and he would scream, "Doctor! Doctor! My leg! my leg! my thumb!" He carried on in that way for

three weeks. When we gave him medicine he would kind of die off, "Doctor! Doctor! Doctor!" dying down in a whisper. Then after a little while he would cry out again, and call for the doctor.

## CROSS-EXAMINATION:

The doctor was Dr. Brodie.

Wednesday, Dec. 9, 1885, 2 P. M.

MR. GRIFFIN.—I suppose there will be no question made but that these were the grounds of the defendant, and that this was the defendant's engine?

MR. JEROME.—We do not dispute that it was a Detroit, Grand Haven & Milwaukee engine, on our ground, and that the boy got hurt.

MR. RUSSELL.—We do not admit that we owned the premises where this boy lived, or all the premises alleged in the declaration.

MR. JEROME.—We do not own Guoin street.

THE COURT.—I do not understand you to admit anything except that it was the defendant's track where it occurred, that it was their engine, and that they were operating that road.

MR. JEROME.—That is it.

*Lester Lee*, produced and sworn on behalf of the plaintiff, testified as follows:

In the summer of 1884 I kept a coal-yard near the foot of Hastings street. My office was in the brick building by the track, betwixt Franklin and Atwater streets, a brick building right by the tracks, belonging to the railroad company, I suppose; situated in the northeast corner of the railway tracks and Hastings street, fronting on Hastings. I rented the building of Mr. Russell, the gentleman there. He collected the rent.

Q. During that summer and prior to the accident, do you know anything of children running upon these crossings and tracks?

A. Yes, sir.

Q. Confine yourself to my question, and speak of the time during that summer prior to the accident.

A. Yes, sir, I do know that the children were about the tracks. I have seen plenty of children about there, from three to twenty at a time, some of them small children. I could not say what business they had there. I have occasionally seen little white children riding on the cars. I have seen them hanging on the steps of the cars. I don't think I ever saw any children on the engines. I don't remember that.

Q. It has been alluded to here, on the cross-examination of some of the witnesses, that people drove in there onto these grounds from Hastings street. From what part of Hastings street did they drive in there?

A. Betwixt the tracks. There is a place on purpose for teams to drive in and unload cars, betwixt the tracks. I have unloaded many a team there myself.

Q. Between which of those tracks?

A. Between the first two tracks and the other track on the other side. There are two tracks nearer my place than the others. I think there are three tracks that do not cross Hastings street. They are south, toward the river, from the two tracks that do cross it. I don't think there are two tracks that go into the shed. I think there is but one. There is plenty of room for a team to drive in and turn around, between the south rail of the south track that crosses Hastings street and the north rail of the north of the three side-tracks. Teams do not as a rule drive in on those grounds between the track nearest to the building there and the building itself. They could drive in. There is just barely room enough, and that is all; but they don't drive in there. I never saw any drive in there. The place where they drive in is between the two tracks that cross the street and the other tracks.

*William H. Russell*, sworn on behalf of the plaintiff:

I let this brick building to Mr. Lee in 1883. The building was afterwards purchased by Mr. Geo. Jerome. When I leased it, I was in the employ of the D. & M. R'y Co., in the law department, as assistant to Mr. Jerome, who was with the railway company also. It was bought for the Detroit & South Lyon R'y Co., organized about that time, of which Mr. E. W. Meddaugh was president; and he is general counsel for the Grand Trunk, which operates the D., G. H. & M. R'y as a part of the Grand Trunk system. James H. Muir was the Secretary of the South Lyon R'y, and also Secretary of the D., G. H. & M. R'y.

THE COURT.—What do you claim as a matter of law from this testimony?

COUNSEL.—It bears upon their knowledge, shows that they are quite familiar with the fact that these premises, right along the track, were occupied for dwelling purposes, and they should exercise more care and caution, knowing this fact. Care and caution should be commensurate with the particular circumstances.

THE COURT.—On motion of defendant's counsel, strike out the testimony of this witness, on the ground that it is immaterial.

*Rosa Bushey*, recalled for further cross-examination.

By MR. RUSSELL:

Q. (Referring to Mr. Linnæus Martin.) Do you recognize or know this gentleman?

A. No, sir.

Q. Do you remember ever having seen him before?

A. No, sir.

Q. Did you not have some conversation with this gentleman the next day after this accident occurred, at Hastings street, or near the place, in reference to the accident?

A. Not that I remember.

Q. Did you not say to Mr. Martin, the next day after this accident occurred, at Hastings street, that nobody saw this

accident, that you were on Hastings street when it happened, and that Pete Tean was with you?

A. I don't remember that I said it.

Q. Can you swear that you did not say that?

A. Yes, sir, I can.

Q. As a matter of fact, were you not on Hastings street at the time this accident occurred, instead of being in your own house?

A. No, sir, I was right at our back door when it happened.

Q. Did you not on the following day, at Hastings street, near the place of the accident, say to Martin and to Teagan, this boy who has been sworn here under the name of Tean, that you did not see the accident, that you were on Hastings street, and that nobody saw it?

A. No, sir, I did not say that.

Q. Did you not at the same time, that is, on the same day, and near the same place, say this same thing to this boy Teagan?

A. No, sir, I don't remember saying anything to him. I don't remember seeing that gentleman (Mr. Martin) at all.

Q. I am asking you now about Teagan?

MR. GRIFFIN—His name is Tean.

MR. JEROME—He seems to go by either name.

Q. So you did not say so to him?

A. No, sir.

Plaintiff rests.

Thursday, Dec. 10, 1885.

[Mr. Russell offered in evidence a plat of the premises, marked Exhibit A. A copy of this plat is hereto annexed as a part of this bill.]

*Linnæus Martin*, produced on behalf of the defendant, testified:

Examined by MR. RUSSELL:

I am employed as time-keeper on the D., G. H. & M. Ry. On the morning following this accident, I was sent down there