

they were to blame, was it proper to decide to kill or wound him on the spot. The nature of the defendant's negligence was such, that if liable at all under the charge of the court below, the liability was without excuse.

We submit the judgment should be affirmed.

S. E. ENGLE,

Att'y for P'lf.

No 56

56

STATE OF MICHIGAN

SUPREME COURT

JAMES HUGHES,

By his next friend, etc.

Plaintiff and Appellee,

vs.

The Detroit, Grand Haven & Milwaukee
Railway Company,
Defendant and Appellant.

RECORD.

S. E. ENGLE,

Attorney for Plaintiff.

GEO. JEROME,

Attorney for Defendant.

DETROIT:
FREE PRESS BOOK AND JOB PRINTING HOUSE.
1886.

STATE OF MICHIGAN.

SUPREME COURT

JAMES HUGHES, *by his next Friend,*
Appellee,
vs.
THE DETROIT, GRAND HAVEN &
MILWAUKEE RAILWAY CO.,
Appellant.

*Writ of Error to the Superior
Court of Detroit.*

Suit commenced by declaration, of which the following is a copy :

STATE OF MICHIGAN, }
WAYNE COUNTY, } ss.—THE SUPERIOR COURT OF DETROIT

James Hughes, a resident of Detroit aforesaid, an infant under the age of 21 years, by S. E. Engle, his next friend, who is admitted by the Court as such to prosecute this suit in behalf of said infant, complains of the Detroit, Grand Haven & Milwaukee Railway Company, a corporation existing under and by the laws of Michigan, and doing business and having its principal office in Detroit, in said County, and operating its line in said city, thence to Grand Haven and other points in said State, defendant herein, of a plea of trespass on the case, filing this declaration, and entering rule to plead, etc., as commencement of suit.

For that whereas heretofore, to-wit : on the 17th day of July, 1884, and for a long time before and since, continuously to the present time, at Detroit, in the County aforesaid, the said de-

fendant possessed and occupied certain premises in the City of Detroit aforesaid hereinafter described, with railroad tracks crossing the same, operated by said defendant with cars and engines thereon propelled by steam.

That said track and premises comprise a strip of land having its western terminus at a freight depot situated a little south of Franklin street, and between Beaubien and Antoine streets, extending thence in an easterly direction to the main line northward on Dequindre street and crossing Hastings street, quite or nearly at right angles, on the same grade with the street, and at a point in or near the line of Guoin street produced westward; that said strip westerly of Hastings street is from 20 to 30 feet wide, with two main tracks crossing Hastings street as aforesaid; that at Hastings street and at the easterly side thereof said premises are expanded to a greater width southerly from said main tracks, to-wit: 150 feet or upwards, and extending with uniform width, or nearly so, to the distance of several hundred feet eastward from Hastings street along the south side of said main tracks crossing Hastings street as aforesaid; that along the southerly portion of this space it was during the period aforesaid occupied by said defendant with small cattle yards or pens, along the northerly side of which pens ran side tracks abutting against stops or bumpers made of a group of piles driven into the ground on the easterly side of Hastings street; that between these side-tracks and said main tracks the premises consisted of an open level space of ground. That Hastings street aforesaid was at the date aforesaid, and for many years then had been, and still is, a public highway at, and each way from, the point where it crosses said main tracks and where it passes said premises and stock yards or pens, where persons, animals and vehicles might and did lawfully pass and repass daily in great numbers to, from and between business portions of the city on the south and the interior of said city on the north of said track.

That on the easterly side of said Hastings street and between it and the said premises above described there was not at the date aforesaid, nor for a long time prior thereto, nor has there

since been to the present time, any fence or barrier whatever, neither is there, nor has there been during the same period, any fence or barrier along the northerly side of said premises, on the north side of said main tracks, but the said premises were readily and easily accessible to persons, animals or vehicles, and they could easily pass thereon either from Hastings street or from the northerly side of said premises lying east of said Hastings street.

That along a portion of the northerly side of the said premises lying east of Hastings street there was during all the period aforesaid, and still is, situate a number of dwellings occupied by families with children, upon lots with open back yards abutting upon said premises of said defendant, and on the same grade with them, and to the westward of said dwellings was an open alley or space in the rear of Hastings street also abutting upon said premises of said defendant; and between said alley, or open way, and Hastings street, and for the space of about a hundred and fifty feet, there was during the period aforesaid, and still is, a long brick building extending along the north side of said premises of said defendant, and close to the main track aforesaid, to-wit: within 6 or 8 feet of the same.

That the front of said building is on the line of Hastings street, and that said brick building was during the period aforesaid, and still is, occupied as a dwelling by families, including small children, among was and is the said plaintiff. That the front doors of said building open on Hastings street, one step above the level of the sidewalk, and within a few feet, to-wit: 10 feet of said railroad track, crossing Hastings street, and that said brick building was so occupied with the knowledge and consent of the defendant, and the agents of said defendant had during said period, and still have, the charge and care of said building, and did and do rent the same to tenants.

That persons, including young children, had during the period aforesaid been accustomed and permitted by the wrongful conduct, carelessness and negligence of said defendant to go and be, and did go and pass upon the said premises of said defendant both from Hastings street at the said crossing, and

from the alley and back yards aforesaid abutting on the north side of said premises, and to ride upon the engines and platforms in front thereof, all of which facts foregoing were well known to said defendant on the 17th day of July aforesaid.

The plaintiff avers that at the date aforesaid he himself had not been so accustomed to go or be upon the said premises, though he had frequently seen other persons, adults and children, there, and had seen children riding on the platforms in front of the engines there, and that he was wholly ignorant and unconscious of the dangerous nature of the said premises and of any danger in going or being upon them, or upon the platform of the engine, and that he was then an infant of tender years, to-wit: 6 years of age, and resided with his mother and stepfather in the brick building aforesaid, by the consent and permission of said defendant and its agents, which building is situated in the northeast corner of the intersection of said railway track and Hastings street as aforesaid, and which building he is informed and therefore avers is owned or controlled by, or in the interest of, said defendant.

That at the date aforesaid the said defendant was possessed of a certain "pony," or switch engine, to wit: No. 9, propelled by steam, then and for a long time prior thereto used by it for the purpose of hauling freight cars about upon said tracks and side tracks, and in charge of servants and agents of the defendant, to wit: a switchman, engineer and fireman, operating the same. And said defendant also had, at the date aforesaid, and for a long time prior thereto, been accustomed to have stationed at said crossing on Hastings street a flagman or watchman whose duty it was to warn and to guard against danger to persons passing along or about the said premises. That the said premises of the defendant were at the date aforesaid of a very dangerous character, situated in a densely-settled portion of the city, entirely exposed and unguarded on the westerly and northerly sides by any kind of barriers or safeguards and immediately contiguous to the public thoroughfare and to a large number of dwelling houses occupied by families, which facts were known to the defendant, and devolved upon it the duty of

great care and vigilance to avoid danger and injury to others and to the plaintiff. That at the date aforesaid the said switchman, engineer and fireman were operating said pony engine No. 9, hauling cars to and fro on the tracks crossing Hastings street, and they had a few minutes prior to the injury hereinafter alleged, run said engine from the direction of the depot aforesaid, eastward across Hastings street, and had stopped and were standing on said main track about one hundred feet east of Hastings street, by the side of the brick building aforesaid, the front of the engine being to the eastward; that extending across the front of said engine and near to the ground was a plank step or platform about a foot wide, and also a few feet above the said step, and parallel with it, extended a hand rail or bar across the front of said engine within reach of a child or adult standing on said plank or step. That said plank or step was used for stepping upon and riding while the engine was moving to and fro, and persons including children in the neighborhood had been permitted by the wrongful conduct and negligence of the defendant's agents and servants aforesaid to go and stand upon the same and ride.

That said engine had attached thereto a small cab occupied by the fireman and engineer while operating the same, in which cab there were windows so that the engineer and fireman standing on either side of the cab could have a full view outward both to the front and rear as well as at the sides.

That said engine was so constructed that a person, whether an adult or child, while standing on any portion of said plank from either end to very near the centre would be plainly visible from the front cab windows.

That while said engine was standing as aforesaid about 100 feet east of the Hastings street crossing, the said engineer and fireman were both standing in said cab, the watchman or flagman was standing at the Hastings street crossing and the switchman near the said crossing, and the plaintiff was on the sidewalk near the front door-step, at the corner of the brick dwelling, where he resided as aforesaid, and was in plain view of said agents and servants of defendant, and but a short dis-

tance, to wit: 30 feet from said watchman; that the day was warm and clear and the hour about 6 o'clock P. M., or a little later, and the plaintiff without any negligence on his part or on the part of his parents, passed from said front door-step at the corner of the building along said Hastings street sidewalk to the main railroad track aforesaid, about eight feet distant, and along and across the same on to said premises adjacent to Hastings street on the east side, and then southeastward over to the cattle yards or pens aforesaid, nearly opposite to where said engine was standing, and then came back to the said engine, still standing in the position aforesaid, and stepped on the plank or step aforesaid in front of the same and walked along it and turned and stepped off again, at the southerly end where he had got on, and walked on the ground along the south side of the engine and then turned back and stepped on the end of said plank and stood there a moment, when without any warning or notice, the engine under the control of said servants of defendant, the switchman, fireman and engineer, and by means of their gross negligence was suddenly propelled forward with speed, while the plaintiff was standing on the south end of said plank or step, and when it had gone rapidly the distance of about 100 feet, the said agents and servants suddenly checked its speed with a jerk, throwing the plaintiff to the ground and across the south rail of the track in front of the engine, which was then instantly propelled forward, running over the plaintiff, completely severing his left leg from his body at the thigh, and severing his left thumb, and otherwise bruising, maiming and injuring him.

The plaintiff avers that his so going and being upon the said premises of the said defendant and about said engine, and stepping on and off said plank or step, and being thrown therefrom and falling to the ground and being run over and injured as aforesaid was without negligence on his part, or on the part of his parents, but that the same was by and through the gross negligence of the defendant and its agents, to wit, the said switchman, watchman or flagman, engineer or fireman, in permitting the plaintiff to go and be upon the said premises and

engine, and in the starting the engine while he was standing on said step, without ordering him off, and suddenly checking it and throwing him off and running over him.

The plaintiff avers that by reason of the facts before alleged and the dangerous of said premises of defendant, it became and was the duty of said defendant to erect some sufficient fence or barrier to prevent so easy access as aforesaid to the said premises, and that its neglect was gross negligence contributory to the injury of the plaintiff, and avers that it was gross negligence in the defendant to habitually allow persons not in its employ, and especially children of tender years, to go and be upon said premises as aforesaid, thus affording temptation to other children and to the plaintiff also to go thereon, and that by such negligence of the defendant the plaintiff was tempted upon said premises to his injury as aforesaid.

And avers that the leaving said dangerous premises so exposed and allowing children to go and be thereon, was a temptation to other children and to the plaintiff to do the like, and as such was gross negligence causing said injury to the plaintiff; and avers that by reason of the exposed and dangerous condition of the premises as aforesaid and of the occupancy of contiguous dwellings and of said brick building as aforesaid, it became and was the duty of the defendant and its said agents to exercise the greater care and diligence to prevent injury to persons and to the plaintiff on or about to go on said premises, but that said defendant and its agents did at the time aforesaid, or at any time, exercise any care or diligence whatever, to prevent injury to plaintiff, and that their neglect so to do was gross negligence of the defendant contributory to the injury of the plaintiff; and avers that it was the duty of the defendant and its said agents to see the said plaintiff when going and being on the premises aforesaid, and to warn him of the danger, and to order him off, and to compel him to go off; and avers that by the exercise of ordinary care and diligence they could have seen him when going and being on and about said premises and engines, and that he was in plain sight

of them all, during the whole time he was there as aforesaid preceding the injury, to wit: about six or eight minutes, and that it was their duty not to so start the engine while he was standing on said step, or to so manage or so check the engine and then immediately propel it forward as aforesaid, without looking to the front of it, and without ordering the plaintiff off, and allowing him to get off, but that said defendant, by the wrongful conduct, carelessness, and negligence of its said servants, took no notice whatever of the plaintiff's presence, and gave him no notice whatever of any danger or to leave said premises, or to get off from said engine, but did wrongfully, negligently and carelessly allow said plaintiff to go and be on said premises, and to ride upon the platform aforesaid, and to be thrown therefrom and injured as aforesaid.

And by reason of the premises and by and through the wrongful conduct, carelessness and negligence of said defendant and agents and servants as aforesaid, the leg and thumb of said plaintiff were cut off, and he then and there by means of the premises sustained permanent loss of one leg and one thumb as aforesaid and was rendered sick, sore, lame and disordered and so remained, and continued for a long space of time, to wit: from thence hitherto, and was then and there as aforesaid, crippled, disfigured, maimed and mutilated for life, and rendered incapable of performing any physical labor or of earning a livelihood, and by means thereof suffered, and still continues to suffer, great bodily as well as mental pain and anguish, and was there and then, as aforesaid, subjected to such pain and torture as will continue for life, and other wrongs the said defendant, by means of the premises then and there did to the plaintiff, all to his great damage and injury, to wit: to his damage ten thousand dollars, and therefore he brings suit, etc.

S. E. ENGLE,

Next Friend and Plaintiff's Attorney.

Plea general issue.

BILL OF EXCEPTIONS.

STATE OF MICHIGAN—THE SUPERIOR COURT OF DETROIT.

JAMES HUGHES, *by next Friend,*

vs.

THE DETROIT, GRAND HAVEN &
MILWAUKEE RAILWAY CO.

At a session of said court held at the court house in the City of Detroit, on the 8th day of December, A. D. 1885, before the Hon. J. Logan Chipman, judge of said court, the issue joined between the parties to this cause came on to be tried by a jury.

The plaintiff, to maintain the issue on his part, called *Rosa Bushey*, who being duly sworn, testified as follows:

I reside in Detroit near the premises owned by the Detroit, Grand Haven & Milwaukee Railway Company, at the corner of Hastings street. I was born there, on that street. In the summer of 1884 I was living there. I remember this accident that occurred to this little boy Jimmy Hughes. I do not remember the date. It was in the summer time, about half-past six; it was before dark. It was just beginning to get dark. I was at the house after the accident. Before it occurred I was sitting right at our back door reading. After the accident I went over to the house, saw the boy, was there some length of time; about ten minutes; then I went home. It was dark when I went home. Hastings street there runs north and south. It goes towards the river. The railroad track there runs east and west. There is an old freight depot west of Hastings street, about one block west. From that depot up to Hastings street there are two tracks; four rails.

Q. In what direction does the track cross the street?

A. The railroad track crosses Hastings street going east and west. On the east side of Hastings street there are more tracks

than there are on the west side. There are about three side-tracks there, if I remember right. They are south of the main-track. Those side-tracks run up to the corner of Hastings street. They do not run across Hastings street, but just about to the side-walk. There is a cattle yard on the south side of the side-tracks, right at the corner of Hastings street, and those tracks, north of the tracks and east of Hastings street, there is a brick house. I don't know how long the house is. It is longer than it is wide. Mr. Woodlyn's family were living at the time of this accident in the front end of the brick house down stairs, on the south side. There are a lot of houses along the north side of that railroad track. They were all occupied by families.

Q. State whether the families had children?

A. Yes, sir, there are lots of children.

Defendant's counsel moved that the question and answer be stricken out as immaterial.

The motion was denied, and defendant excepted.

There is no fence at all, nothing to prevent anyone from going on the track. A little child two years old that could walk, could go on the track. There is nothing to prevent. The grade of the ground of these lots and the railroad tracks and grounds is the same level. Along the east side of Hastings street, between the sidewalk and the ends of these side-tracks, there is not anything to prevent persons going right onto the track from the sidewalk, nor on the north side of the track is there anything to prevent. From the sidewalk on the east side of Hastings street along there by the ends of the side-tracks, to the railroad track, it is level. On the north side of the track near the brick house it is not level. There are a lot of lumps. It is high there. There is a descent there. You could go up and down, but not very easily. There is business carried on across these railroad tracks, or along the river there, and there are quite a few people pass up and down, always. Foot passengers and teams, and children and grown people. On the afternoon of this accident I was in my back yard. My house fronts on Franklin street, the next street north of these tracks,

and running parallel with them; and my back yard leads to the car track. From my back door, over these grounds, I could see all the cars and everything that was going on the track. I had lived there just a year including that summer. In the evening when I had nothing to do, I was in the habit of sitting out there in the back yard.

Thereupon plaintiff's counsel asked the following questions:

Q. Will you state whether you have seen children around upon those grounds?

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

The witness then answered: Yes, sir, I have often seen them on the tracks.

Q. What were they doing there?

Same objection, ruling and exception.

A. I used to see them playing around the track.

Q. State how small children you have seen there?

(It was here stated that all this class of testimony should be considered as taken subject to defendant's objection and exception.)

The witness then answered.

A. I have seen them five or six, and three years old on the track.

Q. State what the company was doing with its cars and engines, if anything, during the time you have seen children playing on the tracks there.

A. I could not exactly say what they were doing.

Q. State whether they had anything on the tracks there.

A. Sometimes they had cars going, and sometimes they did not, when I saw them.

Q. State whether you have seen little children riding on the cars there.

A. Yes, sir, I have seen them.

Q. Before this accident?

A. Yes, sir.

Thereupon the witness was asked the following question:

Q. State whether you have seen them riding on the front step of the engine.

To which counsel for defendant objected as immaterial and irrelevant. The objection was overruled and exception for defendant was allowed.

The witness then answered.

A. Yes, sir, I have seen some girls on the engine.

Q. State whether, when you have seen them riding on the engine, the fireman or engineer were in the cab.

A. I don't know whether they saw them or not; I have seen the children on the engine.

Q. Whether you saw the fireman and engineer on the engine at the same time?

A. Yes, sir.

Q. State whether you have seen children riding and hanging on the freight cars there?

A. Yes, sir, I did see that.

Q. About how old children?

A. They were ten or eleven years old, maybe twelve.

Q. On what part of the cars did you see them hanging?

A. On the iron part where you get on the cars, on the iron steps.

Q. Were the cars in motion?

A. Yes, sir.

Q. Did you know any of the children whom you have seen on the engine?

A. I know the girls that used to play down there. Annie Tean and Mary Steele used to be always on the engines.

Q. You have seen them riding on the front step of the engine?

A. Yes, sir.

Q. In the day time?

A. Yes, sir. I saw this accident. I saw this little boy, Jimmy Hughes, on the engine. I saw him go towards Hastings street once, and he came down toward Riopelle street. The switch-engine gave a jerk and he fell. He went toward Hastings street and then came down towards Riopelle again.

Then when he got by, the switch-engine gave a jerk and he fell underneath and the engine passed over him. The engine was headed toward the east. There is a plank extending across the front of the engine. I could not exactly say how high it is from the ground or rail; about so high (illustrating by holding her hand about sixteen inches from the floor). He was standing on the end towards the south. Any one, from the front cab-windows of the engine, could see him from the end part, but they could not see him on the middle. If he had been standing right in the middle of the plank in front of the boiler, they could not see him. They could see him when he was standing on either end. The fireman stands on the north side of the cab, the engineer stands on the south side. I saw the engineer and fireman in the cab at the time of this accident. I know one of them, Pat Flanigan, the fireman. I did not know the other man. I saw other of the railroad men about the premises, switching up and down the yard, but I did not see any of them at or about the time of the accident. From the back yard, where I was sitting, you could not see around the brick building down to Hastings street to the crossing, so I don't know whether there was anyone at the crossing or not. I did not see the switchman or the yard-master. When I saw the little boy he was on the engine. Just as he got by the switch he fell. The engine passed over him. That is all I saw of him.

On cross-examination the witness said:

My house is about half a block from the east side of Hastings street. Sitting in my back door one can see west up the railroad track about half a block. The switch is opposite the lot next east of us. A brick building obstructs the view there, a soap factory. The corner of Hastings street is west from us, and the Woodlyn building obstructs the view. There is a soap factory on the corner east, the corner of Riopelle street. I can see east from my house up the track about a block. From the back yard of our place I can only see about half a block west along the track. Cannot see from our back yard up the track

to Hastings street. Can see a very short distance. I am sure I could see fifty feet west. During the half hour I was sitting at the back door this engine passed quite a few times, and these same men were on the engine all the time. I first saw this boy about an hour before he got hurt. He was on the sidewalk on Hastings street, right by the corner by the cars, on the north side of the track, on the east side of Hastings street. I was going to the store and I saw him on the corner. The next time I saw him was when I was sitting in my back door, about ten minutes before the accident, and he was on the engine. The engine was going toward the west when I first saw him. The cars were in front of it, and it was backing up. It was pulling the cars.

Q. Where did you next see the boy?

A. On the engine. I did not see him any more. He got hurt. The engine was then going toward the west, toward Hastings street. It was going up and down there. I first saw him when the engine was going west toward Hastings street, and next when he was going east from Hastings street toward the switch. He was still riding on the engine. There was nobody with him. He was standing right at the front end of the engine on the south side. I saw him until he got past the brick building, when I could not see him any more. Then I saw him when he came down again.

Q. I am not asking about when he was going west. How far did you see him go east, standing on the front end of that engine on the south side?

A. I saw him go just past the switch east. I could see him standing on the south end of the foot-board in front of that engine, when the engine was at the switch. I saw him until he just got to the switch.

Q. You still say you saw him on the south end of the board when he got to the switch east of your house?

A. Yes, sir. Our house fronts on Franklin street, and I was in the back door. The back door opens toward the track. I lived on the west side of the house. Our house stands near the west side of the lot. We occupy the part towards Hastings street.

I saw this boy twice. The second time I saw him he fell off. Between the time I first saw him and when I saw him again it was about ten minutes. I had lived there some time. I frequently sat there in the back door of the house. I was reading a book. There were engines passing a great many times every hour back and forth.

Q. How far do you think you could see a boy standing on the south end of the foot-board in front of that engine, when the engine was going east?

A. I saw him until he got about to the switch.

Q. About how far, if you know, could you see anybody standing on the south end of that foot-board, when the engine was going east, away from you?

A. I could not see any farther than until he just got about to the switch. I could not exactly say how many feet he was from the switch when he fell off; he was about four feet from the switch, this way, when he fell off. That switch is about half a block from Hastings street. These lots are fifty feet front. There are about six lots from Hastings street to the switch. I have seen this boy on these premises frequently. Had seen him there before that day. Have seen him passing up and down the track. Had not seen him on the cars and engines before. I saw him climb on the engine once. That is all I ever saw him before. Have not seen him climb on the ladders of cars. Had known this boy about three months before the accident. I just happened to look over, and I saw him on the engine. My attention was called to the fact of his being hurt by seeing my brother by the car, and I went to call him over. That is what directed my attention there. When I went to call him over, the boy was on the front of the engine. My little brother was in the yard, just in the end of our lot, by the cars. I left the back door to call my brother. He was right in front of the door, a little way from the door.

Q. Now, I ask you again what called your attention to this boy being hurt away over there by the switch?

A. As I say, my little brother and the little boy next door were right at the car track, playing, not exactly in our yard,

but right in the next yard, with Tean's children, behind their half of the same house I lived in; and I heard them playing, and I went to call them away, and I saw this little boy on the engine.

Q. When did you first know, or how did you first know of this boy being hurt?

A. When I first saw him the engine-bell started to ring, and I went to look over. That is what drew my attention to look over there.

Q. What did you see when you looked over?

A. I saw the little boy on the engine.

Q. What called your attention to that boy being hurt, and when did you first know he was hurt?

A. When I first knew how he got hurt, this boy that lives next door saw him under the engine.

Q. I am not asking you what somebody else saw. Tell what you saw and what you heard?

A. I heard him holler.

Q. You heard who holler?

A. The little boy.

Q. What next?

A. Then when I heard him holler, I saw the crowd run, and I got up, and I saw him under the car.

Q. You heard the boy holler, and then you saw the crowd run?

A. Yes, sir.

Q. Who did you see running there?

A. Mr. Graney.

Q. Where was he standing when you first saw him start to run?

A. I don't know. He ran from Hastings street toward the switch.

Q. You first saw him run from Hastings street toward the place where the boy was hurt?

A. Yes, sir.

Q. Who else did you see?

A. Peter Tean.

Q. Is he here to-day?

A. I have not seen him.

Q. Where did you first see him?

A. He came out of his own house next door to us.

Q. A part of the same double house?

A. Yes, sir.

Q. You saw him run over?

A. Yes, sir.

Q. Anybody else?

A. Then I saw a couple of brakemen run.

Q. As a matter of fact, you did not see the boy hurt at all, did you?

A. I did not exactly see him right there.

Q. You saw him riding on the engine?

A. Yes, sir.

Q. Then you heard him holler?

A. Yes, sir.

Q. Then you saw people running toward the scene of the accident?

A. Yes, sir.

Q. And then you went?

A. Yes, sir.

Q. How many people were there when you got there?

A. I could not say exactly how many; quite a few.

Q. A dozen or so?

A. Yes, sir; about that.

Q. Who were they?

A. Mrs. Woodlyn, some brakemen, my father, Mr. Tean and a couple of others I don't know.

Q. Do you say Mrs. Woodlyn was over there at the scene of the accident when you went there?

A. I did not get right up to run over to see; I called my father.

Q. When you got there where the boy was hurt, was Mrs. Woodlyn, the mother of the boy, there?

A. Some one sent for her. She was there before I was.

Q. Was she there when you got there?

- A. No, sir.
- Q. How do you know she was there before you were?
- A. She was just coming from her place to get her boy.
- Q. She was just coming there at that time, was she not?
- A. Yes, sir.
- Q. Then she had not been there?
- A. No, sir.
- Q. I ask you to tell me who the people were that were at the spot when you got there.
- A. There were Mr. Graney and Peter Tean and one brakeman, I think. That is all I remember to have been there.
- Q. How long did you stay there?
- A. About twenty minutes.
- Q. Where was the boy lying when you got there?
- A. They were just picking him up.
- Q. Who picked him up?
- A. Mr. Graney was one.
- Q. They were picking him up from where?
- A. From under the engine.
- Q. Was the boy under the engine?
- A. No, he was not under the engine.
- Q. Where was he?
- A. His limb was under the engine.
- Q. I am asking you where the boy was when you first saw him?
- A. When I first saw him, he was on the ground. They had taken him from the track and laid him on the ground.
- Q. Had they not picked that boy up before you got there at all?
- A. They had picked him up from one place and laid him on another place.
- Q. How do you know they had picked him up from one place—you did not see it, did you?
- A. No, sir; but I saw where his leg was.
- Q. I am not asking about that now. Just where was the boy when you saw him first after he was hurt?
- A. He was a little way from the spot where he got hurt.

- Q. How far from Hastings street?
- A. He was not anywhere near Hastings street. He was only a little way from the switch.
- Q. He was not on the ground at all, was he?
- A. Yes, sir; he was lying on the ground.
- Q. Between what tracks?
- A. Between the tracks, south and north.
- Q. How far from the engine?
- A. I could not exactly say how many feet from the engine; about six or seven feet.
- Q. You say he had been picked up and laid down again?
- A. Yes, sir.
- Q. Do you know what they laid him down there for?
- A. No, sir. They did not know whom he belonged to, or anything.
- Q. Did you see him picked up a second time?
- A. Yes, sir.
- Q. Who picked him up?
- A. One of the brakemen.
- Q. What did he do with him?
- A. Carried him home.
- Q. Was Mrs. Woodlyn there when he picked him up?
- A. Yes, sir.
- Q. You were there?
- A. Yes, sir.
- Q. Why did you say a few minutes ago that Mr. Graney helped pick him up?
- A. He picked up his limb.
- Q. As a matter of fact, Mr. Graney did not pick him up or have anything to do with picking him up, did he?
- A. Yes, sir; he picked him up and laid him down.
- Q. You did not see Graney pick this boy up and lay him down, did you?
- A. No, sir; but they told me—
- Q. No matter what they told you. You did not see him help pick him up?
- A. Yes, sir; I had seen him help. He picked up his leg.

- Q. Who else picked him up beside Mr. Graney?
- A. One of the brakemen. I don't know his name.
- Q. As a matter of fact, one of the brakemen picked that boy right up in his arms, did he not, and carried him home without any help from anybody?
- A. Yes, sir.
- Q. And that boy was picked up some distance from the switch when you saw him?
- A. Yes, sir.
- Q. How far?
- A. I could not exactly say how far.
- Q. As far as across the court room?
- A. No, sir, not quite as far as that.
- Q. How far from the point where you last saw him on the engine?
- A. He was picked up about six feet from where I saw him.
- Q. And when you last saw him, you were over in your back yard and the engine was two or three lots away from you?
- A. That was when he got hurt. When I went to see him he was just about six feet from the place he got hurt.
- Q. Please understand my question. You testified that you last saw the boy riding on the south end of the engine, on the foot-board, up near the switch?
- A. Yes, sir.
- Q. How far from that point was it to the point where you saw the brakemen pick him up?
- A. When I saw the brakemen pick him up I could not say very well, because the cars were in front of me; but I saw him underneath the car, saw him pick him up, underneath the car. I was looking underneath the car.
- Q. Then when he was picked up the train was between you and the people on the other side?
- A. Yes, sir, two cars; but I went around afterward.
- Q. How far did you have to go to get around?
- A. I went around the cars, toward Hastings street.
- Q. Was this engine pushing or pulling at that time?
- A. Pushing.

- Q. Pushing that train?
- A. Pushing the cars toward the west.
- Q. You say the engine was pushing the cars toward the west when the boy got hurt?
- A. When he got hurt they were pulling down toward the switch, and then they were going to back up, to push toward the depot.
- Q. I have not asked you any question as to what the cars did after the boy got hurt. Nothing has been said about that.
- A. When he got hurt they stopped right away.
- Q. At the time he got hurt the engine was headed which way?
- A. Toward the east.
- Q. Were the cars in front of it or behind it?
- A. Behind it.
- Q. How many?
- A. I don't remember how many there were.
- Q. You did not see the boy fall off that board at all, did you?
- A. No, sir, I did not see him fall off.
- Q. You simply saw him standing on the board?
- A. Yes, sir.
- Q. Why did you testify some time ago that you saw him fall off?
- A. I saw him when he was standing on the board, and I saw when it gave a jerk.
- Q. Saw the engine jerk?
- A. Yes, sir, when it gave a jerk, and I didn't exactly know whether the boy fell off or not; but I heard him holler.
- Q. You know as a matter of fact that all along between those tracks, along Guoin street, teams go there to load and unload freight, do they not?
- A. Yes, sir, they do.
- Q. You have seen teams unloading coal and other freight from cars there?
- A. Yes, sir.
- Q. That is a place where people from the city, men and women and boys, everybody who has business with the railroad company, go and get freight from the cars?

A. Yes, sir.

Q. Who lived at that time in the double house on the lot next east of your house?

A. Mrs. Robertson.

Q. There was a fence between those houses, was there not?

A. Yes, sir, there was.

Q. The ground in your back yard is some feet higher than the railway track, is it not?

A. Yes, sir, it is.

Q. You could not sit in your back door and look directly under the cars—could not see under the cars without getting right down close to the ground?

A. No, sir.

Q. It was getting dark—was beginning to get dark at this time, was it?

A. Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. ENGLE:

Q. Counsel asked if you had seen this boy getting on the engine before, and you said you had seen him once before?

A. Yes, sir.

MR. GRIFFIN—Not once before, but *once*.

Q. Tell us when that was?

A. I had seen him getting on the engine about half-past six.

Q. And that is the time you saw him get hurt?

A. Yes, sir.

Q. Do you mean the same day of the accident?

A. Yes, sir, the same afternoon, about half-past six.

Q. Had you ever seen him get on there before that?

A. No, sir, I never have.

RE-CROSS EXAMINATION.

Q. You say you had seen him on the railway premises, up and down the tracks?

A. Yes, sir, I have seen him on the railroad, but I never had seen him on the engine before, nor on the cars.

Katie Woodlyn, a witness produced and sworn on behalf of the plaintiff, testified as follows:

Examined by MR. ENGLE:

I am the mother of Jimmy Hughes, the little boy that got hurt. I lost my first husband, and married Mr. Woodlyn. I remember this accident a year ago last summer. I do not remember the month nor the day of the month. I have it down at home. It was in warm weather when we sat outside. I live in the down stairs part of the house there. Mr. Lee had his office on one side, and my kitchen was on this side, close to the railroad. We live in the part of the building facing Hastings street. The front door is on the west end, fronting on Hastings street. The house is on the left hand side of Hastings street, going toward the river. I could not say how many feet the door is from the corner of the building, I should think it is about four or five planks before you step into my door from the corner of the building. In stepping out of our door you step right down on the sidewalk.

Q. On this afternoon just before the accident, will you state where your little boy was and where you and the rest of the family were?

A. I sat in the open door, my little boy was sitting on the sill alongside of me. My little girl who is dead sat on a chair. My last little girl sat on a little round block. I got up and went in to draw my husband's tea. This was about six o'clock in the afternoon. It was not quite dark. It was quite late when I went away to the hospital that night, but we were up to the hospital before the lamps were lighted.

Q. What is the age of the boy?

A. He was entering his sixth year that summer.

Q. Do you remember his birthday?

A. I have it down at home. I don't care to keep it in my mind that long.

Q. From the time you were sitting there in the door, state what you next did?

A. I was sewing when I was sitting there. Then I got up and went in.

Thereupon plaintiff's counsel asked the following question:

Q. What, if anything did you say before you went in?

To which counsel for defendant objected as immaterial. The objection was overruled, and defendant then and there excepted.

A. I said, "children, sit still. I will go in and draw your papa's tea." Then I went in to the stove and took the tea-pot down. The stove was in the same room right close to the front door. I drew the tea and put it on the stove, and then I turned and went over toward the table; I happened to cast my eye up, and I saw a lot of people running down Hastings street toward the track. I went to the door, and I saw they were down near the engine.

Q. Before you go any further, state about how long a time had elapsed since you had got up to make the tea?

A. I suppose it all happened in about five or ten minutes. I saw the people running toward the track, and I went to the door, and one of the watchmen said, "Oh my God! Oh my God!" and I looked out there. I did not go out to the door until a little boy came up and said, "It is a little colored boy." I looked where I had left the children, and then I went over there, and when I got on the track I met them bringing my child to me. That is all I can tell you.

Q. You may state directly whether you had any knowledge or not that he was away until that moment.

A. I did not know he left the step until the little white boy said it was a little colored boy, and I looked where he had been.

Q. How old was the little girl sitting there, and what was she doing?

A. She is about ten years old. She was making an undergarment for herself. She is here to-day. The other little one is dead.

Q. Go on and tell what you did.

A. I came back into the house.

Q. Who had the little boy?

A. One of the brakemen.

Q. How far did you go and where did you go when you went out of the house?

A. I did not go very far from the door, just a little way, and I met them. They were coming down with him, holding him in their arms.

Q. You came right out of the front door and went around the corner of the house?

A. Yes, sir.

Q. How far up the track did you go?

A. You might say midway of the building I met him.

Q. Then what was done with the little boy?

A. They brought him in and laid him on the table, and Mr. Graney went out and brought the leg in and laid it on the table, and one of the railroad gentlemen went and telephoned for an ambulance and the doctor to come, and he was taken to the hospital. I walked up to the hospital with the other two babies. I am not sure of the name of the hospital. It is on Gratiot avenue. When I reached the top of the steps he was lying on a stretcher. Two men carried him into the matron's bedroom. They put him on a table. He was at the hospital a long while. He came home at Christmas, spent Christmas with the children, and then went back. He came home again, and his leg broke out, and I went up to see Mrs. Grand, the head lady at the hospital, to see if she would take him back again. She said she would ask Dr. Brodie. While he was at the hospital I used to go up two or three times a week, sometimes every day. We stayed up there nearly three weeks with him when he was the worst. I stayed during the day, and my husband stayed nights. When he went back after Christmas he was there two months. I think, if not longer. Then he came home, and has been home ever since.

Q. Will you state how his thigh is now, where the leg was taken off, in what condition it is and has been ever since?

A. It did break out; it has been running this last winter, but now it is healed over. I guess it has broken out about four or five times. They gave me some stuff, and said if it broke out to put that on and keep it bandaged.

Q. Is it under treatment now, bandaged ?

A. No, sir.

Q. Will you state whether there is anything between the house where you lived and the railroad track—any fence ?

A. There is no fence along there.

Q. Nothing to prevent children from going on there ?

A. There is no fence.

Q. How is the grade as to its being level or otherwise, in passing from your sidewalk around the corner of the building onto the railroad grounds ?

A. The ground is flat.

Q. As you go down across from your house, down the sidewalk across the track, along by the end of these side-tracks, how is it there about passing from the sidewalk onto the railroad grounds ?

A. There is no fence along there.

Q. Is the ground level or otherwise ?

A. It is level along there.

Q. How is it about passing from the rear of the lot back of your brick building ?

A. It is a little raised up above the track. These lots are high up. There is no fence. It is like a little hill. You go down and then go on the track.

Q. Can a person go down afoot easily ?

A. Yes, sir; you can kind of walk down.

Q. How long had you lived in that building before this accident ?

A. Nearly nine months, or somewhere along there.

Q. State what care you had taken of the children in order to keep them from the track and the railroad grounds ?

A. I always kept them under my eye. I would leave my work and watch them when they went out. My daily talk was, "Never go near the track; you will be run over."

Q. State whether you kept a servant or nurse.

A. No one, only myself. I am not able to. My husband's business was driving a coal-wagon for Mr. Lee.

Objected to as immaterial.

THE COURT.—So far as the care she has taken of the children is concerned that will be allowed to remain. The rest is ruled out.

WITNESS.—During the three weeks I attended him at the hospital he was pretty low. They kept him chloroformed. He was not in his own mind because he was in such pain. If they had not done that he would have died.

Q. Do you of your own knowledge know about children frequenting these grounds and riding on the cars and engines ?

A. Other children have been on the railroad premises and on the cars and engines riding in the banana cars and hanging on.

Q. How were they riding when you saw them ? How would you see them riding ?

To which defendant's counsel objected as incompetent and immaterial. The objection was overruled, and an exception taken.

The witness then answered :

A. Standing inside the doors, catching hold and looking out ?

Q. In the box-cars ?

A. Yes, sir.

Q. Did you ever see them riding in any other way ?

A. No, sir; I never noticed them in any other way.

Q. Have you yourself seen the children riding on the front plank of the engine ?

A. I saw Peter Tean riding on the engine that summer.

Q. Is there any window from your rooms looking directly out on the track ?

A. Yes, sir; one window down-stairs and two windows up-stairs.

Q. Did you occupy the up-stairs ?

A. Yes, sir; two rooms up-stairs and down-stairs.

CROSS-EXAMINATION.

The windows front on Hastings street. We had lived in this brick house about nine months before the accident. My husband worked for Mr. Lee. I stayed at home all the time,