

In the Privy Council.

ON APPEAL

FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

BETWEEN

ENA PEARL NANCE (Plaintiff) - - - - - *Appellant*

AND

BRITISH COLUMBIA ELECTRIC RAILWAY COMPANY LIMITED (Defendant) - - - - - *Respondent*

AND BETWEEN

BRITISH COLUMBIA ELECTRIC RAILWAY COMPANY LIMITED (Respondent) - - - - - *Appellant*

AND

ENA PEARL NANCE (Appellant) - - - - - *Respondent.*

CONSOLIDATED APPEALS

RECORD OF PROCEEDINGS

MESSRS. GARD, LYELL & CO.,
 47 GRESHAM STREET,
 LONDON, E.C.2,
Solicitors for Ena Pearl Nance.

MESSRS. LINKLATERS & PAINES,
 AUSTIN FRIARS HOUSE,
 6 AUSTIN FRIARS,
 LONDON, E.C.2,
*Solicitors for the British Columbia
 Electric Railway Company Limited.*

19/1951

No. 26 of 1950.

In the Privy Council.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

BETWEEN

ENA PEARL NANCE (Plaintiff) - - - - - *Appellant*

AND

BRITISH COLUMBIA ELECTRIC RAILWAY COMPANY
LIMITED (Defendant) - - - - - *Respondent*

AND BETWEEN

BRITISH COLUMBIA ELECTRIC RAILWAY COMPANY
LIMITED (Respondent) - - - - - *Appellant*

AND

ENA PEARL NANCE (Appellant) - - - - - *Respondent.*

CONSOLIDATED APPEALS

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

NO.	DESCRIPTION OF DOCUMENTS	DATE	PAGE
<i>IN THE SUPREME COURT OF BRITISH COLUMBIA PLEADINGS</i>			
1	Endorsement on Writ	12th April 1949 ..	1
2	Statement of Claim	12th April 1949 ..	1
3	Defence	27th April 1949 ..	4
4	Joinder of Issue	29th April 1949 ..	6
5	Order for Jury Trial	6th May 1949 ..	7
6	Notice requiring Special Jury	7th June 1949 ..	7
7	Order for Examination of witness <i>Christino Lee de bene esse</i>	26th May 1949 ..	8
8	Notice to Admit Facts	7th June 1949 ..	8
9	Admission of Facts	10th June 1949 ..	9

30714

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LEGAL STUDIES

NO.	DESCRIPTION OF DOCUMENTS	DATE	PAGE
<i>Proceedings at Trial</i>			
10	Case for Plaintiff	21st June 1949 ..	10
11	Opening Address by Mr. Sturdy, Counsel for the Plaintiff ..	21st June 1949 ..	11
<i>Plaintiff's Evidence</i>			
Rossiter, Alan Henry :—			
12	Examination-in-Chief	21st June 1949 ..	14
13	Cross-examination	21st June 1949 ..	25
Thomas, John :—			
14	Examination-in-Chief	21st June 1949 ..	30
15	Cross-examination	21st June 1949 ..	32
Harmon, Dr. Thomas R. :—			
16	Examination-in-chief	21st June 1949 ..	34
17	Cross-examination	21st June 1949 ..	35
18	Re-examination	21st June 1949 ..	39
Fletcher, Ralph :—			
19	Examination-in-chief	21st June 1949 ..	40
20	Cross-examination	21st June 1949 ..	53
21	Re-examination	21st June 1949 ..	59
Roth, Danny :—			
22	Examination-in-chief	21st June 1949 ..	60
23	Cross-examination	21st June 1949 ..	64
24	Re-examination	21st June 1949 ..	67
25	Re-cross-examination	21st June 1949 ..	68
Nauce, Ena Pearl :—			
26	Examination-in-chief	21st June 1949 ..	69
27	Cross-examination	22nd June 1949 ..	86
28	Re-examination	22nd June 1949 ..	105
29	Re-cross-examination	22nd June 1949 ..	109

NO.	DESCRIPTION OF DOCUMENTS	DATE	PAGE
	Borger, Frances :—		
30	Examination-in-chief	22nd June 1949 ..	110
31	Cross-examination	22nd June 1949 ..	113
	Gratham, Rebecca :—		
32	Examination-in-chief	22nd June 1949 ..	116
33	Cross-examination	22nd June 1949 ..	118
	Crawford, Elizabeth J. :—		
34	Examination-in-chief	22nd June 1949 ..	118
35	Cross-examination	22nd June 1949 ..	119
	Lee, Christine (<i>de bene esse</i>) :—		
36	Examination-in-chief	22nd June 1949 ..	119
37	Cross-examination	22nd June 1949 ..	125
38	Re-examination	22nd June 1949 ..	130
	Stephens, Joseph :—		
39	Extracts from examination for Discovery	22nd June 1949 ..	131
	<i>Proceedings at Trial</i>		
40	Opening Address by Mr. Cameron, Counsel for the Defendant	22nd June 1949 ..	141
	<i>Defendant's Evidence</i>		
	Boyle, William Anthony :—		
41	Examination-in-chief	22nd June 1949 ..	141
42	Cross-examination	22nd June 1949 ..	144
43	Re-cross-examination	22nd June 1949 ..	149
	Isaacs, Jaqueline :—		
44	Examination-in-chief	22nd June 1949 ..	150
45	Cross-examination	22nd June 1949 ..	152
	House, Herman Victor :—		
46	Examination-in-chief	22nd June 1949 ..	153

NO.	DESCRIPTION OF DOCUMENTS	DATE	PAGE
	<i>Mclver, Donald Murdo :—</i>		
47	Examination-in-chief	22nd June 1949 ..	155
48	Cross-examination	22nd June 1949 ..	157
49	Re-examination	22nd June 1949 ..	160
	<i>Stephens, Joseph :—</i>		
50	Examination-in-chief	22nd June 1949 ..	160
51	Cross-examination	22nd June 1949 ..	163
	<i>Proceedings at Trial</i>		
52	Charge to the Jury by the Honourable Mr. Justice Whittaker	23rd June 1949 ..	169
53	Question for Jury	23rd June 1949 ..	201
54	Verdict	23rd June 1949 ..	179
55	Oral Judgment	24th June 1949 ..	182
	<i>Judgments, etc.</i>		
56	Judgment of Whittaker, J.	24th June 1949 ..	205
57	Notice of Appeal to the Court of Appeal of British Columbia	16th September 1949	206
	<i>COURT OF APPEAL</i>		
58	Oral Reasons for Judgment of the Honourable the Chief Justice	23rd February 1950	207
59	Written Reasons for Judgment of Sloan, C.J.B.C.	23rd February 1950	208
60	Written Reasons for Judgment of O'Halloran, J.A.	23rd February 1950	210
61	Written Reasons for Judgment of Sidney Smith, J.A.	23rd February 1950	217
62	Judgment	23rd February 1950	220
63	Conditional Order for Leave to Appeal to His Majesty in Council	16th March 1950 ..	221
64	Registrar's Certificate as to security and settling of transcript Record	31st May 1950 ..	222
65	Final Order for Leave to Appeal to His Majesty in Council	7th June 1950 ..	223
	<i>IN THE PRIVY COUNCIL</i>		
66	Order in Council granting Special Leave to the Respondent to Cross-Appeal to His Majesty in Council	28th July 1950 ..	224

PART II.—EXHIBITS AND DOCUMENTS

NO.	DESCRIPTION	DATE	PAGE
1	Plan of Intersection (page 15)	1st March 1949 ..	194
2	Dealer Farm Equipment Sale Contract (page 42)	14th December 1945	184
3	Dealer's Motor Truck Contract (page 42)	14th December 1945	188
4	Financial Statements (page 43)	31st December 1948	189
5	Marriage Certificate (page 50)	31st August 1944 ..	183
6	Photostatic Copy of Entry of Birth (page 70)	17th June 1949 ..	202
7	Copy Letters of Administration (page 70)	13th May 1949 ..	200
8	Succession Duty Schedule (page 78)	9th May 1949 ..	195
9	Expectancies of Life Table (page 78)	No date	203
10	<i>De bene esse</i> Evidence of Christine Lee (page 119)	30th May 1949 ..	201
11	Tables of Distances Travelled at various speeds (page 141)	No date	203

Endorsement on Writ
Statement of Claim

No. 675/1949

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ENA PEARL NANCE

Plaintiff

AND:

BRITISH COLUMBIA ELECTRIC RAILWAY
COMPANY, LIMITED,

10

Defendant

ENDORSEMENT ON WRIT

The Plaintiff's claim is under the Provisions of the Families' Compensation Act, R.S.B.C. 1948, Chapter 116 on her own behalf and on behalf of the other the persons entitled to the benefits of the said act to wit: Jessie Mae Carter, Eldwin Joseph Nance, Thomas Lyle Livingstone, and Robert Armstrong Livingstone for damages for the death of Samuel Joseph Nance on the 18th day of January, A.D. 1949, at Vancouver, British Columbia, which death was caused by the negligence of the servant of the Defendant, Joseph Stephens.

STATEMENT OF CLAIM

Writ issued April 12th, A.D. 1949.

1. The Plaintiff resides at the Village of Irricana, in the Province of Alberta and is the widow of the late Samuel Joseph Nance who formerly resided at Irricana aforesaid.

2. The Defendant is a body corporate and has and at all times material to this action had its principal place of business and registered office in premises owned by it the said Defendant at the corner of Carrall and Hastings Streets in the City of Vancouver in the Province of British Columbia.

3. The Plaintiff sues herein under the Families' Compensation Act, R.S.B.C. 1948, Chapter 116 for herself and for all the other the persons entitled to the benefit of the said Act, which persons are to wit: the children of the late Samuel Joseph Nance, that is to say, Jessie Mae Carter of the City of London in the Province of Ontario, the wife of Wayne Carter of the said City of London and Eldwin Joseph Nance of Irricana aforesaid, and

Statement of Claim

further the step-children of the said Samuel Joseph Nance, deceased, who are Thomas Lyle Livingstone of Camp Borden in the Province of Ontario and Robert Armstrong Livingstone of Iricana aforesaid.

4. On or about the 17th day of January, A.D. 1949, one Joseph Stephens of 427 Powell Street, Vancouver, British Columbia, a servant of the Defendant was acting as the motorman of a certain street car of the Defendant and was driving the said street car in an easterly direction along Kingsway in the said City of Vancouver in the vicinity of Gladstone Avenue, which Avenue intersects with said Kingsway.

5. At the time and place aforesaid the said Joseph Stephens was an employee and the servant of the said Defendant and was operating the said street car in the course of his employment for such purpose by the said Defendant, and the said street car was the property of the said Defendant.

6. At the time and place aforesaid the late Samuel Joseph Nance, then aged fifty-three years and eleven months, was crossing Kingsway aforesaid in a southerly direction in company of the Plaintiff, his wife.

7. At the said time and place the said Joseph Stephens so negligently ran and operated the said street car of the Defendant as to cause it, the said street car to run into and collide with the person of the said Samuel Joseph Nance and thereby the said Samuel Joseph Nance was thrown onto the street, said Kingsway, and injured.

8. As a result of being injured as described in the paragraph next hereinbefore preceding the said Samuel Joseph Nance died at the Vancouver General Hospital in the said City of Vancouver on the 18th day of January, A.D. 1949.

9. The above-described injury to and death of the said Samuel Joseph Nance was caused by the negligence of the said Joseph Stephens the particulars whereof are as follows:—

- (a) The said Stephens was operating the said street car at an excessive rate of speed.
- (b) The said Stephens was not then and there keeping a proper or any look-out.
- (c) The said Stephens was operating the said street car in a manner dangerous to the public having regard to the conditions of weather and the traffic then and there prevailing, the use that was then and there being made of the said Kingsway and the said Gladstone Avenue and the other the circumstances of his such operation of the said street car.

Statement of Claim

- (d) The said Stephens was then and there negligently attempting, not alone to operate the said street car, but also to act as conductor of the said street car, to sell tickets, receive money, hand out transfers, operate the doors and mechanism of the said street car and otherwise, in addition to his duty of driving the said street car, attending to the wants and requirements of the other passengers of the said street car.
- 10 (e) The said Stephens failed and omitted to yield to the said deceased, a pedestrian, the right of way at the said intersection and the Plaintiff pleads hereunder the Provisions of the Traffic By-Law of the City of Vancouver No. 2849, Subsections 12 and 13.
- (f) The said street car was not equipped with brakes or in the alternative the brakes of the said street car were defective and not in proper working order or in further alternative the said Joseph Stephens did not apply the brakes of the said street car in sufficient time to avoid striking the said deceased as aforesaid.
- 20

10. By reason of the hereinbefore-described injuries to and death of the said Samuel Joseph Nance the Plaintiff and the other the persons for whose benefit this action is brought, have suffered damages the particulars whereof are as follows, to wit:

- (a) The Plaintiff has been deprived of the pecuniary benefits reasonably by her to be expected, had the said Samuel Joseph Nance not met his death as hereinbefore described and in particular the said Plaintiff has been deprived of the maintenance furnished by the said deceased to her, the said Plaintiff, and of the maintenance reasonably to have been expected to be furnished by the said deceased to her the said Plaintiff during the remainder of the expectancy of life of him, the said Samuel Joseph Nance, deceased; and the said Plaintiff has sustained actual pecuniary loss on account thereof.
- 30
- (b) The other the children and step-children of the said deceased for whose benefit this action is likewise brought, have also suffered the pecuniary loss of the maintenance and financial assistance which the said deceased was reasonably expected at the time of his death thereafter to have provided for them, the said children and step-children during the remainder of his expectancy of life.
- 40

11. The Plaintiff has also had and incurred special expenses as follows:—

PARTICULARS

Funeral expenses of deceased, paid
by the Plaintiff..... \$500.00

WHEREFORE THE PLAINTIFF CLAIMS on her own behalf and on behalf of the other the persons entitled to the benefit of the said Families' Compensation Act such special and general damages for the death of the said Samuel Joseph Nance
10 as this Honourable Court may be pleased to award under the Provisions of the said Act, together with the costs of this action and such further or other relief as this Honourable Court may be pleased to award.

DATED at the City of Vancouver, in the Province of British Columbia, this 12th day of April, A.D. 1949.

D. A. STURDY,
Solicitor for Plaintiff.

PLACE OF TRIAL VANCOUVER, B. C.

TO: The Defendant

20 THIS STATEMENT OF CLAIM is filed and delivered by Mr. David A. Sturdy, Solicitor for the Plaintiff whose place of business and address for service is 415-16 Rogers Building, 470 Granville Street, Vancouver, British Columbia.

D E F E N C E

The Defendant says that:—

1. In reply to paragraph 3 of the Statement of Claim the Plaintiff has no status and is not qualified to bring this action as required by Section 4 of the "Families' Compensation Act" Chapter 116, R.S.B.C. 1948.

30 2. The Defendant denies each and every allegation contained in paragraph 4 of the Statement of Claim.

3. The Defendant denies each and every allegation contained in paragraph 5 of the Statement of Claim.

4. The Defendant denies each and every allegation con-

tained in paragraph 6 of the Statement of Claim.

5. The Defendant denies each and every allegation contained in paragraph 7 of the Statement of Claim, and without limiting the generality of the foregoing denies in particular that any streetcar ran into or collided with the said Samuel Joseph Nance, and that he was thrown or injured as alleged or at all.

6. In reply to paragraph 8 of the Statement of Claim the Defendant denies that the said Samuel Joseph Nance died as a
10 result of injuries received in the manner described in paragraph 7 of the Statement of Claim or as a result of any incident involving a streetcar.

7. The Defendant denies each and every allegation contained in paragraph 9 of the Statement of Claim and specifically denies that it or any of its servants or agents were negligent as particularly alleged therein and elsewhere in the Statement of Claim or in any manner in respect of this action, and without
20 limiting the generality of the foregoing, the Defendant denies that the streetcar was driven at an excessive rate of speed or improperly operated in any manner, and that the brakes of the streetcar were not properly applied or were defective in any way, and that the streetcar and its mechanism and equipment were faulty or improper in any way, and that the said Samuel Joseph Nance had any right of way in respect of the Defendant's streetcar.

8. If the Plaintiff and the persons for whose benefit the action is brought have suffered damages as alleged, which is not admitted, such damages were caused solely or alternatively
30 contributed to by the negligence of the said Samuel Joseph Nance, deceased, who was negligent in that:—

- (a) He was crossing the roadway at a place other than within a crosswalk at an intersection.
- (b) He failed to give the right of way to the Defendant's streetcar as required by Section 13 of City of Vancouver Street and Traffic By-law No. 2849.
- (c) He failed to look for or listen to or pay proper or any attention to the traffic on the street.
- (d) He paid no attention to the warning gong and noise and lights of the streetcar.

Defence
Joinder of Issue

(c) He ran immediately in front of a moving streetcar which he saw or heard or should have seen or heard.

A. BRUCE ROBERTSON,
Solicitor for Defendant.

DELIVERED this 27th day of April, A.D. 1949 by A. Bruce Robertson, whose place of business and address for service is at Room 320, 425 Carrall Street, Vancouver, B.C.

10 To the Plaintiff:

And to: David A. Sturdy, Esq.,
415-16 Rogers Building,
470 Granville Street,
Vancouver, B.C.

JOINDER OF ISSUE

The Plaintiff joins issue with the Defendant upon its defence herein.

DATED at Vancouver, B.C., this 29th day of April, A.D. 1949.

D. A. STURDY,
Solicitor for the Plaintiff.

20

TO: the Defendant

AND TO: A. BRUCE ROBERTSON, ESQ.,
Its Solicitor.

DELIVERED by David A. Sturdy, Esq., Solicitor for the Plaintiff, whose place of business and address for service is 415-16 Rogers Building, 470 Granville Street, Vancouver, B.C.

Order for Jury Trial

ORDER

BEFORE THE HONOURABLE
MR. JUSTICE MANSON
IN CHAMBERS

FRIDAY, the 6th day of
MAY, A.D. 1949.

UPON APPLICATION on behalf of the Plaintiff in the presence of David A. Sturdy, Esq., of Counsel for the Plaintiff and Gordon H. Johnson, of Counsel for the Defendant; UPON
10 READING the Pleadings and Proceedings herein and the Chamber Summons issued the 3rd day of May, A.D. 1949, AND UPON HEARING what was alleged by Counsel aforesaid;

IT IS ORDERED that this action be tried by a Judge with a jury.

AND IT IS FURTHER ORDERED that the costs of this application be costs in the cause.

“A. M. MANSON,” J.

Approved as to form,
20 “A. BRUCE ROBERTSON”

Checked,
“G.B.” “E.W.W.” “A.B.R.”

NOTICE REQUIRING SPECIAL JURY

You are hereby notified pursuant to Section 58 of the “Jury Act,” Chapter 167, R.S.B.C. 1948, that the Defendant requires a Special Jury for the trial of this action.

DATED AT VANCOUVER, B.C., this 7th day of June, 1949.

A. BRUCE ROBERTSON,
Solicitor for Defendant.

30 To the Plaintiff:

And to: David A. Sturdy, Esq.,
470 Granville Street,
Vancouver, B.C.,
Plaintiff's Solicitor.

And to the Sheriff for the County of Vancouver.

Order for examination de bene esse
Notice to Admit Facts

O R D E R

BEFORE THE HONOURABLE
MR. JUSTICE MANSON
IN CHAMBERS

THURSDAY, the 26th
day of MAY, A.D. 1949

UPON APPLICATION on behalf of the Plaintiff in the presence of Mr. John G. McDonald, on behalf of David A. Sturdy, Esq., of Counsel for the Plaintiff; AND UPON it being represented on behalf of Counsel aforesaid that the solicitors for the Defendant consent hereunto;

IT IS ORDERED that the Plaintiff be at liberty to examine the witness Christine Lee de bene esse upon oath at 11:30 o'clock in the forenoon of Monday, the 30th day of May, A.D. 1949 before the District Registrar of the Supreme Court of British Columbia at his offices in the Court House, Vancouver, British Columbia.

AND IT IS FURTHER ORDERED that notice of the appointment herein be served upon the Defendant on the 26th day of May, A.D. 1949.

"A. M. MANSON," J.

Checked,

"G.B." "E.W.W." "A.B.R."

NOTICE TO ADMIT FACTS
(ORDER XXXII, Rule 4)

TAKE NOTICE that the Plaintiff in this case requires the Defendant to admit, for the purposes of this action only, the several facts respectively hereunder specified.

AND the Defendant is hereby required within six (6) days from the service of this Notice to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this action.

DATED at the City of Vancouver, in the Province of British Columbia, this 7th day of June, A.D. 1949.

D. A. STURDY.

Solicitor for the Plaintiff.

Notice to Admit Facts
Admission of Facts

TO: The Defendant.

AND TO: Mr. A. Bruce Robertson,
Its Solicitor.

The facts, the admission of which is required are:—

- (1) That on the 17th day of January, A.D. 1949, Joseph Stephens was a servant of the Defendant.
- (2) That on the 17th day of January, A.D. 1949, the Defendant owned a street-car of model "P.C. 400," number 433.
- 10 (3) That at some time between the hour of 11:00 p.m. and midnight on January 17th, A.D. 1949, the said Joseph Stephens was driving the said street-car in an easterly direction along Kingsway in the city of Vancouver.
- (4) That at some time between the said hour of 11:00 p.m. and midnight on January 17th, A.D. 1949, a collision occurred between the said street-car and the person of the late Samuel Joseph Nance.
- 20 (5) That the said collision occurred at some place within 300 feet east of the intersection of Kingsway and Gladstone Streets, Vancouver, B.C., on Kingsway.
- (6) That as a result of the said collision the said Samuel Joseph Nance was injured.
- (7) That on January 18th, A.D. 1949, the said Samuel Joseph Nance died as a result of such injuries.
- (8) That at the time of his death, to wit: on January 18th, 1949, Samuel Joseph Nance was of the age of 53 years, 11 months and 2 weeks.
- 30 (9) That on the occasion aforesaid to wit: between 11:00 o'clock p.m. and midnight on January 17th, 1949, the said Joseph Stephens was operating the said street-car in the course of his employment for such purpose by the said Defendant.

D. A. STURDY,

ADMISSION OF FACTS

The Defendant in this cause, for the purposes of this cause only, hereby admits the several facts respectively hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them as evidence in this cause:

Provided that this admission is made for the purposes of

Admission of Facts
Proceedings at Trial

this action only, and is not an admission to be used against the Defendant on any other occasion, or by any one other than the Plaintiff.

DELIVERED this 10th day of June, A.D. 1949.

A. BRUCE ROBERTSON,
Solicitor for Defendant.

To David A. Sturdy, Esq.,
10 Solicitor for the Plaintiff.

FACTS ADMITTED

(1) That on the 17th day of January, A.D. 1949, Joseph Stephens was a servant of the Defendant.

(2) That on the 17th day of January, A.D. 1949, the Defendant owned a streetcar of model "P.C. 400," number 433.

(3) That at some time between the hour of 11:00 p.m. and midnight on January 17th, A.D. 1949, the said Joseph Stephens was driving the said streetcar in an easterly direction along Kingsway in the City of Vancouver.

20 (4) That on the occasion aforesaid to wit: between 11:00 o'clock p.m. and midnight on January 17th, 1949, the said Joseph Stephens was operating the said streetcar in the course of his employment for such purpose by the said Defendant.

A. BRUCE ROBERTSON,

PROCEEDINGS AT TRIAL

D. A. STURDY, ESQ., appearing for the Plaintiff,

W. Q. CAMERON, ESQ., and
F. J. GILMOUR, ESQ., appearing for the Defendant.

30 Mr. Sturdy: I am for the plaintiff, my lord.
Mr. Cameron: I appear, my lord, for the defendant, with
Mr. Gilmour.

(JURY CALLED AND SWORN.)

(LESLIE H. C. PHILLIPS, FOREMAN.)

Opening address by Mr. Sturdy
Counsel for Plaintiff

Mr. Sturdy: My lord, if it please you, I have notified my friend of an application to amend the Statement of Claim, by leave, if you please, to delete sub-paragraph (g) of paragraph 9.

Mr. Cameron: I have no objection, my lord.

The Court: All right, the amendment will be made.

Mr. Sturdy: If your lordship please. Your lordship makes the amendment, by striking out the sub-paragraph?

10 The Court: By striking out (g) of paragraph 9.

Mr. Sturdy: Yes, my lord, if you please.

The Court: There will be an Order for the amendment.

Mr. Sturdy: My lord, with your permission, and Mr. Foreman and gentlemen, I represent Mrs. Ena Nance, a widow of Irricana, Alberta. Mrs. Nance and I are going to attempt to satisfy you that the death which occurred last January of her husband was brought about by the negligence of an employee of the British Columbia Electric Railway.

20 Mrs. Nance and her husband had left their home in Irricana, Alberta, which is a place some 80 miles east of Calgary, for a vacation, about the middle of December, and had motored to his relatives' home in Oklahoma, returning to their home by way of Vancouver. They arrived in Vancouver on January 17th. That was a Monday.

At the time, you will remember, the weather was very cold and the streets were icy, with some snow on the ground. Mrs. Nance had relatives in Vancouver, though Mr. Nance was a stranger here, and so she personally spent the day with her relatives, a niece and a sister, and in the afternoon of that day,
30 Monday, January 17th, Nance, amongst other things, spent the time locating a place for he and his wife to stay.

They were, by the way, although it is not material, accompanied by a child of Mrs. Nance, a young man of 17, an offspring of her first marriage.

Now, Mr. Nance went out Kingsway to the Chateau Tourist Home, which is one of these Motels near Gladstone Street, about two blocks east of Victoria Drive. He went out there and engaged a cabin, or a cottage, whatever they are called in these Motels, and returned to his wife and their friends.

40 There was a dinner, or a supper that evening. In the meantime, and going back a little, Mr. Nance had laid the car up, because of the slippery condition of the streets—that is, the automobile they had been using.

Now, about 11:30, or some time shortly before 11:30 possibly, Mrs. Nance and her husband took the No. 11 streetcar from

Opening address by Mr. Sturdy
Counsel for Plaintiff

some place in the west end out to the Chateau Tourist Home, the Motel I have spoken of. As you know, gentlemen, that No. 11 car travels a route along Pender, going east, and down Granville Street, then along Cordova to Main and out Main to Kingsway. They were on the car and were accompanied for part of the distance by Mrs. Nance's sister and her husband. It was just a family gathering, which was usual at that time of the year, of course.

10 On the way to the Motel, which is, as I say, near the corner of Gladstone and Kingsway, they decided they would, if possible, have some food before they retired, and shortly after 11:30 p.m., just before midnight, they left the streetcar at the corner of Gladstone, actually, as will appear in evidence, at the southwest corner of that intersection, and crossed Kingsway to the north side and went into a cafe there and had coffee and sandwiches, or some such thing, and very shortly afterwards left the cafe and commenced their trip to the Motel, which, as far as Mr. 20 Nance was concerned, proved fatal.

After leaving the cafe they walked arm in arm across Gladstone, going up on the north side of Kingsway. They crossed Gladstone to the northeast corner of that intersection, and from there started to cross Kingsway, going in a southeasterly direction. When they travelled across the street, Mr. Nance was on Mrs. Nance's right. She had his left arm by her right hand.

Mr. Nance was a very big man, about 6 ft. 2, and weighed about 240, something between that and 210 lbs., and he had had at one time in his life a condition of ulcers in his legs which made 30 him somewhat lame, and as the witnesses will describe he could only get along by shuffling. The streets were very slippery, and Mr. Nance was lame.

When the two of them got to the southerly pair of car tracks, that is, the tracks that would be occupied by the eastbound No. 11 car—when they got to those car tracks there was an accident. An eastbound B. C. Electric streetcar ran into Mr. Nance. That caused Mr. Nance to hit Mrs. Nance and that tossed her, or knocked her through the air for some distance. The immediate impact fractured Mr. Nance's skull, and caused some laceration 40 and tearing of his brain tissues.

I might say, if your lordship permits, Mr. Williams will be with me in this case.

And, as I say, he sustained a fracture of the skull, bleeding into the brain box and bleeding into the brain, and laceration and tearing of the brain. He died the following day about nine

Opening address by Mr. Sturdy
Counsel for Plaintiff

o'clock. He was taken from there by the Kingsway Ambulance.

The witnesses whom the plaintiff will call are police officers, principally for narrating conversations with the streetcar operator, and they will give evidence as to the distances involved and the general lay-out of the corner, and the condition of the parties. Then there will be evidence of statements previously made in the proceedings by the streetcar driver, Mr. Stephens—
10 Joseph Stephens, the motorman, and employee of the streetcar company, all in an effort to satisfy you that the death of Mr. Nance was brought about by negligence of Mr. Stephens, as motorman, as his lordship will define negligence.

The claim of Mrs. Nance will be for you to determine of what she has lost, so far as you can measure it in money alone, by the death of her husband. We will call an accountant to indicate what he left and what he earned, and what she might have expected to receive in the way of monetary benefit directly spent for her or given to her for her account during the remainder
20 of her lifetime and his lifetime, and there will be some question of the length of that time that you can determine Mr. Nance might be expected to live.

I would like to commence on the evidence itself by informing you that certain facts in this case have, by the courtesy of my learned friend, Mr. Cameron, been admitted, and these my lord, are in the admission contained in the Notice to Admit Facts. The facts admitted by the defendant, B. C. Electric Railway are these:

(1) That on the 17th day of January, 1949, Joseph Stephens
30 was a servant of the defendant. The word servant is used, not in its domestic sense, but in its legal sense, meaning an employee. It is simply an employee.

(2) That on the 17th of January, 1949, the defendant, the B.C. Electric Railway, owned a streetcar, Model P.C. 400, Numbered 433.

(3) That at some time between the hour of 11:00 p.m. and midnight on January 17th, 1949, the said Joseph Stephens was driving the said streetcar in an easterly direction along Kingsway in the City of Vancouver.

(4) That at some time between the said hour of 11:00 p.m.
40 and midnight on January 17th, 1949, Joseph Stephens was operating a streetcar in the course of his employment for such purpose by the Defendant, the B.C. Electric.

In order to establish the liability of the B.C. Electric, in law, I have to show that Mr. Stephens was at that time driving

Rossiter (for Plaintiff) Exam.-in-chief

A. Yes. They left in a few minutes.

Q. That is what you saw on arrival? A. Yes.

Q. Mr. Rossiter, I am producing what has been agreed, if your lordship please, between my learned friend and I as being a true and proper sketch of the intersection. I have one for your lordship, and I have supplied one to my friend, and the one which will be marked by the witness, if your lordship please, will be given to the jury later.

10 You have, Sergeant Rossiter, before you a plan of the intersection?

Mr. Cameron: I might say I have some extra copies if the jury wish to see them.

Mr. Sturdy: Thank you, but I was going to have the witness make a few marks while he is in the witness box where he is and has a space to write, and then show it to the jury.

Mr. Cameron: I only thought his evidence would be more intelligent if they looked at the plan at the same time.

Mr. Sturdy: That is true, and I will see that they see the
20 plan.

Q. Sergeant Rossiter, will you pick out the curb lines on Gladstone Street? A. Yes.

Q. And make a mark where you estimated the streetcar to have stopped, with reference to the east curb line of Gladstone Street. A. From measurements that I took in investigating, I found the front of the streetcar to be stopped approximately almost exactly 110 feet east of the east curb line, or the projection of the east curb line of Gladstone Street.

The scale is 20 feet to the inch, so I am making a mark 5½
30 inches eastward of the east curb line, indicating the front of the streetcar.

Q. Will you mark that with some suitable mark, say No. 1, Sergeant? A. No. 1? A streetcar of this type—

The Court: Q. You have put in the figure "1," have you?
A. I have put in the figure one, my lord.

Q. Yes. A. A streetcar of this type is 46 feet in length. I am making a mark indicating the rear of the streetcar, with the figure 2.

Mr. Sturdy: Q. That mark would be more than 2¼ inches
40 long? A. Just a little more than 2¼ inches long.

Q. Did you see any particular mark that enabled you to identify the location of the body of Mr. Nance? Of course, he was not then dead, but where he lay, was there anything to mark where he lay? A. Yes. There was a blood spot directly beneath the position where he had been lying, from a severe

Rossiter (for Plaintiff) Exam.-in-chief

head wound. This mark was 30 feet easterly of the same curb line of Gladstone Street, used as a base, and approximately 8 feet north of the south curb of Kingsway.

The Court: Q. 30 feet east of what? A. 30 feet east of the east curb line of Gladstone Street, my lord, produced across the street.

Q. And where was it, with reference to the south curb line of Kingsway? A. It was 8 feet north of the south curb line of Kingsway.

Mr. Sturdy: Q. That is the location of the blood? A. Yes, my lord.

Q. And that would be marked— A. —with the figure 3.

Mr. Cameron: Perhaps, to make it clear, the curb line you are referring to is the continuation of the curb there, not the dirt shoulder. A. An extension of the curb line of Gladstone Street. The curb is well marked. The concrete curb is carried around the corner on to Gladstone Street. It was an extension of a line between those two curbs.

Mr. Cameron: I wanted to make sure your lordship had it. Is it clear enough?

The Court: Q. It is the curb itself—the extension of the curb? A. Yes, from a direct line between the two curb lines, one on the north and one on the south side.

Q. That is a cement curb? A. Yes.

Mr. Cameron: You can see it quite clearly on the plan.

Mr. Sturdy: My lord, I had really planned myself the presentation of this evidence. I was proposing first to have the marks made, and then show them to your lordship and the jury, but when the marks are put in indicating the starting point, it is hard to determine—

Mr. Cameron: I am sorry, I didn't wish to interrupt, but I thought your lordship was marking your plan, and I thought you might mark the wrong place.

The Court: No, I have not marked it yet.

Mr. Cameron: Then I am sorry, my lord.

Mr. Sturdy: Q. You have marked No. 3, the blood on the street? A. Yes.

Q. 8 feet north of the south curb line of Kingsway and 30 feet east of the east curb line of Gladstone? A. Yes.

Q. Where did Mrs. Nance lie, with relation to Mr. Nance, when you saw her? A. The blood spot indicates the position where Mr. Nance was lying, with his head towards the south, and Mrs. Nance was lying with her head towards the south, approximately 12 feet more to the east of the person of Mr.

Rossiter (for Plaintiff) Exam.-in-chief

Nance. That is only an estimated distance.

Q. Will you please now take the plan to the jury, and point out these most distinguishing features. Point out the set up of the plan and the streets and the numbers. A. (Witness goes to jury.) The lines shown there (indicating) are the curb lines on the north side of Kingsway. North is to the back of the sketch. The lines I am indicating right down here (indicating) are the south curb lines of Kingsway and on each side
10 upward of those lines are lines indicating the sidewalk.

On the boulevard, against the sidewalk, are such other things as lamp standards, which are shown, and driveways. In particular there is a driveway which leads into what is known as the Chateau Tourist Homes at 2210 Kingsway. The sidewalk on the southwest side—no, the southeast side of Kingsway is not extended as a concrete sidewalk, but is simply a worn footpath in normal times.

At the time of the accident, the whole of the scene shown in the sketch was covered with snow, with the exception of a
20 centre portion of Kingsway where the snow had been worn right down by traffic, leaving the car lines, which are shown in centre, exposed, and also the entrance to the Auto Court, shown as this wide sidewalk crossing, (indicating) was also clear of snow. It had been cleared manually.

The sidewalk on both the north and south sides of Kingsway were quite well trampled by foot traffic.

The marks that I have indicated are (1), the front part of the streetcar, standing 110 feet east of a line which I am indicating with a ruler, extended between the north and south sides
30 of Kingsway at the east side of Gladstone Street. The curves shown on each corner of the intersection are rounded concrete curves, with the curb lines not extended either north or south of Kingsway.

The Court: Q. Now, you mean on Gladstone. A. I mean on Gladstone, my lord. Also shown is a trolley pole on each of the four corners of the intersection.

Figure (2) is the rear of the streetcar, a distance of 66 feet east—that is, the streetcar is 46 feet and figure (3) indicates the position of a blood spot, which was approximately 12 inches
40 round in thin snow, quite a sufficient mark. That is all.

Mr. Sturdy: My lord, I am concerned about the marks on the plan your lordship has. I can have this witness put them in on your lordship's plan now, if you wish, or later.

The Court: Yes, I would appreciate that.

Mr. Sturdy: Q. Figures (1), (2) and (3), Sergeant Ros-

Rossiter (for Plaintiff) Exam.-in-chief

siter. A. (Witness marks.)

Mr. Sturdy: While the markings are being made by the Sergeant, I might go on to tell the jury, by permission of my learned friend and by agreement, that Kingsway from curb to curb is 56 feet in width at that intersection, and Gladstone Street, between what the Sergeant has described as the curb lines is 30 feet. That is from the uppermost extension from the curb across Gladstone to the same point across the street is 30 feet.

10 The space between the individual pairs of rails, that is, the space between the tracks occupied by the eastbound and again by the westbound cars is 4 ft. 8 inches, measured from the inner side of each rail to the inner side of the corresponding pair, and the devil strip, as it is called, that is the space between the pairs of rails is 5 feet in width.

The Court: By the devil strip you mean the space between the double tracks?

Mr. Sturdy: Yes, my lord.

The Court: Then the measurement you gave of 4 ft. 8
20 inches is what?

Mr. Sturdy: Is that from the inner part of each rail to the inner part of its fellow in the pair, and then the rail itself is 2 inches in width, making 5 feet as being the outside measurement of the streetcar tracks, and the total space occupied by both rails, with the devil strip, is 15 feet.

The Court: The devil strip is how much?

Mr. Sturdy: 5 feet, my lord.

Mr. Cameron: The devil strip measurement of 5 feet includes two rails. It is from the inside of the second rail, across
30 the middle strip over the third rail for this 5 feet.

The Court: But it is 15 feet from the south rail, that is, from the outside of the south rail to the outside of the north rail, is that right?

Mr. Cameron: No, I guess it wouldn't be quite, because you still have a couple of inches on either side. You have 5 feet, plus two times 4 ft. 8 inches, plus two track widths, which wouldn't be quite 15, but it is pretty close.

Mr. Sturdy: The fact is the tracks are 5 feet apart, and the space between them is 5 feet.

40 Mr. Cameron: It is 4 feet, 8½, actually.

Mr. Sturdy: That is quite close enough.

Mr. Cameron: Speaking of measurements, I don't want to interrupt you again, but I was looking at Sergeant Rossiter's mark. It seemed to me to be a little too far west. I measured it, and it seemed to me he marked it a little bit too far west.

Rossiter (for Plaintiff) Exam.-in-chief

It gives the impression it is a little too far west. It is only a couple of feet.

Mr. Sturdy: Q. Would you check your measurement on mark No. 1?

Mr. Cameron: Mark No. 3. It is the blood spot. Mind you, it is only a couple of feet. A. Yes. On the jury's plan it shows approximately 28 ft. 6 inches.

Mr. Cameron: Q. Possibly you could move it over, then.
10 Mr. Sturdy: Actually, I don't think feet and inches matter very greatly.

Mr. Cameron: No, they don't, but as I looked at it, it seemed to be further west, and it may create the wrong impression.

The Court: It should be 30 feet.

Mr. Sturdy: 30 feet is correct, my lord. That is the correct measurement, but 28 feet and a half is what the witness appears to have marked on the jury's copy of the exhibit.

Mr. Cameron: He is going to move it over a couple of feet,
20 my lord, so we will have it.

The Witness: It is now corrected to 30 feet, my lord.

Mr. Sturdy: Q. Sergeant Rossiter, was there a crosswalk or a path through the snow from the northeast to the southeast corners? A. The snow was trampled on the sides of the road on Kingsway from the curb. That indicated that there had been quite a bit of cross traffic.

Q. What is called the crosswalk, that is the imaginary extensions of the sidewalks. A. Yes, imaginary extensions of the sidewalk.

30 Q. That was a clear passage, was it? A. Yes.

Q. Subject, of course, to the ice being on it. A. Yes.

Q. Now, to make it entirely clear, it was an icy night, was it? A. It was extremely icy. The whole road surface, indeed, all the whole part of town was covered with a film of ice. At the particular scene, the ice was anywhere from 1/16th to a quarter of an inch in thickness, transparent, clear ice on the centre of the driving portion of Kingsway.

Q. I believe at one time in some other proceedings, you, yourself, said you had difficulty in standing, is that correct?

40 A. Yes, extreme difficulty.

Q. Would you describe the visibility to the jury? A. The visibility was very good. It was a bright night. The lighting was good. It is as good as anywhere in town, in Vancouver. The four trolley poles at the corner that I indicated on the plan each carried a lamp which was lit—a street lamp.

Rossiter (for Plaintiff) Exam.-in-chief

Q. That is the point marked "T.P." on each one of the corners? A. Yes.

Q. There was a street light on it? A. Yes. I stood at the scene and looked in both directions, and I could see quite an appreciable distance, as far as possible on Kingsway towards the east. That is almost a thousand feet.

Q. And there was nothing to impair your visibility at all? A. No.

10 Q. Perfectly clear vision? A. Yes.

Q. How do the street lights at that intersection compare with other suburban lighting in Vancouver, other than down town, I mean? A. Until recently I would have said it was as good as any, but recently there has been lighting installed which is much superior to this, such as is found on a portion of Hastings Street, east of Main, and the new lighting on Cambie Street, but this type of lighting is not the usual standard lamp type. The light is much higher, more out of the drivers' eyes.

20 Q. You are speaking of the ones at Kingsway and Gladstone? A. I am speaking of the ones at Kingsway and Gladstone, and doesn't throw normally as much glare as the lower standard lamp.

The Court: Q. Which is the lower? A. The lower type of standard lamp, which is on its own pole—its own iron pole.

Q. It was there at the time? A. No, that is not present on Kingsway, your lordship. That is the common type.

Q. I am speaking of the scene of this particular accident. Which type of lighting was there? A. The higher type, where a lamp is added to the streetcar trolley poles. That is, the lamp
30 is placed in a position half as high again as a standard lamp, I might say.

Mr. Sturdy: Q. It gives a light without a glare or reflection in the drivers' eyes? A. Yes, that is right.

Q. The snow plough had been along that street? A. There were indications it had been ploughed, inasmuch as the snow had been piled on the curbs to a height of approximately 8 to 12 inches.

Q. Yes. So that one going from the northeast to the southeast corners would be confined, I suppose, to the crosswalk, or
40 to the travelled portion of the street?

Mr. Cameron: What is that again?

Mr. Sturdy: A person going from the northeast to the southeast corner.

Mr. Cameron: You mustn't lead the witness.

Mr. Sturdy: I am sorry, my lord.

Rossiter (for Plaintiff) Exam.-in-chief

Q. What about the mode of passage from the northeast to the southeast corners? How would one travel? A. The best and simplest and most obvious way to walk across would be straight across the street, from one crosswalk to the other, where there was no snow piled on the curbs.

There was one other route we checked, and that was from the northeast corner across to this open driveway, which I indicated on the plan, which had been cleared of snow from the
10 curbs. That would mean a long passage across Kingsway, since one would be travelling at an angle towards the south and east.

Q. If one were taking the latter course, towards the south and east, towards the driveway, would he be exposed to traffic a greater length of time than if he took the direct route across?

A. Yes, but not any appreciable difference.

Mr. Cameron: The square and hypothesis, eh?

Mr. Sturdy: Q. Did you assist in placing Mr. Nance on the stretcher of the ambulance? A. Yes.

Q. Tell his lordship and the jury what you did there. A.
20 Well, my first action was to check the apparent injuries of both persons. I could see at once that Mrs. Nance was conscious, and apparently not too badly injured, so I went immediately to Mr. Nance, and he was apparently unconscious and suffering a severe head wound. I assisted the ambulance drivers to raise him on to the stretcher.

Q. Did you have a good look at Mr. Nance as he lay there?

A. Yes.

Q. Did you see from what part of his head the blood was coming? A. No, I don't remember.

Q. After the departure of the ambulance with Mr. and
30 Mrs. Nance, did you see the remains of Mr. Nance? A. Yes.

Q. Where? A. At the City morgue.

Q. Did you there identify it to any city official? A. Yes, to the Coroner, as being the remains of the same person, Samuel Nance, that I had seen lying on the roadway at the accident.

Q. Did you also identify the remains to any doctor?

Mr. Cameron: I don't think there is any doubt of his being there. A. I may have done, but I don't remember the details of the proceeding at the inquest.

Mr. Sturdy: The other officer did. Unless it is admitted—?
40

Mr. Cameron: I don't think we need question that.

Mr. Sturdy: How far does your admission go? I am only going through the formality.

The Witness: I could say the doctor was present at the identification and would have heard the identification that I

Rossiter (for Plaintiff) Exam.-in-chief

made to the Coroner.

Mr. Sturdy: Q. And who was the doctor? A. Dr. Harmon.

Q. Dr. Harmon? A. Yes.

Mr. Sturdy: Unless I can connect the necessary links that are necessary—

Mr. Cameron: What do you wish to prove?

Mr. Sturdy: That Mr. Nance was killed.

10 Mr. Cameron: That is admitted.

Mr. Sturdy: Not that by any means it was a fault of your employee, but he died as a result of injuries sustained. My lord, I think it is proper to ask how far my friend goes, because it might abridge the trial quite a bit. I am ordinarily obliged to go through quite a procedure to prove the person injured was the person on whom the inquest was held, and so on. If Mr. Cameron admits Mr. Nance died as a result of these injuries, it will save quite a bit of time.

20 Mr. Cameron: Oh no, I don't admit that. I admit he was dead at the time.

Mr. Sturdy: Q. You were present at the Coroner's inquest, and you were present at all events on the identification of the remains to Dr. Harmon? A. Yes.

Mr. Cameron: I admit the man that Dr. Harmon saw and the man that Sergeant Rossiter saw were the same person, if that is of any assistance to you.

Mr. Sturdy: Yes, that will save that part of it.

30 Q. Are you at all acquainted with the performance of the P.C.C. 400 cars, Sergeant? A. Only inasmuch as I have ridden in them and seen them operated, without actually studying the operation.

Q. Your division of the Vancouver Police is traffic, is it? A. That is right.

The Court: Q. What is that type of car? What is the number? A. It is No. 433, a P.C.C. type, or a 400 type.

Q. P.C.C., or 400?

Mr. Sturdy: P.C.C., or a 400, is a model of the car—the Kingsway-Pender cars, but the number of this individual car was 433.

40 The Court: 433, but the type of car is P.C.C.?

Mr. Sturdy: P.C.C., 400.

The Witness: Yes. Those are the initials. It is named the President's Conference Car. It was a type of streetcar which was developed purely from a safety point of view, as much as for its efficiency in operation. That is to say, special

Rossiter (for Plaintiff) Exam.-in-chief

attention was paid to providing as good a visibility as possible for the operator, good strong seating, and exceptionally good braking, comparing them with the older type of streetcar.

Mr. Sturdy: Q. What would you say as to the acceleration, Sergeant? A. The acceleration of this type of car is extremely fast, compared with the older type of streetcar operated in the City of Vancouver, or the older types.

It is such that it has an acceleration, or pick-up, equal to
10 that of any automobile in the hands of a competent driver when accelerating in low gear, without changing gears. I cannot tell how many feet per second it does accelerate at.

Q. But it has a pretty fast pick up? A. I have driven in an automobile beside these cars and noticed their fast acceleration to their running speed from a standing start.

Q. Was a headlamp of No. 433 burning the night in question? A. Yes, as far as I remember. That is one of the details we normally check in an investigation, and if it was out I would have made a note of it.

20 Q. You didn't make a note of it? A. I didn't make a note of it at the time.

Q. Now, just a couple of questions more, Sergeant. The front end of those cars, are they flat or rounded? A. The whole front is rounded from side to side. That is, it is fairly flat in the centre portion of the front, but it rounds off fairly sharply towards the side. It also slopes backwards from the top portion.

Q. A man even as big as Mr. Nance wouldn't be affected by the back slope at the top? A. No. It is practically level
30 to the bottom part of the window. Upwards, it slopes backward.

Q. Now, you explain yourself how the bodies came to occupy the positions you found them in, with reference to the position of the streetcar. A. Yes. Together with other constables, we attempted to find from the motorman, Joseph Stephens, any indication of an impact between the streetcar and a body, since Mr. Stephens indicated to us at the time that it was the front—

Mr. Cameron: Q. What do you mean, Mr. Stephens indicated to you? You are not allowed to say what he said. My
40 lord, he is allowed to say he inspected the front of the car, but he is not allowed to give references to conversations he had.

Mr. Sturdy: My lord, I didn't come prepared to argue this, because your lordship decided the very thing in the Howard case as to the admissibility of a conversation between an officer

Rossiter (for Plaintiff) Exam.-in-chief

and the employees of the defendant company.

The Court: Well, I do not think that case was before me.

Mr. Cameron: Well, may I say, with respect, the very opposite view has been taken in this Court. I have been present on many cases where it has. It is a decision of the Ontario Court, where conversations with an operator are not evidence.

The Court: You submit they are, do you, Mr. Sturdy?

Mr. Sturdy: My lord, I do, yes.

10 The Court: I suppose that is the point you will have to decide.

Mr. Sturdy: I might do this, if your lordship would allow me to consider the point during the noon recess, and if I then admit it will not be necessary to recall the officer, but if I succeed in persuading your lordship it should be admitted, then I might be allowed to recall him.

The Court: Apart from the conversation, have you any more evidence from this witness?

20 Mr. Sturdy: That is all from this witness, except I want him to mark off in the Court room some approximate distances—the distance of 27 feet, so we will have an understanding and an agreement of what 27 feet is.

Q. I take it, Sergeant, you are accustomed to pacing off distances on roadways? A. Yes.

Q. Would you mark off 25 feet from that wall, to the front of the witness box?

Mr. Cameron: You better measure it.

The Court: You had better measure it. It is not quite as accurate, pacing it.

30 Mr. Sturdy: Yes. We will measure it, at the noon hour.

The Court: I think we will have a short recess of five minutes now.

(PROCEEDINGS RESUMED AFTER SHORT RECESS.)

Mr. Sturdy: My lord, the witnesses, I think, from this point on should be excluded. The formalities that have gone heretofore don't count.

The Court: Yes. The witnesses on both sides will please leave the Court room and remain within call. That does not apply to the plaintiff, Mrs. Nance.

40 Mr. Sturdy: Will you call Dr. Harmon?

Mr. Cameron: I wanted to ask Sergeant Rossiter some questions.

Mr. Sturdy: Oh yes, all right.

Rossiter (for Plaintiff) Exam.-in-chief
 Rossiter (for Plaintiff) Cross-Exam.

Mr. Cameron: Mr. Stephens, I take it, may stay in the Court room.

The Court: Is there any objection to Mr. Stephens staying?

Mr. Sturdy: No, not from me. We will recall Sergeant Rossiter then.

ALAN HENRY ROSSITER, resumed the stand and testified further as follows:

10 The Clerk: You are already sworn, you are still under oath.
 The Witness: Yes.

CROSS-EXAMINATION BY MR. CAMERON:

Q. Sergeant Rossiter, when you were speaking of measuring the distance to where Mrs. Nance was lying, that was an estimate, you said? A. Yes, that was an estimate I just formed when I saw her lying on the street.

Q. She had been moved before you arrived? A. Yes.

The Court: Q. She had been moved? A. She was being moved, as I estimated it. She was being lifted to a stretcher.

20 Mr. Cameron: Q. Speaking of the lighting on Kingsway, I didn't understand you there. You said it was fairly good, but wasn't as good as what now appears on Hastings Street. A. No, it isn't nearly as good as the new type of lighting being installed.

Q. Is it not true while you are driving in a car it is some times difficult to see on any street at night, is that correct? A. Some times, yes.

30 Q. Now, when you were speaking of this P.C.C. type of car, you mentioned, that as far as you knew, it had a good windshield to see out of. I suppose there would be a blind spot on that car, the same as on any automobile? A. Yes, a number of blind spots.

Q. And the headlight was burning—there is also on those cars what is called a clearance light, I believe A. There is a blue light attached above the driver, above the operator in the centre of the car.

Q. And the front of the car is painted red and white, isn't it, or cream and white? A. It is mostly cream, to my knowledge.

40 The Court: Q. Red and cream? A. There is some cream on it.

Rossiter (for Plaintiff) Cross-Exam.

Mr. Cameron: Q. Red and cream, mostly cream. It is actually a cross, which indicates you have to get on at the front.

A. Yes.

Q. Haven't you seen them with red here and cream here and red at the bottom, (indicating)? The ordinary car going to Stanley Park. A. All cars entered by the front have a large cross painted from one side to the other to indicate to people that they should enter at the front where the cross is. The
10 colours used by the B. C. Electric for this purpose are red and cream.

Q. It is meant to be seen, of course? A. Yes.

The Court: Q. The cross is red? A. No, the cross is cream, against a red background.

Mr. Cameron: I think it is actually a blocked out solid colour, not just a plain cross.

Q. Now, do you know how much those cars weigh? A. I have always understood they weigh approximately 20 tons. That is, something less than 20 tons when completely empty,
20 and something more than 20 tons, according to the load carried. A fully loaded car would be something over 20 tons, but say within 22 tons.

Q. Yes, I believe that is correct. Now, as you have said, the simplest way to cross Kingsway, if you were going to go south, would be to go straight across the street. If you were going to go to the Motel, the most direct route would be diagonal, towards the Motel, is that correct? A. Yes.

Q. And the entrance to the Motel, that is, the driveway, was shovelled out, was it not? A. Yes.

30 Q. Perhaps you would point that out on the map here.

Mr. Sturdy: I will admit all that. That is the driveway.

Mr. Cameron: Q. This entrance here (indicating) was shovelled out? A. Yes. It is the entrance with the word "Crossing" in the barred lines on the driveway.

Q. That is quite all right, isn't it? The whole of it wasn't shovelled out. There were two or three feet of snow. A. Yes. I couldn't say just exactly how much. We didn't measure the width of it. It would be at least half of that crossing that was cleared. Enough would have been cleared, my lord, to turn a
40 car into that driveway freely. A car is approximately 15 feet long.

Q. Now, the curb on the sidewalk wasn't shovelled, was it? A. No.

Mr. Sturdy. The curb where?

Mr. Cameron: Q. The curb on the sidewalk, or, rather,

Rossiter (for Plaintiff) Cross-Exam.

the sidewalk by the curb at the southeast corner. A. Yes, at the southeast corner it was clear.

Q. Was it shovelled? A. I don't know whether it was shovelled, but it was well trampled.

Q. I understand that you would have to go over a hump to get up on to the trampled sidewalk. A. No. It was trampled down, so that the snow was only approximately an inch of hard packed snow.

10 Q. How did that compare with the northeast corner? A. About the same.

Q. I understand there was an actual cut shovelled through the northeast corner, but not the southeast corner. That would be natural, because this sidewalk doesn't lead anywhere, but the northeast corner does. A. It is a normally travelled path. There is a beaten path at normal times, but there is no actual concrete paving on Gladstone Street extended south.

Q. There is no sidewalk of any kind, extending south? A. Yes, the sidewalk is there, back to the property line.

20 Q. Was it covered with snow? Have you been there recently? I suggest, as you were telling me, some people may have walked down there. I don't deny that, but there was no sidewalk. A. My examination of the plan shows the sidewalk is indicated.

Q. Perhaps you would show me where it is, then. Where I am referring to is down here (indicating). A. No. The southerly half of the sidewalk on Kingsway—there is no sidewalk, but people walk along here (indicating), but the corner is paved.

30 Q. Here is where it was shovelled (indicating). A. Yes.

Q. And here is where it is marked (indicating). A. Here is where it was beaten down (indicating).

Q. To a certain extent? A. To a certain extent, somewhere between this corner and the trolley pole (indicating).

Q. But there is no sidewalk along there. A. No.

Q. At last we are talking about the same thing. Was there any traffic on Kingsway that night? A. Yes, there was. Not quite the normal amount of traffic. Traffic was very light in that particular cold period, but there would be approximately,
40 I believe, two or three streetcars that were held up by the accident, exclusive of the one involved, standing east.

Q. Kingsway is a fairly well travelled street? A. Yes.

Q. There are times when there is no traffic, but you might expect any at any time? A. Yes, that is so. We had to take precautions against traffic when investigating, after the traffic

Rossiter (for Plaintiff) Cross-Exam.

had been moved.

Q. Now, I want to ask you, you are a traffic officer, is that correct? A. Yes.

Q. And as such, you may be familiar with the stopping distances in which automobiles can stop, is that correct? A. I have made experiments to find out reaction times and the stopping distances of automobiles.

Q. I am not suggesting a streetcar can stop in the same
10 distance as an automobile, but to get a rough estimation I have a table prepared by the Junior Board of Trade, in connection with the Vancouver Safety Council. At ten miles an hour an automobile is going 15 feet a second, is that right?

Mr. Sturdy: I don't think any groundwork has been laid for this. It isn't based on any skilled opinion, such as this witness has. My learned friend suddenly brings up something that the Junior Board of Trade has put out and asks him if it is correct.

Mr. Cameron: I didn't interrupt my friend to protest that,
20 but I am prepared to prove it, if it is desired to be proved.

The Court: Is it relevant? Is it the distance within which a motor car can stop?

Mr. Cameron: Yes. A streetcar, being a larger and heavier vehicle, would be expected to go further.

Mr. Sturdy: That is argumentative, not evidence.

Mr. Cameron: I am asking Sergeant Rossiter, who is a traffic officer and experienced on that.

The Witness: That would depend on—

The Court: Just a moment, Officer. I do not want to get
30 the jury confused as between motor cars and streetcars. Their system of operation and their apparatus are quite different, are they not?

Mr. Cameron: Yes, that is quite true, it is a different vehicle, but every one hears erroneous statements of people saying they can travel at 15 miles an hour and can stop in six feet, which is ridiculous, because without introducing any evidence I might say it is just a matter of arithmetic.

Mr. Sturdy: Now, if your lordship please—

Mr. Cameron: If he is going at 15 miles an hour, his car
40 is going 22 feet a second. That is straight mathematics.

The Court: I think we will have to show that this witness has some expert knowledge as to the distances within which a streetcar could stop.

Mr. Cameron: Q. Have you any such knowledge? A. I have never made direct experiments myself with streetcars, but

Rossiter (for Plaintiff) Cross-Exam.

I have taken training in speed and stopping distances.

The Court: Q. That is, with regard to motor cars? A. With regard to motor cars, but it does apply to any type of vehicle, but certain knowledge must be gained in order to use the various formulas for estimating stopping distances, which would apply in this case. One thing would be the amount, or the percentage of braking of a vehicle of this particular type at that time. In other words, when a certain proportion of the
10 braking force of a car is used, as soon as the gripping force of the wheels upon the under surface is greater than, or, rather, is less than the gripping force of the brakes, the vehicle will skid. That is the basis of the estimate.

Q. Depending on the type of vehicle and the under surface. What is your knowledge with regard to streetcars? A. None, specifically, my lord.

Mr. Cameron: Q. Let me ask you this question. Would it seem reasonable to you, in the light of your experience, that a vehicle weighing 20 tons would be more difficult to stop than
20 one weighing a ton and a half, as an automobile does?

Mr. Sturdy: If your lordship please, that is exactly the same question, and exactly the same objection pertains. The B. C. Electric, with all its resources, can give expert evidence on the performance of these vehicles, without cross-examining the witness, who, on his own confession, is not an expert on these things.

Mr. Cameron: I don't choose to press it.

Mr. Sturdy: Excuse me a moment, Sergeant.

Q. Arising out of that, were either Mr. or Mrs. Nance
30 moved after your arrival, and before the ambulance took them away? A. Mrs. Nance was being lifted from the ground. I saw her raised from the ground on to a stretcher, and Mr. Nance was still lying on the ground, and I assisted in placing the stretcher alongside of him.

Q. Before that occurred, and the stretcher was placed before him, he wasn't moved? A. He wasn't moved before my arrival.

The Court: Q. You mentioned the blood spot on the road. Where was that blood spot with reference to Mr. Nance's head,
40 when you arrived? A. It would be directly underneath his head, my lord.

Q. His head was lying in the blood? A. Yes.

Q. Are any crosswalk lines there? A. No, my lord.

Q. You mentioned the icy condition of the road. Did I understand you to mean there was a skim of ice over the entire

Rossiter (for Plaintiff) Cross-Exam.
Thomas (for Plaintiff)—Exam.-in-chief

surface of Kingsway? A. Yes, in the actual roadway. The snow had extended out from the curb for a distance of about eight feet on each side, and from there on each side towards the centre had been worn by traffic so that it was clear of any snow, but it was then covered with glare ice. The rails at this particular point were clear.

10 Q. But the paved portion of the highway, from 8 feet from the curb, was covered with ice, is that what you say? A. Yes, my lord.

Q. There is no curve in Kingsway, east or west of Gladstone there, is that right? A. Yes, the curb line is extended from Gladstone.

Q. No, there is no curve in Gladstone? A. No, it is a straight roadway.

The Court: I think that is all.

Mr. Cameron: Perhaps we might ask if the two streets intersect at right angles.

20 Mr. Sturdy: I thought we agreed on the plan, and the plan shows they are at right angles.

Mr. Cameron: Would there be any objection to me having Dr. Tompsett with me while Dr. Harmon is giving his evidence?

Mr. Sturdy: I should think so—very much so—unless you can show Dr. Tompsett knows something about Mr. Nance. In any event, I am calling another officer now.

(Witness aside.)

JOHN THOMAS, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

30 DIRECT EXAMINATION BY MR. STURDY:

Q. Mr. Thomas, you are an officer of the Vancouver Police Force? A. I am.

Q. Attached to the Traffic Division? A. I am.

Q. And have been for some years? A. I have.

Q. Did you take measurements, or assist in taking measurements at the corner of Gladstone and Kingsway, on the night of the 17th and 18th of January, 1949. A. I did.

Q. With whom? A. Officer Rossiter.

Q. Did you see the scene of an accident? A. I did.

40 Q. Had there been an accident at the time of your arrival?

A. There had been.

Q. Most of what you saw has already been given in evi-

Thomas (for Plaintiff)—Exam.-in-chief

dence, Mr. Thomas, but I want to know in particular about the method of getting across the street from the northeast to the southeast corner—getting across Kingsway. Will you describe what passage there was? A. My lord, the ground was covered with a considerable amount of snow in the immediate vicinity, but the snow had been cleared away to form a crosswalk. That had been trampled, I would say, on the northeast corner and on the southeast corner. People had been using the cleared away
10 portion.

Q. Had the snow been cleared off the sidewalk which extends to the east around Gladstone, on the southeast corner?

A. No, I don't believe the snow had been cleared there.

Q. Are you speaking of the sidewalk leading from the southeast corner to the front of the Chateau Tourist Home?

A. No. I think it had been cleared previous, and there was kind of a formation—as I remember it, there was a formation of some snow. I believe the centre of the sidewalk was more or less cleared.

20 Q. Did you observe a pool of blood? A. I did.

Q. Now, the location of that blood has already been given, but do you know whether there was any more blood or any other blood spot other than the one you have spoken of? A. No, that is the only one that I saw.

Q. Did you have a conversation with the motorman of the streetcar? A. I did.

Q. Joseph Stephens. A. That is right.

Mr. Sturdy: Do I understand that my learned friend objects to this?

30 Mr. Cameron: Oh, yes.

Mr. Sturdy: All right.

The Court: Do I understand you are going to consider it in the noon hour?

Mr. Sturdy: Yes, my lord, with your lordship's permission.

The Court: Yes.

Mr. Cameron: I don't wish to give the impression to the jury that I am trying to conceal anything, but it is a proper rule of evidence.

40 The Court: Yes. It is a question of whether it is evidence, or not. There is no suggestion that there is anything condemnatory in it.

Mr. Sturdy: Q. What was the size of that clot of blood?

A. Well, I would say it was approximately 18 inches to 2 feet across. There was quite a considerable amount of blood there.

Q. And where did Mr. Nance lie, in relation to that blood?

Thomas (for Plaintiff)—Exam.-in-chief
 Thomas (for Plaintiff)—Cross-Exam.

A. Well, now, I didn't see the deceased man at all at the scene.
 Q. So you don't know where he was? A. No.
 Mr. Sturdy: That is all, thank you, Mr. Thomas.

CROSS-EXAMINATION BY MR. CAMERON:

Q. The driveway leading into the Motel was shovelled out, to a certain extent, I believe. A. Yes, it was.

10 Q. It is quite a wide driveway shown on the plan here, 35 or 40 feet. Was that distance shovelled out? A. No. The easterly portion of the driveway, as far as I could see, or from my impression, had been cleared.

Q. The easterly portion? A. Yes.

Q. All right. And where was the entrance to the Motel, did you notice that? A. In relation to what, sir?

Q. Was there any entrance down on Gladstone Street, or did you have to go in around this corner where the sign was?

A. The vehicular traffic used the driveway.

20 Q. Was there any other door for a pedestrian to go in? Supposing you were going to the Motel, where would you go? Down Gladstone, or into the driveway? A. Well, the pedestrian—

Q. To the office? A. To the office, did you say?

Q. Yes. A. Well, I believe the driveway is used by pedestrian traffic, too. I didn't make sure of that point.

The Court: Q: Is the motel right on the corner? A. Yes, my lord. It has an inner circle, or an inner driveway.

Mr. Sturdy: Q. Are you familiar with this plan, Mr. Thomas, (producing)? A. Yes, I have looked at it.

30 Q. Perhaps you can point out to his lordship and the jury what buildings constituted the Chateau Tourist Court?

Mr. Cameron: Perhaps if he comes over here it would be better.

Mr. Sturdy: It was his lordship's inquiry.

The Court: Q. Is there any entrance to the Motel on Gladstone? A. No, my lord.

Q. Neither for pedestrians nor for motor cars? A. No. The entrance is on Kingsway, my lord.

The Court: All right, thank you.

40 (Witness aside.)

Mr. Sturdy: My lord, the third police constable, Mr. Tomkins needn't be called, unless my learned friend wishes, or the jurors would like to hear him. His evidence substantiates that

Thomas (for Plaintiff)—Cross-Exam.

of Rossiter.

Mr. Cameron: I don't think I understood you there. Are you objecting to me having Dr. Tompsett here?

Mr. Sturdy: Of course.

Mr. Cameron: I have to have someone. You know how medical men talk. I have to have someone to advise me. I think it is always a rule. I would say Dr. Tompsett, as far as I know, has never examined the deceased. It is merely for the
10 purpose of understanding what Dr. Harmon is saying.

The Court: Are you calling him as a witness?

Mr. Cameron: No, not unless in the giving of the medical evidence there is something not understandable. As far as the examination of the body of the deceased is concerned, he knows nothing of it.

Mr. Sturdy: That is exactly the point. He proposes to call Dr. Tompsett to hearken to the evidence of Dr. Harmon and subsequently to advise my learned friend on how to pick holes in it. That is exactly why witnesses are excluded.

20 The Court: But, as I understand it, Dr. Tompsett is not a witness.

Mr. Sturdy: If he is not to be a witness, by all means; but it would be an astonishing thing if a medical witness were called to hear evidence and give evidence on the testimony he has heard and not on the body itself.

The Court: Sometimes doctors are called to give evidence on stated facts given in evidence by other witnesses.

Mr. Cameron: I think that is the usual practice. I haven't heard of it being done the other way. I am surprised at my
30 friend calling it astonishing.

The Court: In any event, if you are not calling Dr. Tompsett, he is entitled to be here.

Mr. Sturdy: Oh yes, if Dr. Tompsett is not to be a witness, by all means. Dr. Tompsett is very welcome, but I object to this kind of fishing in the course of a trial.

The Court: You can certainly have him here, and if you want to call him later, we can settle the point then.

Mr. Cameron: Thank you, my lord.

Mr. Sturdy: Well, do I understand that my learned friend
40 may be at liberty subsequently to call Dr. Tompsett, because there is nothing that I don't want the jury to hear, but I do object to what is going on now.

The Court: We will decide that later. If he wants to call him later, we can discuss it.

Mr. Sturdy: Very well. Dr. Harmon, my lord.

Dr. Harmon (for Plaintiff)—Exam.-in-chief

THOMAS RIDEAU HARMON, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. STURDY:

Q. You are a qualified, licensed and practicing physician and surgeon, doctor? A. In the province of British Columbia, yes, that is correct.

Q. Did you perform an autopsy on the body of the late Samuel Joseph Nance? A. I did.

10 Q. Pursuant to instructions from the Vancouver Coroner? A. That is correct.

Q. How did you come to know the body of Mr. Nance, as such? A. Acting on the instructions of the Coroner, Dr. J. D. Whitbread, I performed an autopsy on the body of Samuel Joseph Nance, on January 18th, 1949, at 1:45 p.m.

He was identified to me by Clarence Martin Nance, Innisfield, Alberta, machine agent, brother, and at the scene of the injuries Sergeant Rossiter and P.C. 128, Thomas, of the Vancouver Police.

20 Q. Thank you. What, in your opinion, was the cause of Mr. Nance's death? A. I found Mr. Nance came to an unnatural death as a result of laceration or bruising of the brain, hemorrhage into the skull, and a severe fracture of the skull.

Q. Doctor, was his skull fractured in more than one place? A. The fracture was a continuous fracture, extending from the left posterior or back part of the skull, down across the midline into the right base—posterior base, and along the floor, involving the temporal bone, which is the bone in which the ear canal is present, and anteriorly and towards the midline there was a
30 large fracture.

Q. How long would that be in inches, doctor? A. That is difficult to say. I didn't measure the fracture, because it is difficult to measure it in a curved body such as the skull is, and not having measured it, I wouldn't like to say how long it was.

Q. In all events, this death was caused by the fracture of the skull, as well as the bleeding into the brain and tearing of the brain tissues? A. That is correct.

Q. What would have caused such injury? A. There was a severe abrasion, that is, a deep abrasion to the scalp in the
40 posterior portion of his head, and I believe he suffered a blow on the back of his head that produced this fracture.

Q. Had there been bleeding from any other part of the head? A. I believe there had been some bleeding from this

Dr. Harmon (for Plaintiff)—Exam.-in-chief
 Dr. Harmon (for Plaintiff)—Cross-Exam.

abrasion on the posterior scalp, and the fracture extended through the right ear canal, and there had been bleeding from the right ear. There was some blood oozing from the right ear, at the time of the autopsy.

Q. I can tell you it was given in evidence that Mr. Nance's body was found lying in a large pool of blood. Can you surmise where that blood would have come from? A. I believe it could
 10 have come from his right ear.

Mr. Sturdy: Your witness.

CROSS-EXAMINATION BY MR. CAMERON:

Q. Have you any idea how old a man Mr. Nance was? A. I have his age as 53 years of age. That was the age given to me.

Q. He was a big man, I understand. A. Yes. He was a tall man, and obese.

Q. My learned friend mentioned he was about 6 ft. 2, and could have weighed anything up to 240 lbs. A. That could be correct, yes.

20 Q. A man like that, in slipping and falling on ice, could have fractured his skull. A. He could.

Q. Now, you said he was obese. What effect has over weight like that on the probable length of one's life? I have always been told that fat men have to be careful and watch their hearts. A. In some instances, that is correct.

Q. It is a factor one might consider with a man of that size and weight? It wouldn't be unfair to say he might be expected to go a little sooner than another man, is that correct? A. That is a problem.

30 Q. Sometimes it happens? A. It does, occasionally happen. I am not prepared to say whether you can use that as a general conclusion.

The Court: Q. You say you could use it as a general conclusion? A. No. I don't think you could use it as a general conclusion.

Mr. Cameron: I understand he was also suffering from varicose ulcers on both legs, is that correct? A. That is correct.

The Court: Q. That appeared in your examination? A. Yes.

40 Mr. Cameron: Q. And when the veins were dissected on your autopsy, they showed marked twisting and enlargement, and some thickening of the walls? A. That is correct.

Q. That indicated a previous inflammation? A. That is

Dr. Harmon (for Plaintiff)—Cross-Exam.

what I found.

Q. And varicose ulcers, that has to do with the veins, hasn't it? A. It was shown to be varicose ulcers at the time of the autopsy. He had discolouration on the insides of both lower legs. That is, a thickening and a bronzing of the skin, which indicated to me healed ulcers in that region.

Q. What are ulcers of the veins? Do they affect the blood supply? A. The ulcers are in the legs. They result from a cooling of the blood in the lower leg, and some interference with the blood supply to the skin.

Q. Yes, I see. Now, I understand that his heart was larger than usual, is that correct? A. I found the heart to weigh 420 grams and described it as being moderately hypertrophied.

Q. What does that mean? A. Moderately increased in size.

Q. What effect might that have on a man's health? A. This increase isn't a large one, and I don't believe in that age of a man—as I have described it, that it would have a great deal to do with his health, that is, the increase in the size of his heart. It would indicate that that heart had been working probably a little harder than one usually sees, but it isn't a very marked increase in size.

Q. His heart was a little bit enlarged, anyway. That would be correct? A. That is correct.

Q. The muscle, I understand, around the heart was somewhat soft. A. The muscle was soft to feel. That is correct.

Q. What does that mean? How is a normal heart muscle? Is it as soft as that, or not? A. This was a little softer, I thought, at the time of the autopsy than one normally sees.

Q. Now, the arteries. The coronary arteries—what are the coronary arteries? A. The coronary arteries are the arteries supplying the heart muscle.

Q. What did your examination disclose as to them? A. They showed an arterial sclerotic thickening.

Q. What does that mean? A. Arterio-Sclerosis is a thickening of the arteries, which comes with age. The wall is thicker and firmer than one sees in a younger age group.

Q. The effect of that is to cut down on the blood supply, to a certain extent? A. That thickening interferes with the elasticity of the artery and the lumen, as I have described in my previous testimony, was narrowed. It was patent.

Q. It was patent. What does that mean? A. That means it was open. There was no closing off of the lumen.

Dr. Harmon (for Plaintiff)—Cross-Exam.

Q. The blood was going around, but it was smaller than usual? He was said to be suffering from some coronary artery disease, is that correct? A. That is correct.

Q. Now then, I understand when you examined the liver it turned out to be large and pale in colour, and had, on sectioning, a fatty surface, is that so? A. That is correct.

Q. What caused that, or is that normal as well? A. That is not usually seen in healthy individuals.

10 The Court: What did you say was wrong with the liver?

Mr. Cameron: Q. Would you repeat that, doctor? I have it, that it was enlarged and pale in colour.

Mr. Sturdy: Now, just a moment. What are you reading from? This is the witness's evidence, given somewhere?

Mr. Cameron: I am reading from his own evidence at the inquest, I believe.

The Court: Q. Was there anything wrong with his liver?

A. The liver was enlarged and of a pale, yellowish brown colour, and on sectioning showed a fatty surface.

20 Mr. Cameron: A fatty degeneration? A. The fatty degeneration is what I believe is there.

Q. His lordship asked you if there was anything wrong with his liver. Would you answer that question? A. That is a difficult question to answer, my lord. The explanation of a fatty change in the liver is rather a long one, and I don't think that it has any bearing on the man's immediate health. The state of his liver might be described as below par.

Q. Now then, you mentioned that the brain showed considerable softening, I think. Was that something that would have resulted from the accident, or was that a previous condition. A. An examination of the brain showed a bloody or hemorrhagic degeneration of the outer surfaces on the lower portions of the two frontal, or forward lobes, which was due to trauma.

The Court: Q. That is due to the blow? A. Due to a blow, yes.

The Court: That is what you were inquiring about?

Mr. Cameron: Q. Prior to the accident, he probably didn't have that? A. Yes, that is correct. May I continue?

40 Q. I am sorry, yes. A. The remainder of the brain, on section, shows nothing remarkable other than an increase of vascular markings which are typical of concussion. That is, there was no softening or hemorrhage into the brain other than the portion that had been traumatized, or had received injury.

Q. As far as you knew, his brain was all right before he

Dr. Harmon (for Plaintiff)—Cross-Exam.

banged his head? A. From my examination, as far as I could see, yes.

Q. I understand he previously had an abdominal operation, or a bowel operation, four or five years ago. Did you examine the bowels and abdomen to any extent? A. That is correct. I examined the bowel. Just—I don't understand your question.

Q. I want to know whether there had been any such an operation, to your knowledge. A. I didn't consider that this
10 has anything to do with the man's death, or his state of health at the time of death. However, he had a scar in the midline and definite evidence in his abdomen of having had a previous operation, but this had healed well and everything appeared to be reasonably normal at the time of my examination.

Q. Summing up, would it be fair to say although none of these organic conditions might have had any effect on his immediate health, apart from the fracture, of course, that his prospects for the future would be somewhat less than the average man might expect?

20 The Court: The expectancy of life?

Mr. Cameron: Q. Yes. He was a big man with a weak heart and a bad liver.

Mr. Sturdy: My learned friend is addressing the jury now. There is no evidence of that.

The Court: Q. You have described certain conditions, doctor. The condition of the heart, for example, in your opinion would that have any effect on his normal expectancy of life? A. It would, my lord. It is difficult for me to say what his life expectancy would be. There are two factors; one is, if he abused
30 himself or lived a life which wasn't careful, I believe his heart condition would have a definite influence on his life expectancy. It would cut it down. However, if he lived a very careful life, I can't say how long it would cut down his life expectancy. I believe it would influence it to some extent.

Mr. Cameron: Q. Is the same thing true of the other conditions, doctor? A. Not to the same extent. The changes in the liver we do know are some times reversible, so that I can't make any definite statement as to the effect that his liver would have on his life expectancy.

40 Mr. Cameron: Thank you.

The Court: Q. Then the only condition that you noticed which might affect his life expectancy, or which you can say might affect it, would be the condition of the heart? A. And the legs, my lord. The varicosity in the legs would necessitate keeping down his activities, and I believe might have some effect

Dr. Harmon (for Plaintiff)—Cross-Exam.
 Dr. Harmon (for Plaintiff)—Re-exam.

on his future. I don't believe it would have nearly as much effect as the condition of his heart, but it would have some bearing on it.

Mr. Cameron: Might I ask one question, my lord?

Q. The condition of the heart and liver wouldn't normally show up on an examination, other than on an autopsy? Would that be so, or wouldn't it? A. It wouldn't. That is, it wouldn't show in an ordinary clinical examination. There were not sufficient changes there.

Mr. Sturdy: My lord, with your lordship's permission, may I very briefly re-examine, so the doctor can go?

The Court: Yes. Something arising out of the cross-examination?

Mr. Sturdy: Yes.

RE-DIRECT EXAMINATION BY MR. STURDY:

Q. The bowels and intestinal tract were perfectly sound, were they?

Mr. Cameron: My friend is on something new. There was no cross-examination on that.

The Court: You brought out the examination of the bowels; I think, Mr. Cameron.

Mr. Cameron: Yes, but let the witness answer the question.

Mr. Sturdy: Q. It was about this operation, that apparently Mr. Nance underwent at one time. Would you say that turned out all right and there was good recovery and all that, as far as you could tell? A. I found there were a few adhesions on the right side of the abdomen, and there had been a re-section of a portion of the colon. The anastomosis between the small bowel and the remaining colon was normally patent. That is, it was wide open and was functioning very well, and I believe that this had no effect on the man's health.

Mr. Sturdy: Thank you.

The Witness: At the time of death.

Mr. Cameron: Q. At the time of the accident? A. At the time of the accident.

The Court: Thank you, doctor.

(Witness aside.)

40 The Court: We will adjourn now until 2:30.

Mr. Fletcher (for Plaintiff)—Exam.-in-chief

(PROCEEDINGS RESUMED AT 2:30 P.M.
PURSUANT TO ADJOURNMENT.)

Mr. Sturdy: My lord, I will call Mr. Fletcher.

RALPH FLETCHER, a witness called on
behalf of the plaintiff, being first duly
sworn, testified as follows:

DIRECT EXAMINATION BY MR. STURDY

Q. Mr. Fletcher, what is your occupation? A. I am a
10 general accountant, and income tax consultant.

Q. Now, just speak a little louder, please, so the jury can
hear you. Where do you practice? A. In the city of Calgary.

Q. What are your qualifications as an accountant? Have
you a degree? A. I have a University degree of Bachelor of
Commerce, and approximately 15 years practical experience.

Q. In bookkeeping and accounting? A. Yes, that is right.

Q. Where is your practice now? A. My practice is in
Calgary.

Q. Actually, you are a Vancouver man, but you have been
20 in Alberta for the past few years? A. Ten years.

Q. Are you specializing in any kind of accountancy now?
A. General accounting and income tax work.

Q. Were you the accountant or bookkeeper for Samuel
Joseph Nance? A. Yes.

Q. Where did Mr. Nance carry on his business? A. In
Irricana, Alberta.

The Court: What is the name of the place? A. Irricana.

Mr. Sturdy: Q. Irricana is a farming town, 80 miles or
so east of Calgary. A. Approximately 40 miles east of Calgary.

30 Q. On the C.P.R.? A. There are two railways run
through there.

Q. It is a farming district? A. It is a farming district.

Q. A fairly prosperous community? A. Yes, it is.

Q. When did you commence to be Mr. Nance's bookkeeper?
A. 1945.

Q. And did you continue to do that work for him until the
time of his death? A. Yes.

Q. Did you do his income tax returns? A. Yes, I did his
income tax returns for 1945 and 1946 and supplied the figures
40 for 1947 and 1948 on which they were compiled.

Q. In 1947 and 1948, the income tax returns were compiled

Mr. Fletcher (for Plaintiff)—Exam.-in-chief

by somebody else? Do you know by whom? A. By the Royal Trust Company of Calgary.

Mr. Sturdy: My lord, it will be brought in evidence later that the Royal Trust Company is the Administrator of Mr. Nance's estate. That is the relevancy, at the present time.

Q. Now, who, of all people, knows, or at any time knew anything at all about Mr. Nance's financial affairs? A. Well, I believe I would. He claimed I possibly knew more than he did
10 about them.

Q. You knew more about his books and financial affairs, than he did himself? A. I knew equally as much, I would say.

Q. Did you set up his bookkeeping system in some way? A. Yes, I did.

Q. What was the way of operating between you and him? A. I had certain records that I had suggested that Mr. Nance should keep, in order that I could prepare a proper statement, and three or four times a year I would bring the books up to date. Mr. Nance maintained those books very accurately.

20 Q. Three or four times a year, what would happen? A. Three or four times a year I would go to Irricana and enter up the books.

The Court: What was his business? A. He was an implement agent.

Mr. Sturdy: Q. What agency did he have? A. The International Harvester Company.

Q. What kind of an agency is that? A. It is an agency for farm implements and motor trucks, which is generally considered one of the top agencies in the field.

30 Q. Did he have any other business but the implement agency? A. He had a garage. He specialized with the I.H.C., with his belief that he could give better service in that respect.

Q. The I.H.C. being what? A. The International Harvester Company.

What was the name of his garage? A. The Irricana Garage.

Q. When did he take on the International Harvester Company's agency? A. In December, 1945, I believe it was.

40 Q. Have you any record of that? A. Yes, I have that here.

Mr. Sturdy: My lord, before filing that exhibit, I suppose I should have the plan marked as Exhibit 1.

The Court: Oh yes, Exhibit 1.

(PLAN MARKED EXHIBIT No. 1)

Mr. Fletcher (for Plaintiff)—Exam.-in-chief

Q. You say he had a garage, Mr. Fletcher, as well? A. Yes. It was a garage and implement agency, although he specialized more in the implement line rather than with motor cars.

Mr. Sturdy: Q. Have you the contracts to show his relationship with the International Harvester Company? A. Yes, there are two contracts (producing) for the two divisions. One is the farm equipment division, and the other the truck division. This was signed in 1945.

10 Mr. Cameron: I might say this wasn't disclosed in the Affidavit of Documents. This is rather embarrassing.

Mr. Sturdy: There was no Affidavit of Documents, by agreement. I disclosed a great deal of detail to my learned friend, and these only came into my possession this morning, when Mr. Fletcher came from Calgary. I met Mr. Fletcher myself for the first time this morning.

The Court: Q. Are these original contracts, or just a general form?

Mr. Sturdy: Q. Would you describe those contracts, Mr. Fletcher, as to what they are, for the time being? A. It is my belief it is a general contract submitted by the International Harvester Company, when they wish to appoint a dealer in any locality.

The Court: Q. But are these Mr. Nance's contracts? A. Yes, sir, they are. They are his records.

Q. Do they bear his signature? A. I am not sure of that. They should do.

Mr. Sturdy: I might say, my lord, I am sorry about this, but I only saw these myself for the first time this morning. I didn't disclose them to my learned friend, because we had no Affidavit of Documents between us at all.

Mr. Cameron: We had your letter, Mr. Sturdy.

Mr. Sturdy: Well, we have operated between us in this way, my lord; I have made a far greater disclosure in the way of answered statements, and so on, and my friend, if he has requested me—I went so far as to go down to my learned friend's and take documents with me and show him them, and it was agreed between us there would be no Affidavit of Documents, but we did exchange letters in which I said we had no other documents, not knowing of these contracts, which, as I say, were produced to me for the first time this morning by Mr. Fletcher, when he came to my office before the Court sat.

The Court: Are they signed?

Mr. Sturdy: They are signed with the signature of S. J. Nance.

Mr. Fletcher (for Plaintiff)—Exam.-in-chief

The Witness: They are signed with the signature of S. J. Nance, which I can identify.

The Court: Are you objecting to them, Mr. Cameron?

Mr. Cameron: Are these all the same, or are they different contracts? A. There are two contracts. One is for the motor trucks and the other is for the farm implement division.

Mr. Sturdy: Well, if my learned friend is taken by surprise, I will leave them for now. I didn't know about them, as I say, 10 myself, until this morning. I don't want to take unfair advantage.

Mr. Cameron: Perhaps you can put them in.

Mr. Sturdy: I don't want to embarrass my friend. I will come back to them later on in this witness's evidence, if you wish.

Q. We will go on. Apart from the question of the contract, for the time being, have you prepared a statement of his assets and liabilities and his income for the period of your being his bookkeeper? A. Yes, I have.

20 Q. Would you produce the statement, please? A. I have that here.

Q. You have seen these. I have also shown these to my learned friend, Mr. Gilmour. What net estate did Mr. Nance own on December 31st, 1948? A. According to the records of the statement of assets and liabilities, his estate would be \$17,152.71.

Q. What were his net earnings for the year 1945? A. For the year 1945, the net profit, as shown by his statement of profit and loss, was \$1,469.57.

30 Q. That is 1945, \$1469.00? A. That is right.

Q. Now, that was the year, was it not, I think you have already stated, that he acquired the agency. A. At the end of that year.

Q. In December? A. Yes.

The dealership? A. Yes, that is correct.

Q. And what net profit did he make in the year 1946? A. In the year 1946, the net profit was \$4,707.30.

Q. Roughly \$4700.00? A. Yes.

Q. That was for 1946? A. Yes.

40 Q. And his net profit for the year 1947? A. His net profit for the year 1947 was \$7,689.40.

Q. And in 1948? A. In 1948, \$9,638.30.

Q. \$9,638.30? A. That is correct.

Q. Now, those figures show an increase each year, commencing from the time he started. What is the explanation of

Mr. Fletcher (for Plaintiff)—Exam.-in-chief

the increase? A. Well, Mr. Nance was considered one of the outstanding implement dealers by the International Harvester Company.

Mr. Cameron: I don't know whether he can say anything about that.

The Court: No.

Mr. Sturdy: Q. Never mind his repute with the International Harvester Company, but what is your explanation of the increase each year in his net earnings? A. It was due to the acquirement of the International Harvester Company dealership, or franchise.

Q. For the Irricana District? A. That is right.

Mr. Sturdy: My lord, if I may, without embarrassing or inconveniencing my friend, I would like to know whether he is willing for me to file the contracts, such as they are. They are only proof that he acquired the agency in December, 1945, and they are contracts signed "S. J. Nance." I can identify the signature, but I don't want to take advantage, because it is an oversight. Are you willing?

Mr. Cameron: Yes.

The Court: All right, then.

Mr. Sturdy: Would you please make them separate exhibits? The farm equipment sales contract and the truck sales contract will be separate exhibits.

The Court: Exhibit 2 will be the equipment sales contract.

(EQUIPMENT CONTRACT MARKED EXHIBIT No. 2)

(MOTOR TRUCK CONTRACT MARKED EXHIBIT No. 3)

Mr. Sturdy: Q. Are you familiar with the signature of Mr. Nance? A. Yes, sir.

Q. Are those documents signed by him? A. Yes.

Q. So much for the past four years, Mr. Fletcher. What do you say as to the future prospects of Mr. Nance in his business at Irricana? A. Well, from the records available, I would say that he had every right to expect a fairly substantial income. Perhaps not as great as the \$9600.00 in 1948, but according to my past experience and conversations with him, I would say between \$6,500.00 and \$7,000.00

Q. Per year, do you mean? A. Yes, that is correct.

Q. You think that would be a fair statement of his prospects? A. I believe so.

Q. By the way, the records that you have produced were

Mr. Fletcher (for Plaintiff)—Exam.-in-chief

compiled by you, were they? A. That is right.

Q. From what material? A. From the various records maintained by Mr. Nance. That is, the invoices, cheques, disbursements and pay sheets.

Q. And this typing was under your direction? A. That is correct.

Mr. Sturdy: May I file these statements of profit and loss, my lord?

10 (STATEMENTS MARKED EXHIBIT No. 4)

Q. And where are the original documents from which those statements or balance sheets were compiled? A. They are here, as well.

Q. If it is a proper question, and I am sure I am only asking it for convenience, there is a pile of four or five boxes outside the Court room door. Are those Mr. Nance's records? A. That is right.

Q. Complete? A. Correct.

Q. Occupying some space and some weight, is that right?
20 A. Yes.

Mr. Cameron: I hope we don't have to look at those.

Mr. Sturdy: I am producing them for my learned friend, if he wishes to question the statements. I think from now on it is his responsibility.

Q. You have spoken of the future of the business of Mr. Nance, if he had continued to operate it. What do you think about its future prospects, now that Mr. Nance is dead? A. It is my personal opinion—

Mr. Cameron: Wait a minute. I don't think that is a very
30 fair question. He is not with the International Harvester people. He might say what he knows of the facts.

Mr. Sturdy: I will lead up to it another way. I think I can lay the groundwork for the question.

Q. You observed the increase in his business over the past four years? A. Yes, that is correct.

Q. You visited his premises, at least three or four times a year? A. Yes.

Q. And were personally acquainted with him? A. That is correct.

Q. You were also in charge of his records? A. That is
40 correct.

Q. Did you know anything about the volume or number of customers with whom he dealt from day to day, or from week

Mr. Fletcher (for Plaintiff)—Exam.-in-chief

to week? A. Oh, I wouldn't say that I knew very much about the number of customers with whom he dealt.

Q. What kind of people were they, so far as you knew them? What occupations? A. Well, they were farmers.

Q. They were farmers? A. Yes.

Q. And their interest, as far as he was concerned, was, as you stated, in buying implements? A. That is correct.

Q. Now, what was the relationship between Mr. Nance
10 and his customers, during his lifetime?

Mr. Cameron: I don't think he can say that. He gets what he can from the books. Mr. Nance speaks for his own relationship.

Mr. Sturdy: I can arrive at it this way:

Q. Have you spent very many hours or days in attendance at the Irricana Garage in the past three or four years? A. Yes.

Q. You have seen customers coming and going? A. That is correct.

Q. And you have, on occasion, engaged in conversation with
20 his customers? A. Yes, I have.

Q. Now that he is dead, who is managing the Irricana Garage? A. Mr. Nance's son.

Q. Yes. What is his name? A. Eldwin.

Q. Yes. How old is Eldwin? Is it E-l-d-w-i-n? A. That is correct.

Q. Do you know how old Eldwin is? A. No, I wouldn't know his age.

Q. If you don't know exactly, it will come out later. Is he young or middle aged? A. No, he is young.

Q. Has Eldwin had any experience at operating the Irricana Garage?
30

Mr. Cameron: He can't speak of any experience of this man. How can he say what experience Eldwin had? He is the accountant.

Mr. Sturdy: I have laid the foundation for that, if your lordship please. The man has been out there and talked to the customers of this man, the people with whom he did business. He knows the relationship that existed between Mr. Nance and his customers. He testified, too, that the son Eldwin proposed
40 to take over the running of the business, and I submit I have laid the foundation for him to testify as to Eldwin's competence and knowledge.

The Court: Who has this agency with the International Harvester? I think that is a fair question.

Mr. Cameron: Yes, I understood him to say Eldwin had

Mr. Fletcher (for Plaintiff)—Exam.-in-chief

the agency.

The Court: He was managing the garage. I believe that is the way he put it, but who has the agency?

The Witness: I believe it is operated by the estate, at the present time.

Mr. Sturdy: Q. It hasn't, as far as you know, been assigned to Eldwin? A. No, it hasn't.

Q. How long have you known Eldwin? A. Oh, approxi-
10 mately one year, I would say.

Q. How many times would you have seen him in that space of a year? A. Oh, perhaps eight.

Q. Eight times? A. Eight or ten times.

Q. And spoken to him personally on those occasions? A. Yes, sir.

Q. Have you made an estimate—don't answer this question until it is ruled on—as to Eldwin's competence to run the business?

Mr. Cameron: I certainly must object to that. Seeing a
20 man eight or ten times—well, I would hate to be judged on my competence in those circumstances.

Mr. Sturdy: It is a matter of the bearing and weight of evidence, rather than the question of admissibility, in direct examination.

Mr. Cameron: It is liable to be very damaging. I don't think it should be admitted at all, in those circumstances.

The Court: No, I would not allow that question. What is Eldwin's age?

Mr. Sturdy: I will establish that, provisionally, if your
30 lordship will allow me to state it. It is 28. I will call his step-mother to give that, in evidence.

Q. There is another son or young man in that home, isn't there? A. That is correct.

Q. Who is he? A. Robert Livingstone.

Q. Now, he is Mrs. Nance's son, by her previous marriage, is that correct? A. That is correct.

Mr. Sturdy: You see the difficulty I am having, my lord, in laying the foundation for the question I am asking this witness. I am calling him now in order to enable him to get back to Cal-
40 gary. I have called him somewhat out of order, but I will have to accept the responsibility for it, of course.

Q. Do you know of any other children of Mr. Nance or Mrs. Nance? A. I believe there is a daughter. I am not acquainted with her.

Q. A daughter of whom? A. Of Mr. Nance, and there is

Mr. Fletcher (for Plaintiff)—Exam.-in-chief

also another step-son.

Q. That is, a son of whom? A. Mrs. Nance.

Q. Did Mr. and Mrs. Nance themselves have any children?

A. No.

Q. Then, it is Mr. Nance's own son—Eldwin, that is—

Mr. Cameron: I suppose he had heard they have no children.

Mr. Sturdy: I beg your pardon?

Mr. Cameron: I suppose he has heard they have no children.

10 Mr. Sturdy: That, too, is another thing I can bring out. If I weren't trying to do this to let Mr. Fletcher go back to Calgary, I would lay the foundation.

Mr. Cameron: I don't want to make useless objections.

On the other hand, I don't want to be prejudiced.

Mr. Sturdy: In the ordinary course I would have called Mrs. Nance before Mr. Fletcher, but Mr. Fletcher has a business he wants to go back to, and I am at the disadvantage of asking him questions without having laid the proper foundation, through Mrs. Nance.

20 Q. Did you know anything of Mr. Nance's intentions, with reference to building? A. He had mentioned it on two or three occasions.

Mr. Cameron: Now, that is the purest kind of hearsay. This man is the bookkeeper and accountant, and not a partner of the deceased. He knows what he was told, and I think that is about as far as it goes.

The Court: A statement made to someone by the deceased is not admissible, I think, Mr. Sturdy.

30 Mr. Sturdy: My lord. I have the authority of *Moert v. Abraham and Johnston National Storage Limited* as to the character of testimony that must be adduced.

Mr. Cameron: Yes, but by competent witnesses.

Mr. Sturdy: I will put it this way, without asking any questions. The case is *Moert v. Abraham and Johnston National Storage, Limited*, a judgment of the Supreme Court of British Columbia found in 60 B.C.R. at page 405. The Honourable Mr. Justice Coady uses the language of another case, in *Re the Royal Trust Company*, which I will cite later:

40 "Pecuniary loss is largely a matter of estimate, founded on probabilities."

My submission, first, is my testimony must be proper and admissible evidence, but when it is admitted it must go to the probabilities. Estimates, even guessing is evidence, as is most evidence on the subject of the expectation of life.

It becomes material to know what Mr. Nance's intentions

Mr. Fletcher (for Plaintiff)—Exam.-in-chief

were, with regard to his future business and his future expenditures, because, they, too, relate to the claimant here. I cannot prove those intentions and those proposed expenditures otherwise than through this man, who has already stated he is competent to give the best evidence of Mr. Nance's finances.

Mr. Cameron: If I may say so, my lord, I don't doubt my friend's submission of the law, but I think it must be based on competent evidence, and as far as the deceased's intentions were
 10 concerned, that is the purest kind of speculation. We can make our estimates, based on the facts. This witness is in a position to say the deceased had so much money, according to the books, We can draw what conclusions we wish from that. He may have spent it in gambling, or he may have built himself a new house, but as to what this witness thought he might have done, I submit is not evidence at all, and it is the facts upon which we have to form our reasonable estimate of the probabilities.

The Court: I do not think that case helps much, Mr. Sturdy.

Mr. Sturdy: What I am trying to introduce, my lord, is a
 20 statement made by Mr. Nance, during his lifetime, as to his intention with regard to his future expenditures and the financial future for himself and his family. I know it is very difficult. I see that it does smack of hearsay, but when we have the problem of deciding how much money, if any, Mr. Nance would have spent on his family, subsequent to his death, we have to go into that and it becomes part of the purpose of this trial, I submit, to determine what he was going to do, and we cannot do it otherwise than stating his intention through a competent witness, and that is the best evidence I consider, and then we
 30 have to leave it to the jury to do what they think has to be done on that evidence. I cannot prove his intention other than through his language, and I submit that language becomes an essential element in this case.

The Court: It seems to me it would be very dangerous to give evidence of a man's intentions, when they could be changed at any time. I do not think I could allow it.

Mr. Sturdy: Very good, my lord.

Q. Were you familiar with the amounts retained by Mr. Nance for his household expenditures—his family expenditures?

40 A. Yes. That would enter into the records I maintained for him.

Q. There was really one set of records? A. Yes.

Q. He was not incorporated? A. No.

Q. He was a private individual, Mr. Nance, carrying on business as the Irricana Garage? A. Yes.

Mr. Fletcher (for Plaintiff)—Exam-in-chief

Q. I take it from what you say his family financing and accounting was part of the business accounting? A. Yes, that is correct.

Q. Did you then become familiar with his family accounting and family books, in the course of your work on the business books? A. Yes. I would see the withdrawals he had taken from the business.

Q. All of which are included in the statements which have
10 been filed as Exhibit 4? A. That is correct.

Q. What is your estimate of the cost to Mr. Nance of the maintenance of Mrs. Nance, his wife, during his lifetime?

The Court: During his lifetime?

Mr. Sturdy: During his lifetime. The cost of the maintenance of Mrs. Nance by Mr. Nance, during his lifetime. I am not speaking of the future, but in the past.

The Court: That is, during the time he was in business with the agency.

Mr. Sturdy: Yes.

20 Mr. Cameron: Would you repeat that question, please?

Mr. Sturdy: Q. What is your estimate of the cost to Mr. Nance of the maintenance of Mrs. Nance, during his lifetime, say, on a yearly basis?

Mr. Cameron: I don't think he can estimate that. If he can read it off the books, he could give it.

Mr. Sturdy: He could read it off the books to which my learned friend refers, but it would be a tremendous task.

The Court: You said during his lifetime.

Mr. Sturdy: While he was living. I don't mean during
30 his entire lifetime, but during the period he and Mrs. Nance lived together, while he was living.

The Court: Does the witness know when they were married?

Mr. Sturdy: Q. Do you know, Mr. Fletcher? A. Not positively. I believe it was 1944.

The Court. Q. You acted as his accountant from 1945. A. That is correct, your Honour.

The Court: Well, take it from 1945, Mr. Sturdy.

Mr. Sturdy: Well, yes. Thank you, my lord. I think this
40 is admissible evidence, the certificate of marriage of Mr. and Mrs. Nance, over the seal of the Department of Public Health for the province of Alberta, purporting to be signed by the Marriage Commissioner for the province of Alberta.

The Court: You are not disputing the date of the marriage, I suppose?

Mr. Fletcher (for Plaintiff)—Exam.-in-chief

Mr. Cameron: No, my lord.

Mr. Sturdy: They were married on August 31st, 1944. That will be Exhibit 5. According to Exhibit 5, Mr. and Mrs. Nance were married on August 31st, 1944.

(MARRIAGE CERTIFICATE MARKED EXHIBIT No. 5)

Mr. Sturdy: Q. What do you estimate it cost Mr. Nance to maintain Mrs. Nance, per annum, during their married life together?

10 The Court: You are basing this on his records, showing his withdrawals from the business, is that correct? A. That is correct. It would be very difficult to finely divide it and say so much was Mrs. Nance's and so much was Mr. Nance's.

Mr. Cameron: Mrs. Nance will produce that certificate?

Mr. Sturdy: Yes.

The Court: Q. You have no record of how much it cost to maintain Mrs. Nance or how much to maintain the two of them? A. No. That would be very difficult to obtain, because the grocery monies would be used by each member of the family.

20 An accurate breakdown would be practically impossible.

Q. What you are giving us are his withdrawals that he made from the business, presumably for living expenses for himself and his family from 1944 on, or from 1945 on? A. 1945, it would be, sir.

The Court: All right.

Mr. Sturdy: Q. What is the figure? A. Well, I will have to refer to my statements here.

Q. Exhibit 4, is that what you mean? A. No, I have the information here, as well.

30 Mr. Cameron: Q. Perhaps you had better get it from Exhibit 4, unless you want me to see that document. A. All right, that is fine.

Mr. Sturdy: Q. I am showing you now Exhibit 4. A. Well, it would vary from 1945, when he didn't have the agency, from approximately \$2,000.00 to when the high was reached in 1947 of \$3,465.00.

The Court: Q. \$2,000.00 in 1945? A. Yes, and \$3,465.00 in 1947.

Mr. Sturdy: Q. You said \$2,000.00 in 1945? A. \$2,000.00

40 in 1945. Q. And \$3,465 in 1947? A. Yes.

Q. Now, what are those figures? A. Those are the drawings from the business, by Mr. Nance.

Mr. Fletcher (for Plaintiff)—Exam.-in-chief

Q. And how would those withdrawals be expended by him?

The Court: Q. Do you know that?

Mr. Sturdy: Q. Do you know how they would be spent by him? A. Partially.

Q. To the extent of your knowledge, then. A. Well, I do know that the monthly grocery account was paid by these withdrawals. Mr. Nance paid it by cheque, each month.

Mr. Cameron: Q. Do you know who ate most of the groceries? A. No, I have no idea.

Mr. Sturdy: Q. How many people lived in the same establishment there? A. Three.

Q. Mr. Nance and Mrs. Nance and Robert Livingstone? A. Yes.

Q. Eldwin didn't live with him, is that correct? A. That is correct.

Q. And these figures of \$2,000.00 and \$3,465.00 represent his expenditures on what? I shouldn't tell you, you tell us. A. On clothing, food and in entertainment.

20 Q. Of whom? A. Mr. and Mrs. Nance.

Q. How long had you known Mr. Nance, personally? I mean otherwise than as his accountant. A. Oh, I think I first became acquainted with Mr. Nance around 1942.

Q. Yes. Do you know anything about his physical health and activity during the past four years, while you have been associated with him at Irricana? A. Well, any time I had been up there, he was always there. I have never known him to be away. I have never known him to complain of anything.

30 Q. Was he an active man physically? I mean, subject to any illness he might have. A. I would say normal.

Q. Did he work long hours? A. He put in pretty good hours in the garage. It is a country garage, and you pretty well have to.

Q. A country garage, I take it, calls for unusual hours, or irregular hours, is that it? A. Well, farmers have a habit of coming in most any time, up to say 10 o'clock at night, and proprietors are expected to be there.

Q. And within your experience, has he been there regularly, as required by them? A. Yes.

40 Q. Let me have Exhibit 4, please. Thank you. That has to be left with the Court.

Mr. Sturdy: Your witness.

Mr. Fletcher (for Plaintiff)—Cross-Exam.

CROSS-EXAMINATION OF RALPH FLETCHER

Mr. Cameron: Q. Just on the last thing you were saying, if you were running that business in Irracana, you would have to be around at ten o'clock at night to take care of business, is that what you say? A. Not necessarily to get business, but you have to be available.

Q. What time in the morning would you start? A. Oh, between seven and eight o'clock.

10 Q. Now, perhaps we had better just check this. This statement you just showed us, I want to be sure I have it correct. In 1945, you say the net profits of the business were \$1,469.57? A. May I refer to the statement, please?

Q. I think I am using your own figures. That was for 1945.

The Court: \$1469.00.

Mr. Sturdy: \$1469.57.

Mr. Cameron: Q. Yes, \$1469.57. A. That is correct.

20 Q. And in the same year, his personal drawings were \$1966.87? A. That is correct.

Q. So, that means the business operated at a loss that year, is that right? A. Not actually at a loss. That would mean he would deplete his assets.

Q. He had to cut into his capital, in order to get by that year? A. That is correct.

Q. Normally, one says that is a loss. You don't make a profit, is that right? A. The Income Tax authorities don't look at it that way.

30 Q. By the way, is Income Tax shown here? I don't see it anywhere.

Mr. Sturdy: Where is that?

Mr. Cameron: On this statement.

Mr. Sturdy: My lord, I can file an inventory of his assets and liabilities in the form of affidavits S.P. 1 and S.P. 14, used by the Royal Trust Company in the letters of administration to Mr. Nance's estate, which include these details of debts, including income tax.

Mr. Cameron: We can get that later on. In the meantime I am asking if Mr. Fletcher can say if the income tax is shown 40 in here.

The Witness: In this Exhibit (indicating)?

Q. Yes. A. No. These are merely the statements of his assets and liabilities and profit and loss for the years.

Q. How would he pay the income tax? He would have to

Mr. Fletcher (for Plaintiff)—Cross-Exam.

pay that out of his personal drawings, would he? A. Yes, he would.

Q. Now then,— A. The income tax, of course, hasn't been paid. That is why the drawings were so low.

Q. They have not been paid since 1945? A. No, they have not.

Q. Oh, they haven't. Then, to show a true picture, you should have marked up some income tax against the withdrawals of \$1900.00? A. Well, in the year 1945, of course his tax wasn't very much.

Q. No, I guess it wouldn't be on a loss. Come to 1946. The net profit was \$4,707.30, I think you said, and he drew that year \$2351.54? A. Yes, that is correct.

Q. Can you refer to anything? A. I really should have the exhibit, I guess.

Q. Yes, you can have that back. In 1947, then, things were going better. He made a profit of \$4,707.30—net profits. A. Did you say 1947?

20 Q. I am sorry—1946. A. That is correct.

Q. And his personal drawings that year were the ones you told us about, that he spent on himself and his family, and they were \$2,351.54? A. That is correct, and his tax wasn't paid in that year, I don't believe.

Q. I don't see the tax shown here. A. No. it wasn't paid.

Q. He probably had some tax to pay that year? A. Considerable income tax.

Q. That would come out of his personal drawings? A. Had it been paid, yes.

30 Q. Yes. Now, the next year \$7,689.40, net profit? A. Yes.

Q. That is, again, without income tax? A. Yes.

Q. And again there would be considerable income tax? A. Yes.

Q. His drawings for that period were \$3455.00? A. That is correct.

Q. In 1948, the last year for which you have a record, that was a big year, \$9,638.00, profit, is that correct? A. That is correct.

40 Q. And in that year he drew, for himself and his family, \$2749.00? A. That is correct.

Q. So, it appears that Mr. Nance was certainly a prudent man. In spite of the boom years, his own drawings for himself and family were reasonable? A. Well, he was attempting to build up the business of the International Harvester Company, and they expected him to maintain an adequate stock. Accord-

Mr. Fletcher (for Plaintiff)—Cross-Exam.

ingly, he didn't have very much cash available at the time.

Q. That is right, so his drawings were low all during those years? A. They were moderate.

Q. They ran from \$2,000.00, to a little better. In 1948 he drew considerably less than in 1947, though the profits were up? A. Yes.

Q. Where did those profits go? He called them back into the business, I think you said. A. Yes. He was building the
10 business.

Q. So the net estate, or at least the net worth of the business, is the net worth of the business the previous year, plus the profit, less his personal drawings? A. That is right.

Q. All earnings, apart from drawings, are still there in the business? A. That is correct.

Q. Did you know Mr. Nance—you said you knew him in 1942? A. I was acquainted with him from 1942.

Q. That was in Calgary, was it? A. In Irricana.

Q. Oh, in Irricana? I understand he left Irricana in about
20 1921. Was he in business—do you know whether he was in this business in Irricana before? I was told it was started in 1925? A. He had been there for some years. Of course, my acquaintance wasn't an acquaintance—I was travelling in southern Alberta, and in the course of my calls I had called on Mr. Nance.

Q. You knew he was there, but you didn't know him too well? A. That is correct.

Q. I am told that when things got pretty tough in the depression, he left in 1931 and came to Calgary and took a job
30 there for a few years, or for a year, anyway—up to 1945. Do you know about that? A. No. It was my understanding he was in Irricana in 1945, operating his business.

Q. Was there a period before that when he was not in Irricana? A. Not to my knowledge.

Q. How big a town is Irricana? A. Oh, the town itself isn't large. The area which it serves is quite a good size.

Q. What is the population, as you say? A. Oh, for Irricana itself it is quite difficult to say. I would say the population itself would be approximately 125, something like that.

Q. Now you spoke of him taking the agency in 1945. Had
40 he had it previous to that? A. Yes, he had.

Q. He lost it for a period, did he? A. Apparently, yes.

Q. And got it back again in 1945? A. That is correct.

Q. Now, you spoke of the future. First of all, let us look at the profits for these years. Have you any idea what his

Mr. Fletcher (for Plaintiff)—Cross-Exam.

profits were in previous years? We have only the past four years. A. I think, from my conversation with Mr. Nance,—

Q. What he told you he was making?

Mr. Sturdy: I submit at this stage the witness should be allowed to go on and complete his answer to the question.

The Court: He said he has no information, except conversations.

Mr. Cameron: Yes. That is a fair answer. He knows
10 nothing about it. I am entitled to find out, if he has any records.

Mr. Sturdy: May I respectfully suggest, my lord, that the conversation is now a proper subject of evidence, by my learned friend's question.

Mr. Cameron: I never heard the rule overcome by smart practice like that, with all due respect to my friend.

The Court: I do not think Mr. Cameron is required to do that.

Mr. Sturdy: Very good, my lord.

Mr. Cameron: Q. Do you know anything about the Inter-
20 national Harvester business in farm machinery generally? Perhaps I had better be clear. I think you said you had travelled about and you worked out of Calgary and went down there on your accounting work, is that correct? A. That is correct.

Q. Under those circumstances you have learned something of the demand and supply and business for farm machinery? A. That is correct.

Q. Now, isn't it true that during the war farm machinery, although there was a priority on some of it, was very hard to get? A. It was hard to get. It still is.

30 Q. A lot of farmers had to make do with what machinery they had, for a long time? The same thing applies to farm machinery as applied to automobiles. During the war you had a terrible time trying to get them, and then, as the war ended, and the market built up, there were more available; isn't that right? A. Yes. Possibly not as severe as with automobiles. They wished to keep the farmers farming during the war, as much as possible.

Q. The Massey-Harris factory, in fact, was making bullets during the war? A. Yes. I believe most of the factories were.

40 Q. These four years, from 1945 to the present time, would represent an unusual demand for farm machinery, isn't that so? A. They would represent a very good demand.

Q. I suppose you can remember the time when farm machinery agencies over the prairie wouldn't make \$10,000.00 between them? A. Not with an I.H.C. dealership.

Q. How long have you been on the prairies? A. Ten

Mr. Fletcher (for Plaintiff)—Cross-Exam.

years.

Q. You weren't there during what my friend Mr. Gilmour calls the hungry thirties? A. No.

Q. You can't give us any more than what we already know about it. The prairie business depends on wheat pretty well, doesn't it? A. Wheat and mixed farming.

Q. Farmers are in a notoriously volatile business. It goes up and down. A. They feel it is more stable at the present time.

10 Q. Oh yes. Now, the farmers are very prosperous, isn't that correct? A. Yes.

Q. But they haven't always been? A. Possibly not.

Q. In the future they hope to be, but it is pretty hard to say about the future, isn't it? A. Oh yes.

Q. Now, Mr. Sturdy asked you about Mr. Nance's health in the last four years, and you said he was able to do a good job of work. I don't know why he said four years, you have known him for longer than that. Has he ever been ill that you know of? A. I believe prior to that time, before I was doing his
20 accounting, that he was away for a short period of time, due to illness.

Q. What was that for—operation? A. I don't know. I have no idea.

Q. You don't know. So you didn't know him too well, apart from doing his bookkeeping? A. Not until I became his accountant.

Q. Do you know anything about the estate now, and who has the business? A. Eldwin, who is a son of Mr. Nance.

Q. He has the agency, but who owns the business? A. It
30 is my knowledge that the estate is not yet settled, and as such it is operated by the estate, under the jurisdiction of the Royal Trust Company in Calgary.

Q. Well, I don't know whether this is a fair question—

Mr. Sturdy: Go ahead, it is all right.

Mr. Cameron: Q. —but what I wanted to know is who gets the profits out of the business now? Would you know that?

Mr. Sturdy: We have no objection at all. We have no secrets about the estate at all. A. I don't know whether there
40 are going to be any or not.

Mr. Cameron: Q. What happened to the \$20,000.00? A. Well, that was the point that I have been making with the Royal Trust Company, that Eldwin hasn't had the experience in that business.

Q. Have the International Harvester people been making

Mr. Fletcher (for Plaintiff)—Cross-Exam.

that statement? A. I haven't spoken to them about it. They won't know until one year has been completed, and they ask for a financial statement.

Q. My information is the business is doing very well. Have you seen the books in the past half year? A. Yes. I have them in my office, in Calgary.

Q. How is it going? A. Not very well.

Q. What? Are you sure of that? A. Yes, I am positive.

10 Q. My information is the indication is that this year it will be better than in 1948? A. I don't know the source of your information, but according to my records, that is not the case.

Q. Who do you say owns the business now? It would be Mrs. Nance, and the boys between them? A. It is administered by the Royal Trust Company, and operated by the estate.

Q. I don't want to ask you about the beneficiaries. We will get that from someone else.

Mr. Sturdy: Go ahead.

Mr. Cameron: Q. Perhaps you can give us a plain answer.
20 Is it true, or not, that Mrs. Nance and Mr. Eldwin Nance, the son, will inherit this business, such as it is? A. That is rather a legal problem, and I don't care to answer it.

Mr. Sturdy: I propose to establish the point, my lord.

Mr. Cameron: Q. Did you prepare the first estimate, or at least any estimate, for the Royal Trust of the value of the estate? A. The Royal Trust Company have apparently prepared an estimate. I was speaking on the 'phone with their representative, in Calgary. Whether he used my figures, or not, I don't know.

30 Q. Do you know what your figures were? I was told the original estimate was \$32,000.00, including real estate? A. I am sure I don't have any information, in connection with that.

Q. I am asking you what your figures were. You don't remember them? A. Not offhand, because I hadn't completed the records at that time, and I think we were talking more or less in general terms at the time.

Q. Have you had any experience in the farm machinery business yourself? Are you a salesman? A. I have had a little bit of experience.

40 Q. Have you ever done any selling? A. I have done considerable selling of various things.

Q. What have you been selling? A. Oh, I have often assisted. As a matter of fact, in the adjacent town, it also has an I.H.C. dealership. These people purchased the business, and they had no experience whatsoever. As a matter of fact, they

Mr. Fletcher (for Plaintiff)—Cross-Exam.
Mr. Fletcher (for Plaintiff)—Re-exam.

were farmers from Saskatchewan.

Q. You helped them out? A. I aided them.

Q. When were you last in Irricana?

The Court: "When were you"—what?

Mr. Cameron: Q. When were you last in Irricana? A. Oh, I was there roughly two weeks ago.

Q. How many times have you been there, since Mr. Nance's
10 death? A. Oh, three or four, something like that.

Mr. Cameron: All right, thanks very much.

RE-EXAMINATION BY MR. STURDY

Q. Arising out of the cross-examination, Mr. Fletcher, the village of Irricana have a population of about 125, but is there a business district—you know, a trading or shopping district around the village itself? A. I am afraid I don't follow you there.

Q. You said the village of Irricana has about 125 people.
A. That is correct, yes.

Q. Are there more people outside of the village who do
20 their trading and shopping in the village? A. Oh, many more.

Q. Many more than 125? A. Oh, I would say so.

Q. It is like any farming community. It has a central point, and for miles in all directions you have the farming population. A. That is correct.

Q. You gave it as your opinion, just now, that Eldwin hasn't had the experience to run the business. Was that your opinion, or whose? A. That is my opinion.

Q. And is it for that reason the business is not going well now? A. That is my opinion.

30 Mr. Cameron: He didn't say what was the reason. He said, as far as his records show, it wasn't going well now.

Mr. Sturdy: Q. All right, as far as the records show, it wasn't going well now, is that right? A. That is right.

Q. Why? A. Because I feel that Eldwin—

Mr. Cameron: He said that now. My friend shouldn't do that.

Mr. Sturdy: All right. That is all, Mr. Fletcher.

(Witness aside.)

40 The Court: Mr. Foreman and gentlemen, I did not tell you I would accept questions from you, if you wish to ask questions of any witness. I would appreciate it if you put them through me, because I have to rule on their admissibility, some times. Would you like to ask this witness any questions? All right, we will recess for five minutes.

Danny Roth (for Plaintiff)—Exam.in-chief

(PROCEEDINGS RESUMED AFTER SHORT RECESS)

Mr. Sturdy: My lord, with your kind permission, before I call the next witness, it might be appropriate at this time to read the Alberta Act regarding the Intestacy Section. It would link in with the evidence of the last witness. My learned friend agreed your lordship may take judicial notice of the other Statutes in Alberta and this province.

The Court: There was no will?

10 Mr. Sturdy: There was no will. I will file later on the Letters of Administration, through Mrs. Nance. In Alberta, the Act reads (reading.)

In short, my lord, we agree among counsel that the Alberta law of intestacy succession, as far as it is material to this case, is the same as our own, that the widow gets one-third and the children, of whom Mr. Nance had two, get two-thirds. The step-children do not share. I think that is our common understanding as to the law of Alberta. Mr. Gilmour and I have agreed on it.

20 I would like to add a word of apology, my lord. I am calling these witnesses out of sequence but it is more or less inevitable. The jury has not yet got the story in sequence of what happened at this accident, and the reason is that it still has to come out from the plaintiff. Some of these witnesses have had to come from out of town, particularly the last witness, Mr. Fletcher, who has to return to Calgary as soon as possible.

So, with your lordship's permission, I would like to call the next witness now, because he wants to go back to a logging camp.

30 DANNY ROTH a witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. STURDY:

Q. What is your occupation, Mr. Roth? What do you do?

A. Logger.

Q. And where are you working? A. At Hillcrest.

Q. The Hillcrest Logging Company? A. Yes.

Q. Near Lake Cowichan, on Vancouver Island? A. Yes, that is right.

40 Q. Were you in Vancouver on January 17th, 1949? A. Yes.

Danny Roth (for Plaintiff)—Exam.in-chief

Q. Were you at the corner of Gladstone Street and Kingsway, just before midnight on that day? A. Yes.

Q. Did you see an accident? A. Yes, I saw it.

Q. Tell his lordship and the jury what happened, where you were and what all happened. A. I was standing on the east side of Gladstone, waiting for a town streetcar. I saw a man and a woman crossing.

The Court: Q. Just a minute, please. You were waiting
10 for a streetcar, to go to Vancouver? A. Yes.

Q. You were at the east side of Gladstone? A. Yes, waiting for a streetcar.

Q. You mean, you were at the corner? A. Yes, at the mail box that was there.

Mr. Sturdy: Q. What side of Kingsway were you on? A. This side, (indicating).

Q. The east side of Gladstone? A. The east side of Gladstone.

Q. And on which side of Kingsway? A. It was in front
20 of me.

Which side of Kingsway? Which direction? A. East.

Q. East of Gladstone. A. Yes.

Q. Whereabouts on Kingsway? A. West or east?

Q. No, north or south. A. North or south?

Q. Which were you? Which corner? A. The east corner.

Q. The east corner, east of Gladstone? A. Yes.

Q. Kingsway runs the other way. A. That is right.

Q. Where were you, on Kingsway? A. I was on the east
side.

Q. No, Kingsway hasn't any east side. Kingsway runs east
30 and west and Gladstone north and south. A. I was on the east side.

Q. You were on the east side of the intersection? A. Yes. I was waiting for a streetcar.

Q. You were waiting for a streetcar to go down town. May I have my friend's permission to ask him?

Mr. Cameron: Oh, yes.

Mr. Sturdy: Q. Were you on the north side of Kingsway?
A. North, I guess it would be.

Q. That is fine. Now we are located. That is where you
40 were standing, waiting for a streetcar? A. Yes.

Q. Go on and tell all that happened. Mr. and Mrs. Nance came towards you, did they? A. Yes, they passed Gladstone, and come to me.

The Court: Q. They crossed Gladstone? A. Yes.

Danny Roth (for Plaintiff)—Exam.in-chief

Q. Yes? A. Then I look to the right and I saw about 8 feet from me they started crossing Kingsway, to the other side.

Q. I am sorry, I did not hear that. A. When I looked to the right I figure he go straight ahead on the sidewalk, but I turn around and he started walking on Kingsway.

Q. They crossed first towards you. They were walking in an easterly direction, were they? A. Yes.

Q. They got to the northeast corner? A. They got to the northeast corner, and started to cross.

Q. Then they started to cross what—cross Kingsway? A. Cross Kingsway.

Mr. Sturdy: Q. Both together, Mr. Roth? A. Both together.

Q. A man and woman? A. Yes.

Q. A big man? A. He was a pretty heavy man, all right.

Q. Tell what happened, as they went across Kingsway?

A. They went across Kingsway, just on the devil strip between the tracks.

Q. They came to the devil strip, between the tracks? A. Yes, and the car came up and stopped.

The Court: Q. Just a minute. A car came, going in what direction? A. South—north.

Mr. Sturdy: Q. Was the car going towards New Westminster? A. Yes.

Q. East? A. East.

The Court: Q. The car came, going east, then it stopped? A. Then it stopped.

Q. Where did it stop? A. Down Kingsway, at the corner.

The Court: You go ahead, Mr. Sturdy.

Mr. Sturdy: Q. Where did the streetcar stop? At which corner, Mr. Roth? A. At the corner.

Q. Was it the southwest corner? Yes, it was supposed to stop, before crossing Gladstone.

Q. Before crossing Gladstone, it stopped? A. Yes.

Q. When the streetcar stopped, where were Mr. and Mrs. Nance? A. They were at the devil strip.

Q. Did Mr. and Mrs. Nance keep on going? A. Keep on going.

Q. Did the streetcar start up? A. The streetcar start up between the third and fourth rail.

Q. Mr. and Mrs. Nance were between the third and fourth rail? A. Yes.

Q. What happened then? A. I saw the streetcar pull

Danny Roth (for Plaintiff)—Exam.in-chief

up, and I figured they was clear, but when the streetcar passed I saw both lying there.

The Court: Q. Just a minute. Is this correct; when the streetcar started up, Mr. and Mrs. Nance were on the devil strip? A. No, when it stop.

Q. When it stopped, they were on the devil strip? A. Yes.

Q. Then what happened? A. Then the car pulled out as
10 the man and woman were between the third and fourth rail.

Q. That was when it started to go? A. Yes.

Q. Yes. Just a minute. Yes?

A. Then I saw the streetcar pass. I was figuring they were clear, but when the streetcar was past I saw both laying.

Q. What did you see when the car passed? A. Both laying.

Q. Both lying on the ground? A. Both lying on the ground, yes.

Mr. Sturdy: Q. Mr. Roth, did you see where Mr. and Mrs.
20 Nance walked? How did they walk across Kingsway, left or right, or straight, or how? A. Right from my side on Kingsway, on the right side.

Q. On the right side of you? A. Yes.

Q. Did Mr. and Mrs. Nance pass to your left, or to the east? A. No.

Q. From you? A. No.

Q. Did they keep to your right? A. They kept to my right.

Q. That is, west from you? A. I don't know whether it
30 is west.

Q. Well, it was right? A. My right side, yes.

Q. As you were looking at them? A. Yes.

Q. They didn't go east? A. No. The direction wasn't on the left. It was always to the right side.

Q. And they didn't cross over to your left side? A. No, I don't think so, no.

Q. All right. Did you go and help anybody at all? A. Yes. I was right close if the car came down where I was supposed to go, and I went down and there were quite a few people.

40 Q. You took a streetcar down town? A. Yes.

Q. You first gave your name to the police? A. No, to the man on the streetcar.

Q. You gave your name to the streetcar driver? A. Yes.

Q. It was a one-man streetcar? A. Yes.

Q. Now, when Mr. and Mrs. Nance started to cross Kings-

Danny Roth (for Plaintiff)—Exam.in-chief
Mr. Roth (for Plaintiff)—Cross-exam.

way—when they started to go across Kingsway, was there any streetcar? A. No. Everything was quiet and clear and everything. No traffic around.

Q. Did you hear any bell, or gong of the streetcar? A. No.

Q. What part, if you know, of the streetcar did you see hit Mr. Nance or Mrs. Nance? A. No. I was figuring they were clear on the right side of the streetcar.

10 Q. You thought they had made it, and got across? A. Yes.

Q. But they didn't, because you saw them lying there. A. Yes.

Q. Do you know what part of the streetcar hit them? A. The outside—the right side.

Q. The front or back? A. The front outside.

Q. The front right side? A. The front right side corner.

Q. You thought they were going to get safely across? A. Yes, that is what I was thinking.

20 Q. And were the two people lying on the road when the police came? A. No. I go out before the police come.

Q. You left before the police came? A. Yes.

Mr. Sturdy: Your witness.

CROSS-EXAMINATION BY MR. CAMERON:

Q. Now, Mr. Roth, you were waiting for the streetcar going to Vancouver? A. Yes.

Q. And Mr. and Mrs. Nance came along, and started to cross the street. Now, had you seen the streetcar then? A. No, it wasn't there at that time.

30 Q. Now, do you remember giving evidence at the Coroner's inquest about this? At that time, were you asked this question, reading from page 53?

The Court: I suppose I have not got that, have I?

Mr. Cameron: No, my lord, About halfway down the page.

“Q: Do you think they saw the streetcar? A. I couldn't say.

“You couldn't say whether they saw the streetcar—where was the streetcar when they were doing this? A. It was pretty near, it was quite a bit across the centre of the road.

40 “Q. Beyond the centre of Gladstone? A. No, it was still standing at that time.

“Q. It was still standing when they started to cross?

Mr. Roth (for Plaintiff)—Cross-exam.

A. Yes.”

Q. Were you asked those questions, and did you give those answers?

Mr. Sturdy: Read on. Excuse me, I would like my friend to read on the rest of that page.

Mr. Cameron: It starts in about the streets were slippery.

Mr. Sturdy: I will find it later.

Mr. Cameron: I only wanted to ask that question: Q.
10 What is your answer? Is that what you said before? A. It was more clear, I say now.

The Court: Q. More what? A. More clear. It is clear, as to what I say.

The Court: Would you please read me the last answer of the witness, please, Mr. Reporter.

(Answer read by Reporter.)

Q. You mean you remember better now? A. Yes. It was at that time clear.

Mr. Cameron: Q. You mean, you have thought it over
20 since, and talked with someone about it, and that is what you think in your mind, is that right? A. No.

Q. Have you talked to anybody about it? A. No, I don't talk.

Q. Didn't you talk to Mr. Sturdy about it? A. We don't talk about that.

Q. Oh, come, come.

Mr. Sturdy: Does he understand it?

Q. You talked to me about it. A. Yes, I talked to you about it.

30 Mr. Sturdy: He doesn't know my name.

Mr. Cameron: Q. Did you also talk to a man from the B.C. Electric, shortly after the accident? A. Yes.

Q. And do you remember what you said to him?

Mr. Sturdy: Just a moment now. Let's understand what the witness is being confronted with.

Mr. Cameron: I am going to ask him.

Mr. Sturdy: If he is going to cross-examine him on the statement reduced to writing, it should be produced.

Mr. Cameron: I am asking him what he said.

40 Mr. Sturdy: If he is to be cross-examined on a written statement, let us have it.

Mr. Cameron: I have nothing in a written statement.

Q. I am told you said they were just approaching the west-bound rails when the car started up, is that right? A. I don't remember.

Mr. Roth (for Plaintiff)—Cross-exam.

Q. You don't remember, all right. How were they going across? Were they going steadily, or did they stop? A. Steady.

Q. Did you actually see them hit? A. No.

Q. In other words, they had gone so far when the car was past them, and they were still standing at the time the car went past, is that right? A. That is the way it looked to me. I didn't watch exactly.

10 Q. You were not watching carefully? A. I beg your pardon?

Q. Did you say you were not watching carefully? A. I saw it, but I thought they were clear.

Q. You thought they made it? A. I thought they made it.

Q. When the streetcar went past, they were still standing were they? A. No, they were laying.

Q. After it went past? A. Yes.

Q. When the front of the streetcar went past them, were they upright? A. They were standing.

20 Q. And when the streetcar cleared, you saw them on the ground? A. Yes.

Q. They were pretty close together? You said they were close. Were they looking to see whether the streetcar was coming? A. I beg your pardon?

Q. Could you see whether Mr. and Mrs. Nance were looking? A. No, I couldn't say that. I don't know.

Q. You don't know whether they were looking or not? A. No, I don't.

30 Q. If you had been there, wouldn't you have waited for that streetcar? If you had been in the middle of the road, or wherever they were, and saw a streetcar start up, wouldn't you wait to let it go clear? A. Well, I guess so, if I saw it.

Q. If you saw it, you would wait? A. If I saw it I would wait, or walk quick.

The Court: His answer was he would have waited or walked quick.

Mr. Cameron: Q. If you had seen it. I was told they actually weren't going straight across, towards the sidewalk, but heading a bit at an angle, a bit easterly? A. No, they was 40 pretty straight.

Q. When you were speaking to a representative acting for Mr. Stephens, or the B.C. Electric, I understand you said they seemed to be going more or less straight across, but possibly going a bit to the east. A. But they didn't pass my side.

Q. They were waiting for a streetcar coming from the

Mr. Roth (for Plaintiff)—Cross-exam.
Mr. Roth (for Plaintiff)—Re-exam.

cast? A. Yes.

Q. They went past you? The corner was on your right, wasn't it? A. Yes, the corner was on my right.

Q. They would leave the corner and wouldn't have any reason to go past you. Just answer me, whether or not you said that possibly they were angling a bit to the east? A. No.

10 Q. You didn't say that? A. I might have, I don't know.
Q. You don't remember?

The Court: If you intend to contradict him by another witness, you would have to put it more specifically. Who was the conversation with, and where and when?

Mr. Cameron: I think I am satisfied with his answer. He said "I don't remember."

Mr. Sturdy: That wasn't his answer. He said they didn't cross to the left, or to the east, but went on a straight line.

10 Mr. Cameron: I will put the question to you again: Q. I understand when you were talking to the representative of the B.C. Electric, this was right after the accident, the next day, in fact,—do you remember any such conversation? A. Yes, I remember it.

Q. —you said to him, so I am informed, that they walked more or less straight across, but you did feel they were angling a bit to the east, or a bit to the left? A. They might, but they didn't pass my side.

I didn't ask you if they past your side. You said they might have angled a bit. A. Yes.

Mr. Cameron: All right, thank you.

30 RE-EXAMINATION BY MR. STURDY:

Mr. Sturdy: Due to the language difficulty here, my lord, I think a little latitude might be allowed me, because I think he has made two inconsistent statements for the one intended.

Q. How far were you from the corner—the curb corner, Mr. Roth, when you were standing there? A. Oh, I don't know how far. I stood in the proper place, waiting for a street-car.

Q. You were standing where—west of the westbound street-car? A. Yes.

40 Q. As you stood there, Mr. and Mrs. Nance didn't walk to your left, or to the east of you, is that correct? A. No, it was always on my right side.

Q. One other point that arises out of cross-examination.

Mr. Roth (for Plaintiff)—Re-exam.
Mr. Roth (for Plaintiff)—Re/Cross Exam.

You thought they had made it? You thought they had got across safely? A. Yes.

Q. The last time you saw them, they were standing up? A. In front of the streetcar, yes.

Q. Then the streetcar went by, is that it? A. Yes.

Q. When you saw them again, they were lying? A. Yes.

10 Q. But they were not standing nearer to you than the streetcar, when the streetcar went by? They were not between you and the streetcar, were they? A. I don't understand that.

Q. When the streetcar went past you, eastbound, where were Mr. and Mrs. Nance? A. They were right in front of me.

Q. Yes, but on the rails. Where were they on the rails? A. When they were walking?

Q. Yes. A. They were between the third and fourth rail.

Q. They were between the third and fourth rail? A. Yes.

Q. Where was the streetcar then? A. It just pulled out.

20 Q. It just pulled out. Now, the streetcar approached them and they kept on walking? A. Yes.

Q. When the streetcar passed you, do you know where Mr. and Mrs. Nance were—when the streetcar went by you? A. I didn't see them at that time. The streetcar covered them up.

Q. The streetcar covered them up. It is only a language trouble, I submit, my lord.

Mr. Cameron: May I ask one question, my lord?

RE/CROSS EXAMINATION BY MR. CAMERON

30 Q. Was there any obstruction in the way? Was there any reason why the Nances couldn't have seen the streetcar, if they had looked?

Mr. Sturdy: What is the question again?

Mr. Cameron: Q. Was there anything in the way to stop the Nances from seeing the streetcar, if they had looked? A. I didn't see anything.

Q. Did you see anything there? A. I didn't see anything.

You didn't see anything, except the nose of the streetcar?

A. The nose of the streetcar.

Mr. Cameron: All right.

40 The Court: Q. Now, how were they walking, Mr. Roth? Together or apart? A. Together, slowly.

Q. They were walking slowly together? A. They were walking slowly together. It was slippery.

Mr. Roth (for Plaintiff)—Re/Cross Exam.
Mrs. Nance (Plaintiff)—Exam.-in-chief

The Court: Have the jury any questions?

The Foreman: I see there is a mail box there. Was the witness near the mail box?

The Court: Q. Do you remember a mail box on the corner, near where you were waiting? A. Yes.

Q. How far away would you be from the mail box? A. There was all snow around. There was only one place to stand.
10 I stood right next to the box.

Q. You say there was all snow around the mail box? A. Yes, but it was the only place I could stand.

Q. Oh, I see. The only place where you could stand was by the mail box. A. Yes.

Q. How close were you to the mail box? A. I was right close.

Q. How close to the mail box? A. Oh, maybe a foot.

Q. A foot from the mail box? A. Yes.

The Court: Any further questions?

20 Mr. Cameron: My lord, would you ask the witness whether the mail box was on his right, or on his left? I understand there was a cut through there in the summer.

The Court: Q. Was the mail box on your right? A. Yes, the mail box was on my right.

The Court: All right, thank you, Mr. Roth.

Mr. Sturdy: Has the jury any further questions?

The Court: Have you any further questions, gentlemen?
All right.

(Witness aside.)

30 ENA PEARL NANCE, the plaintiff herein,
being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. STURDY:

Q. Where do you live, Mrs. Nance? A. At Irricana, Alberta.

Q. And you are the plaintiff in this action? A. Yes.

Q. Are you a widow? A. Yes.

Q. What was the name of your late husband? A. Samuel Joseph Nance.

Q. Where is that marriage certificate, Exhibit 5? Where
40 did Mr. Nance live? A. At Irricana.

Q. When did you and Mr. Nance get married? A. The 31st August, 1944.

Mrs. Nance (Plaintiff)—Exam.-in-chief

Q. I show you a document, over the seal and hand of the Department of Public Health for the Province of Alberta. Is that a certificate of your marriage? A. Yes.

Q. It shows you were married on August 31st, 1944, at Calgary? A. Yes.

Q. You were then a widow? A. Yes.

Q. Your name at that time was Livingstone? A. Yes.

Q. And you had been born Holbrook? A. Yes.

10 Q. This document shows Mr. Nance's condition corresponding to yours as a widow, that is, he was a widower. Is that entirely correct? A. No, that was a mistake, Mr. Sturdy.

Q. Actually, what was his status? A. He was divorced.

Q. In other particulars, does this certificate Exhibit 5, correctly set out the facts and circumstances relating to your marriage, Mrs. Nance? Yes, it does.

Q. Everything else on that certificate is right? A. Yes, that is right.

Q. That is just the lawyer's way of saying all the rest of
20 it is correct, is that right? A. Yes.

Q. When did Mr. Nance die? A. Mr. Nance died on January 18th.

Q. 1949? A. 1949.

Q. What was his age, at the time of his death? A. 53.

When would he have been 54? A. The 10th of February.

Q. 1949? A. 1949.

Q. He was within about three weeks of having attained his 54th birthday? A. Yes, that is right.

Mr. Sturdy: My lord, my learned friend has agreed on a
30 photostatic extract from the family Bible of the Nance family at Tulsa, Oklahoma, verified by affidavit, that it will be taken as proof of the birth date of Mr. Nance. He would have been 54 if he had lived another three weeks.

Q. Is that correct? A. That is right.

Q. Who are the trustees of Mr. Nance's estate? A. The Royal Trust Company in Calgary.

(PHOTOSTAT MARKED EXHIBIT NO. 6)

Q. I show you a document over the hand and seal of the Clerk of the Court of the District Court, Calgary, purporting to
40 be Letters of Administration in the estate of Mr. Nance. You have seen them, have you? There is a Notarial copy attached. There are two there. One is a Court copy and one a Notarial copy. The actual copy—the Notarial copy you can keep, Mr.

Mrs. Nance (Plaintiff)—Exam.-in-chief

Gilmour. This document I have handed you is a certified copy of the Letters of Administration of the late Mr. Nance? A. Yes.

Q. And the Royal Trust Company was appointed trustee on the 13th May, 1949? A. Yes.

(LETTERS OF ADMINISTRATION MARKED
EXHIBIT No. 7)

Q. Now, you and your husband had been on a vacation, previous to your coming to Vancouver? A. Yes.

10 Mr. Sturdy: You don't mind me leading at this point?

Mr. Cameron: No.

Mr. Sturdy: Q. When did you leave Irricana? A. On the 13th December.

Q. 1948? A. 1948.

Q. And you drove by motor, you and your son Robert Livingstone, and Mr. Nance, to Oklahoma, is that right? A. Yes.

Q. And the purpose of that was to visit relatives of his at Tulsa and Dixie? A. Yes.

Q. You were on your way back home, by way of Van-
20 couver on the date of this fatality? A. Yes.

Q. By your former marriage, you have two children? A. Yes.

Q. Would you give their names and ages? A. The eldest one is Thomas Lyle.

Q. L-y-l-e? A. Yes.

Q. Livingstone? A. Yes.

Q. How old is he? A. He is 20, right now.

Q. And your younger son is the one you spoke of, Robert?

A. Yes.

30 Q. How old is Robert now? A. 18.

Q. What children did Mr. Nance have by his first marriage? A. A boy and a girl. Jessie May Carter.

Q. Jessie Carter, that is, of course, her married name?

A. Yes.

Q. How old is she? A. She is 26.

Q. And the son? A. Eldwin.

Q. Eldwin Nance. That is the son who has been mentioned
by Mr. Fletcher? A. Yes, that is right.

Q. How old is he? A. 28.

40 The Court: Q. How do you spell Eldwin? A. E-l-d-w-i-n.

Q. What is his age? Did you say 28? A. 28.

Q. And the daughter's age, Jessie? A. 26.

Mr. Sturdy: Q. When did you, Mr. Nance and Robert Liv-

Mrs. Nance (Plaintiff)—Exam.-in-chief

ingstone arrive in Vancouver on your way back to Calgary and Irricana, from Oklahoma? On what date? A. It was on Monday, the 17th.

Q. Of January? A. Of January.

Q. What year? A. I beg your pardon?

Q. 1949? A. 1949.

Q. On your arrival in Vancouver, what did you and he do?

10 In general, outline between the time that you reached Vancouver and the time of this accident. A. We looked up my niece, as soon as we could find where she was, and then we went to her home.

Q. She lives in the west end? A. Yes.

Q. On Broughton Street? A. Yes.

Q. Or, she did then? A. Yes.

Q. And what happened? We are leading up to the time of the accident to cover the day. A. So, I stayed there the rest of the afternoon. Well, my husband and my son went to pick a Motel for us to stay for the week.

20 Q. You had planned to stay in Vancouver a week, had you? A. Yes.

Q. Now, did Mr. Nance go and pick out a Motel? A. Yes.

Q. What Motel did he pick out? A. The Chateau.

Q. And where is the Chateau? A. It is at Kingsway and Gladstone.

Q. In Vancouver? While he was picking it out, you were visiting with your niece? A. That is right.

Q. Did you all have dinner together? A. Yes, in the evening.

30 Q. Yes, and, still leading, with your permission—

Mr. Cameron: Certainly.

Mr. Sturdy: —you had a family gathering that evening?

A. That is right.

Q. Then, later on in the evening, you and Mr. Nance started off for the Chateau Motel, is that right? A. Yes.

Q. Where was Bobby? A. He was with us.

Q. He was with you all the way? A. Yes.

Q. You took the No. 11 streetcar, did you? A. Yes.

Q. You, Mr. Nance and Bobby? A. Yes.

40 Q. And I believe your sister and her husband? A. Yes.

Q. You went out from the west end, out Pender and Granville and Cordova and out Main Street and Kingsway to Gladstone, is that right? A. Yes.

Q. Now, was that the first occasion that you had ever been, yourself, at the intersection of Gladstone and Kingsway?

Mrs. Nance (Plaintiff)—Exam.-in-chief

A. That is right. That was the first time I was ever there.

Q. You hadn't been there with Mr. Nance? A. No, I wasn't with him, not when he went to get it.

Q. As a matter of fact, apart from the one tragic occasion, have you ever been there at all, at the corner of Gladstone and Kingsway? A. Yes, once.

Q. When? A. Yesterday.

10 Q. That is the only other time, after this one, when Mr. Nance was killed? A. That is right.

Q. The three of you got off the streetcar, did you? A. Yes.

Q. What corner did you get off at? A. We got off at the southwest corner of Gladstone and Kingsway.

Q. The three of you? A. Yes.

Q. What did Bobby do? A. He walked across the street, to the cafe, with my husband and myself.

Q. You all went to the cafe? A. Yes.

Q. Where is the cafe, Mrs. Nance? Near what corner?

A. Well, it is on the northwest.

20 Q. It is on the north side of Kingsway? A. Yes.

Q. And on what side of Gladstone? A. West.

Q. On the west side? A. Yes.

Q. It is one of those cafes near that corner? A. Yes.

Q. About how far from the corner? A. I don't know exactly just how many feet, but it isn't very far.

Q. It is one of the buildings adjacent to the corner, and you went in and ate? A. Yes.

Q. You went into the cafe, the three of you? A. Yes.

Q. Did Bobby stay with you? A. No.

30 Q. He left ahead of you, did he? A. Yes.

Q. Where did he go? A. He went over to our Motel, and went to bed.

Q. And you and Mr. Nance remained in the cafe after? A. Yes.

Q. That is about as far as I can lead you, without violating certain rules. From now on tell the incidents in your own language, but first, what were the weather conditions that night?

A. Cold and icy.

Q. Was it extremely icy? A. Yes.

40 Q. Mr. Nance has been mentioned as having had certain trouble in his legs. Would you describe his disability? A. The doctors—Dr. Ingram described it as being phlebitis.

Q. Phlebitis? A. That is what he called it.

Q. And he had phlebitis, or had had phlebitis? A. Yes.

Q. Was he suffering from it at the time of his death? A.

Mrs. Nance (Plaintiff)—Exam.-in-chief

Yes, he was lame.

Q. He was lame, but was he suffering from the disease of phlebitis, at the time of his death? A. Oh, no.

Q. What did he do to correct the effects of this phlebitis. He had that phlebitis, and it made him lame. What did he do to better his walking? A. He had leggings that he laced up to the knees, and he kept them on most all the time.

Q. How tall was he? A. 6 ft. 2.

10 Q. And what was his normal weight? A. 210.

Q. Quite a big man? A. Yes.

Q. What colour of an overcoat was he wearing on the occasion of his death, or the fatal injury? A. Oh, kind of a light brown, I would say.

Q. Do you remember yourself about the conditions of visibility, the street lights and all that, at the time that this accident occurred? A. We had no trouble seeing.

Q. Did you pay any particular attention to street lights, or their location? A. No, I didn't.

20 Q. You had never been there before? A. No.

Q. Except for one occasion, you have never been back? A. No.

Q. Go on and tell his lordship and the jury what happened, up to the time Mr. Nance was involved in the accident. A. When we came out of the cafe, we went across Gladstone Road, going east, until we got to the northeast corner where we stopped. Before leaving the curb, we looked both ways and there was no traffic.

30 Q. How were you walking together? In what relation to each other? A. I had hold of my husband's left arm.

Q. He was on your right? A. Yes.

Q. Go ahead. A. We started to cross Kingsway, going south on the intersection there, on the crosswalk.

Q. Did you look again? A. Yes. I looked again and I saw a streetcar.

Q. Now, in which direction was the streetcar? In which direction did you see it? A. You mean, which way was it coming?

40 Q. Yes, if you saw it moving. A. When I saw it, I was between from where the snow was piled up, somewhere between where the snow came out and the first set of railroad tracks.

Q. Yes, the end of the snow. A. And the streetcar tracks.

Q. Somewhere between the end of the snow and the first set of tracks? A. Yes.

Q. That is where you were when you looked the second time? A. Yes.

Mrs. Nance (Plaintiff)—Exam.-in-chief

Q. The first time, you didn't see anything? A. No.

Q. Where were you when you looked the first time? A. Just as we were going to leave the curb.

Q. When you looked and saw the streetcar, where was the streetcar? A. Well, it was down what I thought right along has been — yesterday, when I was out I noticed where I had made my mistake, saying it was half a block away, and it looked to me as if that was the block I was talking about.

10 Q. I will put it this way; when you looked and saw the streetcar, where was the streetcar with reference to any land mark that you know of now? A. Right a little bit this side of where that used car lot is. Just about at the end.

The Court: Q. By this side, you mean towards Gladstone?
A. Yes, towards Gladstone Road.

Q. Just a little bit this side of the used car lot? A. Yes.

Mr. Sturdy: Q. That is where the streetcar was when you first saw it? A. Yes.

20 Q. Go on and describe the rest of your passage across the street? A. We just kept on going, walking, shuffling along. That was all we could do, was just shuffle. I wasn't nervous or afraid, or anything, because I was quite sure by the time we got in the front that he would see us and wouldn't start up.

Q. Where were you and Mr. Nance when you again saw the streetcar? A. Just on the last rail. The northerly rail.

Q. The last rail? A. Yes.

Q. I think you have made a little mistake on the last rail. It wouldn't be the northerly rail. A. The southerly rail.

30 Q. That was a mistake, Mrs. Nance? A. Yes, that is right.

Q. And when you saw the streetcar, how far away was it?
A. Right on us.

Q. And at that instant, where were you? A. I still had hold of my husband's left arm.

Q. And on the southerly rail? A. Yes.

Q. What happened then? A. We were hit. The first thing I knew, I went flying through the air, and that was all.

Q. What hit you? What hit you? A. Well, I guess it was the force of the streetcar hitting my husband that threw me.

40 Q. That is what I mean. What hit your husband? A. The streetcar.

Q. Then what happened? A. I went through the air, and from then on there was a crowd gathered around, and I couldn't see anything or hear anything much. I looked up the street and saw my husband lying there.

Mrs. Nance (Plaintiff)—Exam.-in-chief

Q. About how far away from you did he lie? A. Oh, it is hard to say. I don't know. I am not much good at judging distances, really.

Q. Point out any object in the room that you think is about the distance you were away from your husband. A. Well, when I was lying flat on my face, I lifted myself up on this arm (indicating). I tried with this one (indicating), and my arm went limp, and I knew it was broken, and I couldn't get it to
10 work for me. I raised up on this one (indicating) and it looked to me as far as from here to the door from me to my husband, but I couldn't be certain.

Q. Incidentally, your arm was broken at that time? A. Yes.

Q. It hadn't been broken before? A. No.

Q. Then what happened to you after you had landed there?

A. A crowd came and called the ambulance, and then we were taken away.

Q. You were taken away to the hospital? A. Yes.

20 Q. Now, subsequently did you see the body of Mr. Nance?

A. When do you mean?

Q. After January 17th, at any time. A. Just at the funeral.

Q. Mr. Nance died as a result of these injuries, that is what I am getting at, is that so? A. Yes, that is correct.

Q. Did you go to the inquest that was held on his death?

A. Yes.

Q. Was that inquest on the death of Mr. Nance? A. Yes.

30 Q. Was the body described by Dr. Harmon at the inquest that of Mr. Nance? A. Yes.

Q. And was the body described by Dr. Harmon here today that of Mr. Nance? A. Yes.

Q. First, tell about the cross walk. Where were you introduced to the imaginary projection of the east sidewalk of Gladstone, as you went across Kingsway? A. I don't understand you.

Q. Well, the crosswalk is the imaginary extension of the sidewalk, you see, from Gladstone. A. Yes.

40 Q. As you went across Kingsway, where did you walk with reference to those imaginary lines? A. Well, we had to walk right where the path was. To see where to walk, we had to be right there.

Q. Was there any reason why Mr. Nance had to confine himself to the path? A. Well, yes. He couldn't possibly walk through any other place. We had to stay where there was good

Mrs. Nance (Plaintiff)—Exam.-in-chief

walking.

Q. And you did so? A. Yes.

Q. Did you angle, or swerve over towards the crossing that opens into the Chateau Tourist Home? A. No.

Q. What point on the opposite side of the street were you and Mr. Nance heading for, as you proceeded across Kingsway? A. Just straight across Kingsway, to the southwest corner. Then we were going to walk up to our Motel from there.

10 Q. There has been some suggestion in these and other proceedings that you were angling, or going in an easterly direction. What is your answer to that? A. No, we didn't.

Q. Now, the manner of your going along was shuffling. I will have to ask you to indicate that, or demonstrate it to the jury. Will you do that? Come out before the jury box and show about how fast you walked and he walked, as you and he walked across Kingsway. I don't want to detain the Court, my lord.

The Court: That is all right. We will carry on until about 20 minutes to 5:00, I think.

20 Mr. Sturdy: Yes, I can finish this part of the evidence.

Q. Start about at the end of the jury box, walking towards me, and give the jury an idea of how you walked, or, rather, how Mr. Nance walked, and at what pace. A. All the time we were slipping underfoot. Our foot would go out about like that (indicating).

Q. Is that the pace you walked? A. Yes.

Q. Indicating a very slow rate of walking? A. Yes.

Q. Did Mr. Nance bring his heel beyond his toe as he walked with upturned steps? A. He was even with me and we 30 were together.

Q. Is that about the way he walked? A. Yes, that is about the way he walked.

Q. Was the slippery condition of the street causing you any trouble in your progress? A. Oh, yes.

Q. Just to make sure on one point, I understood you to say it was the streetcar that struck Mr. Nance, is that right? A. Yes.

Q. Did you see that? A. Yes, I did.

Q. What part of the streetcar struck him? A. The front 40 right side.

Q. You are familiar with these streetcars, now, aren't you, with their rounded fronts? A. Yes.

Q. And he was thrown against you, and you were thrown through the air? A. That is right.

Q. Now, on other occasions, and in the course of other

Mrs. Nance (Plaintiff)—Exam.-in-chief

proceedings, you have given an account of your progress across Kingsway that has not been exactly the same as that you have given today. My learned friend no doubt will go into that more fully than I, but why the discrepancies, assuming these errors have existed?

The Court: What are you referring to now?

Mr. Sturdy: I am anticipating cross-examination that I might possibly leave until it occurs and cross the bridges when
10 I come to them.

The Court: Yes, I think so. You can ask for an explanation, afterwards.

Mr. Sturdy: Yes, my lord. If you so desire, this would be a convenient place to discontinue, before going on with the estate matters.

The Court: Yes, very well. We will adjourn until 10:30 tomorrow morning.

(PROCEEDINGS ADJOURNED UNTIL JUNE 22, 1949,
AT 10:30 A.M.)

20

Vancouver, B.C.

10:30 a.m.,

June 22nd, 1949.

PROCEEDINGS RESUMED PURSUANT TO
ADJOURNMENT

Mr. Sturdy: My lord, I was examining Mrs. Nance and with the consent of my learned friend and your lordship's permission I would like to file as an exhibit the notarial certificate forms SD1 and SD14 in the estate of Mr. Nance, made pursuant to the Dominion Succession Duties Act, showing the gross estate with
30 debts, sworn by the present trustee of the estate.

The Court: One Exhibit.

(DOCUMENTS REFERRED TO MARKED EXHIBIT 8)

ENA PEARL NANCE, the plaintiff
herein (resumed the stand)

The Clerk: You are already sworn, and you are still on oath.

Mr. Sturdy: My lord, also to review for a moment and for your convenience I would like to file a list of recognized expectancies of life at age 54—it doesn't say on this but it is for men

Mrs. Nance (Plaintiff)—Exam.-in-chief

--I think it speaks for itself, my lord.

(TABLE OF EXPECTANCIES OF LIFE MARKED EXHIBIT 9)

DIRECT EXAMINATION CONTINUED BY MR. STURDY:

Mrs. Nance, yesterday before we concluded we had finished your account of the accident itself. I feel that I overlooked asking you your age at the present time—has there been a record made of that?

10 Mr. Cameron: You didn't ask that.

Mr. Sturdy: Q. What is your age at the present time?

A. 47.

Q. When were you 47? A. April 5th.

Q. 1949? A. That's right.

Q. That is, you are 47 and a few months now? A. Yes.

Q. And I don't believe I asked you the hour at which Mr. Nance died, January 18th, do you remember what hour? A. 9.40 I believe.

Q. In the morning? A. Yes.

20 Q. About 9 to 10 hours after the accident? A. That is right, yes.

Q. I forget whether I asked you whether immediately following the accident and your being thrown to the ground, did you lose consciousness at all? A. No.

Q. You were conscious throughout? A. That is right.

Q. And did you sustain some personal injury? A. Fractured elbow and bruised leg.

Mr. Cameron: That is not relevant in this.

Mr. Sturdy: That is true, there is no claim here for her 30 personal injuries.

Mr. Cameron: In this action?

Mr. Sturdy: In this action or any other action thus far.

Q. Heretofore, you have lived for some years in Calgary, I believe you said? A. That is right.

Q. Did you make use of street cars in Calgary? A. Oh yes.

Q. Frequently? A. Yes, very much.

Q. Speak a little louder. A. Very often.

Q. Did you become familiar in Calgary with what we know 40 in Vancouver as P.C.C. 400, one man cars described here? A. No, just the old fashioned cars they have there, slow.

Q. Are the Calgary street cars a little noisier than the

Mrs. Nance (Plaintiff)—Exam.-in-chief

P.C.C. 400? A. Yes.

Q. We finished your account of the circumstances itself and I want to go now to the question of the health of all persons concerned. What is the state of your health? A. Good at present, so far, just suffering from shock, the doctor says my nerves.

Q. After this long series of court cases is through you don't expect to have any nervous trouble? A. No, I don't.

10 Q. What is the condition of health of your youngest son, Bob? A. Good.

Q. He is 18? A. Yes.

Q. And Lyle, your older son? A. Good health.

Q. Aged 20? A. Yes.

Q. He will be 21 next month, July 1949? A. Yes.

The Court: Q. Lyle, did you say?

Mr. Sturdy: Yes. He will be 21 next month.

Q. And your step son, Eldwin, Mr. Nance's own son, 28 years of age? A. Yes.

20 Q. In good health? A. Yes.

Q. And his daughter, Mrs. Carter, London, Ontario? A. Good health.

Q. What does Bob do for a living? A. He helps Eldwin in the garage.

Q. And that is what Eldwin is doing too then. A. Yes.

Q. Works in a garage? A. Yes.

Q. Before his death they had both worked for your late husband, Sam Nance? A. Yes.

30 Q. Now, Mrs. Carter, Jessie, wife of Wayne Carter, of London? A. Yes.

Q. Is he supporting her? A. Yes.

Q. Do you know anything about their financial circumstances? A. I don't know, he has got a job in the post office.

Q. A little louder. A. He works in the post office.

Q. In London, Ontario? A. Yes.

Q. And does he get an adequate wage? A. Yes, so I understand, he has never complained of anything.

Mr. Cameron: Well now—

40 Mr. Sturdy: I don't know why my friend should object, this is all to his benefit.

Q. And Lyle, your oldest son, what is his occupation? A. He is in the Army.

Q. The permanent force? A. Yes.

Q. What branch of the service—he is in the army, not the air force? A. No, the army.

Mrs. Nance (Plaintiff)—Exam.-in-chief

Q. Yes, R.C.A.C.? A. Yes.

Q. Stationed at a camp somewhere in Ontario? A. Camp Borden.

Q. Has he been in the army long enough to qualify for full private or is he still training basic? A. He is training for a wireless operator.

Q. How long has he been in the permanent force? A. He just went in last year.

10 Q. Is he then at the present time in the permanent force?

A. No, I believe three years he joined up for, I believe.

Q. Has he gone through his basic training? A. Yes.

Q. He is through that? A. Yes.

Q. As far as your observation went in the four and a half years of your marriage, what have you to say about Mr. Nance's health and vigour, his strength, tell the jury what observations you have to make about that? A. He never complained outside of saying his legs felt tired, that is the only thing I ever heard him complain about, he was working every day.

20 Q. Speaking of his legs, was the condition of ulcers a fully healed, post-operative, or was he then suffering with his legs when he died? A. Those were old scars on his legs.

Q. They were not active ulcers on his legs? A. No.

Q. And this phlebitis was something from which he had suffered? A. Yes.

Q. From which he had suffered when he was still lame. A. He had had it for quite a few years.

The Court: Q. You say he was still lame at the time of his death? A. Yes sir.

30 Mr. Sturdy: Q. Did he smoke? A. Yes.

Q. A heavy smoker? A. Well I wouldn't say a heavy smoker, because, when working in the garage he didn't have much time to smoke.

Q. In his leisure was he a heavy smoker? A. About average, I would imagine.

Q. He didn't smoke forty cigarettes a day, but a constant smoker? A. Oh yes.

40 Q. Most men, I take it, are. Apart from over indulgence in tobacco did he over indulge in any other way, particularly eating and drinking? A. No. He was a small eater for a big man but he did like his three meals a day, never ate between meals.

Q. His appetite was good? A. Yes.

Q. Was it excessive? A. No.

Q. And his habits as regards alcohol? A. He enjoyed a

Mrs. Nance (Plaintiff)—Exam.-in-chief

drink for special occasions.

Q. Did he drink every day? A. No, he didn't drink every day, no.

Q. Did he go off on periodical drinking bouts, binges? A. No, he didn't.

Q. He didn't go out and get drunk a week at a time? A. No, he didn't.

Q. By the way what liquor had he had on the day of his death? A. Just what we had before we had our dinner, two rounds of cocktails among eight of us.

Q. When was that you had dinner? A. That was the Monday, we came in about 7 o'clock, between half past six and seven—

Q. You had a family re-union? A. Yes.

Q. I was thinking of noon time; you had dinner at night, 7 o'clock or thereabouts and there was a little drunk at that time? A. Two rounds of cocktails.

Q. Two rounds of cocktails; did he have anything to drink from 7 o'clock until the time of death? A. No.

Q. You were with him constantly the whole time? A. Yes.

Q. And after the last of the cocktails he had had a meal? A. Yes, sandwich and coffee.

Q. No, but the cocktails were before dinner? A. Yes.

Q. Then he had dinner? A. Yes.

Q. And throughout the evening did he have anything to drink? A. No.

Q. You had a sandwich at the cafe just before he was hurt? A. Yes.

Q. During the time of your marriage to him—about four and a half years, that is right, isn't it? A. Yes.

Q. Had he ever consulted a doctor about any physical condition of his own? A. You mean after we were married?

Q. Yes. A. No, he never did.

Q. Did he, as far as you know, have any need to see a doctor during the four and a half years of your marriage? A. No.

Q. What was his ordinary time of going to work during the week days? A. He used to open up shop at 7 o'clock.

Q. In the morning? A. Yes.

Q. Got up I suppose at six? A. That is right.

Q. What time would he usually close again at night? A. Between 10 and 10.30.

Q. P.M.? A. Yes.

Q. That has been explained, I am not alleging, but farmers

Mrs. Nance (Plaintiff)—Exam.-in-chief

find it most convenient to do their shopping in town after hours?

A. Yes.

Q. Would you say he worked, constantly, or habitually during that period? A. When he wasn't doing garage work he was busy getting his books straightened up at the counter.

Q. In other words, he put in a full day? A. Yes.

Q. Of 17 hours, possibly 16 or 17 hours? A. That is right.

Q. I take it from his lameness that he wasn't active and
10 couldn't take exercises, swimming, golf, tennis anything like that, because of his legs? A. He never tried to, never had time.

Q. Apart from the disability, the condition of his legs imposed on him, did he take care of himself? A. Yes, I would say he took good care of himself.

Q. Did he sleep regular hours? A. Oh yes, slept real well.

Q. Slept soundly? A. Yes.

Q. Did he eat his meals regularly? A. He ate his breakfast and then his lunch at noon, and then dinner at night, six
20 o'clock.

Q. Yes, put it this way; his hours of eating were fairly regular, which people believe is important to health? A. Yes.

Q. He ate regularly? A. Yes.

Q. And slept soundly? A. That is right.

Q. And the only complaint he ever made to you as to his physical condition was as to his legs? A. Yes, that is right.

Q. Did he ever complain about his heart or any symptoms connected with heart pains? A. No, he never complained of the heart, any condition of any kind, just the legs.

Q. Never palpitation of the heart or pains in the breast?
30 A. No.

Q. There is no question everybody else in the family is quite well? A. Yes.

Q. Bob lives with you in Irricana and Eldwin still has his own home? A. Yes.

Q. Still married? A. Yes.

Q. Has Eldwin any children? A. Yes, he has got three.

Q. Bob of course is unmarried? A. That is right.

Q. And Lyle is unmarried? A. That is right.

Q. Has Mrs. Carter any children? A. One.
40

Q. A small child? A. Yes.

Q. I understand before you married Mr. Nance in 1944 you were a widow? A. Yes.

Q. Mrs. Livingstone? A. Yes.

Q. Your maiden name had been Holbrook? A. Yes.

Mrs. Nance (Plaintiff)—Exam.-in-chief

Q. And you and Mr. Nance had no children of your own?

A. No.

Q. When did your first husband, Mr. Livingstone die—fix it with reference to the date of Bob's birth? A. It would be 19 years—18 years ago I guess.

Q. Let's put it this way: How old is Bob now? A. Bob is 18, he was born five months after my husband died.

Q. After your husband died? A. Yes.

10 Q. And did your husband leave you any estate, I mean Mr. Livingstone? A. None whatever.

Q. Did you raise Bob and Lyle yourself? A. I did.

Q. How did you do that, how did you make money? A. I got the mother's allowance and then after my own mother came to live with me I went out nursing.

Q. What kind of nursing, what are your qualifications? A. Private nursing.

Q. Are you a registered nurse? A. A graduate nurse.

Q. You are a graduate nurse? A. Yes.

20 Q. And you maintained the family, raised the two boys with your own efforts? A. Yes.

Q. With the assistance of the mothers' allowance? A. That is right.

Q. How long did you live in that state before you were married to Mr. Nance—it is 14 years? A. Yes.

Q. 14 years, you supported yourself and raised the two boys? A. That is right.

Q. When you married Mr. Nance did you have any separate estate, any property of your own that amounted to anything?

30 A. No sir.

Q. Did either of the boys, Bob or Lyle? A. No sir.

Q. But you and Mr. Nance—don't answer the question until my learned friend states his objection to it—did you and Mr. Nance have any plans with reference to a home, building a home in Irricana?

Mr. Cameron: Yes, I think we must object to that.

Mr. Sturdy: I can understand my learned friend's objection to Mr. Fletcher's statement yesterday, that was certainly hearsay, although it is interesting material, but as regards this
40 witness, she is speaking of a joint enterprise, she is here to tell about it.

The Court: I do not see its relevancy; I suppose they did intend to build a home; how does that affect the situation here?

Mr. Sturdy: It is possible he might have built a home and either devised to her, put it in joint tenancy or left it in his own

Mrs. Nance (Plaintiff)—Exam.-in-chief

name. I want to explore that field and if your lordship holds that is not admissible evidence I will accept your lordship's—

Mr. Cameron: I think all the damage has been done now.

Mr. Sturdy: I am not trying to do any damage at all, I have stated it and I will ask everybody to forget what I said.

Mr. Cameron: It is a matter of argument, I don't mind my friend making that argument before the jury but I think we must stick to that in the evidence my lord and speculate, if he
10 chooses, on that.

The Court: I do not think it affects your case one way or the other, Mr. Sturdy?

Mr. Sturdy: Well my lord, with the utmost respect for your lordship's opinion, I defer to it at all times, but in order to present my argument I couldn't speak out in front of the jury and put my friends at a disadvantage—your lordship sees what I am after.

The Court: Mr. Cameron says he is not objecting.

Mr. Cameron: I didn't actually say that, I said it is all
20 over now, he might pass on to something else: I think it must be clear that Mr. and Mrs. Nance were going to build a home.

Mr. Sturdy: I don't want to be unfair but in the address to the jury I will ask the jury to disregard it, but for my address to the jury I want to canvas it.

The Court: All right, ask the question.

Mr. Sturdy: Q. Did you and your husband have any plans with reference to a home in Irricana? A. Yes, we did.

Q. What were those plans? A. He had already spoken for the two lots, to the town council out there, to build right
30 across from our garage.

Q. Yes? A. We planned to start it this year.

Q. Without mentioning any figure of money, contrary to our previous conversation, had there been in your own mind a sum of money agreed on as to what would be spent—don't mention any figures? A. Yes, there had.

Q. I think that is all right, yes. Immediately after your marriage, did he give you a gift, after your marriage did he give you something? A. Well yes, I got a lot of things we had to have.

40 Q. I mean you personally? A. Oh yes.

Q. Tell his lordship and the jury about that; immediately after your marriage did he make a gift to you of something? A. Well you mean buying me things?

Q. Yes, tell us about them. A. Well I had to have an awful lot of clothes, I know I was right down as far as my

Mrs. Nance (Plaintiff)—Exam.-in-chief
Mrs. Nance (Plaintiff)—Cross-Exam.

clothing was concerned, it took every cent I could make to send my children to school and clothe them.

Q. What did he do then? A. He bought me a lot of clothes.

Q. To the value of about how much money? A. It was I believe a thousand dollars.

Q. Did you and he frequently take trips and holidays together? A. Yes, we took three trips during our married life.

Q. Where? A. Twice to Banff, and one down through the States.

Q. The one down through the States was the one you were returning from when this happened? A. Yes.

Q. And there were two trips to Banff? A. Yes.

Q. Which of course isn't so much of a trip from Irricana as it is from Vancouver? A. No.

Q. He provided you adequately with food? A. Yes, very well.

20 Q. And clothing? A. Yes, very well.

Q. And residence, you had an adequate residence? A. Yes.

Q. He provided that? A. Yes.

Q. After your marriage? A. Yes.

Q. And what did he do for Robert and Lyle after you and Mr. Nance married? A. Well, he sent them to school as long as they would go, clothed them and fed them.

Q. Until they got jobs? A. Until they got working on their own.

30 Q. And Bob he gave Bob a job when he got out of school?

A. Yes.

Mr. Sturdy: Your witness.

CROSS EXAMINATION BY MR. CAMERON:

Q. Speaking of your estate, did you have any estate of your own at the time of Mr. Nance's death? A. Did I have an estate?

Q. Yes? A. No sir.

Q. You had no property? A. No.

40 Q. And, now that Mr. Nance is deceased, who owns his business? A. Who owns his business right now—it is in the hands of the Royal Trust.

Q. The beneficiaries, I think Mr. Fletcher told us, are yourself and your two sons, at least your son and daughter, who

Mrs. Nance (Plaintiff)—Cross-Exam.

have a third interest in the business? A. That is right.

Q. Did you have any interest in the business before or was Mr. Nance sole owner? Mr. Fletcher told us Mr. Nance was sole owner, is that correct? A. Well I believe so, he just looked after me.

Q. Yes? A. What was necessary.

Q. Now, Eldwin is working in the business and Eldwin is 28 years old? A. Yes.

10 Q. How long has he been working with Mr. Nance? A. Ever since he came out of the air force.

Q. I see? A. Four years ago.

Q. I beg pardon? A. In 1945 he came home.

Q. He came home in 1945; what was he in the air force, I suppose a mechanic? A. Mechanic, yes.

Q. How did he get along in the business? A. When his Dad was there he was all right, he knows his work, but he had to have his Dad there to ask questions when he got stuck.

Q. He wouldn't be as good as his Dad, he is doing all right?
20 A. Not now.

Q. Why not? A. Well I don't know, he just hasn't got the same way of managing the business as his Dad did.

Q. Have you talked to anybody in the International Harvester Company? A. Yes, I have.

Q. Yes? A. They have all told me something.

Q. Who did you talk to? Mr. Barwagon, in Calgary? A. Not Mr. Barwagon, the man that comes out there. I talked to Mr. Barwagon and he said he had given the agency to Eldwin, I was given to understand until they found out how he did.

30 Q. And what did he say? A. Pardon?

Q. He was told he was doing all right? A. That remains to be found out I guess, yet.

Q. Did anybody tell you he wasn't? A. Mr. Barwagon says there wasn't the business there was when my husband had it.

Q. Of course there isn't, there has been a drought the last few months? A. Drought?

Q. Yes? A. There hasn't been any rain.

40 Q. And the farmers don't buy machinery until they are sure of a crop? A. How do you mean? I don't understand what you are getting at.

Q. Business wasn't done because farmers are not buying and machinery is hard to get? A. Yes.

Q. Now do you know Mr. Claude Bennett? A. No.

Q. He is sales manager for Canada for International Har-

Mrs. Nance (Plaintiff)—Cross-Exam.

vester and I am told he says the agency is all right.

The Court: Mr. Cameron, that is not proper examination.

Mr. Cameron: Q. You never heard any conversation like that? A. No, I didn't.

Mr. Cameron: I am sorry my lord.

Q. Do you know whether farm machinery is on a quota?

A. Pardon?

Q. Do you know anything about business? A. No, I told
10 you I didn't know very much and I am quite satisfied with the
report Mr. Fletcher gave you yesterday, I think he knows.

Q. Wouldn't you like to have Eldwin make a go of the
business? A. I certainly would.

Q. And you would be glad to hear he was? A. Yes sir,
I would be glad.

Q. That would cheer you up? A. Yes.

Q. Now you married Mr. Nance in August 1944? A. That
is right.

Q. How long had you known him prior to that? A. Oh,
20 ten years or so.

Q. He had a serious operation in 1944? A. Yes, he did.

Q. That was before or after your marriage? A. That was
before, just before.

Q. That was a bowel condition? A. That is right.

Q. Was he in the hospital for any length of time? A. Yes.

Q. For how long? A. Ten days.

Q. What was the operation? The doctor told us it was a
re-section of the bowel? A. It was a bowel operation, yes.

Q. What was wrong with the bowel? A. I don't know
30 just what.

Q. I am told it was a growth? A. Something to that
effect I imagine. I didn't get to talk to the doctor.

Mr. Sturdy: Excuse me, might I interject and apologise for
interrupting, I think she should be asked does she know.

The Court: You are giving evidence; I don't know whether
you intend to call these witnesses or not Mr. Cameron.

Mr. Cameron: I am sorry, she said—

Mr. Sturdy: Never mind what she said.

Mr. Cameron: She said it was a bowel operation.

40 The Court: What she knows of her own knowledge.

Mr. Cameron: I suppose she wasn't there at the operation,
but, being married to Mr. Nance, you would expect her to know
a good deal.

Mr. Sturdy: Excuse me again, but they were not married
at the time of the operation.

Mrs. Nance (Plaintiff)—Cross-Exam.

The Court: Q. How long before the marriage was that?

A. The operation I believe was some time in May, and we were married the following August, the 31st of August.

Q. What year? A. 1944.

Mr. Cameron: Q. What is this re-section, do you know?

A. I don't know.

Q. You are a graduate nurse? A. I know, but I have forgotten an awful lot, it is 25, 27 years ago since I graduated.

10 Q. Was any part of the bowel removed? A. I wouldn't know that either, and I never went back to the doctor to find out what the operation was; Mr. Nance was okay and felt good.

Q. Did he tell you what had been done? A. He knew, but he didn't know enough about it to tell me, the doctor used long words and Sam wasn't like that, as long as he felt good that is all he cared.

Q. Was Mr. Nance ever refused life insurance? A. No, not to my knowledge.

Q. How much life insurance did he have when he died?

20 A. He had one policy for a thousand dollars.

Q. The estate papers show that is all he had, is that correct?

A. That is all he had, yes.

Q. Were you the beneficiary under that policy? A. Yes sir.

Q. Now Mrs. Nance getting back to the time of the accident, you had been visiting, with Mr. Nance and your son in Oklahoma, did you say? A. That is right.

Q. And this was December you started out? A. Yes.

Q. And it was January when you were in Vancouver? A.

30 Yes.

Q. On the 17th, the accident was the 17th of January?

A. That is right.

Q. Where had you come from that day? A. Where had we come from?

Q. Yes, you arrived in town that day, from where? A. From Seattle.

Q. You drove up from Seattle? A. Yes.

Q. Where had you come from the previous day? A. Oh, I just forget now, somewhere along there anyway, we made about
40 250 miles a day; I just can't think right now.

Q. That is all right, I just wanted roughly what you had been doing; you drove up from Seattle that morning? A. Yes.

Q. And there was snow and ice on the roads? A. Yes.

Q. On the way up? A. Yes.

Q. And you got here about what time? A. Oh, around

Mrs. Nance (Plaintiff)—Cross-Exam.

one o'clock.

Q. In the afternoon about one o'clock? A. Yes.

Q. And then you went straight to your sister's place?
A. No, my niece's place.

Q. And that is in West Vancouver? A. Yes.

Mr. Sturdy: The West End.

Mr. Cameron: Q. The West End, I beg pardon, Broughton
Street. Then Mr. Nance and your son came back and you had
10 something in the nature of a family re-union, is that correct?

A. Yes.

Q. That is what you said before? A. Yes.

Q. And there were a couple of drinks before dinner? A.
Yes sir.

Q. Had there been any other drinking in the afternoon?

A. No.

Q. I don't mean a drinking bout, I just wondered if there
was any or not? A. No there wasn't.

Q. Then you had dinner; what kind of dinner was it? A.
20 Just more or less a cold lunch.

Q. It was not a real Christmas dinner? A. No. it wasn't,
there was cold turkey, but it wasn't—

Q. And was there any drinks served after dinner? A. No,
nothing.

Q. Did Mr. Nance have a drink after dinner? A. No,
not to my knowledge, I am quite sure he didn't, I was right with
him all the time.

Q. What do you say, "Not to my knowledge" for? A.
Just a form of saying no, I guess.

30 Q. You are sure, aren't you? A. Yes, I am sure.

Q. Now after the party you started home—by the way
you didn't take your car, Mr. Nance didn't bring the car back?

A. No, when he got to the motel he left the car parked in front
of it because he thought it safer to not have the car on the icy
streets.

Q. So that when you left you came out on the street car?

A. That is right.

Q. What kind of street car was it, was it one of those P.C.C.
400 ones. A. I don't know anything about street cars and I
40 would rather you didn't ask me because I don't know the name
or anything like that.

Q. All right, was it a modern street car, did you get on
the front end?

Mr. Sturdy: What street car is it?

Mr. Cameron: Q. This is the one you rode out on after

Mrs. Nance (Plaintiff)—Cross-Exam.

you left the family's place before you went to Gladstone.

Mr. Sturdy: Oh, just before the accident?

The Witness: Yes.

Mr. Cameron: Q. Was it a modern street car? A. Yes, I guess it was.

Q. Was it like the ones they had in Calgary? A. No, it was a lot newer, we haven't got any street cars in Calgary like you have here.

10 Q. Do you think this was the same kind that ran into you?

A. Yes, I believe it was.

Q. One man operated? A. Yes.

Q. You got on the front? A. Yes.

Q. He took your tickets? A. Yes.

Q. And how did you know when you got to Gladstone Street? A. Well my sister and her husband, they were on their way home too, so they rode home part way with us on this street car and they had to get off to transfer on to another street car so my brother in law went to the conductor and told the conductor we were strangers in the city and when he came to Gladstone Road to let us know or call out Gladstone Road, which he did.

Q. And you got off there? A. We got off there.

Q. And then you went across the street to a cafe there to have coffee? A. Yes.

Q. Did you have any trouble going across the street? A. Yes, we slipped a lot.

Q. Quite difficult? A. Quite difficult.

Q. Were you wearing rubbers? A. No.

30 Q. Was Mr. Nance wearing rubbers? A. No.

Q. By the way you said Mr. Nance was wearing a brown coat. What kind of coat were you wearing? A. Black.

Q. And then Bobby went home; why did he go home? A. He just said he didn't want anything to eat.

Q. And then you started out and I believe you said you crossed, first of all, went straight east to the corner and across Kingsway—I beg your pardon, across Gladstone until you got to the north east corner? A. Yes, that is right.

Q. What did you do from there on? A. We started to 40 cross there.

Q. Did you look before you left the curb? A. Oh yes, we looked up and down both ways.

Q. And what did you see? A. There were not any lights then at the time, no traffic coming.

Q. Was there anything to obstruct your vision? A. No,

Mrs. Nance (Plaintiff)—Cross-Exam.

not that I know of, anyway, we could see all right.

Q. Did you have any trouble getting across? A. The same trouble getting across as we had going across to the cafe, slippery, and had to be careful.

Q. Where were you looking? A. We were watching the traffic.

Q. Were you watching the footing? A. Partly and then we would look up and the rest of the time we would watch where
10 we were stepping.

Q. Do you remember being examined for discovery by Mr. Gilmour a couple of weeks ago—two weeks ago, I am reading
Question 73.

Mr. Sturdy: Do you know the occasion my learned friend is speaking of, what occasion it was you gave this testimony he is reading to you now? A. I haven't heard it yet.

Q. He is speaking of the time you and my learned friend Mr. Gilmour and I had a session in the courthouse here. Do you remember that time? A. Yes.

20 Mr. Cameron: Q. Now I will read question 73.

"Q. Can you tell me what you saw when you stopped there—" perhaps I had better go back:

"Q. And did you get up onto the sidewalk then on the north side of Kingsway and on the east side of Gladstone? A. Yes, we stopped there and looked around.

Q. Can you tell me what you saw when you stopped there? Was there any traffic coming from New Westminster way towards Vancouver? A. When we looked, there didn't seem to be any kind of traffic anywhere. It seemed
30 to be quite still.

Q. No traffic coming either direction? A. No, I never noticed.

Q. Do you know whether Mr. Nance looked for traffic as well as yourself? A. He was more or less concentrated on his feet. He was like this, watching." and then you made some motions indicating he was watching his feet.

"Q. He was looking down towards his feet? A. every time he slipped we would both laugh."

40 Were you asked those questions and did you give those answers? A. Yes, that is about the way it was; wasn't that about what I said this time too?

Q. I am only asking you the questions. Now, when did you next look? A. The next time was about half way between where the snow line was and the first set of street car tracks.

Q. What snow line is that? A. Since I have been out

Mrs. Nance (Plaintiff)—Cross-Exam.

there the other day I can see where I got confused by the snow.

Q. Just tell me where you were at the time in question and tell me what you did? A. The snow line we seen was supposed to be piled eight feet out from the curb.

Q. What do you mean, 'supposed'? A. It came out in the evidence of some witness.

Q. Somebody told you the snow was eight feet out from the curb? A. I heard it in the evidence. I was between where
10 the snow line was, half way between where the snow line came and the first set of street car tracks.

Q. That is the snow on the north side of Kingsway? A. Yes.

Q. And the first set of street car tracks; are you sure about that? A. Yes, I am now, since I was out there and looked.

Q. It is rather surprising because you have never said that before. A. I didn't have a clear picture sir, before; since I have been out there I have a different picture altogether.

Q. Your memory would probably be fresher immediately
20 after the accident than it would be since. A. I don't know, not what I went through, I don't think your memory would be very good.

Q. You previously stated you were in between the two sets of rails, is that correct?

The Court: Q. Where is that?

Mr. Cameron: I was going to ask you if that is what you previously said?

Mr. Sturdy: Q. Where?

The Court: Where is it?

Mr. Cameron: Q. You remember there was an inquest as a
30 result of this? A. Yes.

Q. I am reading from page 58.

Mr. Sturdy: Has your lordship the inquest evidence?

The Court: Yes, I have it, thank you.

Mr. Sturdy: Page what?

The Court: Page 58.

Mr. Cameron: The question—what is the number my lord? The coroner has just called Mrs. Nance and he asks her what happened.

40 The Court: No, my last page is 57. You have it Mr. Sturdy, have you?

Mr. Sturdy: I have the inquest but Mrs. Nance's testimony at the inquest commences at page 57.

The Court: Yes, that is the last page I have. All right, Mr. Cameron.

Mrs. Nance (Plaintiff)—Cross-Exam.

Mr. Cameron: The middle of the page there; the coroner had asked you to tell what happened, and I have this note: "We started to cross the street at the intersection there, we got well —there is two car tracks alongside each other and we just got over about the first set of street car tracks, we were over that far and had a hard time going there and I looked up the street again both ways and I could see a street car quite a ways down."

Were you asked that question and did you give that answer?

10 A. Yes.

Q. Now then, there were some other proceedings took place subsequent to the inquest—at the inquest I think you also referred to the matter again, I am reading from page 63 of my copy, question by Mr. Griffiths. —Mr. Griffiths was from your office, was he?

Mr. Sturdy: A student in my office, yes.

Mr. Cameron: Question by Mr. Griffiths: "Mrs. Nance, when you looked up and saw the street car did you stop, did you and Mr. Nance stop or hesitate at that time? A. Yes, we just hesitated, we looked that way and I thought it was all right, because the street car has got to stop, and kept on going. Q. At that time had you reached the street car tracks? A. Oh yes, we had passed over the first two. Q. You had passed over the first two and then stopped? A. Yes."

Now, the subsequent proceedings — were you asked those questions and did you give those answers? A. Yes sir, I guess I must have. They are written down there.

Q. Well— A. Could I explain why.

Mr. Sturdy: Just a minute.

30 The Court: Q. Go ahead Mrs. Nance.

Mr. Sturdy: Q. Go ahead. A. I just want to explain the reasons, things were not clear to me at the inquest like they are now, naturally I was just out of hospital, I only came out of hospital two days before the inquest and things were not as clear then as they are now to me, sir.

Mr. Cameron: Q. It is normal to assume your memory would be fresher immediately after the accident than six months later? A. Suffering from shock, I don't know about a good memory.

40 Q. Then some proceedings on May 25—

Mr. Sturdy: What proceedings?

The Court: Before you go on with that, would you read again what you read before from page 63.

Mr. Cameron: Yes my lord—the last answer you wanted?

The Court: Whatever you read.

Mrs. Nance (Plaintiff)—Cross-Exam.

Mr. Cameron: "Mrs. Nance when you looked up and saw the street car did you stop, did you or Mr. Nance stop or hesitate? A. Yes, we just hesitated, we looked that way and I thought it was all right because the street car has got to stop, and kept on going.

Q. At that time had you reached the street car tracks?

A. Oh yes, we had passed over the first two.

Q. You had passed over the first two and then stopped?

10 A. Yes."

The Court: Thank you.

Mr. Cameron: Q. Now there was a trial here, Mr. Stephens was on trial, do you remember that? A. Yes.

Q. You gave evidence there? A. Yes.

Mr. Sturdy: What proceedings?

Mr. Cameron: Reading from Page 19 on the first trial.

Mr. Sturdy: The first trial?

Mr. Cameron: Yes.

20 "Q. Tell me this, where were you in relation to your husband? A. I had hold of his left arm.

Q. I see. A. When we got about half ways across I looked around my husband like this and I could see the street car coming quite a little ways down."

Were you asked those questions and did you give those answers? A. Yes sir.

30 Q. Later on in the transcript of the same proceedings the evidence comes out, what you said at the preliminary hearing—of course that would be in the police court, I am reading from page 31 of the proceedings of the first trial, and the judge was asking you—

Mr. Sturdy: Q. Do you remember the time, do you remember what proceedings he is speaking of? A. The preliminary hearing.

Mr. Cameron: This is the 25th of May.

Mr. Sturdy: This is the sixth time she has given evidence and she should be told exactly.

Mr. Cameron: The 25th of May, the proceedings I am reading from, this was on the first trial of Mr. Stephens? A. Yes.

40 Q. And there was some preliminary hearing before that?

A. Yes.

The Court: Q. In the Police Court?

Mr. Cameron: Q. Yes, in the police court? A. Yes, I remember.

Q. I am starting at page 29, the court asked you this

Mrs. Nance (Plaintiff)—Cross-Exam.

question:

The Court: Well Mrs. Nance, while counsel is looking up something, as I understand it you were about half way across the tracks, or that is about half way across the road, when you saw the street car half a block away. A. Yes." and then on page 31— were you asked that question and did you give that answer? A. Yes sir.

10 Q. On page 31, the court, at the bottom of the page, "If that is not correct, let us get it, we don't want to nail her down to something that is not right. This witness is not accustomed to being in court giving evidence, and this is all a strain; if she has made any mistake I will certainly give her an opportunity to correct it. If that is not right, let me know."

Do you remember the judge saying that? A. You have got it marked down there, I suppose I must have said it, everything is marked down.

20 The Court: Q. If you do not remember saying, Mrs. Nance, don't say so; it does not always follow because it is down there that it is correct.

The witness: I don't remember saying a lot of those things.

Mr. Cameron: Well, I will go on. The judge says, —that is what Mr. Fisher read to you from the preliminary, and he reads the following question from the preliminary.

"Q. 'When you first saw the street car, Mrs. Nance, it was about half a block west on Kingsway, is that correct?

A. Yes.'

A. Yes.

30 Q: So that would be right. The next point is where you were at that time, and the question was—"

And then he reads the question from the preliminary:

"'Q: At that time you were in the devil-strip, in the strip between the two car tracks? A. Yes.'

Now, is that not correct? A. Yes.

Q. Then that is correct? A. Yes."

Were you asked those questions by the Court, and did you give those answers? A. I remember hearing about the devil-strip, but I didn't know what the devilstrip—

40 Q. Answer the question, were you asked those questions and did you give those answers?

The Court: Let her answer.

Q. Go ahead. A. I remember hearing the questions, all right, but you know I didn't have the distances marked off, I wasn't expecting an accident, and those words were practically

Mrs. Nance (Plaintiff)—Cross-Exam.

put into my mouth, and if I said yes, it was because it was presented to me like that, because since I have been out there I know very well where I made my mistakes, I didn't measure, nobody would expect an accident.

Mr. Cameron: Q. All right, there was a second trial, I believe, and you were at that? A. I have attended every trial.

Q. Yes; I am reading from page 3 of examination in chief, direct examination by Mr. Walkem.

10 Mr. Sturdy: Page?

Mr. Cameron: He is not allowed to ask leading questions; he lets you give the answers, and he says, starting at page 2:

"Q. Now, what are you describing, your passage across Kingsway? A. Yes.

Q. Yes, your passage across Kingsway? A. Yes, sir.

Q. And you were on the north side of Kingsway, where were you going? A. Going south across Kingsway.

Q. To the south side, yes, what direction were you going, to cross Kingsway? A. South.

20 Q. I know, but were you going straight across, or at an angle, or what direction? A. Just straight across."

You were asked those questions, and did you give those answers? A. I suppose, but I don't remember.

"Q. Straight across, yes, and what happened? A. We had just got over the first tracks, the first set of street car tracks there, when I looked around, I had my husband by his left arm, I looked around him, straight down Kingsway, and I could see a street car coming—

Q. Yes? A. —in the next block."

30 Were you asked those questions and did you give those answers? A. I guess I did; I have already told you why.

Q. I beg pardon? A. I have already explained why.

Q. Later on in the same proceedings you were cross-examined by Mr. Fisher; I am reading from page 4:

"Q. Mrs. Nance, when you first saw this street car, you had crossed the first set of tracks, is that correct? A. Yes, sir, somewhere along there, I think.

40 Q. Giving your evidence at various times on this case you put yourself in what is called the devil-strip, and that is the point where you next looked—the first time you looked was as you started across? A. Yes.

Q: That is correct? A. Yes."

Were you asked those questions, and did you give those answers? A. I suppose I must have, but I don't remember.

Q. You notice the word "devil-strip"? A. I answered so

Mrs. Nance (Plaintiff)—Cross-Exam.

many times I could hear "devil-strip" still ringing in my ears, and I still don't know where it is.

Q. You still haven't any reason to change your story. I will go on from there:

"Q. There was no traffic then, coming that way? A. No, not that I noticed."

I skip a bit there—I had better put that in; the previous question was:

10 "Q. Giving your evidence at various times on this case you put yourself in what is called the devil-strip, and that is the point where you next looked—the first time you looked was as you started across? A. Yes.

Q. That is correct? A. Yes.

Q. There was no traffic then, coming that way? A. No, not that I noticed.

Q. And the next time you looked was when you were in the devil-strip, which was just as you crossed the first set of tracks? A. I suppose that is what you call it, I never heard the expression used before in my life.

20 Q. It has been used a couple of times in asking you about it? A. I was a little ways across the first set of tracks, I don't know how far."

Were you asked those questions, and did you give those answers? A. I suppose so.

Q. There was no confusion about devil-strip that time, was there? A. Yes, there was; if you look back there; I said I didn't know where the devil-strip was, I never heard of it before in my life.

30 Q. I will read that again— A. I said I was all confused in the previous testimony.

"Q. And the next time you looked was when you were in the devil-strip, which was just as you crossed the first set of tracks? A. I suppose that is what you call it, I never heard the expression used before in my life.

Q. It has been used a couple of times in asking you about it."

And you said,

40 "I was a little ways across the first set of tracks, I don't know how far."

The Court: We will adjourn for five minutes.

(PROCEEDINGS RESUMED FOLLOWING
SHORT RECESS)

Mrs. Nance (Plaintiff)—Cross-Exam.

Mr. Cameron: Q. The answer I have just finished reading to you from the last previous trial involving Mr. Nance — Mr. Stephens. Now, do you remember being examined for discovery by Mr. Gilmour? A. Yes.

Q. That was a couple of weeks ago, I think it was. I am reading from question—I think I had better start at page 31—page 9, sorry.

Mr. Sturdy: Page what?

10 Mr. Cameron: Page 9, question 83. I may say that she is on the northwest corner of Kingsway and Gladstone, the northwest corner, just about to cross Kingsway:

“Q. 83: And you proceeded to endeavour to cross?

A. Yes.

Q. 84: And at that time you saw no traffic? A. No, it didn't seem to me as if I could see anything.

Q. 85: Did you see any people at any of the corners at that time? A. I didn't notice, no.”

20 Were you asked those questions, and did you give those answers? A. Yes, sir.

“Q. 86: Did other people come out of the cafe when you and Mr. Nance came out? A. I didn't notice.

Q. 87: Well then, you and Mr. Nance proceeded across to cross the intersection? A. That is right.

Q. 88: And that would be, you would be crossing, first the westbound traffic of Kingsway, the westbound lane? A. Yes, we were crossing over to the south.

Q. 89: Yes, in a southerly direction? A. Yes.

30 Q. 90: Was there any conversation between yourself and Mr. Nance at that time? A. No.”

Were you asked those questions, and did you give those answers? A. Yes, sir.

Q. Carrying on, question 91:

“Q. 91: And then what happened, Mrs. Nance? A. Well, somewhere along there I looked around my husband, I had this arm, and I looked down and I could see the street car in motion.

Q. 92: Let us just pause there. You saw a street car in motion for the first time? A. Yes.

40 Q. 93: Coming in which direction? A. Coming east, coming towards us.

Q. 94: Coming towards you from the west, going easterly? A. Yes.

Q. 95: And where were you at this time when you first saw the streetcar? A. Well, that is where I get con-

Mrs. Nance (Plaintiff)—Cross-Exam.

fused. I am not just sure exactly where it was, to tell you the truth. You don't notice distance when you don't expect anything to happen, but it seemed to me I was just a little bit . . ."

The Court: "... just over a little bit . . ."

Mr. Cameron: Q. "... it seemed to me I was just over a little bit over the first tracks. I am not sure of that either."

10 Were you asked those questions, and did you give those answers? A. Yes, sir.

Q. Question 96:

"Q. Did you say 'tracks'? A. Yes, the street car tracks.

Q. 97: You have heard the expression used, 'devil-strip'. Do you understand what is meant by devilstrip?

A. No, I didn't know what that meant at all. I never heard of it before.

20 Q. 98: But you think you had already crossed two of the tracks, and they would be the most northerly two tracks, when you first saw the street car? A. Yes, sir."

Were you asked those questions, and did you give those answers? A. Yes, sir.

30 Q. And now you are telling us, Mrs. Nance, that you were just between the edge of the road and the first set of street car tracks when you saw the street car, first saw the street car? A. Yes, I am telling you that because since I have gone out there it is a different picture altogether, and because I have stuck to practically the same thing in all the evidence you have read out, it is just because I thought I had to stick to the same thing and say it over and over.

Q. That was when Mr. Nance was on trial.

The Court: Stephens.

Mr. Cameron: Q. Stephens; you knew he might go to jail if he was convicted in those proceedings, did you know that? A. I don't understand what you mean.

Q. Did you know, when you were giving all this previous evidence, Mr. Stephens might go to jail if he was convicted? A. Why, surely.

40 Q. Surely, and yet you gave all that evidence, and now you are coming in here after all that seven times and now you are saying you have changed your mind since you have been out to look. A. They always read back all this other evidence and practically tell me I have to stick to the same story.

Q. You have changed your mind since you have looked at

Mrs. Nance (Plaintiff)—Cross-Exam.

the place? A. Yes, I did.

Q. When was that? A. That was two days ago.

Q. Yes, with Mr. Sturdy and Mr. Rowe? A. Yes, sir—

Mr. Sturdy: Let her finish that answer.

Mr. Cameron: Yes.

Mr. Sturdy: Q. Did you finish that answer, you went out with— A. Yes.

Mr. Cameron: I am going to make this suggestion to the
10 jury, so I think I had better make it to you.

Q. I want to suggest to you the reason you are changing your story now is that if the street car—if you were in the devil-strip and the street car was half a block away, or quite a ways down the street, as you said recently, you and Mr. Nance only had about five feet to get across the tracks and you couldn't possibly have been hit by that street car, which had to go half a block, stop, pick up four passengers, come across the street and all the way up to where you were. Now, that is almost an impossibility, and that would be very damaging to your case, isn't
20 that so? A. No, that is not, because when I went out there I had a different picture altogether; we wouldn't be over half-ways across the street, for heaven's sake, before we would even look down the second time.

Q. You said that. A. Sure, you want me to keep on saying it and saying it, and that is what I have been doing, and now I am checking up.

Q. I am asking why you have changed your mind. A. Because I have been out to the scene of the accident, and I have a different picture altogether, which is clear.

30 Q. All right, then, you started from there, wherever you were, when did you see the street car, and when did you next see it? A. When it hit us, practically.

Q. Where were you then? A. On the last southerly rail.

Q. Did you look again between the time you looked—let us assume you are correct, and you first looked at the traffic before you got to any street car tracks; did you look again then, until you were hit? A. No, I don't think—I knew we would be right in front of him by that time, and I thought he wouldn't start up when he saw us in front of him.

40 Q. You knew he was there, though? A. Yes, I saw the street car coming along, and I knew he had to stop there.

Q. How did you know that? A. Because at that time I thought all street cars had to stop; I thought it was like a stop-sign.

Q. Why did you think that? A. I have always thought

Mrs. Nance (Plaintiff)—Cross-Exam.

that.

Q. Ever been to that corner before? You told us you hadn't? A. No.

Q. I am going to suggest to you the truth of the matter is you were just looking at your feet, you were not watching the street car at all? A. I certainly saw a street car anyhow.

Q. You didn't see where it was? A. Yes, I did see it, it was in motion, coming up.

10 Q. And yet you never bothered to look again from there until the time you were struck? A. No, I didn't think it was necessary, because at that time I was sure he would see us.

Q. You were relying on the motorman? A. In part—no, you can't rely on anybody any time, you have got to rely on yourself.

Q. How did you try to avoid the accident? A. Naturally when I saw the street car there I wanted to get across the street, we just kept right on going to get across the street.

Q. Did you look—you say no? A. No, I didn't look again.

20 Q. You were relying on him—I am not trying to trick you; tell us what you were doing to avoid the accident. A. I don't see what else we could have done to avoid it, he ran right into us. One motorist depends on another for right of way, that is as much as I depended on him for right of way for us.

Q. Did you hear him coming? A. At the very last, that is what made me peek around like this, and it was right on us.

Q. If you had looked in the devilstrip could you have stopped there? A. Pardon?

30 Q. Supposing you had looked in the devilstrip—you say now you didn't look in the devilstrip—just before you got on the devilstrip. A. I don't know, he would have seen us by that time, we were going so slow; I showed you yesterday how we were walking.

Q. It turns out now that the street car must have been very close to you, and if you had looked again just before you stepped on the tracks, you would have known you were going to be hit. A. The street car stopped.

Q. When you looked the second time—? A. I didn't look a second time.

40 Q. You told us that, but if you had looked, and apprehended any danger, was there anything to prevent you stopping? A. No, there was nothing to prevent us, we were going slow, we could have stopped.

Q. Was there anything to obstruct your vision? A. No, we could see.

Mrs. Nance (Plaintiff)—Cross-Exam.

Q. I suggest you were looking at your feet, and were not looking down to the corner at all. A. I looked as much as it was necessary to look, and when you see a street car and you think they are going to stop there, you depend on a certain amount of protection from the other fellow; as I said, one motorist depends on another for right of way. We had the right of way at that time.

Q. I am asking what you did. A. I am answering you.

10 Q. I am asking if you were looking down at your feet. A. We were hanging on to each other, we would slip and hang on, and go on naturally like anybody would cross an icy street yourself.

Q. I am reading question 75 from discovery:

"Q. 75: Do you know whether Mr. Nance looked for traffic as well as yourself? A. He was more or less concentrated on his feet. He was like this, watching.

Q. 76: He was looking down towards his feet? A. Every time he slipped, we would both laugh."

20 I asked you that before, and I think you said you remembered giving that evidence, is that right? A. Yes, if you have it marked down there.

Q. That is not what you said, you said you remembered before.

Mr. Sturdy: If you will read question 75 again. Let me ask my friend to re-read question 75.

Mr. Cameron: "Q. Do you know whether Mr. Nance looked for traffic as well as yourself? A. He was more or less concentrated on his feet. He was like this, watching."

30 And then you indicated looking down at the feet.

"Q. 76: He was looking down towards his feet? A. Every time he slipped, we would both laugh."

You were asked those questions and gave those answers?

A. Yes.

Now, Question 105, Mr. Gilmour said to you on examination for discovery, at least, this is my record of it:

"Q. 105: I might say, Mrs. Nance, that I would like, if you can, to please just tell me what you saw at that time and not what you have since learned. Did you see the street car come to a stop? A. No, I didn't see it stopping.

40 "Q. 106: You have since learned that it did stop? A. Yes.

Q. 107: But you did not see it stop? A. No, sir."

Were you asked those questions, and did you give those answers? A. Yes, sir.

Mrs. Nance (Plaintiff)—Cross-Exam.

“Q. 108: And then you kept on your journey in a southerly direction? A. Yes, sir.

Q. 109: And where were you looking? A. Mostly watching our footing and that.

Q. 110: You took your eyes off the street car? A. Yes, and then I didn't look again until—

10 Q. 111: When did you look again? A. We were just almost—well, in fact, we were almost in the centre of the last street car tracks.

Q. 112: You were about the centre of the third and fourth street car tracks? A. Yes.”

Were you asked those questions, and did you give those answers? A. Yes, sir.

Q. So it would be right to say you were watching your feet a good deal of the time? A. Well, after I figured we had the right of way. A motorist will take his eyes off the other fellow and go on when he figures he is safe, that he has got the right of way, and that is what I did.

20 Q. Now, you have said at various times you saw it about half a block down the street, and other times you said quite a ways, and in Court yesterday, or this morning, I have forgotten, you said you were wrong about that, it wasn't quite that far away, it was down by the used car lot; is that correct? A. A little bit this side of the used car lot.

Q. Why did you change your mind about that? A. I noticed it when I was out there the other day, but I didn't notice it that night, but it made me think that was the beginning of the block.

30 Q. But about half a block, would that be rather long? A. Well, where I thought was the beginning of the block up to where it stopped, it would be just about a little bit over half, on this side.

Q. And that is what you say now, is it? A. Yes.

Q. Half a block? A. Yes, I said a little this side of the used car lot.

Q. Yes, and that is about half a block? A. Yes.

Q. Then I apologize; you were not changing your mind. One question I forgot to ask: Is there anything wrong with your 40 eyesight or hearing? A. No, sir.

Q. And Mr. Nance, how was his? A. Good.

The Court: Is that the used car lot next to the store?

Mr. Cameron: I don't think that lot is shown on this map, my lord.

Mr. Sturdy: No, it is not shown, the map indicates that

Mrs. Nance (Plaintiff)—Cross-Exam.
Mrs. Nance (Plaintiff)—Re-Exam.

the first block west of Sidney Street, 500 feet distant—my client has described the used car lot in the middle of the space on the south side of Kingsway midway between Gladstone and Sidney Street.

The Court: I do not see Sidney Street marked.

Mr. Sturdy: The small diagram in the lower lefthand corner of the map, diagram Exhibit 1, shows Sidney Street and
10 Gladstone.

Mr. Cameron: Halfway down the block would be about 150 feet.

Mr. Sturdy: 250 feet.

The Court: How much?

Mr. Cameron: 250 feet.

The Court: That is halfway between.

Mr. Cameron: My friend informs me 500 feet in the block, and I believe that is correct.

Mr. Sturdy: That is to scale.

20 Mr. Cameron: Yes, so it is 250 feet away.

RE-DIRECT EXAMINATION BY MR. STURDY:

Q. Mrs. Nance, arising out of that examination: You and I went out there last Monday? A. Yes, sir.

Q. And we went with Mr. Roth, a Swedish witness? A. Yes.

Q. Or someone with whom you are staying, Mrs. Gratham? A. Yes.

Q. Why had you never gone out there before the 20th June? A. I just didn't feel equal to going through that ordeal.

30 Q. But since the inquest, which was about the 18th or 20th of January, have you been in Vancouver or in Irricana most of the time? A. What do you mean?

Q. You remember the inquest? A. Yes.

Q. Your first proceeding? A. Yes.

Q. That was in the first week of January? A. Yes.

Q. After the inquest, what did you do, you went home? A. Yes.

Q. To Irricana? A. Yes.

40 Q. And when did you come back to Vancouver? A. For the preliminary.

Q. For the preliminary hearing on the manslaughter trial of Joseph Stephens, and that was March 18th? A. Yes.

Q. So, between the date of the preliminary, January 24th,

Mrs. Nance (Plaintiff)—Re-Exam.

and March 18th, you were in Irricana? A. Yes.

Q. And after the preliminary, where did you go? A. I went back home again.

Q. Back to Irricana? A. Yes.

Q. When did you return to Vancouver? A. For the manslaughter charge?

Q. Yes. A. The next trial.

Q. Which was — this is fair enough — you returned just
10 about the 24th of May, didn't you? A. Yes, that is right.

Q. And after the two manslaughter trials, which were close together, then what did you do? A. I went home.

Q. Back to Irricana? A. Yes.

Q. When did you return to Vancouver from Irricana this last time? A. Sunday night.

Q. When? A. At eleven o'clock at night.

Q. The following afternoon, last Monday, the four of us went out and saw the scene of the accident? A. Yes, sir.

Q. Was that the first time you had been out there after
20 the fatality? A. Yes.

Q. And what difference between the appearance of the location struck you as between the time you went out Monday and the time you were out there on the 17th January? A. It was the width of the street.

Q. Yes, and what caused in your mind any confusion as to the width of the street? A. It was the snow.

Q. How much snow, according to what you know now and all this evidence you have heard six times? A. Eight feet of snow.

Q. Out from Kingsway? A. Yes.
30

Q. Do you know now—it is agreed, I think, the width of the first and second—the space between the first two rails is 5 foot eight.

Mr. Cameron: Four foot eight and a half.

Mr. Sturdy: Four foot eight and a half.

Q. And from where you know now that you stood when you first saw the street car, to where you said you stood when you first saw the street car, on the previous proceedings, is a distance then of about some eight feet, isn't it? A. Yes.

Q. Is that just about the width of the snow you spoke of?
40 A. Yes, that is right, sir.

Q. It was that that caused the trouble in your mind, the snow being there, and when we went out there there was no snow? A. That is right.

Q. Did your husband do the driving, or most of the driving

Mrs. Nance (Plaintiff)—Re-Exam.

on this trip to Oklahoma? A. He did partly, and my son did, they changed off and on.

Q. Did he have any difficulty or impediment? A. No, he did most of the driving; Bobby, my son, liked to drive, and he would ask.

Q. But Mr. Nance would do most of it? A. Oh, yes.

Q. Just to clarify, one point came up in cross-examination: After your arrival in Vancouver on January 17th, about one
10 o'clock, were you on a street car at all until the time you boarded the street car that took you out to Gladstone and Kingsway at about 11.30 p.m.? A. No, sir.

Q. You hadn't had street car rides in Vancouver before you went that time you did? A. That is true.

Q. Had you ever, before the time you went out there about 11.30, January 17th, ridden on those P.C.C. cars? A. No, sir.

Q. Had you ever done very much riding on Vancouver street cars?

Mr. Cameron: I think we had that before — not that I
20 object to it.

Mr. Sturdy: This is my case; my learned friend has my client saying she had been on a street car previously on the same day, when actually she said her husband had gone out to the Chateau and come back on a street car, but she wasn't with him.

The Witness: No, I wasn't with him.

Mr. Cameron: That is not the reason, it is shortly this: my learned friend did, sometime, at all events, make out that she had previously ridden on one of these street cars.

Mr. Sturdy: Yes, I believe she did ride from the West End
30 out to Gladstone and Kingsway on—

Mr. Cameron: That is what my friend brought out.

The Witness: I didn't understand the question.

Mr. Sturdy: Q. When you left your niece's and came out to Gladstone Street, you rode a street car didn't you? A. Oh, yes, that is the one we got off to go to the cafe.

Q. That is one of those modern new Vancouver street cars?
A. Yes; but not before that.

Q. Oh, no. A. Yes, that is the one we went out on.

Q. It is quite a long way? A. Yes.

Q. Did it stop at every corner? A. I wouldn't know that,
40 sir.

Q. You did have some apparently mistaken notion that street cars in Vancouver had to stop at every corner? A. That is what was in my mind.

Q. You were wrong about that, but so you thought at that

Mrs. Nance (Plaintiff)—Re-Exam.

time? A. Yes.

Q. And the fact, as you know now is that the street car did stop there? A. The other day we were out there, the street car came along and it stopped there, and no passengers got on; I was going to ask—

Q. That would hardly be evidence about another occasion, unless my learned friend wants to know about it. When you crossed Kingsway on the night in question, what direction were
10 you facing, south? A. Yes.

Q. What would be the line of the motorman's vision? A. He was going east.

Q. Yes; did I understand you to tell my learned friend that Mr. Nance didn't look either to the left or right? A. Well, by what he read out there, but he was looking, certainly, the most of the time, I don't know whether we were looking at our feet or what, hanging on to each other, up and down, everybody looks both ways, for goodness sakes.

Q. Do you say this—a couple of negatives in a row—do you
20 say Mr. Nance didn't look? A. Oh, no, he certainly looked, for goodness sakes; nobody is going to go across a street without looking.

Q. On our visit to the scene of the accident last Monday afternoon you did see the used car lot then? A. Yes.

Q. What relationship exists, in your mind, or did exist until then, between the used car lot, in what you now know to be the used car lot, and the length of that block to Sidney Street, or to the west? A. Well, I just thought that that was—it seemed to me then that was a full block.

30 Q. To where? A. To where the used car lot was.

Q. You thought that was a full block? A. Yes.

The Court: Q. From Gladstone to the used car lot, you thought was a block, is that what you mean? A. Yes, from where the used car lot is up to where the street car stopped, I thought that was a block.

Mr. Sturdy: Q. You thought that was a block? A. Yes.

The Court: Where is that used car lot in the block?

Mr. Sturdy: It is not indicated.

Mr. Cameron: She said it was halfway down the block,
40 and that would make it 250 feet west of Gladstone.

The Court: That is, the used car lot is midway?

Mr. Sturdy: Midway between Gladstone and Sidney Street.

Mr. Cameron: And that means 250 feet.

Mr. Sturdy: And that means 250 feet.

Q. And that is what you had, up to last Monday, thought

Mrs. Nance (Plaintiff)—Re-Exam.
Mrs. Nance (Plaintiff)—Re-cross Exam.

was the intersection of the next street west from Gladstone? A. Yes.

Mr. Sturdy: All right, thank you.

Mr. Cameron: My lord, I neglected to put to the plaintiff, query her on being in the cross-walk; I intend to call evidence; I think that is my duty to ask her.

The Court: All right.

10 RE-CROSS EXAMINATION BY MR. CAMERON:

Q. Mrs. Nance, I am informed you were not, in fact, in the cross-walk.

Mr. Sturdy: There we go.

The Court: Do not put it that way.

Mr. Cameron: Q. Mrs. Nance, where were you crossing the street? A. When we started, at the northeast corner, from the curb there?

Q. Yes. A. And there was snow trampled around there, and that is where we started to cross.

20 Q. Where were you going to go? A. We were going to cross Kingsway, south.

Q. Where was your destination? A. Well, we were going to walk up to our motel after we got across the street, we planned to walk up to the motel.

Q. And in the course of your travels to the motel did you go straight to it, at a slight angle? A. No, we just went right straight across until we were hit with the car; we hadn't gone anywhere yet.

30 Q. Right straight across towards the motel? A. Right straight across the intersection, the path that was there when we came, where we could see people were walking.

Q. Where was the path leading to, the motel, or— A. I don't know where it was leading, but we were making a straight bee-line to get across the street, and we were going to walk up to our motel.

Q. So if anybody says you were angling across the street, that would be wrong? A. We were not angling.

Mr. Sturdy: Q. Mr. Roth said you didn't go to his left, or easterly from him, he would be right? A. Yes.

40 Mr. Cameron: Well, what is this?

Mr. Sturdy: There is one thing I want to ask about.

Mr. Cameron: I am objecting to this, my lord.

Mr. Sturdy: All right, it has been covered, it doesn't matter,

Mrs. Nance (Plaintiff)—Re-cross Exam.
 Borger (for Plaintiff)—Exam.-in-chief

I am satisfied.

The Court: Q. Mrs. Nance, you demonstrated to the jury yesterday how you were walking, sort of a slow shuffle? A. Yes.

Q. Why were you walking that way, because of the ice, or because Mr. Nance was lame, or both? A. Well, it was mostly because of the ice; Mr. Nance could walk good until we were
 10 on that icy street.

Q. Well, how did he walk ordinarily? A. Just like a million dollars.

Q. I mean, was there any shuffle in his walk? A. No, never, he strided out, he had a good stride, walked right along.

Q. I understood you to say he was a bit lame? A. At that time he was, but you said ordinarily.

Q. I mean at that time. A. At that time he was lame, yes.

Q. How did that affect his walk. A. He could still walk
 20 on good ground, fairly good, he had that limp.

Q. Just a limp, not a shuffle. A. On good ground he didn't walk with a shuffle.

The Court: Would the jury like to ask any questions? That is all, thank you.

Mr. Sturdy: Thank you, Mrs. Nance.

(Witness aside.)

The Court: I wonder if we hadn't better adjourn now until
 2 o'clock?

Mr. Sturdy: As your lordship pleases.

30 Mr. Cameron: My lord, I have some witnesses from out of town and I would like to reach them—I don't know.

Mr. Sturdy: I will be very brief with this lady, and if she is not called this morning I am going to be desperately afraid when I meet her.

The Court: Yes, call her right now.

FRANCES BORGER, a witness called
 on behalf of the Plaintiff, being
 first duly sworn, testified as
 follows:

40 DIRECT EXAMINATION BY MR. STURDY:

Q. Mrs. Borger, you are a hair dresser? A. Yes.

Q. And have your place of business on Commercial Drive,

Borger (for Plaintiff)—Exam.-in-chief

what is the number? A. 2783.

Q. On the night of January 17th were you at the corner of Gladstone and Kingsway in Vancouver? A. Yes.

Q. Were you in company with someone else? A. Yes.

Q. Who was your friend? A. Mrs. Lee.

Q. Is that Mrs. Kathleen Lee? A. Yes.

Q. No, Mrs. Lee, Kathleen or Christine? A. Christine.

10 Q. You and Mrs. Lee had been at a whist drive? A. Yes.

Q. At a ballroom near that corner? A. Yes.

Q. And that ballroom is on the north side of Kingsway just west of Gladstone? A. Yes.

Q. After you finished your card games, where did you and Mrs. Lee go? A. We crossed the street to the south side and turned east to wait at the car stop for a No. 11.

Q. You didn't cross at the intersection, you jay-walked. A. We jay-walked.

The Court: Q. Across Kingsway? A. Yes.

10 Mr. Sturdy: Q. What have you to say about the state of the street, the condition of the surface? A. Well, it was very slippery that night.

Q. And after you crossed Kingsway, you walked up to the Gladstone corner? A. Yes, to the car stop.

Q. Where had you planned to go, what car did you intend to take? A. We were waiting for a No. 11 car going east.

Q. And did you finally get on that car and go east? A. Yes.

Q. And an accident happened while you were on the car? A. Yes.

30 Q. Before you got on the car, did you see a man and woman cross the street? A. Yes.

Q. Now, tell his lordship, without giving any conversations between you and Mrs. Lee or between you and any other lady, tell his lordship what you saw, and the jury. A. I seen this lady and gentleman come out of the cafe directly across the street from where we were standing and they stopped there for a minute, buttoning up their coats or something, and she took him by the arm and they turned to walk east. After that I took my eyes off them and I didn't see where they went.

40 Q. Did you notice anything about his size? A. Yes, he was a very large man, that is what made us take notice of the couple.

Q. Yes, did you have any trouble picking them out or distinguishing him, could you see him clearly? A. I seen him clearly, yes.

Borger (for Plaintiff)—Exam.-in-chief

Q. And his wife? A. Yes.

Q. Then you took your eyes off them and looked elsewhere? A. I was watching for the streetcar.

Q. You were watching for the streetcar, when you took your eyes from them was the streetcar then coming? A. Well, that, I couldn't say exactly right that minute, I waited a little bit for the streetcar.

Q. Ultimately you got on the streetcar? A. Yes.

10 Q. Do you know who was the last of the four ladies who had been standing on the corner to get on the streetcar? A. Yes.

Q. Who? A. Mrs. Lee.

Q. Your friend? A. Yes.

Q. Mrs. Lee is out of Vancouver now, isn't she? A. Yes.

Q. Do you know anything about an accident in which someone got hurt at that time? A. You mean, did I feel anything?

Q. Yes, tell what you saw, anything that happened. A. No. Well, I seen the people after the accident, laying on the
20 street.

Q. Which people? A. Mr. and Mrs. Nance.

Q. Had you seen them before? A. I had seen them across the street and I recognized them as the same couple, because he was such a large man.

Q. Yes. When you saw them for the second time, they were on the street? A. Yes.

Q. Can you give us some rough idea about where abouts on the street they lay? A. Mrs. Nance was lying just a little bit west of the middle door of the streetcar when I stepped off
30 the streetcar.

Q. Yes. A. And Mr. Nance, I figured he was lying approximately a length back of that again, a streetcar length back of that again.

The Court: Q. Towards the front of the streetcar or towards the rear? A. Towards the rear.

Mr. Sturdy: Q. Did you get out of the streetcar to look at them? A. Yes.

Q. Did you observe Mr. Nance, the man? A. Yes.

Q. Did you look at him closely? A. I walked right up.

40 Q. Was he conscious? A. I would say he was unconscious.

Q. Did you notice whether he was bleeding? A. Yes.

Q. Do you know what part of him was bleeding? A. No.

Q. In particular, no, but in general, do you know what part of his body was bleeding? A. That, I couldn't say, be-

Borger (for Plaintiff)—Exam.-in-chief
 Borger (for Plaintiff)—Cross-Exam.

cause all I seen there was blood on the pavement.

Mr. Sturdy: All right, your witness.

CROSS-EXAMINATION BY MR. CAMERON:

Q. When you first saw Mr. and Mrs. Nance, they were right opposite the cafe? A. Yes.

Q. Lighted cafe? A. Yes.

Q. Windows, they were right in front of the cafe, were they? A. Yes, they were right in front of the cafe, right in front of the door.

Q. And did the way they were walking call itself to your attention for any special reason? A. No, I wouldn't say so.

Q. And you said you were not quite sure how long it was when you last saw them—where were they when you last saw them? A. Where was I?

Q. No, where were they in relation to the cafe when you last saw them? A. When I last seen them they had turned to walk east.

Q. Yes? A. Then I took my eyes away, because I was watching for the streetcar coming the opposite way.

Q. Were they still by the cafe or had they passed it? A. I took my eyes off them as soon as they turned to walk east, then I didn't look any more.

Q. And it struck you as amusing, because he was so big and she so small? A. Yes, that is right.

Q. And you said they had a little trouble keeping their footing? A. Pardon?

Q. You said they had a little trouble keeping their footing? A. Not that I noticed, no.

Q. Now, the interval between the time you last saw them, looked at them, and the time the streetcar came along, you said you were not sure of, how long was it after you took your eyes off them that your streetcar came along? A. That, I couldn't say for sure, because I had in my mind just watching for the streetcar.

Q. Yes? A. And I don't know how many minutes or seconds it would be.

Q. Would it be a matter of seconds or a matter of minutes? A. It could be a matter of a minute, probably, because the streetcar must have come because I quit looking.

Q. Then it wouldn't be a minute, would it? A. I am no judge of time, because I wasn't concentrating on it.

Borger (for Plaintiff)—Cross-Exam.

Q. You really don't know, of course, that is what you said first. Now, you got on this streetcar that came along? A. I got on, yes.

Q. And just describe what happened after that. A. Well, there was four of us standing there and the two ladies got on, we stood back to let this one lady on ahead, then I got on, the third one on, and my friend was going to put the tickets in for me, so I walked on in up the streetcar, looking for a seat, and
10 I got back about the middle door when something happened and the streetcar came to a stop and I knew that there had been an accident, because everybody ran and looked out the window.

Q. Where was the streetcar when you felt the brakes go on? A. You mean where on Kingsway?

Q. Yes, in relation to Gladstone Street. A. Well, it was just about opposite that auto court there.

Q. That is, the auto court that is about 45 or 50 feet of Gladstone Street? A. Auto court which?

Q. Where is the auto court from Gladstone Street? A.
20 Well, it is east—I won't say that, because I am not sure—I know where it is when I am there.

Q. The auto court that you come to after you leave Gladstone Street? A. It must be east of Gladstone, then.

The Court: I thought it was at the corner.

Mr. Cameron: Q. Well, how far past the corner, if it was past the corner, was the streetcar when you felt the brakes go on? A. I can't say how far it was past the corner; I know just where the streetcar stopped, but how far that is past the corner, I don't know.

Q. Did it stop quickly? A. Yes, it stopped quite quickly, I knew something had happened, it had to stop quick.

Q. It had crossed Gladstone, had it, when it stopped? A. Pardon?

Q. Had it crossed Gladstone? A. It had crossed Gladstone?

Q. Yes. A. I would say it had crossed Gladstone, yes.

Q. When you felt the brakes go on? A. When I felt the brakes go on.

Q. You said you were walking up the streetcar and every-
40 thing was normal and suddenly felt a very sudden stop? A. Yes.

Q. Where was the streetcar then? A. It stopped sudden right there and we got out in front of the auto court.

Q. Now, that auto court extends over about half a block, I understand; what part of the auto court are you referring to

Borger (for Plaintiff)—Cross-Exam.

—would it assist you to look at a plan? A. It stopped at the driveway—I don't always hear what you say.

Q. I am sorry. It stopped at the driveway? A. Yes, the first driveway, there is a driveway right by the auto court and that is where the streetcar was about, I would say, just a little bit—the front of the streetcar would be east of that, it was practically stopped at that driveway, because I got out the middle door and I was right at the driveway.

10 Q. You were right at the driveway? A. Yes.

Q. You still haven't given me a clear answer, I don't think, to my question: Where was the streetcar in relation to the easterly curb of Gladstone Street when you felt this emergency? A. Well, I am saying that it was right there, that is when I felt it, it just stopped like that.

Q. Right there? A. At that driveway.

Q. Oh, all right, thank you. That is what I wanted to get. Now, you said the man was lying about a length, you thought, away from the lady. A. Well, I am no judge of distance, but 20 I say approximately the length of the streetcar back of the lady.

Q. I see, and the lady was lying where, in relation— A. I came out the middle door and I just turned a little bit west and the lady was right there.

Q. Did you notice how the car started up, was there anything unusual about the speed? A. No, I wouldn't say so.

The Court: Q. Did you stay there until Mr. Nance was placed in the ambulance? A. I was there until the ambulance came and I seen them taking a stretcher, to put him on the stretcher.

30 Q. Had he been moved in the meantime? A. No.

Q. Was there more than one driveway into the tourist camp? A. Yes, there is a double driveway there, there is one that goes in by the building and comes out on the farther side.

Q. Is there another one—oh, I see, it goes in one place and comes out another A. Goes around and comes out the other side.

Q. That is what you meant by two driveways? A. That is what I meant by two driveways.

Q. And it has an entrance to both on Kingsway? A. Yes.

40 Q. And it was the first one? A. Yes, the first one right by the tourist place there, the office.

Q. You didn't feel any impact, I suppose? A. Pardon?

Q. You didn't feel any bump or impact? A. I never felt no bump.

The Court: Any questions? All right, that is all.

Borger (for Plaintiff)—Cross-Exam.
Gratham (for Plaintiff)—Exam.-in-chief

Mr. Cameron: My lord, I would like to clear up about the auto court and driveway. This witness—unless my friend will admit it, the easterly driveway, what you have marked as auto camp, shows office there, and then there is a very large area extending on to the right and this driveway comes around, it is easterly, it is not shown on this map at all.

The Court: Is that agreed?

10 Mr. Sturdy: Yes, my lord, about 2½ inches along the sidewalk on the south side of Kingsway, crosses the sidewalk and goes on there for 1¾ inches, 35 feet, and that is the first driveway, and there is a cut curb there and there is another driveway into the Chateau that is not on this, away down the street.

The Court: Quite some distance?

Mr. Sturdy: Quite some distance. It is not concerned with the accident, anyway.

Mr. Cameron: Q. You said, referring to the driveway, there was snow on the ground. A. Yes.

20 Q. And was it part shovelled out? A. The driveway shovelled out?

Q. Yes. A. I didn't notice.

The Court: That is all, thank you.

(Witness aside.)

The Court: We will adjourn until 2.15.

(PROCEEDINGS ADJOURNED UNTIL 2:15 P.M.)

Vancouver, B.C.,
June 22nd, 1949. 2:15 p.m.

(PROCEEDINGS RESUMED PURSUANT TO
ADJOURNMENT)

30

Mr. Sturdy: I am very nearly through, my lord, two brief witnesses discovery and then I am finished.

REBECCA GRATHAM, a witness called
on behalf of the plaintiff, being first
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. STURDY:

Q. Mrs. Gratham, you live in Vancouver? A. Yes.

Q. What address? A. 1905—13th Avenue, West.

Gratham (for Plaintiff)—Exam.-in-chief

Q. A little louder so the gentlemen of the jury can hear you. A. 1905—West 13th.

Q. You are a friend of Mrs. Nance? A. Yes.

Q. A close friend? A. A very close friend.

Q. And you know the late Mr. Nance? A. Known Mr. Nance since 1932.

Q. Where did you meet him? A. Calgary.

Q. You were living there then? A. I was living there.

10 Q. How long did you know him in Calgary and how long in Vancouver? A. Well we moved out here about six years, but I was back in Calgary last summer, the first week of September, visiting with Mr. and Mrs. Nance for a while.

Q. And do you consider yourself a close friend of the family? A. Very close.

Q. I want you to tell only about his habits as to taking care of himself, eating and drinking and so on? A. No, he was not a drinking man.

The Court: Q. He was what? A. He was not a drinking 20 man, but if the occasion called for it, he would take a drink.

Mr. Sturdy: Q. About his habits as to eating— A. Pardon?

Q. What about his eating? A. Well, I would call him a small eater for a large man, but he really liked his three meals a day.

Q. Did he eat regularly? A. Regularly, yes.

Q. Did he have regular hours of sleep? A. He liked to have lots of sleep unless he was busy, you know, working.

Q. In your opinion did he take reasonable care all the 30 time? A. He did, he did.

Q. I believe he was a pretty heavy smoker, wasn't he? A. Well, I guess you would say an average smoker.

Q. Did he work long hours when he was at his place of business in Irricana? A. Yes, he did. He lives out there—it is a farming district, and he kept his shop open after hours, catering to the farmers.

Q. How has his health been since the time of his operation in 1944? A. Well just through correspondence, he seemed to be fine.

40 Q. What sort of character, temperament did he have—not that it is material, but just to get a picture? A. He was a congenial man, very cheerful, and he was an energetic worker. I couldn't speak too highly of Mr. Nance.

Gratham (for Plaintiff)—Cross-Exam.
Crawford (for Plaintiff)—Exam.-in-chief

CROSS EXAMINATION BY MR. CAMERON:

Q. Mrs. Gratham, do you know what that operation was for in 1944? A. Well, I was living out here in Vancouver at the time. The operation—I do believe it was some—I couldn't tell you the medical terms, but it was something connected with the bowel, or something, but I couldn't say.

10 Q. You didn't hear what it was about? A. No.
(Witness aside.)

ELIZABETH JEAN CRAWFORD, a witness
called on behalf of the plaintiff, being first
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. STURDY:

Q. Mrs. Crawford, you are a sister of Mrs. Ena Pearl Nance?
A. Yes, sir.

Q. You live in Vancouver? A. Yes.

20 Q. How long have you lived in Vancouver? A. I have lived in Vancouver five years.

Q. Five— A. Five years.

The Court: Q. Whose sister did you say?

Mr. Sturdy: Q. Mrs. Nance's, my lord, the plaintiff's. You are eleven years older than she is? A. Yes.

Q. Did you know the late Mr. Nance? A. Yes, I did, seven years.

Q. How much of that in Vancouver, and how much elsewhere? A. Two years in Calgary, and the rest I was out here, and back and forth.

30 Q. What do you say as to his habits in respect to eating and drinking? A. He was a very small eater for the size of man; and he wasn't a drinking man; he would take a drink on special occasions, but he wasn't a drinking man by no means.

Q. Did he take reasonably good care of himself? A. Very.

Q. Did he eat regularly? A. Very.

Q. Eat his meals regularly? A. Yes.

Q. Did he get adequate sleep as a matter of habit? A. Yes, sir.

Q. Do you know what care he took of your sister since their marriage? A. Well, the very best.

40 Q. What kind of provider would you call him? A. I would call him the very best that—I guess as could be.

Crawford (for Plaintiff)—Exam.-in-chief
Crawford (for Plaintiff)—Cross-Exam.

Q. What about his disposition? A. He had a very cheerful disposition.

CROSS EXAMINATION BY MR. CAMERON:

Q. Mrs. Crawford, did you know that Mr. Nance had an operation about four years ago? A. Yes.

Q. What was it for? A. Well, I couldn't tell you that, because I wasn't in Calgary at the time, but I know he had an operation.

Q. As far as you know what was it for? A. I couldn't tell you that, I wasn't there, I don't know.

(Witness aside.)

Mr. Sturdy: My lord, if you please, the Honourable Mr. Justice Manson on the 26th of May, made an order for the examination de bene esse of Mrs. Christine Lee, previously described as one of the passengers in the street car. Mrs. Lee was to go away for a month. She is still in California as I am informed. Pursuant to that Order, Mrs. Lee's evidence was taken before the Court Registrar on the 26th of May. I represented the plaintiff, and my learned friend, Mr. Gilmour appeared for the defendant. I suppose I should read it.

The Court: Yes.

Mr. Sturdy: Mrs. Christine Lee was sworn—

The Court: Well, perhaps I better explain, Mr. Foreman and gentlemen, this evidence is being read just as though Mrs. Lee were here. It is sworn testimony and it was taken because she would not be here for the trial, so Mr. Sturdy is going to read it now and it is evidence before you just as though Mrs. Lee had been here.

Mr. Sturdy: With your permission, Mr. Foreman, and gentlemen, I am the lawyer referred to as Mr. Sturdy, and the lawyer referred to as Mr. Gilmour, is my learned friend with Mr. Cameron.

“Mr. Sturdy: Mr. Registrar, I file as Exhibit 1, (reading) . . .

who was lying on the road? Yes.”

I am willing for my friend, Mr. Gilmour, or Mr. Cameron to read from here on.

Mr. Cameron: I thought Mr. Sturdy might appreciate it if my friend Mr. Gilmour carried on.

de bene esse
Lee (for Plaintiff)—Exam.-in-chief

Mr. Gilmour: Yes, at that point my examination of Mrs. Lee began.

“Q. Mrs. Lee, this night in question. . . (Reading) . . .
Q. Or time? A. Nor time.”

EXAMINATION DE BENE ESSE UPON OATH OF
CHRISTINE LEE, PURSUANT TO THE ORDER
OF THE HONOURABLE MR. JUSTICE MANSON
MADE ON THE 26TH DAY OF MAY, A.D. 1949.
10 IN THE SUPREME COURT OF BRITISH COLUMBIA
(Before the Registrar)

Vancouver, B.C.
May 30th, 1949.

675/49.

BETWEEN:

ENA PEARL NANCE,

Plaintiff,

AND:

BRITISH COLUMBIA ELECTRIC RAILWAY
20 COMPANY, LIMITED,

Defendant.

D. A. STURDY, ESQ.—appearing for the Plaintiff.

F. J. GILMOUR, ESQ.—appearing for the Defendant.

CHRISTINE LEE, sworn:

Mr. Sturdy: Mr. Registrar, I file as Exhibit 1 the Order of the Honourable Mr. Justice Manson made in Chambers on the 26th day of May, 1949.

The Registrar: Entered in Volume Book 235, Folio 253.

30 (ORDER ABOVE-MENTIONED MARKED No. 1
FOR IDENTIFICATION).

The Registrar: The appointment for the examination has been duly taken out, returnable on this date, and the witness to be examined is present together with counsel representing the parties to this action.

(APPOINTMENT ABOVE-MENTIONED MARKED
No. 2 FOR IDENTIFICATION)

DIRECT EXAMINATION BY MR. STURDY:

Q. Your full name is Christine Lee? A. Yes.

Q. Where do you live, Mrs. Lee? A. 3845 Euclid Street, Vancouver.

Q. And your occupation is housewife? A. Yes.

Q. On the night of Monday, January 17th, at some time just before midnight, were you present at a collision between a B.C. Electric streetcar and two pedestrians? A. I was on the streetcar when it happened.

Q. And that was on the night of January 17th last? A. Yes.

Q. Do you remember the time? A. Well I cannot just recall the exact time but it was between 11:30—around 11:30.

The Registrar: Q. In the morning? A. No, no, at night.

Mr. Sturdy: Q. Before midnight? A. Yes.

Q. When the collision happened where were you? A. I was waiting for a No. 11 to come along. I don't know the direction. It would be the south side of Kingsway, I imagine.

The Registrar: Q. You were standing on the sidewalk waiting for a streetcar? A. Yes.

Mr. Sturdy: Q. On the southwest corner of the intersection of Gladstone and Kingsway; would that be right? A. I don't know. I never use the directions. I just know where it is.

Q. Would you agree with me it is the southwest corner? A. Yes, I imagine it would be.

The Registrar: Q. You were proceeding to go in what direction? A. I was going east towards Rupert Street.

Mr. Sturdy: Q. And the streetcar did come along? A. Yes.

Q. Was that the same streetcar which shortly after ran into Mr. and Mrs. Nance? A. Yes.

Q. And you got on that streetcar? A. Yes.

Q. How many people boarded the streetcar? A. There was four of us altogether.

Q. Were they all women? A. All women.

Q. You were in company with one of the other women, Mrs. Borger? A. Yes, my friend, Mrs. Borger.

Q. Where had you and Mrs. Borger been? A. We were at the card party in the Ellmar Ballroom. It is known as Maitland's.

Q. Where is the Ellmar Ballroom? A. On Kingsway. I don't know the number.

Q. Is it near Gladstone? A. Yes, in between Gladstone

and Victoria. There may be a street running in between it.

Q. Victoria is west from Gladstone, isn't it? A. It is the stop—

Q. Victoria Street is west from Gladstone Street, isn't it, Victoria Drive? A. Yes.

Q. And the Ellmar Ballroom is in the same direction towards Victoria from Gladstone Street? A. I believe it is closer to Gladstone Street than it is to Victoria.

10 Q. Yes, but it is west of Gladstone, is it not? A. Well, I don't know.

Q. Well, it is in the direction— A. It is in the middle of the block. I don't know whether you call it east or west.

Q. Is the Ellmar Ballroom west of Gladstone? A. Oh yes, I see what you mean. Yes, it is.

Q. And on which side of Kingsway? A. Well, it is on the opposite side to where I got the streetcar.

Q. That would be north? A. Yes.

Q. And it is in the first block west of Gladstone? A. Yes.

20 Q. After leaving the ballroom, you and Mrs. Borger walked to the place where you were waiting for the streetcar? A. Yes.

Q. What kind of night was it, as to weather? A. Well, it was clear. I know it was a very treacherous night and slippery, and I know we had quite a time getting over ourselves, because we had no rubbers on.

The Registrar: Q. Had it been snowing? A. No.

Q. Raining? A. No. I know there was a lot of snow on the sides. We tried to jump over the frozen snow, but the road was treacherous.

30 Mr. Sturdy: Q. Do you mean it was slippery? A. Yes.

Q. Was it very slippery? A. Very slippery.

Q. And you had to be careful walking along? A. Yes.

Q. Do you know who boarded the streetcar first? A. Well, I don't know those two ladies.

Q. Was it one of the other two women who got on first? A. Well, my friend—I know there was four. There was one lady that came across in front of the streetcar, and that is how I was last to get on, because I let her on first, and I believe I made a remark to her, or somebody hollered—

40 Q. You must not tell us what was said, but you were the last to get on the streetcar? A. Yes.

Q. Do you know who was directly in front of you, ahead of you? A. That lady I let on.

Q. And Mrs. Borger, of course, was ahead of you, too? A. Yes.

Q. You paid Mrs. Borger's fare? A. Yes.

Q. You put two tickets in the box? A. Yes.

Q. Did you have to have a transfer? A. Yes.

Q. Did you ask the motorman for a transfer? A. Yes,
I asked for two transfers.

Q. You said those words to him? A. Yes.

Q. Something to the effect of giving you two transfers? A.
I don't know just the exact words, but I wanted two transfers
10 and I held my hand out.

Q. Did he say anything? A. No.

Q. I mean about the transfers? A. No, when the bump
came—

Q. Before the bump came, did you ask for transfers? A.
Yes, sure, I said, "Two transfers."

Q. And then you held your hand out? A. Yes.

Q. And when the bump came were you still holding out
your hand? A. Well, I don't just recall. It happened so quick.

Q. When the bump came you were still waiting for your
20 transfers? A. Yes.

The Registrar: Q. Was the car in motion when you put
your hand out? A. Yes.

Mr. Sturdy: Q. You were still waiting for the transfers
while the car was leaving? A. Yes.

Q. And before the bump? A. Before the bump.

Q. Do you know what the motorman was doing while you
were waiting for the transfers? A. I can't recall what he was
doing.

Q. Do you know in which direction he was looking? A.
30 No, I don't.

Q. Did he say anything to you? A. Well, when we heard
the bang, he said, "Oh, my goodness, what was that?" or some-
thing to that effect. I cannot recall the exact words. Then he
immediately stopped the car and flew out the door.

Q. At the Coroner's Inquest I think what you said was that
the motorman used the words, "My God, what is that?" Is that
correct? A. Well, I can't just recall exactly, but I know it
was, "My God," or "My goodness."

Q. It was some exclamation, some surprise indicated in
40 his statement? A. Yes.

Q. What had caused the bump?

The Registrar: If you know. A. Well, I didn't know
until he opened the door and I seen this couple lying down. I
didn't know what he hit until we looked out.

Mr. Sturdy: Q. Who were the people? A. It was then I

recognized them. It was Mr. and Mrs. Nance, if I should call them that. Mrs. Nance fell down with her head towards the Chateau, and when I seen her she was getting up with her head further down and when I looked further down the streetcar I saw Mr. Nance. My friend had already seen him.

Q. Mr. Nance was lying west of Mrs. Nance? A. Yes.

Q. About how far? A. I don't know; a little ways behind the car. I don't know how far.

10 Q. Was he clearly behind the car? A. Oh yes, he was clearly behind the car, as far as I can remember now. In a few minutes so many people gathered there, you know.

Q. Had you seen the woman fall? A. No, I just saw her as she got up, then she fell again, because by that time I was out and a girl had picked her purse up and I told her it was the lady's and she gave it to the lady.

Q. You had not seen Mrs. Nance fall in the first place? A. No, as I looked out, she was getting up and she must have passed out, of course, for a minute or two.

20 Q. Can you give us some idea of what part of the streetcar received the bump? A. Well, it seemed—

Mr. Gilmour: Well, would you know?

Mr. Sturdy: Q. You were standing in the vestibule at the front of the car? A. Well, it would be the right hand corner.

The Registrar: Q. Were you facing the front of the car when the bump occurred? A. Well, I couldn't tell you where I was looking, but it seemed like it was the side, the thud.

Q. What side? A. The right hand side of the streetcar, on the corner.

30 Mr. Sturdy: Q. And that side of the streetcar is the part where the door opens? A. Yes, that is the side.

Q. There are two doors on that side? A. Yes.

Q. What part of the streetcar did the bump sound on? A. The front.

Q. Towards the right side? A. Where we go in.

Q. Just a minute, now. It does not do any good to point out on the table, because it all has to go on the notes, you see. Just tell us as nearly as you can and judging by the sound or the vibration of the impact, what part of the streetcar struck the
40 body of Mr. Nance or Mrs. Nance? A. Well, I say the right hand corner. That is where it sounded, but I don't know.

The Registrar: Q. You heard a noise at the front of the car? A. Yes, on the front right hand corner.

Mr. Sturdy: You did not actually get your transfers? A. No, not until we got to Rupert Street.

Q. Have you any idea how long a time elapsed from the time the streetcar started up until you heard this thump? A. No, I couldn't say exactly. It wasn't very long.

Q. Was it a matter of a few seconds? A. Something like that.

The Registrar: Q. Had the car got across the intersection when you heard the noise? A. Yes, it was across Gladstone then.

Mr. Sturdy: Q. Did you hear the streetcar bell? A. I don't recall whether I heard the streetcar bell or not. No, I don't know. I wouldn't like to say, because I am not sure whether I did or not.

Q. It is likely that if it had sounded, you would have heard it, standing in the vestibule, as you were? A. Yes.

Q. But you did not hear it? A. No, I didn't.

Q. At this time of the thump taking place, where was Mrs. Berger? A. She was further on in the car.

Q. Looking for a seat? A. Yes.

Q. You are personally acquainted with Mrs. Nance now, are you? A. Well, I have never been made acquainted with her, but the first time I spoke to her was on the trial the other day.

Q. But you know her to see her? A. Oh, yes.

Q. And it was Mrs. Nance who was lying on the road? A. Yes.

CROSS-EXAMINATION BY MR. GILMOUR:

Q. Mrs. Lee, this night in question, where were Mr. and Mrs. Nance when you first saw them? A. They had just come out of Maurice's Cafe.

Q. And that, you have said, is on the north side of Kingsway? A. Yes, sir.

Q. Close to the northwest corner of Kingsway and Gladstone? A. Yes.

Q. And which way did Mr. and Mrs. Nance proceed then? A. Well, when we were waiting for the streetcar, we saw this couple come out, and why we paid so much attention was that he was an exceptionally large man, very tall and stout, and when they come out of the cafe he kind of shuffled and she grabbed him, and we made a remark—

Mr. Sturdy: No, I don't think you should say anything about that.

Mr. Gilmour: Q. Where did they go? A. When we watched them, or should I say "I watched them"?

Q. I think maybe so. A. They were walking up towards Gladstone.

Q. Proceeding in an easterly direction? A. Yes.

Q. And where were you at that time? A. At the street-car stop.

Q. On the southwest corner of the intersection? A. Yes.

10 Q. And you were looking across the other side of Kingsway? A. Yes.

Q. And how far did you watch them going towards Gladstone? A. They just started to walk away from the cafe, and then we saw a number 11, coming, and we watched to make sure the road was clear, to watch for the streetcar.

Q. You took your eyes off them because a streetcar was coming? A. Yes.

20 Q. How close was the streetcar at that time? A. It was just coming up from Victoria. You generally see the green light first. There is two cars, one is the Victoria Drive and the other is No. 11, and we were watching for a No. 11.

The Registrar: Q. When you first saw the car, where were the Nances? A. They were walking easterly.

Mr. Gilmour: Q. Had they come to Gladstone Street yet? A. Well now, that I couldn't say. I had my mind on the No. 11 car.

Q. You remember giving evidence at the trial of Mr. Stephens? A. Yes.

30 Q. Were you asked these questions and did you make these answers:

"Q. When did you see them first? A. We first saw them when we were waiting for a No. 11. They had just come out of Maurice's Cafe.

"Q. What were they doing? A. When they came out, it was very slippery that night and apparently Mr. Nance kind of slipped and she grabbed his arm and started to walk.

"Q. Did you see them again after that? A. Did I watch them?

40 "Q. Yes, did you watch them at all? A. We just watched them for a little ways and then our No. 11 came along and I got on the streetcar."

Were you asked those questions and did you make those answers? A. Yes.

Q. The next question was:

“Q. How far did you see them go? A. Not very far. Apparently they were walking east when I last saw them.”

Did you give that answer? A. Yes.

Q. I am reading now from page 48 of the transcription of evidence at the trial of Mr. Stephens, and the Judge interrupted and said:

“Q. She said something. Let us hear it over again.
10 A. When I got on, I just put the two tickets in the box and asked for two transfers, and I held my hand out, and he started the car up, it seemed very slow, and just went a short distance when we heard this bump.”

Did you make that statement? A. Yes, that is when I did hear the bump.

The Registrar: Q. And you agree with that today? A. I believe that is the same statement I made.

Mr. Gilmour: Q. Continuing further, Mr. Walkem asked you:

20 “Q. At that time did you tell me a minute ago you had your hand out waiting for the transfer? A. Yes.

“Q. Did the motorman give you the transfer? A. No, sir.

“Q. What was he doing while you had your hand out? A. I don't know. I can't remember.

“Q. You can't remember what he was doing? A. No.”

Were you asked those questions and did you make those answers? A. Yes.

30 Q. And were those answers true? A. Yes, those are true.

Q. You were also asked:

“Q. You did not see these people at that time in front of the streetcar? A. No, I didn't, my lord.”

Q. That is why you were standing at the front of the streetcar, waiting for your transfer? A. You mean—

Q. When you were standing at the front of the streetcar waiting for transfers. A. When I was in the streetcar?

Q. Yes. A. No, I never saw them.

40 The Registrar: Q. And would that be because you were looking in some other direction, or would it be because you were not paying attention? A. Well, I guess I wasn't paying attention. I can't recall where I was looking or anything, because I had no reason to talk to the motorman, because I don't know the man. I might have been looking down at my girl-

friend to see what seat she was getting. I just can't recall what I was doing.

Mr. Gilmour: Q. Prior to the impact, then, the last time you saw them was when they were walking easterly on Gladstone? A. Yes, when they come out of the cafe.

Q. And then your car came along. Did much time elapse from the time you saw them last on Gladstone and the time your car came along? A. No, not very long.

10 Q. A matter of what? A. Maybe a few seconds. I don't know. I just can't tell you.

Mr. Sturdy: Q. What did you say? A. I just don't know the exact time, how long it took me.

Mr. Gilmour: Q. But you did say a matter of a few seconds? A. Yes, it wasn't very long.

Q. Did the streetcar start up quickly or slowly? A. It started slowly, to my knowledge. I thought it did.

Q. Did it make a fast get-away? A. No, still moving slowly, and then when the bump came it pretty near—you know,
20 it swayed.

Q. Was it moving slowly when the bump came? A. No, I think it was just a little faster than when he started at the intersection. He wasn't going fast. At least, I didn't think so.

Q. He was not going fast at any time? A. No. Not as fast as they can go.

Q. When you were waiting for the streetcar, did you see any automobile coming along in the same direction as the streetcar? A. No, I don't think I did.

The Registrar: Q. Or the lights of an automobile coming
30 in the same direction? A. No, I don't recall, not at that time. We generally watched for them and we knew it was free to go.

Mr. Gilmour: Q. When you put your street car tickets in the box, was the streetcar still standing or had it started? A. Oh no, it was standing.

Q. And you were the last to get on? A. Yes.

Q. The people who got on before you had gone on into the body of the car? A. Yes.

Q. Before the streetcar started up? A. Yes.

Q. And the only conversation you had with the motorman
40 at that time was to ask for transfers? A. "Two transfers, please."

Q. And he started up and did not give you the transfers? A. That's right.

Q. Was he paying attention to his driving? A. That, I couldn't say.

Q. Well, could you say that he was doing anything other than paying attention to his driving? A. No, I can't recall where he was looking or what he was doing, or where I was looking.

The Registrar: Q. It was a dark night, was it? A. Well, just like ordinary. I think it was fairly clear, you know. I knew it was very slippy.

Mr. Gilmour: Q. Did you see Mr. and Mrs. Nance cross
10 Gladstone? A. No, I don't believe I did. I saw them going towards Gladstone. I got on the streetcar then.

Q. Before they had crossed Gladstone? A. Yes, they were walking towards Gladstone when I last saw them.

Q. Did the streetcar make a quick stop? A. Yes, very quick.

Q. You did not see Mr. and Mrs. Nance, then, trying to cross Kingsway? A. No, I didn't.

Q. When you heard the bump, had the streetcar gone past the intersection? A. Oh, it was past the intersection. You
20 mean Gladstone?

Q. Yes. A. Oh, yes.

Q. Would you know how far past? Are you a good judge of distance? A. No, I am not.

Q. Would it be easier for you to place that as being opposite some other location? A. Well, I imagine the streetcar stopped—see, there is the Army & Navy Club.

Q. Yes, that is on the north side, isn't it? A. Yes. I believe he stopped—well, it was almost—somewhere close to—

Q. To that building? A. Yes.

30 Q. Do you remember, at the inquest, being asked these questions and giving these answers:

“Q. You were beyond the intersection? A. Yes, I imagine, we would—maybe not quite across from the what-you-call-it—

“Q. The Auto Court? A. No, the other, across the street, that Army and Navy, it hit not very far from there.”

A. Yes, I believe that is the words I said.

Q. And you agree with that now? A. Yes.

40 Q. And was that about where Mr. and Mrs. Nance were hit? A. Just about there.

Q. Can you tell now if the streetcar went very far after you heard the thud? A. No.

Q. Could you estimate about how far? A. No, I couldn't.

The Registrar: Q. You say it did not go far? A. No. As soon as he heard the bump, he stopped just like that (indicating).

de bene esse

Lee (for Plaintiff)—Cross-Exam.

Lee (for Plaintiff)—Re-Exam.

Discussion

Mr. Gilmour: Q. He stopped almost instantly? A. Yes.

Q. Did you see any other people come out of the cafe other than Mr. and Mrs. Nance? A. No, I didn't.

Q. Did you see any other pedestrians on the north side of Kingsway near Gladstone? A. No, I didn't.

Q. Were you wearing a fur coat that night? A. No.

10 Q. Was Mrs. Berger? A. Yes, I believe she had her fur coat.

RE-EXAMINATION BY MR. STURDY:

Q. Do you consider that you can estimate distances and times at all accurately, Mrs. Lee? A. No, I am not a very good judge of distance.

Q. Or time? A. Nor time.

(Concluded.)

20 I hereby certify the foregoing to be a true and accurate report of the said proceeding.

J. C. NELSON,

Deputy Official Stenographer.

Mr. Cameron: With my learned friend's permission I might say that the westerly side of the Army and Navy Club, whatever it is called, is 162 feet east of the easterly curb of Gladstone. I will just draw a line, if my learned friend will come over and supervise it.

(Jury's copies of plan marked by Mr. Cameron.)

30 Mr. Cameron: You don't know where it is, it is back from the curb somewhere, but I will just draw a line like that, indicating it is over there somewhere.

Mr. Sturdy: If your lordship please, we were discussing the filing of the copy of the de bene esse evidence as an exhibit. It perhaps should be in the record.

The Court: Yes.

Mr. Sturdy: Does my learned friend want to give his up or shall I give mine up?

Mr. Cameron: It is your witness. Mine is in my brief now, I can't get it out.

Mr. Sturdy: I will part with mine.

40 The Court: Is that Exhibit 10?

Mr. Cameron: Exhibit 10, my lord, I have no objection

Extracts from Examination for Discovery of Joseph Stephens

to it being filed after the trial.

Mr. Sturdy: No, that is quite all right, file it now, and I will get it back.

(DE BENE ESSE EXAMINATION MARKED
EXHIBIT No. 10)

Mr. Sturdy: My lord, in conclusion I wish to read certain excerpts from the examination of Joseph Stephens for discovery.

10 The Court: Will you give me the questions in advance.

Mr. Sturdy: Yes, my lord, should the process of examination for discovery be explained to the jury?

The Court: Yes, I think so. Mr. Foreman and gentleman, Mr. Sturdy is about to read now portions of an examination of Mr. Stephens, the conductor, held before the trial. This is an examination taken under oath, and the parts that Mr. Sturdy is going to read go in as part of the plaintiff's case.

Mr. Sturdy: Yes, thank you, my lord. Should I read, my lord, the questions and the answers?

20 The Court: Just the questions and—

Mr. Sturdy: 1 to 6;— all these are inclusive — 13 to 23; 28 to 35; 40 to 45; 47; 49 to 51; 68 to 79; 81 to 92; 105 to 110; 123; 126; 132 to 136; 140 and 141; 144 to 149; 151 to 153; 162 to 182; 186 to 188; 194; 200 to 202; 206; 216; 217; 227 to 230; 253; 265; 318; 324 to 331; 336; 348 to 355; 365; 366; 377; 380 to 383; 396; 397; 415; 423 to 426; 428; 431. (Reading).

Vancouver, B.C.,
June 13, 1949.

30 EXTRACTS FROM EXAMINATION OF JOSEPH
STEPHENS, a Servant of the Defendant, FOR DISCOVERY:

D. A. STURDY, ESQ.—appearing for the Plaintiff.

F. J. GILMOUR, ESQ.—appearing for the Defendant.

JOSEPH STEPHENS, sworn:

EXAMINED BY MR. STURDY:

1. Q. What is your full name, please, witness? A. Joseph Stephens.

Extracts from Examination for Discovery of Joseph Stephens

2. Q. S-t-e-p-h-e-n-s? A. Yes.
3. Q. Where do you live? A. 427 Powell.
4. Q. Street, Vancouver? A. Yes.
5. Q. And you have been sworn to tell the truth, the whole truth and nothing but the truth on this Examination for Discovery? A. Yes.
6. Q. May I ask your age, Mr. Stephens? A. 37. Can I ask one thing before you go any further?
- 10 13. Q. What is your occupation? A. Motorman.
14. Q. Employed by whom? A. B.C. Electric.
15. Q. How long have you been employed as a motorman by the B.C. Electric? A. Since October, 1944, somewhere around there.
16. Q. So in January of 1949 you had been employed by the B.C. Electric for four years and three months, about? A. Approximately.
17. Q. Have you been continuously employed by the B.C. Electric during that period? A. Yes.
- 20 18. Q. How long have you been a motorman for the B.C. Electric? A. Ever since I started.
19. Q. So you have been a motorman for the B.C. Electric for that entire period? A. Yes.
20. Q. For what total length of time have you been a motorman on these one-man streetcars? A. A year later; approximately three years and three months.
21. Q. Three years and some odd months you have been operating these one-man cars? A. Yes.
22. Q. Were you an employee of the B.C. Electric Railway Company, Limited on January 17th, 1949? A. Yes.
- 30 23. Q. Were you working on that day? A. Yes.
28. Q. And on that day you were operating on the Kingsway run, is that correct? A. Joyce Road.
29. Q. What is the number of that streetcar? A. 433—
No. 11.
30. Q. That is to say, the number 11 route? A. Yes.
31. Q. And that particular streetcar you were operating on the 17th January was streetcar No. 433, is that correct? A. Yes.
- 40 32. Q. What do you call the model of that streetcar? A. The 400 type, we call it.
33. Q. Is that the same as P.C. 400? A. Yes.
34. Q. Was that streetcar then owned by the B.C. Electric, do you know? A. Yes.
35. Q. And were you on January 17th, from 7.43 or there-

Extracts from Examination for Discovery of Joseph Stephens

abouts and on to about midnight, working as an employee of the British Columbia Electric Railway? A. Yes.

40. Q. Do you recall an accident that occurred near the corner of Gladstone Street and Kingsway Avenue, Vancouver, late on January 17th, 1949? A. Yes.

41. Q. Was your streetcar, No. 433, involved in an accident? A. That was the streetcar that I was driving.

42. Q. Was that streetcar involved in an accident? A. Well, I—yes, that was the streetcar that was involved with the—

43. Q. Go on, that was the streetcar that was involved in an accident? A. In an accident.

44. Q. In which a man was injured, is that right? A. Yes, the man was injured.

45. Q. What was the name of the man that was injured? A. Well, I heard after, Samuel Nance.

47. Q. You heard afterwards that the two people who were injured were Mr. and Mrs. Samuel Nance, is that correct? A. Yes.

49. Q. Where did the accident occur? A. On Kingsway just at—just east of Gladstone.

50. Q. In which direction had your streetcar been proceeding? A. East.

51. Q. You had been driving east? A. East.

68. Q. As you approached Gladstone, going east along Kingsway, did you see some people preparing to board your car? A. When I approached Gladstone, I saw four passengers.

69. Q. Where were they? A. On the curb.

70. Q. Can you tell us which curb, northeast, southwest or what? A. Southwest.

71. Q. The southwest curb? A. Yes.

72. Q. What did those four persons do? A. Well, when I drove up to the intersection I stopped, and these four passengers shuffled across for the streetcar.

73. Q. They shuffled across? A. Yes.

74. Q. What caused them to shuffle? A. It was an icy night. You could not actually walk. You more or less shuffled.

75. Q. No person could walk at an ordinary gait, is that correct? A. Well, not how you would walk, you know, anyway, you would walk, no.

76. Q. Put it this way: Were the streets icy that night? A. They were icy.

77. Q. Extremely so? A. Yes, they were icy.

78. Q. And you knew that they were icy? A. Yes.

79. Q. When had you first become aware that the streets

Extracts from Examination for Discovery of Joseph Stephens

were icy? A. When I went to work.

81. Q. They could not lift their feet as high, that is one thing? A. No. I mean, you could not run.

82. Q. And you could not lift your feet very high off the roadway because of the icy condition, is that correct? A. That's right.

83. Q. Of course, these same people who boarded your car at Gladstone had the same difficulty in walking, is that correct? A. Yes, they had to shuffle across the ice.

84. Q. You stopped for those persons, did you? A. Yes.

85. Q. And then what occurred? A. As soon as the last passenger got on, I automatically closed the door, turned and looked to my left and proceeded across Kingsway.

86. Q. I don't want to interrupt you at this point. Tell what happened. A. I looked straight ahead and I was a good car length past the east curb line, or well on the way, and a woman asked for a transfer, and when I was just about a good car length past the east curb line, I was about to reach for the transfers when I heard a thump at the side of the car. I thought, "My gosh, what was that?"

87. Q. You said that? A. Yes.

88. Q. "My gosh, what was that?" A. Yes.

89. Q. I would rather you went on and told the story in your own words. A. Well, I opened the door, and when I got out of the car—

90. Q. You first stopped the car? A. Oh, yes, as soon as I heard the thump, I automatically applied my brakes and stopped the car, and I opened the door and when I got out I saw two people lying back again the curb.

91. Q. Had you previously seen the two people who were lying on the road that you have described? A. No.

92. Q. You had not seen them? A. No.

105. Q. Where were you with relation to any part of Gladstone when the woman asked you for the transfer? A. I had just cleared the intersection, like, see what I mean?

106. Q. When she asked you for the transfer, had you arrived at the east curb line of Gladstone? A. Yes, I presume that is just about where I was when she asked for a transfer.

107. Q. And that would be about the distance of the width of Gladstone, is that right? A. Yes, just about that.

108. Q. Do you know who the woman was? A. Well, I mean, I know now.

109. Q. But you did not know then? A. No.

110. Q. Who do you know now she is? A. Mrs. Lee.

Extracts from Examination for Discovery of Joseph Stephens

123. Q. You had not seen Mr. or Mrs. Nance? A. No.

126. Q. Are those cars capable of picking up speed pretty quickly? A. Yes, they will pick up quickly, but you will start with a jerk if you fed it too fast.

132. Q. Are those cars not faster on the up take, that is, have they not a better acceleration than the ordinary kind of B.C. Electric streetcars? A. Oh, yes.

133. Q. Will you agree with me that they are capable of starting up at a fairly high rate of speed? A. Well, just what do you mean by capable of starting up at a high rate of speed?

134. Q. Put it this way: Isn't it possible for the P.C. 400 car to gather a greater rate of speed in less time than most of the B.C. Electric streetcars? A. Oh yes, yes.

135. Q. They will start up quicker, put it that way. A. They will start quicker than the older cars.

136. Q. And do they correspondingly stop quicker? A. Yes, in comparison with the speeds of the cars, they have a better braking on that car. They are made for that.

20 140. Q. In your four odd years of operating streetcars, you must have had occasion often to make sudden stops to avoid, say, a child or a dog or any vehicle, that is true, isn't it? A. Yes.

141. Q. And are they capable of stopping quite quickly if necessary? A. Oh, the car has good brakes to stop quickly, yes.

144. Q. Can you tell me this: At the speed at which you past the east curb line of Gladstone on that night, at that speed, in what space could you stop if you had to, say, to avoid running into something? A. Well, the speed that—I wouldn't say at more than maybe 5 feet, maybe a little bit less. I don't mean 5 feet. I mean 5 feet less of what I have already pointed out what I have stopped in. Say, for instance, maybe instead of 20 or 25 feet, 15 or 20 feet, you see. I can't cut it right down.

145. Q. No, nobody is expecting you to be exact. A. I am getting—maybe within 15 to 20 feet, I could stop.

146. Q. Is this a fair statement, that that speed at which you passed the east curb line of Gladstone that night, at that speed you could have stopped if it had been necessary and had you seen the Nances, in 15 feet? Is that a fair statement? A. Yes, within 15, 20 feet, I guess.

147. Q. Well, you should know, Mr. Stephens, because you have operated these cars for four years and you have operated the one man cars for three years. A. Yes, but I wouldn't point myself right down to how long I would take to stop, unless you and I went out there and had something to show of the speed

Extracts from Examination for Discovery of Joseph Stephens

we were going and we tramped on the brake and see how far we went.

148. Q. In four years of experience as a motorman, you must have had frequent occasion to do that very thing, stop as quickly as you could? Have you not had that experience? A. Yes.

149. Q. And in the time that you have been driving this particular kind of streetcar, you must often have had occasion 10 to stop the car as quickly as you could stop it, is that so? A. Yes.

151. Q. Now, you have in your own mind a vague idea of the rate of speed within your experience at which you were travelling when this thump occurred on that night, is that correct? A. Yes.

152. Q. Now, had you seen the Nances, in what space could you have stopped the car at that speed? A. Well, approximately 15 feet.

153. Q. That is what I am trying to get at. A. 15 to 20 20, I said. I said that.

162. Q. And you have in your own mind a fair idea of the rate at which you were travelling when you struck Mr. Nance, isn't that right? A. Yes, when I heard a thump.

163. Q. Now, I don't ask you to put that in miles per hour, but you know with reference to your experience in driving streetcars at what comparative speed you were proceeding, is that right? A. Yes.

164. Q. Now, just follow me. You also have had frequent occasion in the course of your experience as a motorman to stop 30 in order to prevent an accident, haven't you? A. Yes.

165. Q. Then, in the light of the speed at which you recollect you were travelling that night and the experience that you have had in stopping cars when you have had to, within what space of time could you have stopped this streetcar had you seen Mr. Nance—not what space of time, but within what distance? A. Just as I said, approximately 15 feet.

166. Q. Now, why did you not see Mr. or Mrs. Nance? A. That I don't know.

167. Q. They were there. A. I don't know why.

40 168. Q. They were there, were they not? A. Well, they were somewhere.

169. Q. Well, they must have been, to have been struck? A. They must have been somewhere. Why I didn't see them, I don't know.

170. Q. But you did not see them? A. No, I never saw

Extracts from Examination for Discovery of Joseph Stephens

them.

171. Q. When you are operating these cars, the one man has to hand out tickets, does he not? A. Yes.

172. Q. And close the doors? A. Yes.

173. Q. And the same man has to take in tickets, sell tickets, take in money? A. Yes.

174. Q. And close the doors? A. Yes.

175. Q. Start the car? A. Yes.

10 176. Q. Stop the car? A. Yes.

177. Q. Answers questions of passengers? A. Yes.

178. Q. Look for other traffic? A. Yes.

179. Q. And, if possible, avoid accidents? A. Yes.

180. Q. That is all the responsibility of one man, isn't it?

A. Yes.

181. Q. On the night in question, when Mr. Nance was injured, you actually had Mrs. Lee standing beside you, that is true, isn't it? A. Yes, she was standing alongside the box.

182. Q. That is alongside of you? A. Yes.

20 186. Q. But had you held out your hand with a transfer in it, she could have taken a transfer from your hand? A. Yes.

187. Q. She was that close? A. Yes.

188. Q. And she had, just before the accident, asked you for the transfer? A. That's right.

194. Q. You are sometimes called on to make change, too, when people buy tickets, are you not? A. Yes.

200. Q. Had Mr. Nance moved or been moved between the time you first saw him and the time you telephoned? A. No, he wasn't moved by anybody until the ambulance came.

30 201. Q. Who first moved him? A. The ambulance.

202. Q. That is the ambulance attendants? A. Yes.

206. Q. But at all events, Mr. Nance was not moved from the time that you first saw him, when you got out of the street-car, to the time he was moved by the ambulance attendants? A. No, no, he wasn't touched by nobody.

216. Q. Put it this way: Was he or was he not moved during that time? A. I never saw him moved by nobody but the ambulance and he was lying in the same spot as I saw him when I first seen them, when I got out of the car. I saw Mrs.
40 Nance lying, and I saw him lying west of her, and they were lying in the same spot, you know, when the ambulances come along. That is my recollection.

217. Q. Mr. Nance stayed in the same position from the time he fell until he was removed by the ambulance? A. That's right.

Extracts from Examination for Discovery of Joseph Stephens

227. Q. Was there blood on the roadway near where Mr. Nance had lain? A. Where his head was.

228. Q. I am told that blood came out of his right ear. A. Well, I didn't examine that none, but Mr. Nance's head was lying, that is where the blood was.

229. Q. Was that the only blood you saw in that vicinity? A. Yes.

230. Q. So that the pool of blood was that of Mr. Nance? 10 A. Mr. Nance, yes.

253. Q. Do you know Officer Jack Thomas to see him? A. Yes, that's the fellow that spoke to me.

265. Q. I think I heard you say on one occasion that the first time you saw Mr. and Mrs. Nance was when they lay on the roadway after you stopped the car and got out? A. Yes.

318. Q. When you started off after picking up these four passengers at Gladstone, did you see Mr. or Mrs. Nance? A. No.

20 324. Q. Let us get down to the particular time when this accident occurred. You had started off from the stop sign at Gladstone on the southwest corner? A. Yes.

325. Q. Without having first seen Mr. or Mrs. Nance? A. That's right.

326. Q. Now, don't tell me about any other instance or what I would do or what you would have done at other times, but on this particular night and from this particular corner, if you had seen Mr. and Mrs. Nance, what would have occurred?

A. Well, as I am saying, it just depends where I would have saw them, the distance from me. I still would have started off 30 the same way as I started.

327. Q. And then what would have occurred? A. The same thing. They would have crossed across in front of me and cleared the track, and I would have went on the same as any other time.

328. Q. We are still speaking, aren't we, of this particular night? A. That's right.

329. Q. And do I understand you correctly that if you had seen them, you would have started off but you would have allowed them to cross safely, is that right? A. Yes.

40 330. Q. Is that a fair statement? A. Yes.

331. Q. But you didn't see them? A. No, I didn't see them.

336. Q. So that if you had seen them, you would not have run into them, isn't that right? A. Well, yes, I wouldn't have never hit them. Why should I hit them?

Extracts from Examination for Discovery of Joseph Stephens

348. Q. And had you seen Mr. Nance in the path of your streetcar, you would have stopped, is that right? A. Yes.

349. Q. But you didn't see him? A. No, I didn't see him.

350. Q. And you say you could have stopped in 15 feet? A. Approximately.

351. Q. We have spoken now of what you would have done had you seen Mr. Nance while you were still standing on the southwest corner. Now, suppose you had gone halfway across the street, Gladstone, eastbound, and then seen Mr. Nance some place between the devil strip and the south pair of rails, what would you have done? A. Well, I would have stopped to give them time to get across.

352. Q. But you didn't stop? A. No.

353. Q. And you didn't see them? A. No.

354. Q. Now, had you seen Mr. and Mrs. Nance when you were at the east curb line of Gladstone, in your path between the rails or thereabouts, what would you have done? A. Well, if I had seen them walking in front, if it was real close, I would have slammed the brakes on emergency, or something.

355. Q. What happens when you slam the brakes on emergency? A. Well, you come to a little bit quicker stop than ordinary.

365. Q. You could have avoided him had you seen him 15 feet— A. Approximately, yes.

366. Q. But you did not see him? A. No, I didn't see him at all.

377. Q. Do you recall telling me that you saw four passengers step off the southwest corner and approach the streetcar to board it? A. Yes.

380. Q. Well, it is 500 feet to the first intersection to the west, which I think is Sidney Street. Where were you in that space when you saw the four pedestrians leave the curb? A. Well, say about four car lengths, five car lengths.

381. Q. And the car is how long? A. About — say around 150, 170 feet.

382. Q. Four car lengths would be 180 feet? A. Yes.

383. Q. Did you see them at a distance of about 175 to 180 feet? A. Approximately 150 to 180 feet.

396. Q. Suppose Mr. and Mrs. Nance were in the southerly pair of rails in the crosswalk at the east side, would you have started up? A. Actually, I would have started slowly and kept watch and seen if they had cleared.

397. Q. And if you had seen them, you would not have

Extracts from Examination for Discovery of Joseph Stephens

run into them? A. No.

415. Q. Have you driven all types of B.C. Electric street-cars? A. Yes.

423. Q. Are they all made according to the same plan? A. They all look alike.

424. Q. They are all the same length? A. Yes.

425. Q. And they all have the door in the middle? A. Yes, and a door in front.

10 426. Q. The same car that runs along Pender and out to Stanley Park? A. Yes.

428. Q. Don't you agree with me, Mr. Stephens, that the real cause of this accident was your failure to see Mr. Nance? Come now, just give me a fair answer, A. I can't give you a fair answer. Granted, I didn't see them, Why I didn't see them is one thing I don't know. That is what is puzzling me.

431. Q. If you had seen him at a distance of 20 feet, could you have avoided hitting him? A. Yes.

My lord, with your approval, that is the case for the plaintiff.

20 The Court: Are you putting in a by-law?

Mr. Sturdy: Oh no, my lord, my learned friend and I have come to an understanding on that, that the by-law does not apply either in his favour or my favour because it is applicable only to vehicles, and street cars are not vehicles, so there is no question of right of way at this intersection. That is by Statute or by-law, that is, if your lordship pleases.

The Court: We will adjourn for a short recess.

Discussion
Boyle (for Defendant)—Exam.-in-chief

(PROCEEDINGS RESUMED AFTER SHORT RECESS)

D E F E N C E

Mr. Cameron: If it please your lordship and gentlemen of the jury, I don't think I need take up time by giving any further explanations in the case; you have a good idea now what it is all about, and I will call the witnesses. May I first say that my friend and I have agreed for what it is worth — your lordship
10 will remember I was trying to get from Sergeant Rossiter the distance which a moving body would go at a certain rate of miles per hour, that is whether it is a street car or a lump of lead or an automobile. It is purely a mathematical calculation, and my friend has agreed that I can put it in.

Mr. Sturdy: That is correct, my lord.

Mr. Cameron: I will have it written out, if you like, but with your lordship's permission I will just say, to get it out of the way, that a body moving at thirty miles an hour is going 44 feet in one second, and similarly one going at 20 miles an
20 hour is going not quite 30 feet in one second.

Mr. Sturdy: At Twenty—

Mr. Cameron: Twenty miles an hour is not going quite thirty feet. The exact figure is, at 60 miles an hour, one is going 88 feet in one second, so it is one-third of 88, which is very close to 30. Now at 15 miles an hour it is obviously 22 feet in one second. I will put those on a piece of paper.

The Court: Yes, I think it would be a convenience to the jury if you would.

Mr. Cameron: I will have that done so that I will have that
30 before them later. My lord, I will call Mr. Boyle.

WILLIAM ANTHONY BOYLE, a witness
called on behalf of the Defendant, being
first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CAMERON:

Q. Mr. Boyle, you are a resident of Bellingham in the United States? A. That's right, Route 2, Bellingham.

Q. And what is your occupation? A. Well, I buy and sell poultry and I work at my Dad's farm.

Q. I understand you have a trucking line in connection
40 with the farming business? A. That is what goes with the

Boyle (for Defendant)—Exam.-in-chief

buying and selling of poultry.

Q. Now then, were you in Vancouver on January 17th last?

A. I was.

Q. And did you see something of an accident involving a street car and two pedestrians? A. Yes.

Q. And you have since learned that they are Mr. and Mrs. Nance, the two pedestrians? A. Right.

Q. I understand you were driving in an automobile? A. 10 That's right.

Q. And where had you come from? A. Well, I had come from Bellingham originally, up to Vancouver, and returning from Vancouver to go to Bellingham on Kingsway.

Q. You were on Kingsway? A. Right.

Q. That is a main highway, is it? A. That's right.

Q. And about what time was this? A. Oh, it must have been between 11 and 12 o'clock at night.

Q. Now you were driving east on Kingsway? A. That is towards New Westminster, I guess; is that east?

Q. Now will you just describe what you saw, as you were 20 coming along in the vicinity of Gladstone Street on Kingsway?

A. Well, we were proceeding back to New Westminster, and we had been following this trolley car for quite some ways; he would get ahead of us and we would catch up with him, depending on the condition of the road and stop lights and so on.

Q. What was the condition of the road? A. Oh, it was icy. And as we were coming up Gladstone—or up Kingsway there, and approaching Gladstone we seen these two people run out in the street there, and just seen them for a second—

The Court: Q. Just a minute, please, you were approach- 30 ing Gladstone and you saw two people? A. Yes.

Q. Yes. A. And just got a glimpse of them for a second from behind the street car, as we were behind and to the right of the street car, and they were obstructed by the street car, our view was obstructed, our view was obstructed by the street car as it—

Mr. Cameron: Q. Tell us, you were in your automobile behind a street car, you say? A. That's right.

Q. And where were these two people when you first saw 40 them? A. They were over on the first tracks or the devils strip there, the space between the two tracks.

Q. Which tracks, would that be the ones going where you were, or the ones going the other way? A. The ones going the other way.

Q. That would be the westbound tracks? A. Yes.

Boyle (for Defendant)—Exam.-in-chief

Q. They were about there when you first saw them? A. About there, either that or in the devil strip.

Q. And then what happened? A. Well, we lost sight of them as the street car obstructed our view, and I said, "My God, I hope they make it," and they didn't, and the street car hit him and he in turn bumped into the lady, and she was thrown forward and he was thrown around to the side and backwards, and I stopped immediately—

10 Q. Just go a little slower now. Yes, you stopped immediately. Where did you stop? A. I stopped about ten or fifteen feet from the man.

Q. Yes. Now whereabouts were these people in relation to the easterly curb of Gladstone when you first saw them; you had them on the track or the devils strip; I want to know— A. I would say round about 35, 40, 45 feet approximately.

Q. Which way? A. Well towards New Westminster, I guess that would be east.

Q. That's right. And you said you saw the street car strike
20 them. Could you describe that? A. Yes, the street car, the right front corner hit the man, and he in turn hit the woman, and it kind of spun him and kind of created some reverse English on him, he came spinning back towards me; and she was thrown ahead, and I immediately stopped and got out and ran over to the man, and then ran over to the woman, and then ran across the street to this cafe and told the proprietor to call the ambulance and the police.

The Court: Q. You say they were from 35 to 45 feet east of the easterly curb of Gladstone when you first saw them, is
30 that right? A. Approximately, yes, my lord.

Mr. Cameron: Q. Could you say in what direction they were going? A. They were either going on an angle or right straight across the street it is pretty hard to determine which way they were, actually on an angle or just crossing right straight across.

Q. They were going in front of the street car? A. Oh, yes.

Q. From north to south? A. That's right.

Q. The next time you saw them was just as they appeared—

40 Mr. Sturdy: Ask him, don't lead him.

Mr. Cameron: That's all then.

Boyle (for Defendant)—Cross-Exam.

CROSS EXAMINATION BY MR. STURDY:

Q. Mr. Boyle, you are a motorist yourself? A. That's right.

Q. Do you mind if I ask how old you are? A. 21.

Q. You are not familiar with the names of the streets and the blocks west of Gladstone, I suppose, in Vancouver, are you? A. No, I am not.

Q. Would you agree with me that there is a long block, 10 about 500 feet to the west of Gladstone, that is, just before you come to the scene of this accident? A. Well, I couldn't say, I do not know.

Q. What I am trying to find, how far you had travelled alongside of the — or near the street car, what distance? A. Well, I had been following it for quite some way.

Q. Pardon? A. I had been following the street car for some way.

Q. For quite some way, yes. Do you recall whether the streetcar stopped at the south-west corner of Gladstone and 20 Kingsway? A. No, I do not recall.

Q. I mean, you don't know whether it did or didn't? A. Or didn't, that's right.

Q. You are not saying one way or the other, is that it? A. No, because I couldn't remember.

Q. No, that is fair enough. I mean, you just don't know? A. That's right.

Q. But as the street car went across Gladstone, you see, before this impact occurred that you saw, did you stay close behind the street car, or beside it or how? A. Before the im- 30 pact occurred?

Q. Yes. A. I imagine we were going about the same rate of speed.

Q. Yes, just a breast, more or less? A. No, he was ahead of me.

Q. The street car was ahead of you? A. Oh, yes.

Q. And your car was behind? A. Behind.

Q. The rear end of the street car? A. That's right, and on an angle, I mean I was over on the right.

Q. A little bit over to the right? A. That's right.

Q. But you do recall going across Gladstone in that posi- 40 tion, do you? A. Yes.

Q. What was your rate of speed at that time? A. Approximately 20 miles an hour.

Q. Now actually you—I am not trying to get you into

Boyle (for Defendant)—Cross-Exam.

trouble or anything like that, but you did say on the inquest in answer to a similar question—correct me if I am wrong, that your speed at that time was between 20 and 30 miles an hour as you crossed Gladstone. Now do you want to make a change in what you said just now? You said just now, 20. At the inquest you said, between 20 and 30? A. I said just now, approximately 20.

Q. But if anything, I suppose a little bit more than 20?

A. It might have been a little less too, I don't know; it was
10 around approximately 20 miles an hour, 20 or 30, I don't know.

Q. There is a big difference between 20 and 30 and a little less. I mean, take it easy now and explain to me how you say at the inquest between 20 and 30 and now you say maybe 20 and maybe less; let's have a fairly close idea? A. Well, I couldn't exactly say how fast I was going, because I wasn't sure of it. I would say approximately around 20 to 30 miles an hour.

Q. And at that pace you were just about keeping the same distance behind the streetcar as you crossed Gladstone, is that right? A. That's right.

20 Q. If anything, wasn't the street car crossing Gladstone at just a little greater rate of speed than you? A. He might have been just a little bit faster, I am not sure, he might not have too.

Q. Well now, let me just read to you what you said at the inquest in the death of Mr. Nance, at page 30. You were asked this question,

"The street car was going faster than you?"

Mr. Cameron: What was this?

Mr. Sturdy: Page 30.

30 Mr. Cameron: Near the bottom, is it?

Mr. Sturdy: Yes, about two-thirds of the way down.

Q. At the inquest you were asked this question,

"The street car was going faster than you?" The answer that you are reported here to have said was, "The street car was going faster than me as it was pulling away." Now did you give that answer to that question at the inquest, do you remember? A. I believe I gave an answer similar to that.

Q. Yes. And you were speaking there of the passage across Gladstone? A. That's right.

40 Q. Were you in high gear across Gladstone, do you remember? A. I was.

Q. And you saw the collision between Mr. Nance and the street car? A. I believe I did, yes.

Q. You saw him spin? A. Yes.

Q. Now, I am just asking you — you have been a bit fear-

Boyle (for Defendant)—Cross-Exam.

ful through these proceedings — you have nothing to worry about — I am just trying to get what you meant by this reverse English. Is this in billiards when you put a little twist on a ball it brings it back? A. That's right.

Q. That is what happened in this instance? A. Yes.

Q. I am not a good billiard player, but I have played. Would that indicate to you that he caromed off Mrs. Nance? A. Yes, he must have hit her some—

10 Q. And give her a shove— A. Forward.

Q. And her feet, I suppose being on ice, would slide and she would move away from him quite readily, wouldn't she? A. Her feet might not have been on the ice, I don't know—

Q. You don't know about that. Now just before the collision, did the motorman make any attempt to stop at all. Did he slow his bus? A. Not that I can recall, no.

Q. Well again, I point out that at page 29 of the inquest you were asked this question, about midway down the page, "There was no attempt to stop until after the collision." Your
20 answer, "That's right."

Q. In other words, there was no attempt to stop until after the collision? A. That is what I would say.

Q. You thought the driver or the motorman didn't see the people? A. I would say so, yes."

Now at the inquest did you give those responses to those questions? A. I was asked some questions similar to that, and gave similar answers, yes.

Q. And you still say the same thing? A. Yes.

Q. So there is no question he didn't slow up and didn't see
30 them?

Mr. Cameron: Well no, I object to that.

Mr. Sturdy: That is what he said.

Mr. Cameron: He has no idea whether he (the operator) saw them or not. He can say what he saw about slowing down.

Mr. Sturdy: Well just put it this way—

Mr. Cameron: I think you are entitled to say to him — there is no question he didn't see him —

Mr. Sturdy: I will retract that then. Just put it this way, with regard to these questions that were asked you at the inquest,
40 you recall those questions being put to you? A. Yes.

Q. And at the inquest you gave those answers? A. Yes, answers either similar to that or the same answers.

Q. You meant the same thing? A. That's right.

Q. Now you were good enough to run across the street and attempt to get to a telephone? A. That's right.

Boyle (for Defendant)—Cross-Exam.

Q. In fact, wasn't it you that phoned the ambulance? A. No, the proprietor phoned. I told the proprietor to phone.

Q. Well, where — was the cafe away across? A. Maurice's Cafe.

Q. Maurice's Cafe over on the north-west corner? A. That's right.

Q. As you were going across the street, did you slip? A. Yes, slightly going — stepping up on the curb or else up on the
10 curb.

Q. Did you fall? A. Not completely, no, I caught myself on my hands.

Q. Well, you did at all events get down more or less on all fours for an instant as you ran? A. Just for an instant, yes.

Q. It was a pretty slippery night? A. It was slippery, yes.

Q. And I suppose you are as agile as any twenty-one year old man ought to be, and as I used to be, Mr Boyle? A. I
20 suppose.

Q. And you practically fell as you ran across? A. Well, prostrate, no, I was just — I just slipped yes, and caught myself.

Q. On your hands? A. On my hands.

Q. You got your both hands down? A. Yes.

Q. You did see, you recall — or I think your words were, "Got a glimpse" of Mr. and Mrs. Nance before the collision took place. That is when they were on the left side of the street car to you, is that right? A. Yes.

Q. How far, as accurately as you can remember, were you behind the street car when you got that glimpse of Mr. and
30 Mrs. Nance? Oh, probably 40 to 50 feet.

Q. What I am trying to get at is, roughly, how far you were away from Mr. and Mrs. Nance when you saw them, you see, the first time? A. Well, on an angle it would be pretty hard to tell, but I mean as far as being back from them, approximately 40 or 50 feet.

Q. You would say 40 or 50 feet in the rear? A. From Mr. Nance?

Q. From Mr. Nance, yes? A. No, I would be farther than that; I thought you meant behind the street car.

40 Q. No, you were 40 or 50 feet behind the street car?

The Court: 40 or 50 feet behind the street car.

Mr. Sturdy: Q. Oh, all right. That is where you were?
A. Yes.

Q. At the time you got your first glimpse? A. That is right.

Boyle (for Defendant)—Cross-Exam.

Q. Now then, the street car was beyond that again, there was 40 feet between you and the tail end of the street car? A. That's right.

Q. And then there is the length of the street car? A. Yes.

Q. And then there is some distance I suppose intervening between the front of the street car and where Mr. and Mrs. Nance were going to go. Is that right? A. Yes, that's right.

Q. So would it be safe to say that you saw Mr. Nance at that instant a distance of 80 feet, would you go that far? A. I would say probably a little farther than that, maybe.

Q. Maybe 100 feet? A. Approximately; it is hard to say, I couldn't tell.

Q. And that was shortly before the collision? A. That's right.

Q. You had no trouble seeing them? A. No.

Q. A big man? A. A large man.

Q. A big husky fellow? A. Yes.

Q. Four lights on each corner? A. I don't recall what the lighting is.

Q. We will just leave it, at least that you had no trouble seeing Mr. and Mrs. Nance a distance of about 100 feet just before the impact? A. I would say so, yes.

(Witness aside)

The Court: I was not sure whether Mr. Boyle said when he first saw Mr. and Mrs. Nance they were running.

Mr. Gilmour: My recollection is he was saying that at the time you asked him, just a moment, you wanted to make some notes, and he just got about as far as saying he caught a glimpse of them running. He didn't repeat it again after your lordship made a note.

Mr. Cameron: Would your lordship like to ask Mr. Boyle?

The Court: I think that should be cleared up.

WILLIAM ANTHONY BOYLE, recalled.

Mr. Cameron: Would you like Miss Isaacs to leave the room?

Mr. Sturdy: Was she in his company that night?

Mr. Cameron: Yes, they were together.

Mr. Sturdy: Yes, she better leave.

The Registrar: You are already sworn, you are still under oath.

The Court: Q. Mr. Boyle, I wasn't clear whether I heard you correctly, but I understood you to say that when you first

Boyle (for Defendant)—Cross-Exam.
Boyle (for Defendant)—Re-Cross-Exam.

saw Mr. and Mrs. Nance they were running? A. They were running, or hurrying to the best of their ability, I would say, yes.

Q. What we want to know is, were they running or were they not? A. Well, there are people that can run fast, my lord; I mean, there are people that can run fast; I mean they were hurrying to the best of their ability; I mean, people running for
10 them, which would probably be hurrying for someone else; they were hurrying, trying to get past the street car.

Q. They were hurrying? A. Oh yes, maybe running too, I couldn't say.

Q. You do not know whether they were running or not?

A. No, I don't, my lord.

Q. But what you say is, they seemed to be hurrying? A. Oh yes, definitely; they were definitely hurrying.

RE-CROSS EXAMINATION BY MR. STURDY:

Q. Mr. Boyle, I will tell you, it has been given in evidence
20 here that Mr. Nance was lame, and that his mode of going along was just to put one foot in front of the other, but I suppose as fast as he can. Now, could that be what you took to be a running gait, that rapid motion of his feet in that way? A. It could be; I think he was going quite a bit faster than that, or trying to; all we did get a glimpse of him was just a minute or a second, but he appeared to be hurrying to try and get in front of the street car, yes.

Q. Hurrying across, but running, that is something more. Let's make sure whether he was running or attempting to hurry,
30 which is a different thing? A. Well, as I said before, running for some person would vary from hurrying with others.

Q. In this case he wasn't sprinting, lifting his legs up and running, hightailing across the street? A. I would say he was hurrying to the best of his ability.

Q. But he wasn't getting ahead very fast? A. I couldn't tell, I didn't see him long enough.

(Witness aside.)

Isaacs (for Defendant)—Exam.-in-chief

JAQUELINE ISAACS, a witness called on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CAMERON:

Q. Miss Isaacs, where are you from? A. From Bellingham.

Q. And what is your occupation now? A. I am a student nurse.

10 Q. At — A. St. Joseph's Hospital.

Q. In Bellingham? A. Yes.

Q. Were you with Mr. Boyle on the night of the 17th January, 1949? A. Yes, I was.

Q. Did you see an accident, or come upon one that night? A. Yes.

Q. Where had you been prior to that? A. We ate in Vancouver, and we were coming from Vancouver going to Bellingham.

20 Q. I see. What time was that? A. Oh, it was approximately about 12, a little before I think.

Q. And do you know what street you were on? A. On Kingsway.

Q. Would you describe what happened as you approached Gladstone Avenue? A. Yes, we were — I am not sure if we were following behind for a long distance or not, but we were behind a trolley car, and we saw this couple, a man and a woman, approaching from our left to our right, and it was probably in the other track, the track coming towards Vancouver where we first — or I first saw them.

30 Q. You first saw them when they were probably in the westbound track that would be. You were going east? A. Yes.

Q. And where were they in relation to the intersection let's say to the easterly curb, that is the right-hand side, the intersection of Gladstone Street? A. Oh, from the curb, I would say about a street car length.

Q. About a street car length, which way? A. Well approximately — well, east.

Q. In the direction you were going? A. Yes.

40 Q. That is east. That's right. Towards New Westminster? A. Yes.

Q. And where were you at that time? A. We were behind the street car.

Isaacs (for Defendant)—Exam.-in-chief

Q. How far behind? A. Oh, probably about — oh, not quite the length of a street car I would say. I don't know for sure.

Q. And then what happened — by the way, what were these people doing when you saw them? A. Well, I am not sure if they were hustling or not, they were crossing the street, and they seemed — gave me the impression, trying to make it before the street car; and then we saw the man thrown towards us, and
10 the woman the other way.

Q. Well, did you see them the whole time? A. We saw them until the street car obstructed the view.

Q. Yes, and when did you next see them? A. When they were thrown, thrown out.

Q. I see. And will you just describe what you saw at that time? A. The man seemed to be spinning towards us, and the woman seemed to go the other way, and he landed oh, approximately about 10 to 15 feet in front of us.

Q. In front of you? A. In front of the car where we sat.

20 Q. In front of your car when it was stopped? A. Yes.

Q. Where did you stop? A. Oh, a car length — our car length — from the curb.

Q. You mean the automobile? A. From the other — Yes — on the other side of the curb.

The Court: Q. The other curb? A. Yes, the intersection.

Mr. Cameron: Q. You stopped about south-east — the south-east corner, is it — yes, the south-east corner of Gladstone. When you were previously speaking of the distance you were
30 behind the street car when you first saw Mr. and Mrs. Nance, you spoke of a carlength. Is that a street car length or — A. A street car length, approximately. I am not sure of that; I mean, that is just approximately.

Q. It is a guess on your part? A. Yes.

Q. Could you tell me what direction they were going in? A. I don't know if they were going on an angle or straight across, I didn't know that.

Q. And how far apart were the two bodies when they were stopped? A. Oh, probably about 35 feet, 30 feet, some-
40 thing like that.

Mr. Sturdy: When was that?

Mr. Cameron: Q. After the two bodies were lying on the road? A. Yes.

Q. You said that your car was stopped 15 feet from Mr. Nance. A. Yes.

Isaacs (for Defendant)—Exam.-in-chief
Isaacs (for Defendant)—Cross-Exam.

Q. That was the man? A. Yes.

Q. And the bodies were 35 feet apart.

CROSS EXAMINATION BY MR. STURDY:

Q. When you saw Mr. and Mrs. Nance the first time, Miss Isaacs, you had no difficulty seeing them, they were quite clearly distinguishable, weren't they? A. Yes.

Q. He was a big burly man? A. Yes, he seemed large
10 to me.

Q. And it was the same man that you later saw lying on the pavement injured, wasn't it? A. Well, from everything, I would say it was.

Q. Now just one question, how far do you estimate you were from him or his wife when you first saw them, how far away were you from them? A. From them?

Q. Yes. A. Oh, probably the length of approximately, oh, two street cars, I don't know.

Q. That would be about the distance intervening between
20 you and them when you first saw them? A. I think so, maybe a little bit more, I don't know.

Q. And at that time your line of vision to them, of course, was to the left and across the rear of the street car, wasn't it? A. Yes.

Q. You had no trouble seeing them; I mean, there was plenty of illumination, and they were quite obvious to you, weren't they? A. Yes.

Q. You saw them — A. Yes.

Q. — looming right up? A. Yes, they were there.

30 The Court: Q. Do you remember the street car stopping at Gladstone? A. No, I don't remember that.

Q. When you first saw Mr. and Mrs. Nance, was the street car moving? A. Yes.

Q. Had it passed the inner side of Gladstone then, the street car I mean, when you first saw Mr. and Mrs. Nance? A. Yes, I believe so.

Q. Are you sure about that? A. I think so, sir, I am pretty sure.

Q. Well did you stop behind the street car? A. When it
40 stopped, do you mean? Yes.

Q. Then you do remember the street car stopping?

Mr. Cameron: My lord, when he stopped at the time of the accident, I think —

Isaacs (for Defendant)—Cross-Exam.
House (for Defendant)—Exam.-in-chief

The Court: Q. No, I mean before that, before the accident? A. Oh, we had been following it before that, and I don't know what corner it may have stopped at; I remember it stopping, but I couldn't say it was at Gladstone or whatever that street is.

The Court: Does the jury wish to ask any questions?

A Juror: No questions.

10

(Witness aside.)

HERMAN VICTOR HOUSE, a witness called
on behalf of the Defendant, being first
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CAMERON:

Q. Mr. House, how old are you? A. 18.

Q. And where do you work? A. Vancouver Engineering
Works.

Q. Were you on a street car the night of January 17th,
1949? A. That's right.

20 Q. That was involved in an accident? A. Yes.

Q. And what time was that? A. Oh, 11.30 or after 11.30.

Q. Where had you got on the street car? A. Perry Street.

Q. Perry Street? A. That is two blocks east of Knight
Road.

Q. Two blocks east of Knight Road. In any event the
street car was going east on Kingsway? A. That's right.

Q. Will you describe what you saw or heard that night,
commencing after you left Victoria Road and you were coming
up towards Gladstone Street? A. Well we stopped at Glad-
30 stone; we picked up four — well it was about three or four
women passengers, and two of them sat down and one stayed up
the front to get a transfer or tickets or some object, and we
started up again; it was a slow start, I mean there was no
quickness about it, but we started up, and we got across the inter-
section, about a length of a street car across the intersection
and I heard this thump up the front of the street car.

The Court: Q. You heard what? A. A thump, it was
a thud or — and I looked down on the road there and I seen this
woman rolling across the road. Well, we stopped right away.

40 Mr. Cameron: Q. Where were you sitting on this street
car? A. About the third seat ahead of the back doors, treadle
doors.

House (for Defendant)—Exam.-in-chief

Q. That is the middle treadle door, is it? A. That's right.

Q. And on which side of the street car? A. The right side of it.

Q. Were you next to the window or next to the aisle? A. I was right next to the window.

Q. And you said you heard this thump and saw a woman spinning around on the road? A. That's right.

10 Q. Did you see anybody else? A. No, I only seen the woman, just the woman.

Q. And the car stopped right away, you said? A. That's right.

Mr. Sturdy: No questions.

The Court: Q. Where was this street car when you said you heard this thump? A. Oh, it was about a length of the street car across the intersection, the east intersection.

Q. You are speaking of the centre of the intersection? A. Well, the east curb like.

20 Q. The centre of the two streets? A. No, the east — the east curb, you know.

Q. The east curb of what, Gladstone? A. Gladstone, that's right.

Q. About a street car length beyond that? A. That's right.

Q. You mean by that that the rear of the car, the street car, would be about the east curb of Gladstone or a car length beyond that? A. I am not sure about it, but we were well across the intersection anyways; I don't know about the rear
30 of the car, I was sitting up near the front of the car.

Q. You say that the street car was a carlength beyond the east curb of Gladstone? A. It was approximately that, yes.

Q. You mean that the rear of the street car was a carlength beyond the curb? A. Oh no, no, no, I mean the whole car was across the intersection, the east curb.

Q. Well then, the rear of the street car would be about —
A. Was just about the curb, yes.

Q. About the east curb? A. That's right.

(Witness aside)

Melver (for Defendant)—Exam.-in-chief

DONALD MURDO McIVER, a witness called on behalf of the Defendant, being first duly sworn testified as follows:

DIRECT EXAMINATION BY MR. CAMERON:

Q. Mr. Melver, what is your occupation? A. I am night supervisor of the Birks Building.

Q. Of the Birks Building? A. Yes.

Q. Is that here in Vancouver? A. Yes.

10 Q. Were you riding on a streetcar on the night of January 17th last, which was involved in an accident near the corner of Gladstone and Kingsway? A. Yes.

Q. Whereabouts were you sitting? A. Directly behind the driver in the single seats.

Q. On the single seats? A. Yes.

Q. I see. On which side of the street car is that? A. I beg your pardon?

Q. On what side of the street car? A. The lefthand side.

Q. The lefthand side? A. Yes.

20 Q. Would you just describe what you saw as the car approached Gladstone Street; just describe what you saw and did that night; the car was on its way to Gladstone Street, start there? A. Yes.

Q. Going east on Kingsway? A. Yes.

Q. All right now, just what did you see, what did you see that night? A. Well, the car stopped at Gladstone to take on some passengers.

30 Q. Yes. A. And the passengers got on, and proceeded across Gladstone to cross the intersection, and when we were about two-thirds the length of the car past Gladstone, I felt the thump.

Q. Felt a thump? A. Yes.

Q. Go on. A. And the car stopped in a very few feet, and the driver got out of the car immediately, and I got out and followed him.

Q. Yes. A. And the front of the car was about opposite the driveway into the Chateau Motel, at least it looked like the driveway, where the snow was shovelled away. And I took a look at the first person who was laying beside the car, a
40 woman, and I walked back —

Q. Who was that, a man or a woman? A. A woman first. She was lying parallel with the car. And then I saw the man laying back a little further, and I just walked back to where

McIver (for Defendant)—Exam.-in-chief

he was lying, and I noticed an automobile parked right up at the curb where it turned off Gladstone onto Kingsway there. Being chilly I went back in the car and sat down.

Q. Could you give an estimate of the distance between the two bodies? A. Well, I counted my steps that night when I walked from one to the other; it was ten steps, approximately I would say 30 feet.

Q. And where was Mr. Nance's body in relation to the street car? A. Well he was — his head was towards the curb, and I should judge back past the middle doors some.

Q. And where was her body? A. It was on the other side of the centre doors, lying parallel with the car.

Q. Now as you were sitting there, did you observe the motorman at all? A. Well, from time to time I looked at him, and being a patron of the road all the time I see these things, and as far as I could see he was tending to his business.

Q. Well speaking of the time when the street car started across the intersection and went to the other side where you heard the bump, was he doing anything then to attract your attention? A. He was looking ahead is the one time I looked at him, and had his arm back that way handing one of the passengers a transfer, ticket or change, I didn't know just what he was doing, but I just glanced up and saw he was looking ahead.

Q. And were you looking anywhere else? A. I didn't notice him turning his head any place else.

Q. But you didn't look out the window at all? A. I was looking out the front window just over his arm when he had it back that way.

Q. When were you doing that? A. He was looking ahead.

Q. When were you looking out of the window; where was the car then? A. It was past the intersection then.

Q. Was that before or after you heard the bump? A. Just about the time we heard the bump.

Q. And had you previously looked out the window at all?

A. I beg your pardon?

Q. Had you previously looked out the window at all? A. Yes, at different times.

Q. Well, I am speaking from the time the car started up until you heard the bump? A. Yes, I was looking out the window practically all the time there.

Q. Which window? A. Would be the right front window.

Q. And did you see anything on the track or on the street?

A. Well, I didn't notice anything.

McIver (for Defendant)—Cross-Exam.

CROSS EXAMINATION BY MR STURDY:

Q. Was the street car moved between the time that it stopped as you have described, Mr. McIver, and the time it finally drove away again and kept on to Joyce Road? A. Did it stop from the time it left —

Q. No, was it moved again? You see, it came to a stop after the accident? A. Yes.

Q. Right away, as you say? A. Yes.

10 Q. And then you eventually went back into the car and sat there? A. Yes.

Q. Then ultimately I take it the motorman returned to the streetcar and drove away? A. After some time, yes.

Q. Yes, after some time? A. Yes.

Q. Now when that happened, when he drove away, was that the first the car moved after the accident? A. Yes.

Q. Was the curtain drawn behind the driver as he sat in the driver's seat ahead of you? A. It was held back by his arm when he was handing this woman whatever he was giving
20 her.

Q. A transfer or something like that? A. Well —

Q. There was a curtain there, was there? A. The curtain was there.

Q. Now the curtain I suppose protected a part of the rear of his body from your vision; you couldn't see a part of his body because of the curtain, would that be so? A. No, from the arm up to the side of the face I could see, when he had his arm back this way; the woman was leaning against the rod at the stanchion.

30 Q. Where is the curtain now? A. The curtain was against his arm, and I had a shopping bag beside my leg, I wasn't sitting straight in the seat, I was sitting about a 45 degree, and I was looking out —

Q. Through the right front — A. I was looking out through the right front.

Q. I still haven't got the curtain placed,—Mr. McIver, is it? A. Yes.

Q. You are from Ontario and not Scotland? A. Quebec.

40 Q. What about the curtain with relation to your view of the right front — you say the right front window? A. At that particular time he had his arm pushed back where I could see, I could see right out the front window.

Q. Yes, but your gaze was directed more to the front than to the left as you looked? A. Well, yes.

McIver (for Defendant)—Cross-Exam.

Q. And where were you, if you recollect, looking at the instant that this thud occurred? A. I just happened to take a glance at the motorman at that time when he put his arm back like that and then I was looking straight ahead.

Q. Yes, well, you were looking beyond the motorman, were you; you mean you were looking at him or beyond him? A. I took a look at him just before this thud; took a look at him when he put his arm back like that.

10 Q. What was the purpose of his putting his arm back? A. I expect he was handing a transfer or change or something to this woman.

Q. This woman — A. That got on at Gladstone. She was leaning against the stanchion.

Q. So when the thump occurred he had one hand handing out a transfer to the woman and the other hand on the driver's — A. Well those cars don't operate with the hands.

Q. That is, they are foot pedals? A. Yes.

20 Q. When the thump occurred then — put it this way — he had one hand out — A. Yes.

Q. Passing a transfer presumably to this woman? A. Yes.

Q. Where was his other hand, or would you know? A. I couldn't see it.

Q. As he sat, did he sit erect? or did he slouch a bit? A. He was sitting erect.

Q. Those seats are built, aren't they, with the hand rest for the driver's left fore arm, I mean with a rest for the driver's left forearm? A. You mean for the left arm?

30 Q. Yes. A. I can't tell you that.

Q. Did you have any occasion to pay attention to his left hand or arm? A. I couldn't see his left arm for the curtain.

Q. And his right arm you have described — his right hand? A. It was the right arm.

Q. At all events you didn't see Mr. or Mrs. Nance before the collision? A. No.

Q. But you heard the thump? A. Yes.

Q. A pretty loud thump? A. Well, it attracted my attention anyway. Of course, being in the front of the car—

40 Q. What did you think it was actually caused the thump? A. I don't know, I haven't any idea then.

Q. No, but afterwards? A. Well I just saw it was an accident, that's all.

Q. But what particular item of the whole caused the thump?; I mean, I don't want to suggest anything to you, but

McIver (for Defendant)—Cross-Exam.

would it be Mr. Nance's head or what? A. Oh I couldn't say anything about that.

Q. At about what height up the street car did the thump seem to come from? A. Well it is just pretty hard to estimate a height on a well constructed car.

Q. So you don't know? A. No, I wouldn't like to say just exactly the height; you will hit those cars any place, and it would sound all through the car.

10 Q. Yes, that is quite right, all right, thank you Mr. McIver.

The Court: Q. Mr. McIver, I understood you to say that the street car was about two thirds across Gladstone Avenue? A. I would think so, yes.

Q. When you heard the thump? A. Yes.

Q. Well what do you mean by two thirds across, which part of it was two thirds across? A. Two thirds of the front part of the car was past the east curb of Gladstone.

Q. Two thirds of the car was past the east curb of Gladstone? A. Figuring from the relative position of the car when
20 I walked back.

Q. Now, where was the body of Mr. Nance when you saw him? A. About half way between the middle door and the back of the car.

Q. And Mrs. Nance, where was she lying? A. On the other side of the centre doors, about half way between the front door and the centre doors.

The Court: Q. Any questions?

Mr. Williams: May I ask a question?

The Court: Yes.

30 Mr. Williams: Q. You say, Mr. McIver, that the car was two thirds past the intersection of Gladstone?

The Court: Past the east curb?

Mr. Williams: The east curb of Gladstone Street. Now how did you fix that position — that is when you heard the thump — now how did you fix that position? A. From the relative position of the car after it stopped.

Q. After it had stopped? A. Yes.

Q. You actually didn't fix the position, that is, relative to the curb, or to any object on the street, on Kingsway, when
40 you heard the thump? No.

Q. Just after the car stopped, you made your guess after —
A. Yes.

McIver (for Defendant)—Re-Exam.
Stephens (for Defendant)—Exam.-in-chief

RE-DIRECT EXAMINATION BY MR. CAMERON:

Q. Arising out of that, may I ask the witness, in how many feet do you think the car stopped? A. Well I suppose it takes from six to ten feet to stop those cars.

Q. It stopped very quickly? A. Yes.

The Court: I think we'd better adjourn now.

Mr. Cameron: The last witness my lord, is Mr. Stephens; 10 he is here. I think it would be fair to Mr. Sturdy if we called him tonight, and clean up the evidence and then we can have the addresses tomorrow, otherwise his evidence is going to be fresh in the morning.

I think it would be more convenient to your lordship to have the evidence all in.

The Court: Yes, I would like it, but how long is that going to take.

Mr. Cameron: I won't be more than five minutes myself.

Mr. Sturdy: You might consult the convenience of the 20 jurors.

The Court: That is your last witness, Mr. Cameron?

Mr. Cameron: Yes, my lord.

Mr. Sturdy: I might say my lord that on examination for discovery I know it was lengthy, it did take a long time to get answers from Mr. Stephens. I am not saying that with the idea of discouraging the idea, I prefer we go ahead myself, but he is slow in responses.

The Court: Have the jury any objection to remaining until we have the evidence in? All right, we will carry on.

30 (Witness aside)

JOSEPH STEPHENS, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CAMERON:

Q. Now, Mr. Stephens, you have been sitting here in court the whole time, and you were the motorman of the street car involved in this accident? A. Yes.

Q. Now my friend has read previous evidence to indicate that you have been driving those street cars for 3 or 4 years, 40 was it? A. Yes.

Q. That particular type of street car. Would you just

Stephens (for Defendant)—Exam.-in-chief

describe to his lordship and the jury what happened that night starting just before you came up to Gladstone Street? A. I was proceeding east on Kingsway approaching Gladstone, and I seen four passengers standing at the lamp-post, waiting for a street car. I come along the same as usual, stopped the car, they came shuffling across; it was a little bit slippery, you had to keep an eye on them. They got on, paid their fares; I flipped the doors, looked to my left, started up the car and looked straight
10 ahead. When I was on my way, the passenger asked for a transfer — a couple of transfers. I first was going to clear the intersection before I hand out any transfers as is policy that we — just automatically comes to you, you hear them ask for a transfer, but you just wait till you clear the intersection.

Q. Just tell what you did this particular night. Somebody asked for a transfer while the car was still in the intersection you say? A. Yes.

Q. What did you do then? A. I cleared the intersection, which I thought I was well on my way, a good car length on my
20 way, when I reached to get two transfers.

Q. Which way were you looking? A. Straight ahead.

Q. Which way were you looking when they asked for a transfer? A. Straight ahead.

Q. Where were you looking when you cleared the intersection? A. Straight ahead.

Q. Then you reached for a transfer? A. When I was a good car length past the intersection, I put my hand down like that and grabbed two transfers.

Q. And which way were you looking then? A. Straight
30 ahead.

Q. Is it possible for you to pick up two transfers and still look straight ahead? A. Oh yes, you have them right in front of you, everything is sitting there already for you.

Q. In a rack? A. Right in front.

Q. Go on then? A. And I heard a thump on the side of my car. I said, "Gosh, what was that," and I immediately stopped the car, and I opened the door and looked out, and I saw two people lying on the street against the curb.

Q. Did you see them — Just tell — you stopped the car,
40 and then what happened? A. I beg your pardon?

Q. You stopped the car and then what happened? A. I opened the doors and I got out. I went and saw two people laying on the street.

Q. Who was the first? A. The woman was first and the man was —

Stephens (for Defendant)—Exam.-in-chief

Q. Where was she? A. She was right in the roadway, into the auto Chateau Camp, Auto camp.

Q. In the roadway? Would you describe that roadway, could you describe that roadway into the auto court? A. Yes.

Q. Please do that? A. In relation with my car?

Q. No, just say what kind of roadway was it? A. Well it was shovelled out, shovelled out because the ploughs had been there previously, I don't know whether it is two days or three
10 days, the ploughs had been there previously and the snow was piled up approximately that high (indicating), and this was shovelled out and also it was kind of — well I could see in the roadway where the cars had presumably been going in and out, and I would say approximately ten feet wide, and she was lying right at the west — west side of the opening in the roadway parallel with the street car tracks.

Q. The west side? A. Yes.

Q. That is the side nearest to Gladstone Street? A. I
beg your pardon?

20 Q. The side nearest to Gladstone Street? A. Yes, right against the curb.

Q. And where was your car in relation to that? A. Well after — I went to phone — I mean, I rapped on the door and had the proprietor phone. When I come back I asked for witnesses —

Q. I want to know where the street car was? A. Well that is what I want to get at.

Q. All right. A. I want to get at how I took notice.

30 Q. Yes. A. I came back and went through my car from the front and asked for witnesses, if anyone saw anything. No one saw anything. I got out the middle doors. That is when I noticed he was laying approximately six to eight feet back of the middle door.

Q. That is when you noticed he was lying approximately six to eight feet back of the middle doors? A. Middle doors.

Q. And where was the body of Mr. Nance, would you think? A. He was — he seemed to be a considerable distance behind; I wouldn't say exactly how far, I never measured it, I never stepped it off at that time.

40 Q. Can you give any explanation of why you didn't see Mr. and Mrs. Nance, — first of all, let me ask you did you see either of them or anything before you heard the thump? A. I beg your pardon.

Q. Did you ever see Mr. and Mrs. Nance before the accident? A. No, I never, I never saw them at all.

Stephens (for Defendant)—Exam.-in-chief
Stephens (for Defendant)—Cross-Exam.

Q. Did you see them at the time of the accident? A. No, I didn't see — I didn't see them until I opened the door and got out; I didn't even know what the thump was, I didn't know what caused the thump, I just heard the thump, and naturally at all times when we hear a thump that seems to be something that we know there was nothing there, or you thought there was nothing there, you immediately stopped.

10 Q. How were the streets that night? A. They are icy.
Q. Any traffic on Kingsway? A. Automobiles, yes.

CROSS EXAMINATION BY MR. STURDY:

Q. Mr. Stephens your line of vision as you drove across Gladstone would be to the east, wouldn't it, roughly? A. Straight.

Q. East? A. Yes.

Q. East? A. East.

Q. Mr. and Mrs. Nance's line of vision as they went south across Kingsway would be south, wouldn't it? A. Yes.

20 Q. After this accident was over, did you have a talk with any of the police officers? A. Yes.

Q. After the collision? A. Yes.

Q. By the way, it was your street car that ran into Mr. Nance, wasn't it? A. Well I heard a thump on my street car.

Q. Yes. After this thump, and after the police came — A. Yes.

Q. — did you have a talk with any police officers? A. Yes.

Q. Who? A. Sergeant — police officer Thomas.

Q. Thomas? A. Yes.

30 Q. What conversation did you have with Mr. Thomas? A. He come up and asked me what happened, when he was coming across; I says, "I don't know" "Have you any witness?" I says, "Yes," and I voluntarily went up and gave him some witness what I had. He says, "What happened"? I says "I don't know. The people seem to think that they ran right across in front of me."

Q. That is what you told him? A. That is what I told him, but I didn't see them.

40 Q. But you didn't know of — A. He said, "Did anyone actually witness it?" I says, "A fellow from Bellingham says he actually saw it," and I gave him his name. I says, "That's all I know."

Q. Why did you not see Mr. or Mrs. Nance? A. That I

Stephens (for Defendant)—Cross-Exam.

can't explain.

Q. They were there, they were there somewhere? A. Yes, they were there.

Q. Of course they were there because they were struck. You didn't see them, you don't know why you didn't. A. I don't know why I didn't see them. Whether it was reflection or what it was, I don't know why I didn't see them.

Q. You didn't see them at the intersection when you stopped to take on the passengers, did you? A. No.

Q. If you had seen them, what would you have done? A. Well if I had saw them, it depends where I would have saw them; If I had saw them go and seen they were closer, I would have waited and let them go across; if they were just leaving, and not watching me, I would have given them the gong to let them know I was going, or if they were looking at me or seemed to know —

Q. Giving them warning? A. Yes.

Q. If you had seen them, when you were at the corner taking on passengers you would have warned them or let them go by or made sure they were going to let you go by? A. That's right.

Q. But none of those things happened, did they? A. No.

Q. Now when you were half way across Gladstone, if you saw Mr. and Mrs. Nance I suppose the same thing applies? A. Absolutely.

Q. You would either let them go — A. Give them the gong. It depends how close they were up, and usually I mean, passengers walk out; you will see ahead of time they hesitate, or they let you know that they are watching you, or you will give the gong, warn them that you are coming, whatever it is.

Q. All this you would have done on this occasion if you had seen them? A. Yes.

Mr. Cameron: Well if they had been there.

Mr. Sturdy: Q. I say, if you had seen them on this occasion, you would have done these things? A. Yes.

Q. Now then, as you got to the east curb line of Gladstone, if you had seen them, I suppose the same thing would apply? A. Well that would have applied if I had seen them right from the beginning; I would have given a warning right then.

Q. Any time up to stopping distance anyway? A. Well at any time; I mean, you look, you will see people ahead of time, but I didn't see them at any time.

Q. They were there? A. Well I don't know.

Q. You don't know why you didn't see them. What rate of speed were you travelling at as you went across the intersec-

Stephens (for Defendant)—Cross-Exam.

tion — it would naturally be an increasing rate but give us the miles? A. I started off very slowly, and you just pick up speed gradually.

Q. Can you give us some idea of the gain in acceleration from nothing up to some other speed at the east curb line of Gladstone? A. No, I can't actually say.

Q. Well I can quite sympathize with you? A. That is hard to say. Sometimes, a car will start off smoothly, faster; 10 the next time it is slower; that is hard to say.

Q. Yes, it depends on whether you are going to go fast or not, probably. Now as you crossed the intersection you were in fact gaining speed though, weren't you? A. Yes, gradually I would be going a little faster.

Q. All right, and you don't ordinarily measure your speed of a street car in miles per hour do you? A. You just more or less figure you are going that fast.

Q. Yes, if it is the proper rate. A. What you figure you are going that fast.

Q. Put it this way, let me ask the question and then you 20 answer and we will get ahead faster, and we won't stay very long. You haven't got a speedometer on your street car? A. No.

Q. But you have a feeling from many years of experience with regard to the speed of the car, as to whether you are going at the proper speed at any one time, haven't you? A. Well more or less from driving an automobile, that is the way I more or less judge.

Q. Let's speak of a street car. In driving this street car 30 over four odd years, you have acquired a feel for what is the proper speed for the particular circumstance, at any time, haven't you; you know what I mean by that? A. No, I don't know what you mean.

Q. You don't know when you are going too fast? A. Well you know when you are going too fast, you slow down?

Q. How? A. Well the feeling you are going fast — what you are passing on the road.

Q. How do you know when you are going, let's say, as 40 might arise, too slowly to avoid a situation? A. Well you are just creeping.

Q. Now you don't gauge that in miles per hour on the speedometer, do you? A. No.

Q. You gauge it by the feeling you have for the motion of the car with you, don't you? A. Yes.

Q. I am not asking you to say in miles per hour how fast

Stephens (for Defendant)—Cross-Exam.

you were going when this thud occurred, but I am asking you to simply recollect as closely as you can at what speed you were going with regard to this feeling you have for the speed of the car. Now do you understand that? A. I understand that.

Q. Now at that rate of speed, in what distance could you stop the street car in an emergency? A. The same as I said, approximately 15 to 20 feet, and that depends also a lot on how the wheels grab. Sometimes you will throw your wheels into
10 emergency —

Q. How did the wheels grab on the night of January 17th? A. Good, because I applied my brakes just naturally, and before —

Q. So there is no question of the wheels grabbing on the night of the 17th?

Mr. Cameron: No, let him finish his answer.

Q. What did you want to say about the wheels grabbing?

A. All I want to say on that particular night, that is the way I applied the brakes, just so, and the car stopped just so. Some-
20 times you apply your brakes and you put the emergency on; sometimes you have no brake, you will go into a skid and slide.

Q. They didn't slide that night? A. No, I just put the brakes on and it stopped well.

Q. In what distance did you stop? A. Well I presume — in my recollection 20 to 25 feet, it might have been a little more, might have been less.

Q. Might have been a little less. Now then, you could have stopped in less space, couldn't you, if you had — just a moment — if you had applied the emergency brake? and if you
30 hadn't run afoul of this misadventure of slipping on the rails, is that right? A. Depends on the load you have or the condition, what it stops in.

Q. Let's continue to speak of the load you had that night. You could have stopped in less space if you had suddenly slammed on the emergency? A. I figured maybe I could.

Q. As it was, it was 20 to 25 feet? A. That's right.

Q. I think you have already told me on examination for discovery that you could, with emergency pressure, have stopped in 15 to 20 feet? A. That is what I figure.

40 Q. That's right? A. That's right.

Q. Now, had you seen Mr. or Mrs. Nance, when you were 25 feet away from them, you could have avoided this accident, couldn't you? A. If the car would have stopped —

Q. Let's please — A. — if the car would have stopped like it should have. Any time you can — that is why you have

Stephens (for Defendant)—Cross-Exam.

to gauge between your people; you have oncoming traffic; you have got to weigh everything, because you can never depend that your car is going to stop the way you think it should.

Q. On this particular occasion, the car stopped without any difficulty or slipping or jerking? A. Yes.

Q. Right. A. Because I stopped the car just normally, but what I am getting at is if you are coming along with your brakes on I couldn't tell you that I am going to stop at such and
10 such —

Q. A point? A. Point.

Q. No, that is true. A. You see, I mean, you may stop and you may hit a flat spot in the rail and the car will skid two feet more.

Q. That didn't happen this night? A. No.

Q. And the fact is this night you stopped within 20 to 25 feet? A. That's right.

Mr. Cameron: Is my friend including re-action time?

Mr. Sturdy: I am just taking his figure for it. This is my
20 cross-examination.

Q. The next thing is this, that if you had had to stop in a shorter space, on that particular night, at that particular time, you could have done it? A. As I say —

Q. Now let's not go through that all again. The point is, you could have, subject to these slippings, and other things that happened? A. Well as I say, I could have maybe five feet sooner, but if she had slid or skidded I couldn't say what the car would have done.

Q. All that would have happened if you had seen Mr. and
30 Mrs. Nance? A. Yes.

Q. Is that correct? A. Just depends where I saw them, yes.

Q. So is it not true without any confusion whatever, isn't it true to say if you had seen Mr. Nance a distance of 25 feet you could have avoided that accident — come now, be frank with us? A. Well that depends. As I am saying if the car would have stopped — if I figured it stopped, it could have — would have avoided the accident.

Q. Yes, if you had stopped the car within 25 feet you would
40 have avoided the accident? A. Yes.

Q. But you didn't? A. But I didn't see nothing.

Q. That is what I mean, all right. Can you give us some idea how long it would take to go 25 feet at that speed, you were going at when you heard the thump? A. No, I —

Q. You don't know. It would be a very short space of

Stephens (for Defendant)—Cross-Exam.

time though, wouldn't it, that it would take you to go 25 feet? What are our agreed rates?

Mr. Cameron: At what speed?

Mr. Sturdy: In what time would he travel 25 feet at let's say any of our agreed rates of speed, 15, 20 and so on?

Mr. Cameron: Well, at 20 miles an hour he will go thirty feet in one second.

Mr. Sturdy: Q. Yes. So that if you had seen them 30 feet
10 previously, it would have been a second elapsed between that time and the time you would strike them, is that right? A. Well I can't answer.

Q. You don't know? A. I don't know.

Q. All right. But barring the difficulties with brakes that you might have, had you been a little vigilant, you might have avoided this accident, mightn't you, and saved the man's life, isn't that correct? A. Well I figured I look —

Q. If you had seen him, there wouldn't have been any accident? A. Well if I had saw them — just depends where
20 I saw them; I mean it depends where they were.

Q. If you had seen them any distance over thirty feet away you would have avoided the accident, wouldn't you? A. Well yes.

Q. Is that right? A. Yes.

Q. Be frank with me. A. Yes.

Mr. Cameron: He said yes.

Mr. Sturdy: Q. Is that so? A. Yes.

Q. And the real cause of this tragedy was your failure to see Mr. and Mrs. Nance wasn't it? A. Yes, I didn't see them.

Mr. Sturdy: That's all.

The Court: Q. Mr. Stephens, where was the front of your street car with reference to the easterly curb of Gladstone when you heard the thump? A. I was a good car length. What I mean by a good car length, I would say approximately 50 feet or a little bit more.

Q. That is the front of your car — A. The front of my car east of the east curb line.

Q. Where was the front of your car when you stopped it? A. Well I can't tell by the front, I took notice of the centre.

Q. Say with reference to this entrance into the motel? A.
40 Well the centre of my car — the west side of the centre doors was in line more or less with the east side of the entrance into the motel.

Q. That is the cleared part of the entrance? A. Yes.

Q. The cleared part of the entrance? A. Yes.

Stephens (for Defendant)—Cross-Exam.
Charge to the Jury

The Court: Would the jury like to ask him any questions?

A Juror: No questions.

(Witness aside)

Mr. Cameron: That is the case my lord.

The Court: Have you any rebuttal?

Mr. Sturdy: No, my lord.

The Court: We will adjourn until 10.30 tomorrow morning.

10

(PROCEEDINGS ADJOURNED UNTIL
JUNE 23rd 1949 AT 10.30 A.M.)

CHARGE TO THE JURY

The Court: Mr. Foreman and gentlemen of the jury, the plaintiff, Mrs. Nance, sues on behalf of herself and her children, and her husband's children, for compensation under a Provincial Statute called the "Families' Compensation Act." I will explain the provisions of that Act to you, later on.

The action is based on negligence. I shall deal later with the particulars of the negligence alleged and the claim as made
20 by the Plaintiff in this action.

You must accept my direction on the law that is applicable to this case. All questions of fact, on the other hand, are for you, and the reasonable inferences to be drawn from the facts that you find to be established by the evidence before you are also for you. What conclusion you reach as to the facts that have been established by the evidence is entirely for you, as likewise what conclusions you reach with respect to the inferences that you are going to draw from those facts which you find to be established.

30 You may accept, or you may reject, the whole or any part of the evidence of any witness, and the weight to be attached to the evidence of any witness is for you. You have seen the witnesses in the box giving their evidence. You have noticed their demeanour, and you will take these matters into consideration when deciding as to what evidence you are going to accept, and what you are going to reject.

40 It is your recollection of the evidence that must govern, not the recollection of counsel, or my recollection. I shall be as accurate as I can when dealing with the evidence, but, after all, it is your recollection that must govern you, and if you have any doubt as to what the evidence of any witness was, you are to

Charge to the Jury

feel free to return to the Court room and it will be looked up and read to you.

Likewise, if you have any doubt as to the law applicable to this case as I state it to you, do not hesitate to come back to the Court room for further instructions.

You may have read something in the press, or you may have heard something outside of the Court room in connection with this case; you may have read reports of previous trials; 10 I ask you to banish all that from your minds. You must reach your decision entirely upon the sworn evidence which you have heard in the course of this trial. Particularly, if you have heard or read anything about any criminal proceedings in connection with this matter, I ask you to banish that from your minds, because it has no relevancy here. The degree of negligence which is required to establish criminal responsibility is very different from the degree of negligence which is required to establish liability in a civil case, such as this.

In this case certain facts are admitted. It is admitted that 20 the motorman, Joseph Stephens, was the defendant's employee, and that he was acting in the course of his employment. It is also admitted that the streetcar belonged to and was operated by the defendant Company. The effect of those admissions is this, that if you find that Mr. Nance's death was brought about by the impact with the streetcar, then, in order to decide whether the defendant is liable you need only direct your minds to the question of negligence. Was Stephens negligent, to the degree which I shall outline to you, and was Mr. Nance guilty of contributory negligence, as I shall later explain to you what contributory negligence is? 30

As to whether the death was caused by the impact, you have heard the medical evidence, and I need not review it. If you accept the doctor's evidence, then you will have little difficulty in coming to the conclusion that the cause of death was a fractured skull, with the attendant injury to the brain.

As I said a moment ago, the action is one that is based on negligence. The onus is upon the plaintiff to establish, by a preponderance of evidence, that the defendant's employee, Stephens, was negligent, and that Mr. Nance's death was caused 40 by reason of that negligence.

The defendant in this case alleges that Mr. Nance was guilty of negligence, but before I go into that I will explain what negligence is, in law.

Negligence, in law, is the omission to do something under, the circumstances of the particular case, which a reasonable man

Charge to the Jury

guided by those considerations which ordinarily regulate the conduct of human affairs would do, or, doing something, in the circumstances of the case, which a prudent and reasonable man would not do. It is the absence of reasonable care under the circumstances. It is the doing of something which a prudent and reasonable man would not do, or, the omission to do something, which a prudent and reasonable man would do.

10 There, first of all, must be a duty before there can be any question of negligence. That is to say, you must find that the defendant's employee, Mr. Stephens, owed a duty to Mr. Nance, and that Stephens committed a breach of that duty. The defendant in this case says that Stephens was not guilty of negligence, and that Mr. Nance's death was caused solely by his own negligence. If you so find, then the plaintiff cannot recover. If you find both Stephens and Nance were guilty of negligence which contributed to the accident, then you will have to apply the provisions of the "Contributory Negligence Act," which I shall explain to you a little later.

20 Before you can find that Nance was guilty of contributory negligence, you must find that he owed a duty to the defendant, and that he committed a breach of that duty, and was, therefore, negligent. The onus of proving contributory negligence is upon the defendant, and that must be proved by a preponderance of evidence, which you are prepared to accept.

The duty which the plaintiff says the motorman owed to Mr. Nance was to proceed carefully, and to keep a sharp lookout, and to so control the speed of the streetcar as to permit Mr. and Mrs. Nance to clear the streetcar rails. The plaintiff asks you
30 to find there was a duty, regardless of the condition of the pavement; but the plaintiff asks you to find that there was ice on the street, making walking difficult, and in view of that an even greater duty to take care rested with the motorman than would ordinarily be the case.

The defendant Company, on the other hand, says that Nance owed it a duty; the duty to take reasonable precautions in making the crossing, to keep a proper lookout, and, in particular, the duty not to begin the crossing without first ascertaining that he could do so in safety.

40 I have said that the onus lies on the Plaintiff to prove that Stephens was negligent. It must be negligence which contributed to the accident, because, if it did not contribute to the accident it has, of course, nothing to do with this case. The defendant says that Stephens was not guilty of negligence, and that the accident was caused entirely by Mr. Nance's own negligence.

Charge to the Jury

Now, if you find that Mr. Nance was guilty of contributory negligence, it must be negligence which contributed to the accident, because, if it did not contribute to the accident it has nothing to do with the case.

Now, before I go any further I had better explain to you the provisions of the "Contributory Negligence Act." That Act provides that where by the fault of two persons damage or loss is caused to one of them, the liability to make good the damage or loss shall be in proportion to the degree in which each person was at fault, provided that if having regard to all the circumstances of the case it is not possible to establish different degrees of fault the liability shall be apportioned equally. That is, if you find that both were at fault, but you find it difficult to say that the plaintiff or Mr. Nance was at fault to this degree, and the defendant at fault to that degree, then the Act says that the liability shall be apportioned equally.

So, if you find that Stephens was guilty of negligence which contributed to the accident, and that Mr. Nance was guilty of contributory negligence, then you must make up your minds as to the degree in which each party was at fault, and so state.

The degree of fault in each case is expressed in percentages. For example, Mr. Nance 25%, Mr. Stephens 75%; or, Mr. Stephens 25% and Mr. Nance 75%, or, it might be 60 and 40. Those are just illustrations.

The degree in which each is at fault is a question of fact, and is for you to decide. If you are not able to ascertain the proportion in which each one was at fault, then, under the Section which I have just read to you, the liability is to be apportioned equally, in which case you bring in a verdict that each is to blame 50%.

The "Contributory Negligence Act" only applies if you find that the damage or loss was directly caused by the fault of both. What you must try to determine is whose negligence was the direct cause of the accident, or were both guilty of negligence that directly caused the accident?

Now, I must explain to you the rights and duties of pedestrians, when crossing the street, and the rights and duties of operators of vehicles in regard to pedestrians who are crossing the street. First, what is the situation when a pedestrian is crossing on a pedestrian crossing? The pedestrian crossing here would be the lane formed by the extension of the lateral lines of the concrete sidewalk. That, of course, is the proper place for a pedestrian to cross. The law does not relieve a pedestrian of the duty of taking reasonable care in crossing at a pedestrian

Charge to the Jury

crossing. He must exercise reasonable care, but a pedestrian crossing there has higher rights than if attempting to cross elsewhere, and drivers of vehicles are under a greater obligation to keep a sharp lookout at a street crossing than they are under elsewhere, since they know it is the place where pedestrians ordinarily cross.

If a pedestrian is crossing the street some place other than at a pedestrian crossing, there is still a duty on the driver of a vehicle to take reasonable care not to injure him but it is not as high a duty as that which rests upon the driver or operator when the pedestrian is crossing at the pedestrian crossing.

The operators of streetcars are under the same obligation to keep a sharp lookout, to take reasonable precautions as are the drivers of motor cars. But pedestrians are under a greater obligation to keep a sharp lookout for approaching streetcars than for approaching motorcars. That, after all, is only common sense. A streetcar is bound to the tracks. It cannot turn to one side or the other side. It can only go straight ahead, or stop.

It has not the mobility of a motor car.

Now, I must explain to you what the law is in regard to the failure of a person to see, when there is a duty to see and there is nothing to obstruct the vision, but before I explain the law, I will review the evidence bearing on that point. Mr. Stephens, the motorman, admits that he did not see Mr. and Mrs. Nance. There is no evidence that there was anything to obstruct his view. Mr. Boyle and Miss Isaacs, following the streetcar in an automobile, both say they saw Mr. and Mrs. Nance before they disappeared in front of the streetcar. The evidence, if you accept it, is that the intersection was quite well lighted. Mr. Nance had a light brown overcoat on, and Mrs. Nance a dark coat. Mrs. Nance says that after she passed a certain point, she didn't see the streetcar until it was right on them, although there was nothing to obstruct her view. She said she saw the streetcar first, when she was between where the snow came out from the curb and the first set of tracks. The snow extended out from the curb about eight feet. Kingsway is 56 feet, from curb to curb. The distance between the northerly curb on Kingsway and the nearest streetcar rail would be approximately 20 feet. There would be about 12 feet between the edge of the snow and the nearest rail. Mrs. Nance says it was somewhere in that 12 feet that she first saw the streetcar. The double tracks, including the devil strip, take up 15 feet. Mr. Nance was struck on or about the southerly rail. The two must have then traversed, at a slow shuffle, 15 feet, plus whatever distance they

Charge to the Jury

had been from the northerly rail without again seeing the streetcar. Mrs. Nance says that when she first saw the streetcar it was just east of a used car lot, which, it is admitted, is about 250 feet from Gladstone. So that, according to her evidence, the streetcar would be something under 250 feet from Gladstone, when she first saw it.

On previous occasions when she had given evidence, Mrs. Nance had said that they were between the two northerly rails, or on the devil strip when they first saw the streetcar. She says that couldn't have been correct, that she must have underestimated the width of the street because of the snow, which, at that time, extended out for 8 feet from the curb. Unless she underestimated the distance the streetcar was away when she first saw it, her explanation will probably appeal to you as being reasonable, because it is unlikely that she and her husband would traverse, even at a slow shuffle, a distance of only about 10 feet while the streetcar travelled about 200 feet to Gladstone, stopped to take on four passengers, and then travelled the width of Gladstone.

Mrs. Borger, and her friend Mrs. Lee, who were waiting for the streetcar, both say they saw it coming just as Mr. and Mrs. Nance started to walk away from the cafe. That was before the Nances had started to cross Gladstone to the northeast corner.

Now, there is no evidence that Mr. Nance saw the streetcar any sooner than his wife. Mrs. Nance said he more or less concentrated on his feet. He may have done. He may have seen it before, and thought there was ample time to cross, we do not know.

I have reviewed the evidence bearing on the failure of the motorman to see Mr. and Mrs. Nance at any time, and the failure of Mr. and Mrs. Nance to see the streetcar, except at the time stated by her.

Now, the law that I was going to explain to you is this; where there is nothing to obstruct the vision and there is a duty to look, it is negligence not to see what is clearly visible. Applying that statement of the law to the evidence, it is for you to say whether the motorman or Mr. Nance was guilty of negligence which contributed to the accident, and if you find that both were guilty of such negligence, it is for you to say to what degree the negligence of each contributed to the accident.

I shall now review the evidence bearing on the point of impact. The evidence is somewhat conflicting as to whether Mr. Nance was struck in the pedestrian crossing, or to the east of it. Sergeant Rossiter said the front of the streetcar was 110 feet

Charge to the Jury

east of the east curb of Gladstone when he arrived. Mr. Stephens said he stopped within 20 or 25 feet, after hearing the bump. Mrs. Borger said that when she got out of the car at the middle door, it was right in front of the driveway going into the Motel. Mrs. Lee said the car stopped just short of being opposite the Army & Navy building, which is on the north side of Kingsway. It is agreed that the west side of the Army & Navy Club is 162 feet east of the east curb of Gladstone. That does not agree very
 10 well with Sergeant Rossiter's 110 feet.

Miss Isaacs said when she saw Mr. and Mrs. Nance they were about a streetcar length beyond the Gladstone Street curb. Mr. Howse said when he heard a bump, the rear of the streetcar would be about at the east curb of Gladstone. Mr. McIver said when he heard the bump, two-thirds of the streetcar had passed the east curb of Gladstone. Mr. Stephens said the front of the car was about 50 feet beyond the east curb of Gladstone when he heard the bump. Mrs. Nance said they went straight across from the southeast corner, and not at an angle. She said
 20 they had to walk where the track was. They were going to walk up Kingsway to the Motel. Mr. Roth said he was standing at the northeast corner of the two streets, a foot or two from the mail box. The mail box appears on the plan to be 2 or 3 feet from the concrete walk. He said he saw Mr. and Mrs. Nance cross Kingsway. They were going pretty straight across. He said he may have told a B.C. Electric man they were angling a little bit to the east, but he was sure they never got to the east of the point where he was standing.

You will no doubt give consideration to whether the icy
 30 condition of the street had a bearing on the question of negligence. No doubt motorists and streetcar operators under such conditions should be more careful than usual of pedestrians who cannot hurry without the danger of falling. On the other hand, you may feel that pedestrians, knowing a street is slippery, should be more careful than usual not to place themselves in a position of danger from which they cannot extricate themselves.

Mrs. Nance said she wasn't accustomed to the modern type of a streetcar with its quick pick-up. She was used to the slow old fashioned type, although the evidence is she did have at least
 40 one ride on a streetcar in Vancouver — in a modern streetcar. She said she thought the streetcar had to stop at Gladstone, and that it would not start up again without letting them past.

Mr. Boyle said his speed was from 20 to 30 miles an hour, and the streetcar was drawing away from him. Mr. Stephens says his speed was 20 to 25. You will find among the exhibits a

Charge to the Jury

table showing the time it takes a moving body to go certain distances, travelling at certain speeds. That may be of some assistance to you.

Mr. Cameron urged this, that even if the motorman had seen he couldn't have stopped in time, travelling at the speed at which he was travelling, and therefore his failure to see was not negligence which contributed to the accident. But you have to consider this, that if the conductor had seen, would he have worked
 10 up to the speed at which he was travelling, if he had seen them, or would he not have proceeded at such speed as would have enabled him to have stopped in time, if necessary. Mr. Stephens said that travelling at the speed at which he was travelling, he stopped on that occasion in from 20 to 25 feet.

Now, I have already told you that the action is brought under our "Families' Compensation Act." Section 3 of that Act reads as follows:

"Whenever the death of a person shall be caused by
 20 wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to an indictable offence."

And Section 4 reads in part:

"Every such action shall be for the benefit of the wife,
 30 husband, parent, and child of the person whose death shall have been so caused . . ."

Now, under the Act a child includes a step-child.

If you find Mr. Stephens not guilty of negligence which contributed to the accident, that is an end to the action, and you need not consider the question of compensation. If you find he was guilty of negligence which contributed to the accident, then you must arrive at the compensation to which the deceased man's widow and children, including the step-children, are entitled. You cannot give compensation on compassionate grounds. You
 40 cannot give compensation for loss of the society of the husband and father, or for the loss of his love and affection. You can only give the amount of actual money benefit which the family might reasonably have expected to enjoy, had the deceased not been killed. It is largely a matter of estimate, founded on probabilities, of which no accurate forecast is possible. It becomes necessary

Charge to the Jury

to consider what, but for the accident which terminated his existence would have been his reasonable prospect in life of work and remuneration, and, also, how far these, if realized, would have accrued to the benefit of the individuals claiming compensation.

Mr. Nance was 54 years of age. You will find among the exhibits a table which may assist you in arriving at his expectancy of life. As against that, you will have to take into consideration the doctor's evidence as to his physical condition; the condition of his heart and his liver; the fact that he had suffered, and to some extent still suffered from phlebitis; the fact he had had four years previously a bowel operation. I think that counsel on both sides have fairly stated the effect of the doctor's evidence to you.

There is evidence, if you accept it, that he was a man of temperate habits, except he smoked a considerable amount. The point is, how long might he be expected to live and contribute money to his wife and family? Apart from what he might contribute to them during his life time, to what extent, if he had lived, might he have added to his assets, and to what extent might his family have benefited on his death by that addition to his assets, by his will? If he left no will, under the law of Alberta, his widow would take one-third of his estate, and his own children two-thirds. I am only speaking of any addition to his estate which might have resulted from his earning capacities, if he had lived. We are not concerned with the estate which he has left on his death, and which he accumulated before he died. The step-children would not benefit if he did not leave a will, under the law of Alberta.

If you accept Mr. Fletcher's evidence, Mr. Nance left a net estate of \$17,152.00. His net earnings were 1945, \$1469.00; 1946, \$4700.00; 1947, \$7689.00; and 1948, \$9638.00. That shows a steady increase, but those amounts are subject to deduction for income tax.

In those years there was a demand for farm implements to make up for the years when it was difficult to get them. That demand might not continue. Mr. Fletcher estimated his possible future earnings as \$6500.00 or \$7000.00. I presume that would be subject to deduction for income tax, although I do not think he stated whether it was, or not.

In 1945 Mr. Nance withdrew from the business, for himself and family, \$2,000.00; in 1947, \$3465.00. There are other factors to be taken into consideration. If he had lived, his earnings might have been cut down by ill health, or by injuries suffered

Charge to the Jury

in an accident, or he might have died either a natural death or as a result of an accident.

Then there is the possibility of a depression, which might cut down his earnings. Those are all factors which should be considered in arriving at a just estimate of the money which might have accrued to the wife and family, if he had lived.

The evidence is that he was not niggardly with his wife and his children, or her children. It is conceded that all the children
10 are now either married, or self-supporting. So, it is unlikely that Mr. Nance would have contributed much to them, if he had lived.

Do not try to set down what you think each member of the family is entitled to receive — each member of the family. If you decide the defendant is liable, state what you think the family as a whole should receive by way of compensation. There is a provision in the Act whereby the Judge may later apportion it amongst the different members of the family.

I am going to submit to you in writing a list of questions which you may answer. You need not answer them. You may
20 bring in a general verdict, if you wish, but I think it will be easier for you, and certainly a convenience to all parties if you do answer them. If you decide not to answer the questions, then your verdict may be any one of three. First, you may say "We find Mr. Stephens not guilty of negligence."; or, secondly, "We find Mr. Stephens guilty of negligence which caused the accident and Mr. Nance not guilty of contributory negligence."; or, third, "We find Mr. Stephens guilty of negligence which contributed to the accident and Mr. Nance guilty of contributory negligence." In that last event, you would have to state in percentages the
30 degree of blame to be attributed to each. If your verdict should be the second or third, you would have to state the amount of compensation to which you consider the family entitled.

I hope, however, that you will decide to answer the questions. The first question is:

"Was the defendant's servant, Mr. Stephens, guilty of negligence which contributed to the accident?"

If your answer to that is no, you need not go on to consider the other questions. That will put an end to the action. If your answer to that is "yes," then you would answer the next question,
40 which is this:

"If so, what was such negligence?"

Put down there the details of what you consider the negligence to be.

The third question is:

"Was the deceased, Mr. Nance, guilty of negligence

Charge to the Jury
Verdict

which contributed to the accident?"

Now, your answer to that might be yes or no. If it is yes, then you would answer the next question:

"If so, what was such negligence?"

Now, the fifth question is this:

10 "If the defendant's servant, Mr. Stephens, and the deceased were both guilty of negligence which contributed to the accident, to what degree did the negligence of each contribute to the accident?"

Then there is a blank space for you to put down there Mr. Stephens' percentage of fault and Mr. Nance's percentage of fault.

Then the 6th question:

"Regardless of the degree of fault, at what value, in money, do you assess the pecuniary benefit which the family of the deceased might reasonably be said to have lost by reason of his death?"

20 Now, there you put down the full amount, in the event of your finding contributory negligence, and different degrees of fault. You do not try to apportion that amount. You put down the full amount that would be recovered, if the defendant or Mr. Stephens were solely to blame. You put down the full amount. It is a simple matter of arithmetic for us, afterwards, to apportion it.

You must be unanimous in your verdict, and you must all come to a conclusion unanimously on any finding you may make.

30 Is there any objection to the charge, or anything counsel would like me to add?

Mr. Cameron: My lord, if I may say so, I think it is entirely fair.

The Court: Mr. Sturdy?

Mr. Sturdy: I join with my learned friend, my lord, in connection with the charge.

The Court: Mr. Foreman and gentlemen, will you please retire now and consider your verdict. I am sorry to have kept you so long.

(JURY RETIRED AT 1:17 P.M.)

40 (JURY RETURNED AT 2.34 P.M.)

The Registrar: Mr. Foreman, what is your verdict?

The Foreman: My lord, we have answered the questions

Verdict
Discussion

and the answers are handed to you.

The Court: You might read them, will you please.

The Foreman: "Q. Was the Defendant's servant, Mr. Stephens guilty of negligence which contributed to the accident?"

A. Yes.

Q. 2. If so, what was such negligence? A. Failing to keep a proper look out.

Q. 3. Was the deceased, Mr. Nance, guilty of negligence which contributed to the accident? A. No.

I will skip question 4 and 5 which are not relevant.

Q. 6. Regardless of the degree of fault, at what value in money do you assess the pecuniary benefit which the family of the deceased might reasonably be said to have lost by reason of his death? A. \$35,000.00."

The Court: Thank you Mr. Foreman.

Mr. Sturdy: May it please your lordship, I move for judgment accordingly.

Mr. Cameron: My lord, I would ask you to reserve Judgment. I would like to consider that and make some motion in respect thereof. I would like to have a chance to move that in the circumstances it is not warranted by the evidence. I would appreciate the opportunity to consider it.

The Court: Yes, well we can reserve the question for argument.

Mr. Sturdy: My lord, if I may be heard, respectfully, I would like to say that I oppose the application on the grounds that there may be some irregularity in your doing so. I take it that the jury has cast its verdict. With deference I would think that now the court — if I am wrong I will be corrected — has no alternative but to record the verdict.

The Court: Have I any basis, Mr. Cameron —

Mr. Cameron: Yes, my lord. The judgment must be given after the jury has passed upon the question at bar. Judgment may be made either at the time or on a motion later. I am asking with respect, my lord, for at least an adjournment for me to consider the matter.

If I don't make the proper objections at the time I may lose something on appeal, or whatever other proceedings there are, and I don't wish to prejudice my client if there is anything I ought to do now, but all I am trying to do —

Mr. Sturdy: My lord, I can't agree with my learned friend, and I ask for judgment as your lordship pleases.

The Court: I don't think I have any option, Mr. Cameron, but to give judgment in accordance with the verdict of the jury.

Mr. Cameron: Well my lord, I think that there are cases to show that if a verdict is perverse, a judge may take it away from a Jury altogether, or may dismiss it, or order a new trial. There are many things in process as to the percentage of quantum. I think, my lord, if you will remember the case of Jones v. the York Road Railway, that that is exactly what was done, it was adjourned to give Counsel that opportunity.

Mr. Sturdy: Not under British Columbia practice.

10 Mr. Cameron: That may be the old English rule, but it was surely — I think my friend loses nothing by a short adjournment until the matter can be made clear.

Mr. Sturdy: I have been thinking in the first place of the possibility of detaining the Jury. I don't see any reason why—

Mr. Cameron: The Jury is now functus; I think we have agreed on that, they have given their verdict; there is nothing more they can do. I think there is law and that I can find it, if I had the opportunity of an adjournment, to show that when a Jury has given its verdict they are functus, but a judgment is
20 another matter altogether, my lord.

The Court: How long would you want?

Mr. Cameron: Well I would ask for tomorrow at least, my lord.

The Court: I cannot see that you will suffer any prejudice, Mr. Sturdy. It will be adjourned until tomorrow morning.

Mr. Sturdy: Yes, so long as I have recorded my stand, if your lordship pleases.

The Court: Yes. Mr. Foreman and gentlemen of the Jury, doing Jury service is always, or nearly always, of considerable
30 inconvenience, and I have no doubt that some of you have suffered perhaps loss of money and certainly you have suffered loss of time, but it is nevertheless a very important public duty, and I want you to know that I appreciate very greatly the services which you have performed. You are now discharged. Thank you very much.

(PROCEEDINGS ADJOURNED UNTIL JUNE 24th, 1949
at 10:30 a.m.)

Vancouver, B.C.
June 24th, 1949.
10:30 a.m.

(PROCEEDINGS RESUMED PURSUANT TO
ADJOURNMENT)

Oral Judgment

Mr. Cameron: My lord, I am not able to find any authority upon which I can oppose the motion.

The Court: Well, there will be judgment in accordance with the verdict of the jury, judgment for \$35,000.00, and costs.

Mr. Sturdy: Thank you my lord. At the same time, if your lordship pleases, in fairness to my learned friend, I am asking for payment out of the money in Court which has been placed there as security for costs as the plaintiff resided outside
10 British Columbia. My friend is not opposing.

The Court: There will be an order for payment out; I will sign it now, yes.

Mr. Sturdy: Thank you, my lord. Before I enter the order I will file my client's consent to the payment to me personally.

The Court: All right.

SUPREME COURT OF B. C.
VANCOUVER REGISTRY

— CREST —

EXHIBIT No. 5

Nance vs. B.C.E. Rly. Co.
Put in by Pltff. Date 21/6/49.

“R.W.”
Registrar.

MARRIAGE CERTIFICATE

I, David Ormond, Marriage Commissioner in the Province of Alberta, do hereby certify that on the Thirty-First day of August, 1944, in the presence of the undernoted witnesses, a Marriage was contracted before me in my office at Calgary, Alberta, between the parties herein named and described.

Name and Surname	Age	Condition	Occupation	Place of Residence
SAMUEL JOSEPH NANCE	49	WIDOWER	GARAGE PROPRIETOR	IRRICANA, ALBERTA
EVA PEARL LIVINGSTONE nee HOLBROOK	42	WIDOW	GRADUATE NURSE	611-17th AVENUE N.W. CALGARY, ALBERTA

Signature and address of witness

A. H. HOLBROOK, 1214 - 1st East, Calgary

Signature and address of witness

ELSIE A. HOLBROOK, 1214 - 1st East, Calgary

Licence No. 113613

Given under my hand at Calgary, Alberta, this Thirty-first day of August, 1944.

DAVID ORMOND,
Marriage Commissioner.

EXHIBIT No. 5

183

Exhibit No. 5

EXHIBIT No. 2

(Exhibit 2 is a 23-page printed contract form. Counsel have agreed that the following extracts are all that is relevant in this action.)

DEALER FARM EQUIPMENT SALE CONTRACT

SUPREME COURT OF B. C.
VANCOUVER REGISTRY

EXHIBIT No. 2

10

Nance vs. B.C.E. Rly. Co.
Put in by Pltff. Date 21/6/49.

"R.W."

Registrar.

AGREEMENT, entered into this 14th day of December, 1945, between INTERNATIONAL HARVESTER COMPANY of CANADA, LIMITED, a corporation organized under the laws of the Province of Ontario, with a Branch located at Calgary, Alta., (hereinafter referred to as the "Company"), and S. J. Nance, an individual, with principal place of business at Irricana, Alta., (hereinafter referred to as the "Dealer".)

20 1. Goods Covered by This Agreement and Dealer Activity.

The provisions of this agreement shall apply to all items of new farm tractors, farm and dairy machines and equipment and attachments and parts for such lines (except Motor Trucks and equipment and attachments and parts therefor) manufactured or offered for sale by the Company, delivered to the Dealer by the Company during the period from and after the date of the approval of this agreement by the Company's Branch Manager to its termination as provided in Sections 24 and 25, or until it is superseded by another written agreement between the parties.

30 accepted by it from the Dealer and the Dealer agrees to purchase such goods from the Company. The Dealer also agrees to actively promote the sale of such goods in all reasonable and proper ways in the Dealer's territory described herein and to promptly distribute and publish advertising material furnished to him by the Company for those purposes.

The Dealer agrees not to order any tractors, TracTracTors, power units or refrigeration equipment or attachments or parts for resale for other than agricultural uses, other lines of trade being handled by the Company's specialized dealers.

3. Dealer's Territory.

40 The Dealer's territory, meaning the area within which the Dealer will promote and develop the sale of the goods covered by this Agreement, shall be as follows:

Irricana and trading vicinity.

24. Company's Rights in Case of Default by Dealer.

While it is the hope and expectation of the parties that this agreement

Exhibit No. 2 (Cont'd)

will create an enduring and mutually profitable and satisfactory relation, it is recognized that circumstances may arise making it necessary for the Company to take steps to protect its interests or making it impracticable for this agreement to continue, and under which it should be immediately terminated. In order that those reasons may be clearly understood, it is agreed that the following contingencies shall entitle the Company, at its option, to terminate this contract, effective at once, declare all indebtedness of the Dealer to it immediately due and payable and repossess all goods on hand for which the Dealer is indebted to it, or permit the Company, at its option, to establish terms of cash with order or C.O.D. on any goods thereafter delivered to the Dealer, or entitle the Company to exercise any other legal remedies that are available to it:

1. In case the Dealer fails to furnish collateral for past due notes or open account or for goods resold by him.
2. In case the Dealer defaults in the payment of any obligation owing to the Company, or upon demand fails to account to the Company for the proceeds of the sale of goods for which the Dealer is indebted to the Company which have been resold by the Dealer.
- 20 3. In case the Dealer makes any attempted sale, mortgage or other disposition of the stock of goods purchased from the Company, or any part thereof, other than in the regular course of retail trade while indebted to the Company for such goods.
4. In case of loss or damage by fire, wind or water to goods in which the Company's interest has not been protected by insurance as required by Section 13.

The exercise of one right or remedy shall not constitute an election or preclude the Company from exercising all other rights and remedies available to it under the law or provided herein.

- 30 It is also agreed that the Company may terminate this agreement without notice and declare all indebtedness of the Dealer to it immediately due and payable, in the event of (1) an assignment by the Dealer for the benefit of creditors, or (2) the admitted insolvency of the Dealer or any member of Dealer's firm, if a partnership, or the institution of voluntary or involuntary proceedings in bankruptcy or other insolvency law, or for corporate reorganization or for receivership or dissolution of the Dealer, or (3) an attempted assignment of this agreement by the Dealer without the Company's written consent.

- 40 In case of the election of the Company to terminate this agreement as herein provided, the repossession by the Company of the goods for which the Dealer is indebted to it, or the commencement of proceedings for the repossession of such goods, shall be equivalent to notice to the Dealer of such election.

It is also agreed that this agreement, being a personal agreement involving mutual confidence and trust, shall automatically terminate (1) upon the death of the Dealer if the Dealer is an individual; (2) upon the death of a member of the Dealer's firm if the Dealer is a partnership, or (3) upon any change in the membership of the Dealer's firm, if the Dealer is a partnership.

The termination of this agreement under this section, shall, at the option of the Company, cancel all unfilled orders accepted from the Dealer.

25. Termination by Either Party After Notice.

Unless terminated under Section 24, this agreement shall continue in force until the Company, through its Branch Manager, or Assistant Branch

Exhibit No. 2 (Cont'd)

Manager, prior to August 1st of any year, gives the Dealer notice of cancellation in writing, in which event the agreement shall be terminated on October 31st of that year.

The Dealer may terminate this agreement at any time by giving thirty (30) days' written notice to the Branch Manager or Assistant Branch Manager, in which event the agreement shall be terminated thirty (30) days after such notice. After notice of intention to cancel this contract is given by either party to the other, the Company, at its option, may establish terms of cash with order or C.O.D. on any and all goods delivered thereafter to the Dealer, and upon termination by such notice all indebtedness of the Dealer to the Company shall become immediately due and payable, and all unfilled orders accepted from the Dealer shall thereupon be automatically cancelled.

26. Repurchase of Dealer's Stock and Signs Upon Termination of the Agreement.

If this agreement is terminated under Section 24 or Section 25, the Company agrees to repurchase and the Dealer agrees to resell all new, current, unused and salable machines, equipment and attachments on hand in the Dealer's place of business that have been delivered to the Dealer under this agreement. If the termination is by notice by the Company under Section 25, or by the death of the Dealer or a member of the Dealer's partnership, the parties agree that the prices to be paid by the Company shall be the net Prices at which they have been charged to the Dealer (but not more than the current prices), plus transportation charges and less any cash and other discounts that may have been allowed or paid thereon. If the termination is by notice by the Dealer under Section 25 or by the Company because of default of the Dealer under Section 24, or by a change in the membership of the Dealer's partnership other than the death of a partner, the prices which the Company shall pay shall be 90% of the net prices at which the goods have been charged to the Dealer (but not more than 90% of the current prices), plus transportation charges and less any cash and other discounts that may have been allowed or paid thereon.

If this agreement is terminated automatically or by either the Company or the Dealer, the Company will repurchase from the Dealer at the net prices paid for them, less all discounts allowed or paid thereon, or the current net price, whichever is lower, all new, current, unused and salable repair parts on hand in the Dealer's place of business purchased under this agreement, within one (1) year prior to such termination.

The Company also agrees to repurchase from the Dealer all business signs in good condition sold by it to the Dealer at a price of \$20.00 each or more at any time within ten years before such termination. The amount that will be allowed for each sign will be the amount that was paid to the Company by the Dealer for such sign less an annual depreciation of 10% of the amount paid.

The amount payable to the Dealer under this section may be paid to the Dealer in cash or credited to the Dealer's notes and accounts at the Company's option.

The Company shall be released from its obligation to repurchase any goods which the Dealer is unable to redeliver within thirty (30) days after termination.

27. Parties Bound and Effect of Partial Invalidity.

This agreement shall be binding upon the parties hereto, their heirs,

Exhibit No. 2 (Cont'd)

executors, administrators and successors.

This is a personal contract upon the part of the Dealer, and the Dealer may not assign it or any rights herein or any part hereof without the Company's written consent.

If any provision of this agreement or the application of such provision shall be held illegal, invalid or unenforceable, the remainder of the agreement or the application of such provision to other persons or circumstances shall not be affected thereby.

10 28. The Agreement Complete.

This agreement contains the entire agreement between the Company and the Dealer and supersedes all previous agreements between the parties pertaining to the sale of the goods covered by this agreement. There are no oral agreements of any kind and no representative of the Company, other than one of its officers at its Head Office, has any authority to waive any of the provisions of this agreement or to modify or change any of its terms, or to enter into any collateral agreements, and no waiver, change, addition or erasure of any printed portion of this agreement (except filling in of blank spaces and lines) or collateral agreement, shall be valid or binding
20 upon the Company unless in writing and signed in its behalf by one of its officers at its Head Office.

No Waiver by the Company of any default in the performance of any part of this agreement by the Dealer shall apply to or be deemed a waiver of any prior or subsequent default hereunder.

The copy of this contract retained by the Company shall be considered the original and shall control in case of any variation between it and the duplicate retained by the Dealer.

29. Approval of Contract.

This contract shall not be binding upon the Company until approved
30 in writing thereon by its Branch Manager or Assistant Branch Manager.

INTERNATIONAL HARVESTER COMPANY
OF CANADA, LIMITED

By

A. R. TOLTON

S. J. NANCE,

Dealer.

APPROVED at Calgary, Alta., the 27 day of December, 1945.

By

S. R. PERKINS

Branch Manager

EXHIBIT No. 3

DEALER'S MOTOR TRUCK CONTRACT

SUPREME COURT OF B. C.
VANCOUVER REGISTRY

EXHIBIT No. 3

Nance vs. B.C.E. Rly. Co.

Put in by Pltff. Date 21/6/49.

"R.W."

Registrar.

10

(This exhibit is a contract in form essentially similar to Exhibit 2. It is between the same parties and bears the same date and covers the same territory as the contract which is Exhibit 2, but deals with "all new International Motor Trucks together with equipment, attachments and service parts therefor". Counsel have agreed that this document should be omitted from this Appeal Book.)

EXHIBIT No. 4
IRRICANA GARAGE
 Irricana, Alberta

Owned and Operated by: S. J. Nance.

STATEMENT OF PROFIT AND LOSS FOR THE YEAR ENDED
DECEMBER 31, 1948.

	Sales for Period	80,009.43	
	Opening Inventory	6,601.73	
10	Purchases for Period.....	65,784.40	
	Freight and Express.....	885.77	
		73,271.90	
	Closing Inventory	9,021.17	64,250.73
		15,758.70	
	(Gross Profit		15,758.70
	Expense:		
	Licenses, Fees, Etc.....	101.50	
	Fire Extinguishers	36.00	
	Telephone	204.00	
	Postage, Office Supplies.....	346.14	
20	Light and Power.....	168.90	
	Heating	428.41	
	Workmen's Compensation	56.99	
	Small Tools	16.65	
	Taxes	131.04	
	Insurance	151.72	
	Repairs and Maintenance	190.18	
	Sundries	74.41	
	Wages	3,605.51	
	Interest-North Star Oil	93.75	
30	Depreciation	440.20	
	Travel Expense	75.00	6,120.40
		6,120.40	
	Net Profit		9,638.30

IRRICANA GARAGE
 Irricana, Alberta

Owned and Operated by: S. J. Nance

STATEMENT OF ASSETS AND LIABILITIES
AS AT DECEMBER 31, 1948.

	Cash on Hand and in Bank	5,870.20	
	Stock on Hand.....	9,021.17	
40	Machinery and Tools	3,130.90	
	Less: Reserve for Depreciation	471.77	2,659.13
		1,275.00	
	Service Truck	1,275.00	
	Less: Reserve for Depreciation	255.00	1,020.00
		4,458.88	
	Building	4,458.88	

Exhibit No. 4 (Cont'd)

Less: Reserve for Depreciation	4,244.13	214.75
Furniture and Fixtures	431.24	
	<u>430.24</u>	
Less: Reserve for Depreciation	430.24	1.00
Land		450.00
Loans — C. M. Nanee		2,000.00
		<u>21,236.25</u>
Accounts Payable:		4,083.54
Profit for Period	9,638.30	
10 Capital Beginning Period	10,263.88	
	<u>19,902.18</u>	
Less: Drawings for Period	2,749.47	17,152.71
	<u>21,236.25</u>	

IRRICANA GARAGE
Irricana, Alberta

Operated by: S. J. Nanee

STATEMENT OF RECEIPTS AND EXPENDITURES
FOR YEAR ENDED DECEMBER 31, 1947

Sales for Period		65,269.00
20 Opening Inventory	3,921.91	
Purchases for Period	54,087.23	
Freight and Express	480.07	
	<u>58,489.21</u>	
Closing Inventory	6,601.73	51,887.48
		<u>13,381.52</u>
Gain on Sale of Service Truck.....		538.86
		<u>13,920.38</u>
Expenditures:		
30 Coal	389.99	
Insurance	284.81	
Depreciation	227.82	
Interest-North Star Oil	323.20	
Light and Power	147.92	
Shop Supplies	148.10	
Repairs and Alterations	90.88	
Telephone	144.75	
Taxes	111.96	
Workmen's Compensation	22.50	
Stationery and Postage	177.78	
40 Wages	3,894.26	
Travel Expense	75.00	
Sundries Expense	192.01	6,230.98
	<u>7,689.40</u>	
Net Profit for Period		7,689.40

Exhibit No. 4 (Cont'd)

IRRICANA GARAGE
Irricana, Alberta

Operated by: S. J. Nance

STATEMENT OF ASSETS AND LIABILITIES
AS AT DECEMBER 31, 1947.

Cash on Hand and in Bank	1,893.22	
Machinery and Equipment	2,527.40	
Stock on Hand	6,601.73	
10 Buildings	4,458.88	
Furniture and Fixtures	431.24	
Land	450.00	
		<u>16,362.47</u>
Reserves for Depreciation	4,960.94	
Accounts Payable	1,137.65	
Capital Beginning Period	6,039.89	
Profit for Period	7,689.40	
	<u>13,729.29</u>	
Drawings for Period	3,465.41	10,263.88
		<u>16,362.47</u>

IRRICANA GARAGE
Irricana, Alberta

Owned and operated by: S. J. Nance.

STATEMENT OF PROFIT AND LOSS
FOR YEAR ENDED DECEMBER 31, 1946.

Sales for Period		43,019.95
Opening Inventory	1,099.15	
Purchases	37,369.50	
	<u>38,468.65</u>	
30 Closing Inventory	3,921.91	34,546.74
		<u>8,473.21</u>
Expense:		
Wages	1,228.92	
Small Tools, etc.	76.97	
Stationery and Postage	109.96	
Licenses	34.51	
Advertising	41.88	
Sundries	116.47	
Insurance	157.17	
40 Taxes	95.00	
Telephone	178.90	
Depreciation	459.44	
Light and Power	134.92	
Heating	395.23	

Exhibit No. 4 (Cont'd)

Repairs and Alterations	661.54	
Travel Expense	75.00	3,765.91
		<hr/>
Net Profit		4,707.30

IRRICANA GARAGE
Irricana, Alberta

Owned and operated by: S. J. Nance.

STATEMENT OF ASSETS AND LIABILITIES
AS AT DECEMBER 31, 1946.

10	Cash on Hand and in Bank		2,011.36
	Stock on Hand		3,921.91
	Machinery and Equipment		2,045.50
	Service Truck		1,013.92
	Building		4,458.88
	Furniture and Fixtures		431.24
	Land		450.00
	Loan Receivable		1,004.68
			<hr/>
			15,337.49
	Reserves for Depreciation		4,935.90
20	Accounts Payable — Current		1,961.70
	Loan Outstanding — North Star Oil.....		2,400.00
	Capital Beginning Period	3,684.13	
	Profit for Period	4,707.30	
			<hr/>
		8,391.43	
	Personal Drawings	2,351.54	6,039.89
			<hr/>
			15,337.49

IRRICANA GARAGE
Irricana, Alberta

Owned and Operated by: S. J. Nance.

30 STATEMENT OF PROFIT AND LOSS
FOR YEAR ENDED DECEMBER 31, 1945.

	Sales for Period		9,824.97
	Opening Inventory	515.58	
	Purchases for Period	7,021.84	
			<hr/>
		7,537.42	
	Closing Inventory	1,099.15	6,438.27
			<hr/>
	Gross Profit		3,386.70
	Expense:		
	Telephone	134.23	
40	Light and Power	124.28	
	Blacksmith Coal	10.50	

Exhibit No. 4 (Cont'd)

	Heating	252.20	
	Advertising	11.22	
	Workmen's Compensation	7.20	
	Fire Insurance	74.50	
	Welder's License	2.00	
	Taxes	63.64	
	Wages	596.25	
	Service Car Expense	85.00	
10	Postage and Stationery	10.20	
	Repairs and Alterations	215.37	
	Small Tools, etc.	25.86	
	Depreciation	293.28	
	Sundries	11.40	1,917.13
			<hr/>
	Net Profit		\$1,469.57

IRRICANA GARAGE
Irricana, Alberta

STATEMENT OF ASSETS AND LIABILITIES
AS AT DECEMBER 31, 1945

20	Stock on Hand		\$1,099.15
	Cash		94.97
	Service Car		250.00
	Machinery and Tools		1,911.70
	Buildings		4,458.88
	Furniture and Fixtures		431.24
	Land		450.00
			<hr/>
			\$8,695.94
	Reserve for Depreciation		\$4,333.18
	Capital Beginning of Period	\$4,860.06	
30	Profit for Period	1,469.57	
		<hr/>	
		\$6,329.63	
	Personal Drawings	1,966.87	4,362.76
		<hr/>	
			\$8,695.94

SUPREME COURT OF B. C.
VANCOUVER REGISTRY
EXHIBIT No. 4
Nance vs. B.C.E. Rly. Co.
Put in by Pltff. Date 21/6/49.

"R.W."
Registrar.

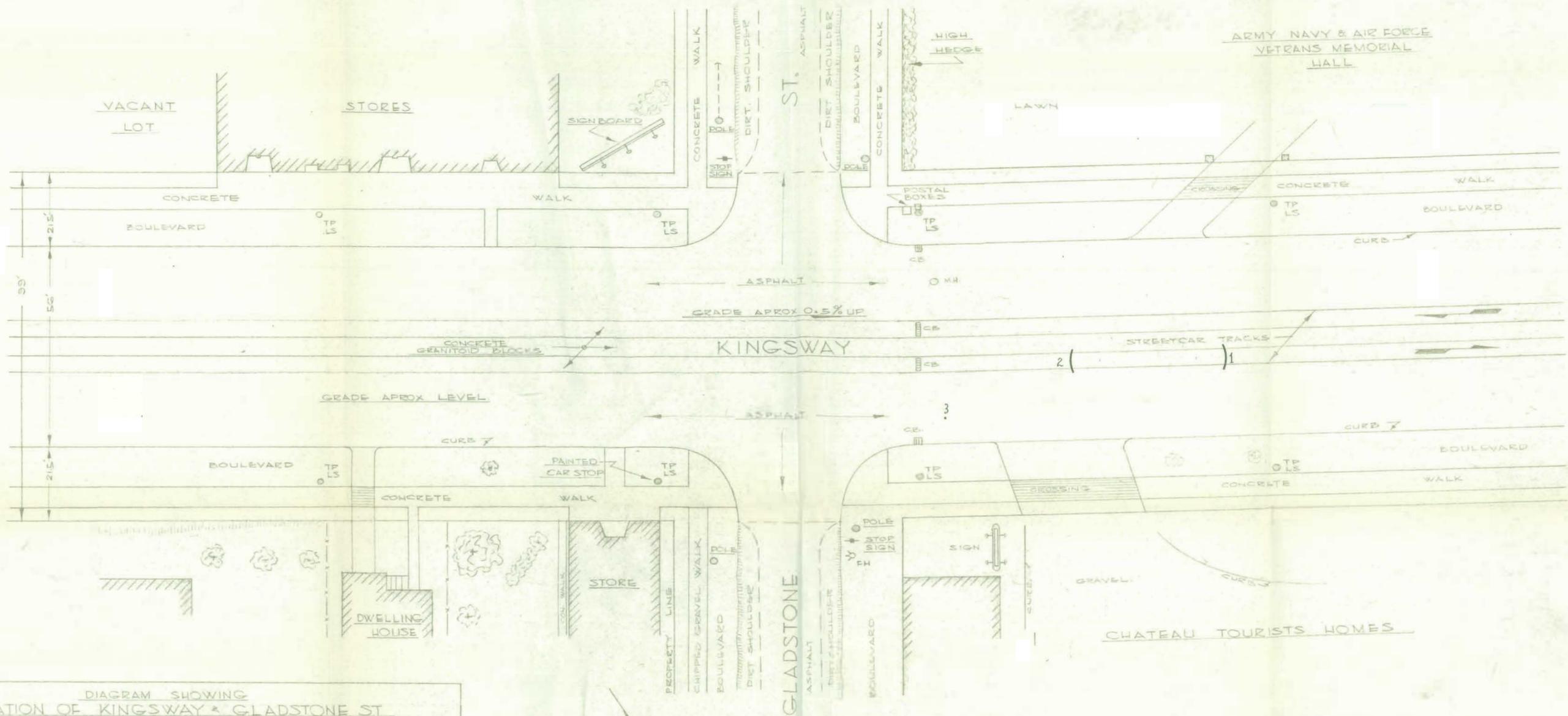
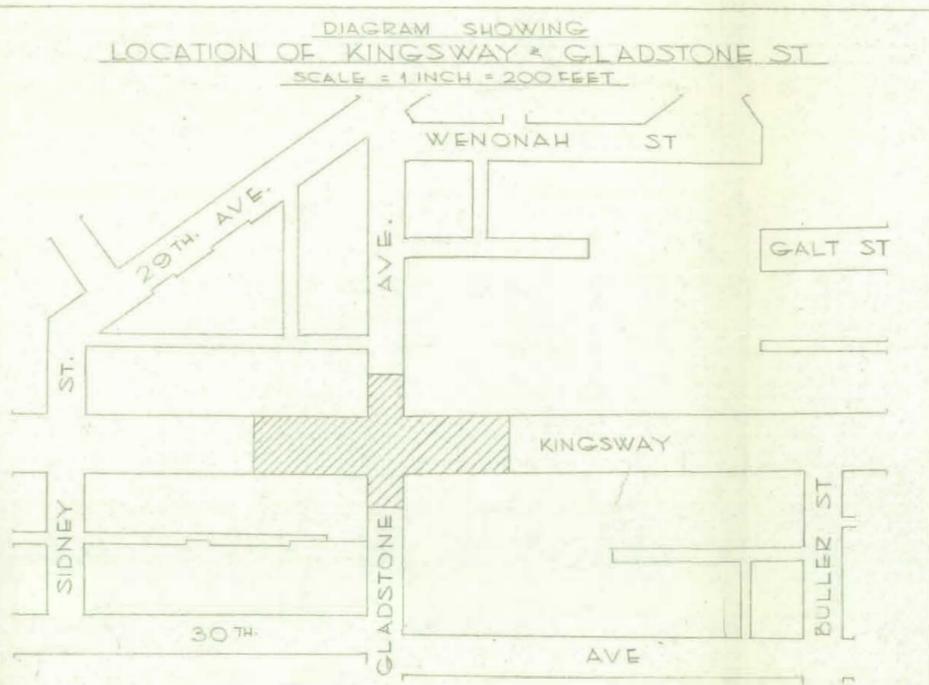


DIAGRAM SHOWING
LOCATION OF KINGSWAY & GLADSTONE ST.
SCALE = 1 INCH = 200 FEET



- LEGEND
- TP = TROLLEY POLE
 - LS = LAMP STANDARD
 - CB = CATCH BASIN
 - MH = MANHOLE
 - FH = FIRE HYDRANT

CITY OF VANCOUVER	
PLAN SHOWING VICINITY OF FATAL ACCIDENT KINGSWAY & GLADSTONE ST.	
SCALE - 1 INCH = 20 FEET	REVISED 1-3-48
DRAWN BY-DRH 2/3/48	
CITY ENGINEER'S OFFICE TRAFFIC DIVISION	CT 19

EXHIBIT No. 1

SUPREME COURT OF B. C.
VANCOUVER REGISTRY
EXHIBIT No. 1
Nance vs. B.C.E. Rly. Co.
Put in by Pltff. Date 21/6/49.

"R.W."
Registrar.

EXHIBIT No. 8

NOTARIAL CERTIFICATE

CANADA:
PROVINCE OF ALBERTA
TO WIT:

IN THE MATTER OF
THE ESTATE OF SAMUEL JOSEPH NANCE, DECEASED
I, ORRIN HENRY EYRES MIGHT,
10 a Notary Public in and for the Province of Alberta, by Royal authority duly
appointed, residing at the City of Calgary, in the said Province, Do Certify
that the paper writing hereto annexed is a true copy of a document produced
and shown to me from the Custody of Messrs. Nolan, Chambers, Might, Saucier
& Peacock, . . . of the City of Calgary in the Province of Alberta, Solicitors,
and purporting to be the Succession Duty Return (S.D.1 and S.D.14) filed
with the Federal Succession Duty Department at Calgary, Alberta, with
respect to the estate of Samuel Joseph Nance, late of Irricana, Alberta,
Garage Proprietor, deceased, . . .
and dated the 9th day of May, A.D. 1949, the said copy having been compared
20 by me with the said original document, an act whereof being requested I
have granted under my Notarial form and seal of office, to serve and avail
as occasion shall or may require.

DATED AT Calgary, aforesaid, this 17th day of June, A.D. 1949.
NOLAN, CHAMBERS, O. H. E. MIGHT,
MIGHT, SAUCIER & PEACOCK, A Notary Public in and for the
Barristers, Etc. Province of Alberta.
CALGARY, CANADA

30 SUPREME COURT OF B. C.
VANCOUVER REGISTRY
EXHIBIT No. 8
Nance vs. B.C.E. Rly. Co.
Put in by Pltff. Date 22/6/49.
"R.W."
Registrar.

Date of death....18th January, 1949.

DOMINION OF CANADA
SUCCESSION DUTIES

(Form prescribed and authorized by the Minister of National Revenue)

40 (Counsel have agreed upon the omission of the formal printed
parts of Dominion of Canada Succession Duties form S.D. 1 Rev.
July, 1942. The essential parts of this document are as follows:)

IN THE MATTER OF THE ESTATE OF.....SAMUEL JOSEPH NANCE,
deceased.

- 4. Name of deceased.....SAMUEL JOSEPH NANCE.....
- 5. Age at date of death.....53 years.....

Exhibit No. 8 (Cont'd)

- 6. Former active occupation.....Garage Proprietor and Implement Dealer...
- 7. Last address.....Irricana, Alberta.....
- 8. Date of death.....18th January, 1949.....
- 9. Country of domicile.....Alberta, Canada.....
- 10. Testate or intestate.....Intestate.... 11. Matrimonial status.....Married.....
- 12. Did the deceased file Dominion Income Tax returns?.....Yes..... If so, where?Calgary.....
- 10 13. Name and address of Executor, Administrator, Trustee or other person making this statement — (state whether Executor, Administrator or Beneficiary).
.....The Royal Trust Company, Calgary, Alberta—Administrator.....
.....
.....
- 14. Name and address to which communications should be sent—
Messrs. Nolan, Chambers, Might, Saucier & Peacock, Solicitors, 601 Lancaster Bldg., Calgary, Alberta.
- 20 15. I HEREBY CERTIFY that I am the Secretary of the Calgary Branch of The Royal Trust Company. I am the administrator and as such have knowledge of the requirements of the Succession Duty law requiring full and complete disclosure of all property of every kind of the deceased, and in particular have read this Succession Duty Form S.D. 1 and have noted the information and instructions contained in Form S.D. 1-A, and that I/WE have inquired as to any property passing from the deceased prior to the date of death, more particularly referred to in item 2 of Form S.D. 1-A and according to the best of my/our knowledge, information and belief, this statement and attached schedules contain a full and completed disclosure of all property of every kind, whether within or without Canada, included in successions from the above-named deceased person, the whole being thus certified in accordance with the Dominion Succession Duty Act, as being
30 "a full, true and correct statement".
Date.....9th.....May.....1949.
- 16. Signature of authorized person(s)....."James Graham".....
- 17. Legal capacity or status of declarant(s).....Secretary of Calgary Branch
.....of The Royal Trust Company, the Administrator.....

PROPERTY IN POSSESSION OF THE DECEASED AT DEATH
IN CONTEMPLATION OF LAW:—

- 40 24. Did the deceased own either in whole or in part any property of the following kind? State "Yes" or "No" after each item.
 - A. Real Estate?Yes.....
 - B. Mortgages and Agreements for Sale?.....No.....
 - C. Stocks?Yes.....
 - D. Bonds?No.....
 - E. Cash on hand and in Bank?.....Yes.....
 - F. Interest in Business.....Yes.....
 - G. Promissory NotesNo.....
 - H. Book Debts?Yes.....
 - J. Life Insurance?Yes.....
 - K. Miscellaneous Property?Yes.....

Exhibit No. 8 (Cont'd)

OTHER PROPERTY

25. Did the deceased:—
 Make any—
 L. Gifts inter-vivos, within three years of death but after April 29, 1941,
 or if prior thereto in contemplation of death?.....No.....
 Purchase or provide any—
 M. Annuities?No.....
 Have an interest in any—
 10 N. (1) Joint properties?No.....
 Exercise during his lifetime any—
 (2) General powers of appointment or disposal?.....No.....
 Make any—
 (3) Settlements including Marriage Settlements?.....No.....
 Or—Upon the deceased's death did there arise any—
 (4) Estates in dower or by the curtesy?.....No.....
 26. The distribution of the property to the actual beneficiaries by name must
 be shown in Schedule "P" on page four hereof in accordance with in-
 structions contained in item 20 of Form S.D. 1-A.
 20 27. List below in order of Schedules those successively answered "yes" in
 items 24 and 25 above.

State letter of alphabet as in items 24 & 25	DESCRIPTION OF PROPERTY (stating encumbrances thereon— see item 5 in Form S.D. 1-A for example)	Value at date of death
		\$ c.
A.	Lots 26 to 29, Block 4, Plan Irricana 5087-W.....	800.00
	Lots 23 to 25, Block 1, Plan Irricana 5087-W.....	4,400.00
C.	50 shares Lethbridge Petroleum and Refineries Limited, N.P.V., at no value.....	Nil
30 E.	Bank of Montreal, Calgary — Current account.....	2,229.01
	Royal Bank of Canada, Beiseker — Current account.....	1,427.51
	Cheques in possession of deceased.....	110.99
F.	Irricana Garage — Stock.....	\$9,000.00
	Equipment	2,800.00
H.	Clarence Nance, Innisfail, Alberta	2,000.00
J.	Continental Casualty Co., Policy No. 543628, payable to widow	1,000.00
K.	Personal effects	25.00
40	1948 International truck No. KB14985.....	1,275.00
28.	Total value as at date of death (after deduction of specific encumbrances from gross value)	\$25,067.51
29.	Schedule O.—Debts as per form S.D. 14 attached—	
	(a) Debts paid	\$
	(b) Debts to be paid	4,715.57
	(c) Total	4,715.57
30.	Aggregate Net Value (item 28 less item 29 (c)).....	\$20,351.94

SUMMARY

The following **must** be completed by the person making the return.

Exhibit No. 8 (Cont'd)

31. GIVE TOTALS OF A to N as answered "Yes" in items 24 and 25 and individually itemized by categories in item 27.

	For Taxpayer's Use		For Taxpayer's Use
A—Real Estate	\$ 5,200.00	Brought forward	\$22,767.51
B—Mortgages, etc.		J—Life Insurance	1,000.00
C—Stocks		K—Miscellaneous Property	1,300.00
10 D—Bonds		L—Gifts inter-vivos	
E—Cash	3,767.51	M—Annuities	
F—Interest in Business.....	11,800.00	N—Total of N(1), (2), (3)	
G—Promissory Notes		and (4)	
H—Book Debts	2,000.00		
Carried forward	<u>\$22,767.51</u>	Gross Estate (item 28)....	25,067.51
		Less Deductions (item 29)	4,715.57
		AGGREGATE NET	
		VALUE (item 30).....	<u>\$20,351.94</u>

DISTRIBUTION OF PROPERTY
SCHEDULE P

20 32. State the "Initial Rate" based on the "Aggregate Net Value" as per "Rates of Duty", item 21 (3) of Form S.D. 1-A.....Nil.....%
(add this to the additional rate in item 33 (6)(a) to get the total rate, item 33 (6)(b)).

	1	2	3	4	5	7
33. Name and Address of Successor		Relationship to Deceased if any	Age of beneficiary at date of death	Nature of Property or Benefit	Value of Property or Benefit to the Successor	Duties Payable on Dutiable Value item 21 (4 and 5) Form S.D. 1-A Carry total to item 18
Ena Pearl Nance, Irricana		Widow	Over 21	Insurance 1/3 Res.	1,000.00 6,450.65	Nil Nil
30 Eldwin Joseph Nance, Irricana		Son	"	1/3 Res.	6,450.64	Nil
Jessie Mae Carter, London, Ontario		Daughter	"	1/3 Res.	6,450.65	Nil
34. Total of Column 5 is "Aggregate Net Value (item 30). Total of Column 7 is "Total Combined Duties Payable" (item 18).					\$20,351.94	Nil
40						

Exhibit No. 8 (Cont'd)

SCHEDULE OF DEBTS

Name and Address of Creditor	Nature of Claim	Amount of Debt	Reasons for Non-Payment of Debts Not Paid
McInnis & Holloway, Calgary	Funeral expenses	\$ 145.40	Awaiting Federal S.D. releases
Chapman Funeral Home Ltd., Vancouver	" "	100.00	
10 Imperial Oil Ltd., Edmonton	Gas & Oil supplied	154.21	
Receiver General of Canada	Bal. of Income Tax for 1945	4.30	
	1946	886.60	
	1947	1,493.07	
	1948	1,881.49	
Clerk of Court, Calgary	Probate fees (estimated)	50.50	
			TOTAL DEBTS....
			\$4,715.57

20

I, hereby certify that I have made inquiries as to the debts and other allowances authorized by and in accordance with Section 8 of the Dominion Succession Duty Act and such debts, and other allowances in the estate of the above named deceased are set forth in the Schedule hereto.

Dated this.....9th.....day of.....May.....1949.

Signature....."James Graham".....

Legal capacity of person making statement.....Secretary of Calgary.....

.....Branch of The Royal Trust Company, the Administrator.....

EXHIBIT No. 7

By the oath which you have taken as Administrator you are bound to render a true account of your administration whenever required by law so to do. You are required to file within two years after the grant, in the office of the Clerk of the Court which made the grant, a statement of account, duly verified under your oath, showing how the estate has been dealt with.

C A N A D A
 10 PROVINCE OF ALBERTA
 IN THE DISTRICT COURT OF THE DISTRICT OF SOUTHERN
 ALBERTA, JUDICIAL DISTRICT OF CALGARY.
 BE IT KNOWN that on the 13th day of May, A.D. 1949,
 LETTERS OF ADMINISTRATION of all and singular the property of
 SAMUEL JOSEPH NANCE, late of the Village of Irricana, in the Province of
 Alberta, Garage Proprietor and Implement Dealer,.....
 who died on or about the 18th day of January, A.D. 1949,
 at the City of Vancouver, in the Province of British Columbia, intestate,
 and had at the time of his death a fixed place of abode at the Village of
 20 Irricana aforesaid,
 were granted by the District Court of the District of SOUTHERN ALBERTA,
 JUDICIAL DISTRICT OF CALGARY,
 to THE ROYAL TRUST COMPANY, at the request of Ena Pearl Nance, the
 lawful widow and relict, and Eldwin Joseph Nance, the natural and lawful
 child of the said deceased, the said Company by its duly authorized officer,
 having been first sworn faithfully to administer the same by paying his
 just debts and all taxes and duties payable in respect of his estate and by
 distributing the residue (if any) of his property according to law, and to
 exhibit under oath a true and perfect inventory of all and singular the said
 30 property, and to render a just and true account of its administration and to
 surrender these Letters of Administration whenever required by law so to do.

IN WITNESS WHEREOF this grant has been issued, under
 the Seal of the Court, pursuant to the fiat of His Honour
 Chief Judge J. W. McDonald.

Certified a true copy,
 this 2nd day of June, 1949.

"A. R. Turner"

Deputy Clerk of the Court, Calgary.

"A. R. TURNER"

Deputy Clerk of the Court.

40

SUPREME COURT OF B. C.
 VANCOUVER REGISTRY

EXHIBIT No. 7

Nance vs. B.C.E. Rly. Co.

Put in by Pltff. Date 21/6/49.

"R.W."

Registrar.

EXHIBIT No. 10

IN THE SUPREME COURT OF BRITISH COLUMBIA
(Before the Registrar)

Vancouver, B.C.,
May 30th, 1949.

675/49.
BETWEEN:

ENA PEARL NANCE,

Plaintiff,

10 AND:

BRITISH COLUMBIA ELECTRIC RAILWAY
COMPANY LIMITED,

Defendant.

EXAMINATION DE BENNE ESSE UPON OATH OF CHRISTINE LEE,
PURSUANT TO THE ORDER OF THE HONOURABLE MR. JUSTICE
MANSON MADE ON THE 26TH DAY of MAY, A.D. 1949.

D. A. STURDY, Esq.,

appearing for the Plaintiff.

F. J. GILMOUR, Esq.,

appearing for the Defendant.

20

SUPREME COURT OF B. C.
VANCOUVER REGISTRY
EXHIBIT No. 10
Nance vs. B.C.E. Rly. Co.
Put in by Pltff. Date 22/6/49.

“R.W.”
Registrar.

(See page 120 to 130 hereof.)

EXHIBIT No. 6

FATHER AND MOTHER OF THE CHILDREN

William Monroe Nance was born on Friday, March the 17, 1871.

Laura Ellen Nance the Mother was Born on Tuesday Oct. the 14, 1873.

THE CHILDRENS NAMES

10 Virgel Roy Nance was Born on Wednesday, Sept. the 7, 1892.

Jessie Basil Nance was Born on Friday, Dec. the 15, 1893.

Samuel Joseph Nance was Born on Sunday, Feb. the 10, 1895.

Infant Son Born March the 30th, 1896. Died the same day.

Cordie May Nance was Born on Sunday, May the 2nd, 1897.

STATE OF OKLAHOMA,

Ss.

20 County of Tulsa,

Cordie May Bullock being duly sworn says; that she is a resident of Bixby, Tulsa County, Oklahoma; and that she is the daughter of William Monroe Nance and Laura Ellen Nance and that she was born May 2, 1897. That she is familiar with and has in her possession the record of the dates of the birth of the members of the family of said William Monroe Nance and Laura Ellen Nance. That the photostatic copy hereto attached is an exact and true copy of the second page of said record and is now and has been for some time in her possession; that she knows of her own personal knowledge that 30 the entries shown thereby were made by her grandmother and are in the handwriting of her grandmother who is now deceased. That there has been no change or alteration of said record. That said record has been in the custody of some member of her family ever since she can remember. That she verily believes that same correctly reflects the ages of the members of said family therein named.

Subscribed and sworn to before me the 17 day of June, 1949.

Cordie Bullock
Harry W. Worsham
Notary Public.

40 My commission expires,
March 20, 1951.
Fees \$4.50

SUPREME COURT OF B. C.
VANCOUVER REGISTRY

EXHIBIT No. 6
Nance vs. B.C.E. Rly. Co.
Put in by Def't. Date 23/6/49.

"R.W."
Registrar.

CERTIFICATION

It is hereby certified that this Photostat is a true and exact photo copy of the original as handed us.

TULSA CAMERA
RECORD CO.

317 South Boston,
Tulsa, Oklahoma

Signed:
Beulah Garten
Date: 6-16-194

Exhibit No. 9
Exhibit No. 11

EXHIBIT No. 9

LIST OF RECOGNIZED EXPECTANCIES OF LIFE
AT AGE FIFTY-FOUR

London Life Insurance Co.	20.017	years
Confederation Life Insurance Co.	18.33	years
Crown Life Insurance Co.	17.83	years
Government Annuity Dept.	23.1	years
10 Succession Duty Act Table	17.81	years

SUPREME COURT OF B. C.
VANCOUVER REGISTRY

EXHIBIT No. 9

Nance vs. B.C.E. Rly. Co.

Put in by Pltff. Date 22/6/49.

“R.W.”

Registrar.

EXHIBIT No. 11

20

SUPREME COURT OF B. C.
VANCOUVER REGISTRY

EXHIBIT No. 11

Nance vs. B.C.E. Rly. Co.

Put in by Def't. Date 23/6/49.

“T. O’N”

Registrar.

- At 10 m.p.h. a vehicle is travelling 15 feet in one second
- At 15 m.p.h. a vehicle is travelling 22 feet in one second
- At 20 m.p.h. a vehicle is travelling 30 feet in one second
- At 30 m.p.h. a vehicle is travelling 44 feet in one second

Questions Submitted to Jury

QUESTIONS FOR JURY

1. Q. Was the Defendant's servant, Mr. Stephens guilty of negligence which contributed to the accident? A.
2. Q. If so, what was such negligence? A.
3. Q. Was the deceased, Mr. Nance, guilty of negligence which contributed to the accident? A.
4. Q. If so, what was such negligence? A.
5. Q. If the Defendant's servant, Mr. Stephens, and the
10 deceased were both guilty of negligence which contributed to the accident, to what degree did the negligence of each contribute to the accident? A. Mr. Stephens' percentage of fault %
Mr. Nance's percentage of fault %
6. Q. Regardless of the degree of fault, at what value in money do you assess the pecuniary benefit which the family of the deceased might reasonably be said to have lost by reason of his death? A.

Supreme Court Judgment

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ENA PEARL NANCE,

Plaintiff,

AND:

BRITISH COLUMBIA ELECTRIC RAILWAY
COMPANY, LIMITED,

Defendant.

10 BEFORE THE HONOURABLE FRIDAY, the 24th day of
MR. JUSTICE WHITTAKER JUNE, A.D. 1949.

THIS ACTION having come on for trial at Vancouver on the 21st, 22nd, 23rd, and 24th days of June, A.D. 1949, before the Honourable Mr. Justice Whittaker, with a jury, in the presence of D. A. Sturdy, Esq., and T. C. Williams, Esq., of Counsel for the Plaintiff and W. H. Q. Cameron, Esq., and F. J. Gilmour, Esq., of Counsel for the Defendant; UPON HEARING the evidence adduced by the Plaintiff and Defendant and what was alleged by Counsel aforesaid; AND THE JURY having found
20 that the Defendant's servant was negligent and that the deceased Samuel Joseph Nance was not negligent, and that the pecuniary benefit which the family of the deceased Samuel Joseph Nance has lost by reason of his death is the sum of \$35,000.00; AND UPON MOTION for judgment for the Plaintiff,

THIS COURT DOETH ORDER AND ADJUDGE that the Plaintiff do recover against the Defendant the sum of \$35,000.00, to be proportioned among the persons on whose behalf this action is brought in such shares as this Court upon further motion shall direct, together with the costs of this action forthwith after the
30 taxation thereof.

BY THE COURT,

"L. A. Menendez,"

District Registrar.

Approved as to form
"A. Bruce Robertson"

Checked

"J.F.C."

"E.W.W."

"D.D.R."

"N.W.W."

J.

Entered July 26, 1949.

"S.C.G."

Notice of Appeal

IN THE SUPREME COURT OF BRITISH COLUMBIA
BETWEEN:

ENA PEARL NANCE,

Plaintiff,

AND:

BRITISH COLUMBIA ELECTRIC RAILWAY
COMPANY, LIMITED,

Defendant.

10

NOTICE OF APPEAL

TAKE NOTICE that the Defendant intends to appeal and does hereby appeal to the Court of Appeal of the Province of British Columbia from the Judgment of the Honourable Mr. Justice Whittaker of the Supreme Court of British Columbia pronounced herein on the 24th day of June, 1949 and entered the 26th day of July, 1949 for the Plaintiff on the verdict of the jury in the sum of Thirty-five Thousand Dollars (\$35,000.00) and costs,

AND FURTHER TAKE NOTICE that the Court of Appeal will be moved at the Court House in the City of Vancouver, Province of British Columbia, on Tuesday, the 1st day of November, 1949 at the hour of eleven o'clock in the forenoon or so soon thereafter as Counsel can be heard, by Counsel on behalf of the Defendant for an Order reversing the said Judgment and setting aside the verdict of the jury on the following, amongst other, grounds:—

1. The finding of the jury that the deceased, Mr. Nance, was not guilty of negligence which contributed to the accident, was unreasonable and perverse.
2. The verdict was against the evidence and the weight of the evidence.
3. The Judgment and verdict were against the law.
4. The damages awarded were excessive.
5. The Plaintiff has no status and is not qualified to bring this action as required by Section 4 of the Families' Compensation Act, R.S.B.C. 1948, Chapter 116.
6. Such further and other grounds as Counsel may advise.

DATED at Vancouver, B.C., this 16th day of September, A.D. 1949.

“A. Bruce Robertson,”

Solicitor for the Defendant.

40 To: The Plaintiff

And to: David A. Sturdy, Esq.,
415-16 Rogers Building,
470 Granville Street,
Vancouver, B.C.
Plaintiff's Solicitor.

ORAL REASONS FOR JUDGMENT OF SLOAN, C.J.B.C.

*In the
Court of
Appeal
for British
Columbia.*

No. 58.

Oral
Reasons for
Judgment
of Sloan,
C.J.B.C.,
23rd
February
1950.

SLOAN, C.J.B.C. : Because our reasons are not quite ready in this case we think it wise to explain now what will occur later.

In this appeal there were two issues in dispute ; first, the issue of liability involving contributory negligence, and secondly, the issue of damages.

My brother O'Halloran on the issue of liability involving contributory negligence would dismiss the appeal. On the damage issue he would allow
10 the appeal and direct a new trial of that issue.

My brother Sidney Smith on the issue of liability involving contributory negligence would in the result uphold the verdict below. On the damage issue he would allow the appeal and reduce the damages to \$12,000.00.

I would set aside the verdict below upon the grounds of misdirection and on the issue of liability involving contributory negligence would find the Plaintiff 40 % at fault and the Defendant 60 % at fault. I would assess the damages at \$20,000.00 and because of the apportionment of fault to the degree mentioned would direct judgment for the Plaintiff in the sum of \$12,000.00.

20 In the result the appeal is allowed and the damage reduced from \$35,000.00 to \$12,000.00.

The question of the apportionment of the judgment between the parties entitled thereto is not before us and counsel may, if they so desire, speak to that matter.

Costs here and below to be spoken to unless counsel agree upon an order in that respect.

I file my brother O'Halloran's authority to deliver judgment on his behalf.

WRITTEN REASONS FOR JUDGMENT OF SLOAN, C.J.B.C.

*In the
Court of
Appeal
for British
Columbia.*

No. 59.
Written
Reasons for
Judgment
of Sloan,
C.J.B.C.,
23rd
February
1950.

This is an appeal from a judgment of Mr. Justice Whittaker entered upon the verdict of a jury in an action brought by the Respondent against the Appellant on behalf of herself and children, for damages consequent upon the death of her husband in a running-down case.

The Appellant does not challenge the finding of the jury that its motorman was guilty of negligence in the operation of the street car which struck and killed the husband of the Respondent, but did contend 10 the jury erred in exonerating the Respondent's husband from any degree of negligence contributing to his death. The quantum of damage awarded by the jury was also brought into question before us.

In my view, with deference, the Appellant, in the result, should succeed on both issues.

After a careful consideration of the facts of this case, it seems to me that the verdict of the jury finding the motorman solely to blame for the fatality must be based upon an erroneous conception of the obligations of a pedestrian under the relevant circumstances. That the learned trial Judge did misdirect the jury upon this issue is, with respect, manifest in 20 his charge.

After properly instructing the jury upon the duty of the motorman and breach thereof, he then directed the jury that "before you can find Nance was guilty of contributory negligence, you must find he owed a duty to the Defendant and that he committed a breach of that duty and was therefore negligent."

With deference, that is a misleading and inaccurate definition of the obligations of the deceased. He owed no "duty" to the Defendant, but was subject to an imperative obligation to exercise reasonable care for his own safety. *Davies v. Swan Motor Co. Ltd.* [1949] 1 All E.R. 622. In 30 my view the jury ought to have been fully instructed on this aspect of the case, and on the consequences which would flow if he was found guilty of failure to exercise reasonable care for his own safety in his journey across the highway under the circumstances then prevailing. As this instruction was not adequately given, there was misdirection and non-direction amounting to misdirection, on a vital issue in this case, occasioning a miscarriage of justice. That being so, the verdict of the jury and the judgment entered thereon must be set aside.

This is a case in which our Rule 5 may properly be invoked (see *Ritchie v. Gale et al* [1934] 49 B.C.R. 251 at p. 258, and cases therein cited, and 40 *Canada Rice Mills Ltd. v. Union Marine and General Insurance Co.* [1941] A.C. 55 at p. 65). Thus, in consequence, I propose to give the judgment which in my opinion ought to have been given below.

The Defendant's motorman was undoubtedly guilty of negligence in not keeping a proper lookout. The Appellant did not contend otherwise. However, the measure of causation must be inclusive and not exclusive; therefore the question remains: Was the deceased guilty of contributory negligence? In my evaluation of the evidence he was at fault in not keeping a proper lookout for an approaching street car, fully lighted and clearly visible. Had he taken the necessary precaution of a momentary

glance, he would not have walked into a position of imminent peril or at least quickened his pace to step clear of the tracks. He had the advantage of mobility, whereas the street car was bound by its rails to an undeviating course.

There is nothing to be gained by a close analysis of the evidence nor by quotations from the voluminous case law on this subject. Those weary vocables of the law—negligence, contributory negligence, and ultimate negligence—are, it seems, no longer fashionable. I am content to say that in the “ordinary plain common sense of this business” it must be held both
 10 parties were to blame for this unfortunate occurrence, and that their fault was “synchronous.” *Admiralty Commissioner v. S.S. “Volute”* [1922] 1 A.C. p. 129 at pp. 137, 144, 145.

I do think, however, in assessing their respective degrees of fault, that of the motorman was greater than that of the deceased. The degree of fault of the motorman I fix at 60 per cent. and that of the deceased at 40 per cent.

I turn now to the assessment of damage. The principles to be applied in awarding damages under the Families Compensation Act, R.S.B.C. 1948, Ch. 116 are well established. See *Grand Trunk Railway Co. v. Jennings* (1888), 13 A.C. 800 at p. 803; *Royal Trust v. C.P.R.* (1922), 3 W.W.R. 24 and *Ponyicki v. Sawayama* [1943] S.C.R. 197. To state the relevant principles does not present much difficulty, but as Lord Parmoor observed in *Royal Trust v. C.P.R. (supra)*, at p. 26: “the actual pecuniary loss is largely a matter of estimate founded on probabilities, of which no accurate forecast is possible.”
 20

In my view the damages awarded by the jury were excessive, and as I have, for the reasons stated above, concluded that the verdict below must be set aside *in toto*, I feel less trammelled in reaching a different conclusion on this aspect of the case than I would in setting aside the award alone and
 30 substituting my assessment for that of the jury.

I have given anxious consideration to this question, in an endeavour to estimate, realistically, on the evidence in the record, the actual pecuniary loss suffered by the Respondent and those she represents. I have reached the conclusion that \$20,000.00 would fairly represent this value. That is the best I can do with a subject so vexed with uncertainties and with so many intruding and imponderable factors calling for consideration.

In the result I would direct that judgment be entered for the Respondent in the sum of \$12,000.00, i.e., 60% of \$20,000.00. She is entitled to her costs of the trial and in the distribution of the costs of the
 40 appeal, in relation to the respective events, I would allow her 65% thereof.

“GORDON McG. SLOAN”

“C.J.B.C.”

Victoria, B.C.,
 23rd February, 1950

*In the
 Court of
 Appeal
 for British
 Columbia.*
 No. 59.
 Written
 Reasons for
 Judgment
 of Sloan,
 C.J.B.C.,
 23rd
 February
 1950,
continued.

WRITTEN REASONS FOR JUDGMENT OF O'HALLORAN, J.A.

In the
Court of
Appeal
for British
Columbia.

No. 60.
Written
Reasons
for
Judgment
of
O'Halloran,
J.A., 23rd
February,
1950.

The Respondent's husband died from injuries sustained when hit by Appellant's street car in Vancouver in January, 1949. The special jury awarded \$35,000.00 damages. Aged 53, he was a big heavy man, and walked with a limp. The Respondent and her husband on foot were crossing Kingsway at the Gladstone intersection. Kingsway is an arterial highway with double street car tracks. They were following the usual pedestrian crossing marked at the time by a path in the snow. The streets
10 were icy. The Respondent had taken her husband's left arm. The street car approached from his right.

They had that day arrived in Vancouver on a visit. Their home was in the Village of Irricana, in Alberta (some forty miles East of Calgary) where deceased had a garage and farm implement agency business. The street car was a new improved one-man model, with rapid acceleration and good braking power. It moved quickly and with little noise. It was about half past eleven at night. The streets were lighted and the night was clear.

The Respondent and her husband at all material times were clearly
20 within the vision of the motorman. It is plain from the evidence, and the jury's verdict confirms it was plain to them, that the Appellant's motorman, if he had been looking at all, could easily have seen the deceased, and ought to have seen the deceased in time to have avoided hitting him. The motorman testified (pp. 136, 163-4 and 168) he did not see the two pedestrians, he did not know why he failed to see them, and that if he had seen them he could have stopped the street car within approximately fifteen feet (p. 136). In my judgment, with respect, the jury would have failed to act judicially if they had not reached the decision the motorman was solely responsible for the collision.

30 Counsel for the Appellant attacked that portion of the learned Judge's charge to the jury which reads :

"Before you find that Nance was guilty of contributory negligence, you must find that he owed a duty to the Defendant (Appellant), and that he committed a breach of that duty, and was therefore negligent."

Shortly stated, counsel's point, if I appreciate it correctly, is that "contributory negligence" may include some form of fault outside negligence ; that is to say, some act or omission of the deceased in the doing or omission of which he did not owe a duty to the Appellant to take care.
40 In effect, he urged, the learned Judge had restricted too narrowly the possible scope of deceased's responsibility for his own death.

A complete answer to this argument in my judgment is that the Appellant did not plead any fault outside negligence. Para. 8 of the statement of defence avers :

"Such damages were caused solely or alternatively contributed to by the *negligence* of the said *Samuel Joseph Nance* deceased who was negligent in that . . . (here follow particulars later mentioned)."

The Appellant Defendant relied entirely on specifically described conduct of the deceased which it charged as negligence.

Negligence began to be developed as an independent tort about the end of the first quarter of the 19th century (Lord Wright's *Essays* [1938] p. 117) and now is regarded as a specific tort in itself and not as an ingredient in some other tort; and see *Grant v. Australian Knitting Mills Ltd.* [1935] 105 L.J.P.C. at p. 14. Did the deceased break a duty that in the circumstances he owed to the Appellant whereby the latter has suffered damage? The concept of duty is not a narrow one. There is no need of the privity that exists in contract. Lord Macmillan (with whom Lord Atkin and Lord Wright agreed) said in *Shacklock v. Ethorpe Ltd.* [1939] 3 All E.R. at 374, that the term "negligence" in modern legal usage tended to be restricted to denote the breach of a duty owed to some other person.

Whether a duty exists depends on the facts of the particular case. Moreover, in the absence of a statutory definition of the duty, the standard of the duty must be fixed by the verdict of the jury (as it has been here) see *Lochgelly Iron and Coal Co. v. McMullan* [1933] 102 L.J.P.C. at 131, and see preface to eighth edition of Salmond on Torts. The degree of want of care which constitutes negligence is a question for the jury; that duty may vary from man to man, from place to place, from time to time; and see *Caswell v. Powell Duffryn Associated Collieries, Ltd.* [1940] A.C. at pp. 175-6; adopted in *The King v. Hochelaga Shipping & Towing Co., Ltd.* [1940] S.C.R. at 156. In *Indermaur v. Dames*, the question of whether Indermaur was an invitee when injured (thereby involving the degree of duty) was left to the jury by Willes, J. The Court of five Judges on the rule nisi unanimously held it was properly left to the jury (1866—L.R. 1 C.P. 274) and that view was sustained in turn without division in the Exchequer Chamber (1867—L.R. 2 C.P. 311).

By pleading negligence in para. 8 as it did, the Appellant therein pleaded expressly that the deceased owed a duty to street cars to take care, and that the deceased broke that duty. The Appellant in para. 8 gave particulars of that negligence, viz., the duty the deceased owed and his breach of it, viz.,

(A) He was crossing the roadway at a place other than within a crosswalk at an intersection.

(B) He failed to give the right of way to the Defendant's street car as required by Section 13 of City of Vancouver Street and Traffic By-law No. 2849.

(C) He failed to look for or listen to or pay proper or any attention to the traffic on the street.

(D) He paid no attention to the warning gong and noise and lights of the street car.

Nowhere did the Appellant Defendant plead any fault outside negligence. The learned trial Judge must have had this in mind, when shortly after the passage in his charge to which Appellant's counsel objected, he said this :

"The Defendant company, on the other hand, says that Nance owed it a duty; the duty to take reasonable precautions in making

In the
Court of
Appeal
for British
Columbia.

No. 60.
Written
Reasons for
Judgment
of
O'Halloran,
J.A., 23rd
February
1950,
continued.

the crossing, to keep a proper look-out, and in particular the duty not to begin the crossing without first ascertaining that he could do so in safety." (my italics).

The Appellant, by its pleading and by its course of conduct at the trial, made its defence and legal position very clear to the learned Judge; the Judge acted thereon and instructed the jury accordingly. It is too late now on appeal to question the correctness of the Judge's charge, because it did not contain something the Appellant did not plead, and did not choose to put in issue at the trial. In true effect, having failed
 10 in its defence at the trial, the Appellant seeks now on appeal to advance another defence it chose not to raise at the trial. And see *Scott v. Fernie* [1904] 11 B.C. (and at 97), judgment of Duff, J., approved in *Spencer v. Field* [1939] S.C.R. at 42. What has been said compels me to conclude that the jury's finding of sole responsibility in the Appellant must be upheld.

It may not be necessary to examine a second ground that points to the same result, but in view of the nature of the argument addressed to this Court, I am constrained to express the view that, quite apart from the question of pleading and the position the Appellant took at the
 20 trial, the learned Judge's charge, as quoted above, was entirely correct. The argument that in crossing the street the deceased owed no duty to the street car to be careful, is one that I have struggled unsuccessfully to appreciate. It seems to be contended that in the course of crossing the street the only duty the deceased owed anyone was to himself; that he owed no duty whatever to the street car, or any other actual or likely user of the street. It was not attempted to be argued in *Loach v. B.C. Electric* [1916] 85 L.J.P.C. 23, that Sands owed no duty to the street car to take care. But it was found that what actually killed Sands was the negligence of the railway and not his own negligence "though it was a
 30 close thing." The jury had found Sands negligent; they could not have done so, if he had no duty to the street car.

Each individual has certain rights, but his rights are necessarily delimited by attendant duties. An individual is a member of society, and for society to exist, a duty fastens itself upon each individual to exercise his rights in such a way as not to interfere, or interfere to the minimum, with the rights of other members of society. A man has the right to cross a city street, but he owes a duty to other users of that street (as they do to him) to cross it in such a way as not to injure them, occasion injuries or otherwise interfere with the rights of others on the street.

40 The deceased had the right to cross the street, but it was not an absolute or untrammelled right. It was circumscribed by duties to other users of the street that sprang from mutual rights. Here among other duties that attended the right of the deceased was his duty to the street car to take care not to place a careful motorman of the street car in a situation of peril that the latter could not avoid, or attempt to avoid, without injury or damage to motorman, the street car and the passengers in the street car. A motorman has the safety and lives of passengers as his responsibility, and this every pedestrian must be taken to know.

50 The deceased, as well as the motorman, had a duty to all users of the street to cross it in a way that would least disturb or interfere with traffic,

*In the
Court of
Appeal
for British
Columbia.*

No. 60.
Written
Reasons for
Judgment
of
O'Halloran,
J.A., 23rd
February
1950,
continued.

for traffic disturbances are a fruitful cause of damage and injury. The Appellant Defendant itself recognised these duties of the deceased in its pleadings—and in the conduct of its defence at the trial. But the jury, properly directed, found specifically on the evidence before them that the deceased had committed no breach of these duties fastened on him. It is to be noted in *Loach v. B.C. Electric* [1916] 85 L.J.P.C. 23, although the jury actually found Sands guilty of contributory negligence, the judicial committee held the B.C. Electric liable because of self-caused incapacity to stop and avoid the collision when (as here) it was plain or ought to have been plain that a collision was otherwise inevitable; and cf. also *McLaughlin v. Long* [1927] S.C.R. 303.

Whether or not a duty exists in the particular circumstances, is a question of fact for the jury, as already stated. That duty may be deduced from the circumstances. In *Heaven v. Pender* (1883), 11 Q.B.D. 503, Lord Esher said a duty to take care arose :—

“ When the person or property of one was in such proximity to the person or property of another that if due care was not taken damage might be done by the one to the other.”

Lord Atkin approved this in *Donoghue v. Stevenson* [1932] 101 L.J.P.C. 20 when he said at p. 128 :—

“ I think that this sufficiently states the truth if proximity be not confined to mere physical proximity, but be used, as I think it was intended, to extend to such close and direct relations that the act complained of directly affects a person whom the person alleged to be bound to take care would know would be directly affected by his careless act.”

Here there was actual physical proximity. The mutual duty to take care was a matter of inference from the physical relationship of the parties on the public street. The jury could draw that inference and did draw it. The jury drew the further inference that the Appellant committed a breach of that duty, and that the deceased did not. It is not necessary for the Respondent to itemize in detail exactly what the Appellant did wrong; and see *Grant v. Australian Knitting Mills, Ltd.* [1935] 103 L.J.P.C. at p. 13, which applied *Donoghue v. Stevenson, supra*.

In reaching the foregoing conclusions it is not denied that a “ contributory negligence statute ” may be drafted so as to include faults which do not come within the specific tort of negligence as such. But that is not the problem in this case. The pleadings are confined to negligence; the trial was fought out on negligence; the case went to the jury on negligence. Moreover, the circumstances of this case confine it to an important city street where users of the street cannot go on it without being brought into a legal relationship with each other. It is not a case of a single individual on an otherwise uninhabited island, or in some other imaginable situation where he cannot come into direct contact with his fellow human beings.

A theory of rights without duties is repugnant to the Anglo-American conception and tradition of law. If law is regarded as the great regulator of human relationships, its social and economic implications enter into its interpretation. Some European politico-economic philosophers favour

*In the
Court of
Appeal
for British
Columbia.*

No. 60.

Written
Reasons for
Judgment
of
O'Halloran,
J.A., 23rd
February
1950,
continued.

duties without any rights whatever, in their effort to banish individuality. To them rights are completely submerged in duties. But even in this theory the duties of individuals towards each other and the State seem to be magnified to even a greater extent than prevails in the Anglo-American concept of *right cum duty*.

*In the
Court of
Appeal
for British
Columbia.*

10 In my judgment the case against the Appellant is much stronger than it was in *Loach v. B.C. Electric*. There the deceased was found guilty of contributory negligence by the jury; here the jury exonerated the deceased. There the jury found the street car could have been stopped in
10 time if the brakes had not been defective. Here the jury's exoneration of the deceased rendered it unnecessary to answer the analogous question, but the motorman here could have seen Nance if he had been looking. The motorman did not see Nance because of his self-caused incapacity to see him. Nor was the crossing in the *Loach* case an important city street like Kingsway. One would think the more important the street, the greater the need to be alert, in other words, the greater the duty to take care.

No. 60.
Written
Reasons for
Judgment
of
O'Halloran,
J.A., 23rd
February
1950,
continued.

20 The Appellant also appealed against the award of \$35,000.00 damages. It is true the award of a jury ought not lightly to be interfered with by an appellate Court. But this large amount appears to be purely arbitrary without foundation in the evidence. The point is confirmed by the circumstances that the three members of this Court are unable to accept the figure of \$35,000.00 or agree upon a figure supported by the evidence. The Chief Justice would award \$20,000.00 and my brother Sidney Smith \$12,000.00. It is my misfortune that I cannot see any basis in the evidence for either of these figures.

30 The claim here is based upon the Families' Compensation Act, C. 116, R.S.B.C. 1948, under which are entitled the Respondent widow (she married the deceased in 1944), deceased's son Eldwin, age 28, employed at the garage; deceased's married daughter Jessie Carter, aged 26, living in Toronto, Ontario; the widow's two sons (deceased's step-sons), Thomas aged 20, in the Army, and Robert aged 17 working in the garage at home. It is that part of the damages which is the compensatory damage to the widow herself with which I am chiefly concerned. She has been deprived of the support of an industrious husband, well established in business. At the same time his death brings her certain financial resources. I cannot resist the view evidence was available but unfortunately not brought forward, that could have established her monetary loss with reasonable business certainty, and which would have avoided the occasion for the
40 jury making what in essence is little else than a wild guess, or a figure taken at random "out of the air,"

In *Grand Trunk Railway Co. of Canada v. Jennings* (1888), 13 A.C. 800, Lord Watson observed at pp. 803-4 that the extent of damages often depends upon data which cannot be ascertained with certainty and must necessarily be a matter of estimate, and it may be partly of conjecture. In *Toronto Hockey Club Ltd. v. Arena Gardens of Toronto Ltd.* (1926), 3 W.W.R. 26, Warrington, L.J., speaking for the Judicial Committee, pointed out the amount of damages may be "more or less guesswork" where they cannot be ascertained by any precise means; and cf. *McHugh*

v. *Union Bank of Canada* [1913] A.C. 299 at p. 309; and *Kinkel et al v. Hyman* (1939) S.C.R. 364 at pp. 380-1. Here in my opinion at least there exists (although not introduced in evidence) essential elements that govern damage which can be ascertained with no great degree of uncertainty.

*In the
Court of
Appeal
for British
Columbia.*

According to the witness Fletcher the Calgary accountant who visited the deceased three or four times annually and made up his bookkeeping records, we have the following (Ex. 4) :—

No. 60.
Written
Reasons
for
Judgment
of
O'Halloran,
J.A., 23rd
February,
1950,
continued.

	year	deed's net earnings	deed's drawings	annual income tax unpaid
10		\$	\$	\$
	1945	1469.57	1966.87	4.30
	1946	4707.30	2351.54	886.60
	1947	7689.40	3465.00	1493.07
	1948	9638.30	2749.00	1881.49

The increase from 1946 is ascribed to the farm implement agency deceased secured that year. The deceased was a hard worker, usually working from 7 a.m. to 10 p.m. The accountant estimated that deceased, if he had lived, had reason to feel assured of a continuing net annual income of \$6,500.00 to \$7,000 (p. 44). He left a net estate valued for
20 succession duty purposes at \$20,351.94, divisible one-third to the widow, one-third to his son Eldwin and one-third to his married daughter.

To my mind an essential if not the main element of damage in this case should be reflected in a capitalized sum representing the difference between the Respondent's annual income position before and after her husband's death. It would be required to know (1) the annual expense of her maintenance and allowances during the husband's lifetime; (2) estimated annual expense thereof due to changes arising from the husband's death, less income to be derived from her one-third interest in his estate; (3) the husband's expectancy of life; (4) the wife's
30 expectancy of life; and (5) the capital sum which if paid her in combined principal and interest payments monthly or quarterly during her life expectancy would reflect the approximate difference between (1) and (2) during her life expectancy.

In my judgment the evidence under heads (1) and (2) could have been given by the accountant Fletcher, if he had been asked to obtain that information from deceased's financial records, and prepare himself to give evidence thereon. Fletcher was familiar with deceased's books and financial affairs (p. 41). As a matter of fact Fletcher verged very
40 close to head (1) at pp. 51-2 but his replies showed he was not prepared sufficiently to answer. The particulars of deceased's withdrawals were in the bookkeeping records to which the witness had access (p. 45); and although the cost of the wife's maintenance and allowances could not be computed accurately to the last cent, those records must have enabled the making of a shrewd estimate.

In respect to head (2) there is really no evidence at all. The necessity for a more searching examination of head (2) is illustrated in two ways: (A) if the business goes well the widow's one-third share of the income might equal or surpass the figure for her maintenance and allowance under head (1) during the husband's lifetime, in which case of course the damages

would be very considerably reduced. On the other hand, if her step-son is not successful in the management of the business (p. 58) her income from that source may vanish. There is also the problem of her stepson buying out her interest in the business and perhaps for a sum that will bear little relation to profits of 1946-1948. This is said in view of the circumstance that her net share in deceased's entire estate appeared at \$6,450.65.

As to heads (3) and (4) the evidence of the life expectancies of deceased and his wife were founded on general average tables, with no relation whatever to the individual as such. These tables are designed for application to large groups of people to secure a general average but in my opinion they lose their value when attempted to be applied to a single individual as such and unrelated to a large group. In the case of the deceased, there was some sketchy general evidence regarding his general health. The physician who performed the autopsy testified (p. 38) it was difficult for him to say what deceased's life expectancy would be. This sketchy evidence in itself points to the inadequacy of general tables, when the facts affecting the individual are essential for decision. The deceased had a serious surgical operation in 1944, but no evidence was obtained from the physicians who attended him regarding his general condition and individual expectation of life then or since. In the case of the widow, a medical examination could have been obtained with evidence of her individual expectation of life. The life expectancies of husband and wife enter into every phase of this aspect of damage. As to head No. (5) the capital sum there mentioned could be easily available in evidence if reliable evidence under the first four heads had been ascertained.

Without at least the evidence noted in heads (1) and (2) and without the best business estimates thereof available put in evidence, I find it, with respect, judicially impossible to reach any figure of damage in this case, which is not pure guesswork. A guess is no less a guess because a Judge or a jury makes it. I feel it ought not to be necessary to guess while tangible bases are open for investigation. For these reasons I am driven to decide in favour of an assessment of damages that will exhaust the evidence of business fact and estimate. If guesswork or conjecture has then to be resorted to, it will at least be based on the estimates of men of specialized knowledge and experience. To make it clear, I am not dealing with other more or less intangible elements of damage, such as exist in every case of this kind. I am dealing only with that business aspect of damages, which the nature of the evidence satisfies me ought to be available in more or less tangible form. The accountant Fletcher indicates that the deceased kept his financial records in good shape (p. 41) and also that the household accounts and particulars of family expenditures were kept with the office accounts (p. 49-50).

I would dismiss the appeal on the issue of liability, but direct a new trial on the consequential question of the quantum of damages.

" C. H. O'HALLORAN "

" J.A. "

Victoria, B.C.,

23rd January, 1950.

*In the
Court of
Appeal
for British
Columbia.*

No. 60.
Written
Reasons for
Judgment
of
O'Halloran,
J.A., 23rd
February
1950,
continued.

WRITTEN REASONS FOR JUDGMENT OF SIDNEY SMITH, J.A.

*In the
Court of
Appeal
for British
Columbia.*

No. 61.
Written
Reasons for
Judgment
of Sidney
Smith, J.A.,
23rd
February
1950.

The Defendant Company appeals from a judgment for \$35,000.00 damages which a jury awarded against it on a trial before Whittaker, J. for the death of the Plaintiff's husband, killed by the Company's street car. The widow sued under the Families' Compensation Act. The jury found that there was no contributory negligence by the deceased, and that finding, together with the Judge's direction on the point, and also the quantum of damages, are the main grounds of appeal. The Company's
10 negligence is not contested. The case raises some fundamental questions on contributory negligence.

The fatality took place on Kingsway in Vancouver, just East of Gladstone Street. For all relevant purposes Kingsway may be regarded as running East and West; Gladstone Street North and South. The Deceased and the Plaintiff, arm in arm, were crossing south-easterly from the north-east corner of the two streets; they had almost crossed the double tramway when Deceased was hit a glancing blow, probably by the front shoulder of the car, and knocked down, dying from a fractured skull. The car had stopped on the far (the West) side of Gladstone Street,
20 and had taken on passengers; but it was a car of a new type which gathered speed quickly; something which was not within the knowledge of the Deceased, and which, I think, accounted for the accident.

The deceased, who was a large and obese man and also lame from phlebitis in his legs, was shuffling very slowly across the street. The evidence shows that the street was icy and slippery, so that even the average pedestrian had to shuffle to keep his feet. The Plaintiff gives the only evidence as to whether deceased ever saw the car that hit him. She says that before leaving the curb "we" (that is, she and the deceased) "looked both ways and there was no traffic." She said at the trial that
30 she first saw the street car when she was between some piled snow and the first car tracks; the street car being then just on the near side of a used-car lot on Kingsway; this would be something like 250 feet from the point of impact. She did not see the car again until practically the moment of impact. Earlier in the Police Court she had said that when in the devil-strip "we" had looked and had seen the street car, but that she herself concluded that it must stop at the corner and that there was plenty of time to cross. We must assume that the jury accepted the version that was most favourable to the Plaintiff, since they found for her. The question is whether, even accepting this, the jury were perverse in finding that the
40 deceased was not negligent.

The Defendant has argued that the deceased had as great an obligation to avoid being hit as the Defendant had to avoid hitting him. Even though general language can be found in judgments that give colour to this contention, I am quite unable to accept it. It ignores the fundamental distinction between an active and a passive role. It is sound enough to say that when two motor cars, or other vehicles whose impact carries a serious menace, approach each other, then (apart from statutory rights of way and questions of priority) their obligations are reciprocal. But a pedestrian carries no menace; and since a pedestrian is practically

incapable of causing damage to a vehicle by a collision, only damage to him need be considered. If a pedestrian walks into the side of a car, he would, in my view, have the greatest difficulty in recovering damages in any Court; but when a car hits him the car is certainly the direct cause of his injuries, and the pedestrian can only be the legal cause if he has so acted that the driver, though guilty of no fault, is unable to avoid the collision. In crowded city traffic the situation is often complicated by the need for both pedestrian and driver to consider not only the other, but third parties who are introducing collateral elements of hazard. In endeavouring to avoid hitting A, or to avoid being hit by B, a driver may hit C. Or a pedestrian, in order to avoid being run down by one driver, may put himself where another, without negligence, cannot possibly avoid him. Here, however, we have none of these factors. Nance did not so act that the motorman could not avoid him. Nor did the motorman have any excuse in the menace of any third party.

I would hold that there was no contributory negligence by the deceased. According to the only evidence he looked before leaving the curb and saw no traffic; he looked again, according to the police court evidence, when in the devil-strip and saw the car, but at a distance which appeared to his companion to imply no danger in view of its having to stop at the crossing. I see nothing unreasonable in that conclusion, especially in view of the fact that the deceased in fact got almost clear of the farthest tracks. Applying to him the principles that would be applicable had he then been driving his own motor car (though I think as a pedestrian he stands in a better position) he had priority in the intersection, and I think the street car becomes entirely to blame for the collision.

It was said for the Defendant that the deceased did not see the car at all because he did not look, and that this failure was negligence. It was put that "it is negligence not to see what is clearly visible." True, but presumably that means what is within one's line of vision; it does not require that one keep looking over one's shoulder in every direction. Moreover, the Defendant's assumption that the deceased did not see the car at all is against the evidence. The evidence indicates that he saw it. But he was then so far advanced in the intersection that he was entitled to assume the car would give way to him. I feel, therefore, that the verdict, far from being perverse on this point, is justified by the evidence.

This case is distinguishable from *Fick v. B.C. Electric Ry. Co., Ltd.*, recently before this Court. There Fick kept no lookout at all; moreover, coming from the right he walked into the right front corner of the street car. Here the deceased, coming from the left, saw the car, tried to cross ahead of it, and was almost clear when struck by its right front corner. There a step the less and there would have been no accident. Here a step more and the deceased in all likelihood would have been safe.

But it may well be, in the present case, that the whole question of perversity is closed by the course taken by Defendant's counsel at the trial. The trial Judge charged the jury that they could only find the deceased guilty of contributory negligence if he had failed in some duty that he owed to the Defendant. This was clearly misdirection, since he owed no duty to the Defendant, only to himself. But on the conclusion of his

*In the
Court of
Appeal
for British
Columbia.*

--- -
No. 61.
Written
Reasons for
Judgment
of Sidney
Smith, J.A.,
23rd
February
1950,
continued.

charge, the learned Judge invited counsel to object or ask for additions, and Defendant's counsel expressly approved the charge, saying that it was "entirely fair." It is true that sec. 60 of our Supreme Court Act saves the right of an unsuccessful party to object to a charge on appeal even though he did not object at the time. That however is quite a different thing from expressly putting the stamp of approval on a charge, and later retracting it. I do not think such blowing hot and cold can be countenanced. The principle *consensus tollit errorem* applies.

10 I am of opinion however that the jury's award of damages is excessive and should not stand. The most useful decision that I have seen on quantum in cases like this is *Royal Trust Company v. Canadian Pacific Railway* (1921), 2 W.W.R. 712, varied by the Privy Council at (1922), 3 W.W.R. 24. Comparing the earning powers of the deceased persons in that case and this, I think that \$25,000.00 would be generous compensation to Nance's dependants if he had been in good health, as the deceased was in *Royal Trust Company v. Canadian Pacific Railway, supra*. But I am satisfied that Nance's expectation of life was poor; he suffered from phlebitis, arterio-sclerosis and fatty degeneration of the liver. Moreover, he had had a bowel section removed for some reason that was
20 not disclosed. Though the evidence was that this had healed well, the probability of recurrence of troubles of this kind is notorious, and I do not think it can be ignored. I should say that if we regard Nance's expectation of life at half the normal, we would not be far wrong. One final consideration is that there is a decided probability that his last years would have been years of small earnings and large medical and hospital bills. On the whole I do not think an award of more than \$12,000.00 can be justified.

I would therefore allow the appeal to the extent of reducing the judgment to \$12,000.00.

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"SIDNEY SMITH"

"J.A."

Victoria, B.C.,

23rd February, 1950.

*In the
Court of
Appeal
for British
Columbia.*

—
No. 61.
Written
Reasons for
Judgment
of Sidney
Smith, J.A.,
23rd
February
1950,
continued.

JUDGMENT OF THE COURT OF APPEAL.

CORAM :

The Honourable THE CHIEF JUSTICE OF BRITISH COLUMBIA.

The Honourable Mr. JUSTICE O'HALLORAN.

The Honourable Mr. JUSTICE SIDNEY SMITH.

Victoria, B.C., the 23rd day of February, 1950.

*In the
Court of
Appeal
for British
Columbia.*No. 62.
Judgment
of the
Court of
Appeal,
23rd
February
1950.

The appeal from the Judgment of the Honourable Mr. Justice Whittaker of the Supreme Court of British Columbia pronounced the
 10 24th day of June 1949 coming on for hearing on the 6th, 7th, 8th and 9th
 days of December 1949, and upon hearing the Honourable J. W. de B.
 Farris, K.C. and Mr. W. H. Q. Cameron of Counsel for the Appellant,
 and Mr. D. A. Sturdy of Counsel for the Respondent, and upon reading
 the Appeal Book, and Judgment being reserved until this day :

THIS COURT DOTH ORDER AND ADJUDGE that the said Appeal be and the same is hereby allowed and that the said Judgment in the Court below be varied by reducing the total damages to be recovered by the Plaintiff (Respondent) against the Defendant (Appellant) to the sum of \$12,000.00 ;

20 AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Plaintiff (Respondent) recover from the Defendant (Appellant) the costs of the trial herein, such costs to be taxed under Column 3, Appendix N of the rules of the Supreme Court of British Columbia, and that the order of the Court below be varied accordingly ;

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Plaintiff (Respondent) shall tax her costs of the appeal herein as if successful and shall recover sixty-five per cent. (65 %) of the amount thereof from the Defendant (Appellant).

By the Court

30

" E. W. WELLS "

Dep. Registrar.

" G. McG. S. "

C.J.B.C.

No. 63.

CONDITIONAL ORDER FOR LEAVE TO APPEAL TO HIS MAJESTY IN COUNCIL.

*In the
Court of
Appeal
for British
Columbia.*

CORAM—

The Honourable Mr. JUSTICE O'HALLORAN.

The Honourable Mr. JUSTICE ROBERTSON.

The Honourable Mr. JUSTICE SIDNEY SMITH.

No. 63.
Conditional
Order for
Leave to
Appeal to
His
Majesty
in Council,
16th
March 1950.

Vancouver, B.C., Thursday, the 16th day of March, 1950.

UPON MOTION of the Plaintiff (Respondent) for leave to appeal to His Majesty in Council from the judgment of this Court delivered on
 10 Thursday, the 23rd day of February, A.D. 1950, UPON READING the notice of motion dated the 13th day of March, A.D. 1950 AND UPON READING the said judgment and the Appeal Book herein AND UPON HEARING David A. Sturdy, Esq., of Counsel for the said Plaintiff and W. H. Q. Cameron, Esq., of Counsel for the Defendant (Appellant),

THIS COURT DOTH ORDER that, subject to the performance by the said Plaintiff of the conditions hereinafter mentioned, and subject to the final Order of this Court upon the due performance thereof, leave to appeal to His Majesty in his Privy Council against the said judgment of this Court be granted to the Plaintiff.

20 AND THIS COURT DOTH FURTHER ORDER that the said Plaintiff do, within three months from the date hereof, provide security to the satisfaction of this Court in the sum of five hundred pounds sterling (£500 : 0 : 0) for the due prosecution of the said Appeal and the payment of all such costs as may become payable to the Defendant in the event of the Plaintiff not obtaining an Order granting her final leave to appeal, or of the Appeal being dismissed for non-prosecution, or for such costs as may be awarded by His Majesty in Council to the said Defendant on such Appeal.

30 AND THIS COURT DOTH FURTHER ORDER that the Plaintiff do within six months from the date of this Order in due course take out all necessary appointments for settling the Record on such Appeal and take all necessary proceedings for the preparation thereof and the dispatch thereof to the Registrar of the Privy Council.

AND THIS COURT DOTH FURTHER ORDER that the cost of the Record on appeal, and of all necessary certificates and all costs of and occasioned by the said Appeal, shall abide the decision of the Privy Council with respect to the costs of Appeal.

40 AND THIS COURT DOTH FURTHER ORDER that the said Plaintiff be at liberty within the said period of six months from the date of this Order to apply for a final order for leave to appeal as aforesaid on the production of a certificate under the hand of the Registrar of due compliance on her part with the terms of this Order.

AND THIS COURT DOTH FURTHER ORDER that all parties may be at liberty to apply to this Court wheresoever the same may be sitting.

By the Court.

L. A. MENENDEZ,
Registrar.

No. 64.

REGISTRAR'S CERTIFICATE as to security and settling of transcript of Record.

*In the
Court of
Appeal
for British
Columbia.*

I, the undersigned Registrar of the Court of Appeal, at the City of Vancouver, Province of British Columbia, HEREBY CERTIFY that pursuant to the Order of the Court of Appeal dated Thursday, the 16th day of March, A.D. 1950, the sum of £500 Sterling was on the 18th day of April, A.D. 1950 paid into Court to the credit of this cause as security for the due prosecution of the Appeal herein by the Plaintiff (Respondent) to His Majesty in His Privy Council and for the payment of all such costs as may become payable to the Defendant in the event of the Plaintiff not obtaining an order granting final leave to appeal or of the Appeal being dismissed for want of prosecution or for such costs as may be awarded by His Majesty in Council for the Defendant on such Appeal.

No. 64.
Registrar's
Certificate
as to
security
and
settling of
transcript
of Record,
31st May
1950.

AND I HEREBY FURTHER CERTIFY that the said Plaintiff (Respondent) has taken out all appointments necessary for settling the transcript record on such appeal, and that the said transcript record has been duly settled and all provisions of the said Order of this Honourable Court dated the 16th day of March, A.D. 1950, have been complied with by the said Plaintiff (Respondent).

20

L. A. MENENDEZ,
Registrar.

Dated at Vancouver, British Columbia,
this 31st day of May, A.D. 1950.

FINAL ORDER FOR LEAVE TO APPEAL TO HIS MAJESTY IN COUNCIL.

CORAM :

The Honourable THE CHIEF JUSTICE.
 The Honourable Mr. JUSTICE O'HALLORAN.
 The Honourable Mr. JUSTICE ROBERTSON.
 The Honourable Mr. JUSTICE SIDNEY SMITH.
 The Honourable Mr. JUSTICE BIRD.

Vancouver, B.C., Wednesday, the 7th day of June, 1950.

*In the
 Court of
 Appeal
 for British
 Columbia.*

No. 65.
 Final Order
 for Leave
 to Appeal
 to His
 Majesty
 in Council,
 7th June
 1950.

10 UPON MOTION on behalf of the Plaintiff (Respondent) for leave to
 appeal to His Majesty in Council from the judgment of this Court
 delivered on Thursday, the 23rd day of February, A.D. 1950, UPON
 READING the Notice of Motion herein dated the 2nd day of June,
 A.D. 1950, AND UPON READING the said judgment and the Appeal
 Book herein AND UPON READING the conditional Order of this
 Honourable Court made the 16th day of March, A.D. 1950, and the
 Certificate of the Registrar dated the 31st day of May, A.D. 1950,
 AND UPON HEARING David A. Sturdy, Esq., of Counsel for the said
 Plaintiff and no one appearing on behalf of the Defendant, although duly
 20 served with the said Notice of Motion,

THIS COURT DOTH ORDER that leave to appeal to His Majesty
 in his Privy Council against the said judgment of this Court be and the
 same is hereby granted to the Plaintiff.

By the Court

L. A. MENENDEZ,

Registrar.

No. 66.

ORDER IN COUNCIL granting Special Leave to the Respondent to Cross-Appeal to His Majesty in Council.

*In the
Privy
Council.*

AT THE COURT AT BUCKINGHAM PALACE

The 28th day of July, 1950

Present

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

Mr. NESS EDWARDS

Mr. Secretary EDE

Dr. EDITH SUMMERSKILL

No. 66.
Order in
Council
granting
Special
Leave to
the
Respondent
to Cross-
Appeal
to His
Majesty
in Council,
28th July
1950.

10 WHEREAS there was this day read at the Board a Report from the
Judicial Committee of the Privy Council dated the 24th day of July 1950
in the words following, viz. :—

20 “ Whereas by virtue of His late Majesty King Edward the
Seventh's Order in Council of the 18th day of October 1909 there
was referred unto this Committee a humble Petition of British
Columbia Electric Railway Company Limited in the matter of an
Appeal from the Court of Appeal for British Columbia between
Ena Pearl Nance (Plaintiff) Appellant and the Petitioner (Defendant)
Respondent (Privy Council Appeal No. 26 of 1950) setting forth
30 (amongst other matters) : that the Petitioner desires special leave
to appeal by way of Cross-Appeal from a Judgment of the Court of
Appeal for British Columbia dated the 23rd February 1950 in so far
as such Judgment allowed the Petitioner's Appeal from a Judgment
of the Supreme Court of British Columbia dated the 24th June 1949
only in part and held the Petitioner to be liable to the Appellant in
the sum of \$12,000 and costs : that the Appellant brought an action
for damages under the Families Compensation Act in respect of the
death of her husband whom she alleged to have been killed by reason
of the negligence of the motorman of one of the Petitioner's street
40 cars which struck and killed her husband : that the action was tried
with a jury which held that the Petitioner's motorman was negligent
that the Appellant's husband was not negligent and that the
Appellant was entitled to recover as damages \$35,000 : that
Judgment was entered for this sum to be apportioned among the
Appellant and children and step-children of her husband in such
shares as the Court upon further motion should direct with costs :
that the Petitioner appealed to the Court of Appeal on the grounds
amongst other grounds that the finding that the Appellant's
husband was not guilty of contributory negligence was unreasonable
and perverse and that the damages awarded were excessive : that
the Chief Justice of British Columbia held that at the trial there had
been manifest misdirection and non-direction amounting to
misdirection on the issue of contributory negligence occasioning a
miscarriage of justice : that he gave the Judgment which he thought
should have been given below and assessed the degree of fault of
the Petitioner's motorman at 60 per cent. and that of the Appellant's
husband at 40 per cent. : that he further reduced the damages from
\$35,000 to \$20,000 and held that the Appellant should recover
60 per cent. of that sum or \$12,000 with the costs of trial and 65 per

cent. of the costs of the Appeal: that O'Halloran J.A. held that there was no misdirection and that the jury's finding that the Petitioner's motorman was alone to blame must be upheld: that he thought however that there was no foundation in the evidence for an award of \$35,000 as damages and that therefore there should be a new trial limited to the assessment of damages: that Sidney Smith J.A. thought that at the trial there had been misdirection but that the Petitioner was precluded from relying on it and that the verdict of the jury on liability should be affirmed: that he thought however that the damages were excessive and that an award of more than \$12,000 could not be justified: that as two of the Judges in the Court of Appeal thought although for inconsistent reasons that the Appellant should recover only \$12,000 the Appeal was allowed and the Judgment was varied by reducing the damages to \$12,000: that the Appellant was given the costs of the trial and 65 per cent. of her costs of the Appeal: that the Judgment of the Court of Appeal was delivered on the 23rd February 1950: that on the last day for exercising her right of appeal to Your Majesty in Council the Appellant applied for and obtained on conditions with which she has since complied conditional leave to appeal to Your Majesty in Council: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal by way of Cross-Appeal from the Judgment of the Court of Appeal of British Columbia dated the 23rd February 1950 and that the Petitioner's Cross-Appeal may be consolidated with the Appellant's Appeal and heard on one printed case on each side and for such further or other Order as to Your Majesty in Council may seem just:

"The Lords of the Committee in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof (Counsel for the Respondent consenting thereto) Their Lordships do this day agree humbly to report to Your Majesty as their opinion (1) that leave ought to be granted to the Petitioner to enter and prosecute its Appeal by way of Cross-Appeal against the Judgment of the Court of Appeal for British Columbia dated the 23rd day of February 1950 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs and upon the footing that the Petitioner does not seek to reopen the finding of the Jury that its motorman was guilty of negligence in the operation of the street car which struck and killed the husband of the Appellant and (2) that the Cross-Appeal and Privy Council Appeal No. 26 of 1950 ought to be consolidated and heard together upon one Printed Case on each side."

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Lieutenant-Governor of the Province of British Columbia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E. C. E. LEADBITTER.

*In the
Privy
Council.*

No. 66.
Order in
Council
granting
Special
Leave to
the
Respondent
to Cross-
Appeal
to His
Majesty
in Council,
28th July
1950,
continued.