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New Jersey Court of Errors and Appeals

EMMA E. M. GORE and GEORGE W. GORE, *Plaintiffs-Appellants,* *vs.* DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, a corporation, *Defendant-Respondent.*	*Action at Law.* *On Appeal from Supreme Court.*

Brief for Plaintiffs-Appellants.

This action was brought by the plaintiff to recover damages for an accident which happened at the Orange Station of the defendant company on February 3, 1914.

The plaintiff, Emma E. M. Gore, sixty-four years of age (page 26, line 19), residing at Morristown, New Jersey, intending to go to Orange, boarded the defendant's train at about five o'clock in the afternoon (page 26, line 30). The plaintiff for a period of four or five years prior to the date of the accident, had frequently traveled from her home in Morristown to Orange and had there gotten off at the defendant's station (page 27, lines 22 to 38). The plaintiff on these occasions always alighted at about the center of the Orange station (page 27, line 40), and always had the assistance of a brakeman with a foot stool in getting off at the defendant's station (page 28, lines 18 to 22). At the time of the accident in question plaintiff, while attempting to get out of the defendant's train, looked for but could not see any conductor or brakeman to

assist her in alighting (page 28, lines 38 to 40). The light was very dim, so dim that the plaintiff could not see the ground (page 29, lines 36 to 40). The defendant's train at the time of the accident in question, instead of stopping at the place where it usually did, about the middle of the station platform, stopped where the street crosses the track and forced the plaintiff to alight from the train into the roadway (page 30, lines 28 to 33). There was no platform there, and that portion of the roadway on which the plaintiff was forced to alight was paved with rough Belgian blocks (page 30, lines 16 to 20), which were so uneven that the plaintiff stumbled thereon (page 37, lines 32 to 33). The bottom step from which the plaintiff was forced to alight was of such a great height that the plaintiff upon reaching down with her left foot as far as she could, could not touch the ground (page 30, lines 2 to 12). The great height of the step caused the plaintiff to lose her balance to a slight degree (page 36, lines 8 to 11). The light was so dim as to prevent her from seeing the unevenness or roughness of the surface on which she had to alight, and the unevenness of the Belgian block prevented her from recovering her balance (page 37, lines 12 to 16) and caused her to stumble and fall (page 37, lines 32 to 33).

Upon this state of facts the Court non-suited the plaintiff upon the ground that there was no proof that the place where the train stopped to enable the plaintiff to alight was an unsafe place to alight. From this result the plaintiff now appeals.

THE COURT IMPROPERLY NON-SUITED THE PLAINTIFF.

The evidence shows (1) that the step from which the plaintiff was forced to alight was unreasonably and unusually high, (2) that the plaintiff looked for one of the agents of the defendant to assist her in alighting, but that there was no one there to offer any assistance, (3) that there was no platform upon which the plaintiff could alight, but that she was forced to alight upon the roadway crossing the railroad track, (4) that the said roadway at that particular point was paved with rough uneven Belgium block, which caused her to stumble and fall, (5) that there was not sufficient light to enable her to see the unsafe condition of the ground.

The testimony covering each of these items is given below under the corresponding figure:

1. Page 30, l. 2:

Q When you attempted to get off, tell me how you did that?

A I took hold of the rail with my right hand as I stood on the lower step and reached down with my left hand as far as I could, and then let go with my hand and with my foot, but the ground was not there.

Q How much was it below your foot?

A Well, I don't know; it seemed to me it was a long distance and I lost my balance.

2. Page 28, l. 36:

Q And did you attempt to get out?

A Yes.

Q Did you notice any conductor or brakeman?

A I didn't see them; I looked for them.

Page 35, l. 30:

"As I stood at the edge of the steps I looked for either the conductor or the brakeman; neither were there."

3. Page 30, l. 28:

Q Can you tell me where this place that you alighted was—was that where you previously alighted or was it in the roadway?

A It was in the roadway; it was where the street crosses the track.

Q Where the street crosses the track?

A Yes.

4. Page 30, l. 14:

Q What did you strike—can you tell me that?

A Belgium block.

Q What was their condition? Of course you did not see them; as your foot struck, what did you feel about the Belgium block? Were they rough or smooth?

A They were rough.

Line 34:

Q You now know whether at that time there were Belgium blocks in the roadway?

A Confident about that.

Page 37, l. 14:

Q That was the only reason why you fell, was it?

A Why surely. The ground was so uneven that I think that had to do with not being able to get my balance.

Q The ground was uneven there?

A Where I alighted; on the Belgium block.

Line 32:

Q How was it uneven, did you slip on the ground?

A Not, but I stumbled.
Q Stumbled?
A Yes.

5. Page 29, l. 38:

Q The light was dim there?
A Very dim.
Q That is, the place where you could see, the light was dim up there?
A Very dim.
Q Did you see the ground?
A I did not.

Page 30, l. 1:

Q Why didn't you?
A Not light enough.

Page 40, l. 16:

Q You said that when you could not find a conductor or brakeman, you thought awhile. What was it that you thought about?
A I did, as I didn't have a light and the distance was so great to the ground, I wondered—that is, I thought the other people had gotten off, and I could.

The duty of the defendant, a common carrier, to the plaintiff is laid down in case of *Delaware, Lackawanna & Western Railroad Company* v. *Dailey,* 37 N. J. L., p. 526:

Van Sickle, *J.,* on p. 529 says:

"It is also alleged that there was error in the charge to the court as to the degree of care the defendant was required to exercise as a carrier of passengers. The jury were instructed 'that the company is bound to carry passengers safely so far as the utmost care and skill of the most prudent men, practically obtainable, can secure it under the particular circumstances.'

"The rule that carriers of passengers are bound to exercise the highest degree of care and diligence that a reasonable man would use, and that they are responsible for the slightest negligence has been very generally adopted in this country and is the law of this State."

In the case of *Falk* v. *N. Y. S. & W. R. R. Co.*, reported 56 N. J. L., p. 380, Lippincott, *J.*, on page 382 says:

"It is the duty of a railroad company to provide the passengers with a reasonably safe and convenient place of ingress and egress from its cars and carriages, and the railroad company is liable for accidents happening by reason of a neglect of such duties to its passengers in descending from a car when at rest at a station, if the circumstances are such as to induce the passenger to believe that he had reached his point of destination, and that it was safe for him to get out."

Citing *Central Railroad Co.* v. *Van Horn,* 9 Vroom 133.

D. L. & W. R. R. Co. v. *Trautwein,* 23 Vroom 169.

In *Dotson* v. *Erie Railroad Co.,* 68 N. J. L., 679, the Court, on page 684, says:

"It is undoubtedly a settled rule that a railroad company is under a duty to exercise ordinary and reasonable care to so construct and maintain station buildings, platforms and approaches that they shall be safe for use by passengers * * * *. It is manifest that this duty requires the railroad company to construct its platforms sufficiently near to the rail that it will afford to passengers, including the aged and the infirm, a safe exit to and from the train."

In the case of *Hansen* v. *The North Jersey Street Railway Company*, 64 N. J. L., 686, Adams, *J.*, in reference to the duty of a common carrier, on page 695, says:

> "A common carrier is bound to take a high degree of care of its passengers. This general duty includes a specific responsibility as to the entrances and exits provided for its vehicles * * * *. The common carrier is negligent if it fails to take a high degree of care to protect its passengers from every danger that the exercise of reasonable foresight would anticipate."

See *Metler* v. *D. L. & W. R. R. Co.*, 77 N. J. L. 97.

Justice Trenchard in the case of *Rivers* v. *Pennsylvania Railroad Co.*, 83 N. J. L., 513, on page 515, says:

> "Generally speaking, the legal duty of the defendant is well settled. A common carrier of passengers must use a high degree of care to protect them from danger that foresight could anticipate."

There can be no doubt but that the defendant owed a high degree of care to the plaintiff, and the real question involved is whether or not the defendant has fulfilled its duty to provide a reasonable safe place at this point for the plaintiff to alight, and whether or not it has exercised that degree of care which it is required to exercise. Whether or not the place at which this plaintiff was forced to alight was a reasonably safe place and whether or not the defendant had exercised proper care in other respects are questions of fact, concerning which there was sufficient testimony to cause them to be submitted to the jury for its determination.

Without considering the combination of causes complained of and the bearing that one contributing cause may have upon another, let us take up each of the causes separately.

Firstly, there is the step which was constructed too high to permit the plaintiff with safety to use it. The same question as to the height of the step was fully considered in the case of *Traphagen* v. *Erie R. R. Co.*, 73 N. J. L. 759, but the decision there was based on the fact that the Court found that there was no proof that the height of the step was unusual. Justice Swayze on page 761 says:

> "We do not mean to say that a railroad company can construct the steps of its cars as it pleases. It must, of course, afford reasonable means for alighting and must use careful judgment in the method of construction it adopts."

In the case at bar the step was of a great and unusual height. It is quite true that there is no evidence of its actual height in feet or inches, but there is evidence that the plaintiff standing upon the bottom step and holding on to the rail reached as far down as she could with her foot without striking the ground, which together with the evidence that "it was a long distance" is surely sufficient to prove that it was of an unusual height. The defendant's counsel on cross examination, had he desired, could have extracted more definite information as to the actual distance, had he intended to prove that it was not an unusual height. It must be remembered in this connection that the plaintiff was not given the opportunity of alighting upon a platform, that the exit of the coach in which she was riding was stopped upon the roadway or street running across the defendant's tracks, which fact in it-

self shows that the distance from the ground to the step at this point would be much greater than the distance from the surface of a platform which had been erected for the purpose of aiding passengers in alighting from the defendant's train.

The same question of distance and height of a step has been considered in numerous cases in other jurisdictions where it has generally been held that the question was one of fact for the jury.

In the case of *Chisholm* v. *Ann Arbor R. Co.*, Supreme Court of Michigan, reported in 153 North Western 818, the Court says:

> "And it is claimed that the distance was great from the step to the ground and that is for you to consider, whether that was a proper distance to require a passenger to step down."

See also *Central of Georgia Rwy. Co.* v. *Brown*, Supreme Court of Georgia, 74 South Eastern 859;

N. Y., N. H., & H. R. R. v. *Lincoln*, Circuit Court of Appeals, 223 Fed. 893;

Trusdell v. *Erie R. R., N. Y.*, Appellate Division, 99 New York Supplement 942.

Secondly, without considering the heighth of the step from which the plaintiff was forced to alight, did the defendant stop its train at a place which was reasonably safe? The evidence shows that there was no platform where the plaintiff alighted, and that it was where a street crossed the track. In other words, the plaintiff was forced to alight in a roadway, which at that particular point was paved with rough and uneven Belgium blocks. The uneveness and the roughness of this paving is one of the principal contributing causes of this accident. It was this unsafe and dangerous condition of the ground upon which the

plaintiff was forced to alight which caused her to stumble and prevented her from regaining her balance, which was the direct cause of her falling.

Page 39, l. 11:

Q And then why did you fall?

A Because I could not get my balance.

Q That was the only reason you fell, was it?

A Why surely, the ground was so uneven that I think that had to do with my not being able to get my balance.

The negligence of the defendant in forcing the plaintiff to alight upon such a treacherous surface and substance as this is sufficient in itself to have had submitted to the jury the question as to whether or not the defendant had exercisel the high degree of care to which our courts hold common carriers.

It is practically the same situation as that in the case of *Metler* v. *D. L. & W. R. R. Co.*, 77 N. J. L. 97, in which case instead of having a rough and uneven Belgium block there was a rounded piece of iron which caused the injury. Judge Trenchard on page 98 says:

"The declaration alleges, as we have seen, that the defendant so negligently managed the operation of its railroad and so failed in the exercise of reasonable precaution that the plaintiff in a careful egress stepped upon a piece of loose rounded iron, carelessly and negligently concealed upon the platform of the car, whereby he was thrown and injured."

"This, we think, states the facts of a breach of the defendant's duty to use a high degree of care to keep its platform provided for the egress of passengers safe for such purpose."

Thirdly. Was the defendant negligent in failing to furnish proper light to enable the plaintiff to see, so that she could safely alight. The Court in its non-suit disposes of this question by saying on page 47 of the State of Case:

> "Now, with respect to the question of light of this station, it seems to me that I do not need to say anything more than to refer to the case of Traphagen *v.* The Erie Railroad Company, which is found reported in 44 Vroom * * *."

Continued on page 48:

> "And with respect to the matter of light, there is no obligation whatever cast upon the railroad company to furnish light where they have not made the place extra hazardous or anything of that sort."

It is extremely difficult to spell any such ruling out of the Traphagen case, as the question is not at all involved therein. The accident there complained of having happened shortly after 12 o'clock on a "very clear beautiful day."

After considering the high degree of care to which the common carrier is held the proposition that it is obliged to furnish sufficient light to make a place reasonably safe for the use of its passengers in alighting from its train is apparent without argument.

The question was raised in the case of *Kingsley* v. *D. L. & W. R. R. Co.,* reported in 81 N. J. 536 where the Court indicates most clearly and strongly that a duty rested upon the defendant to provide proper lights and that an action would lie for their failure to maintain sufficient light if that were the cause of the injury complained of.

The obligation to have the station properly lighted comes within the degree of care placed upon the defendant and all common carriers.

Leggett v. *Atlantic Coast Line R. Co.*, Supreme Court North Carolina, 84 S. E. 357.

The plaintiff's intestate was in a station to take a train. The only light on platform was from the ticket office. Plaintiff's intestate fell from the platform and was badly injured. The Court held that it was well understood that the common carriers are held to a high degree of care in providing at their stations places and conditions by which passengers may board and alight with safety, and that the obligation to have the premises properly lighted came within that principle.

In the case of *Grimes* v. *Pennsylvania Co.*, 36 Fed. 72, Judge Weeker says:

> "It is the duty of the defendant to place and keep upon its platform in the night time suitable and proper lights to protect and make it safe for passengers who may desire to go upon the trains or get off trains at the time of arrivals and departures of trains so advertised to stop or which were accustomed to stop at the station."

In the case of *Chisholm* v. *Ann Arbor R. Co.*, Supreme Court of Michigan, 153 North Western, 818, the Court says:

> "Now if it was entirely dark there or if it was so dark that the plaintiff could not see where to step and the train stopped there for her to get out and she missed her way by reason of not being able to see, when she thought it was safe for her to step dowr that might amount to such negligence upon the part of the defendant as would justify recovery if you find it to be such."

In the case of *Whitman* v. *Chicago Great Western R. R. Co.,* Supreme Court of Iowa, 153 North Western 1023, *J.* Gaynor says:

> "The company then owed a duty to the plaintiff to keep the premises in a reasonably safe condition for her use during the time she remained there under those circumstances, and if reasonable care required the use of lights to that end it was the duty of the company to furnish the lights even though not requested by her."

Texas Central R. Co., et al. v. *Claybrook, et ux.,* Texas, 178 South Western 580.

Louisville, Henderson & St. Louis Ry. Co. v. *Davis,* Court of Appeals of Kentucky, 162 South Western, 1124.

Teale, et ux v. *Southern Pacific Co.,* 129 Pac. 949.

Skow v. *Green Bay & W. R. R. Co.,* Supreme Court Wisconsin, 123 North Western, 138.

Pittsburgh & Lake Erie R. Co. v. *Wiegel,* Circuit Court of Appeals, 191 Fed. 577.

Texas & P. Ry. Co. v. *Lee,* Court of Circuit Appeals of Texas, 151 South Western 35.

Duell v. *Chicago & Northwestern Ry. Co.,* 92 N. W., 269.

Ellis v. *Chicago, Milwaukee & St. Paul Ry. Co.,* 98 N. W. 942.

There can be no question but that the evidence shows that the lights were very dim and were not sufficient to enable the plaintiff to see the dangerous and treacherous surface upon which she had to alight, and that unexpectedly coming into contact with such a condition is one of the contributing causes to the accident.

It is respectfully contended that the negligence of the defendant in maintaining the step at the height which it did was sufficient in itself, without considering it in combination with the other negligence of the defendant, or merely as one of the contributing causes, to establish a *prima facie* case of negligence against the defendant; and likewise the evidence as to the treacherous and dangerous place where the plaintiff was forced to alight upon the rough and uneven cobble stones, separately and by itself presented a case against the defendant which should have been submitted to the jury; and likewise the evidence as to the defendant's negligence in not maintaining sufficient light raised a question of fact as to the negligence of the defendant which should have been passed upon by the jury.

The elements of negligence of course should not be considered singly and separately but in combination, and as a whole, to determine the responsibility of the defendant. Each of the elements complained of, as a matter of fact, was a contributing cause of the accident. The height of the step which caused the plaintiff to lose her balance and pitch was the starting contributing cause. If the ground upon which the plaintiff had to alight had been smooth and even, as it should have been, the accident would not have occurred for the plaintiff says that the roughness and unevenness of this Belgum block prevented her from regaining her balance. So that the second contributing cause was the treacherous substance upon which the plaintiff was forced to alight. The lack of sufficient light which the defendant was under obligation to supply is obviously a contributing cause. Had there been proper light the plaintiff could have seen the dangerous condition of the surface upon which she had to alight and

thereby have avoided the accident. The plaintiff, as a matter of law, had a right to presume and rely upon the fact that the defendant had stopped its train at a safe place and being unable to determine otherwise by reason of the lack of light, was justified in doing exactly as she did do.

There can be no argument made in this case that the plaintiff should have been non-suited because the evidence showed that others had alighted with safety at the place of the accident. It is definitely settled in this State that a common carrier owes a debt to "construct its platforms sufficiently near to the rails so as to afford to passengers, *including the aged and infirm,* a safe exit to and from the trains." *Dotson* v. *Erie R. R. Co.,* 68 N. J. L., 679 at 684.

Central R. R. Co. ads *Van Horn,* 38 N. J. L., 9 Vroom, 133.

A young, agile man or woman might be able with safety to make a step and a safe landing where an aged or infirm person would be under grave risk through a like effort.

It should also be observed that this defendant company has no standarization as to the heighth of its car steps. "Some cars have three, some four steps, and some five." This was admitted (page 22, line 20). It should also be observed that the defendant has apparently recognized the impropriety of dumping passengers from steps of any heighth regardless of conditions of light or darkness down on Belgium paved highways, and the evidence shows that at this time this defendant at each of its stations from Hoboken to Grove street and from Mountain Station through to Morris Plains has changed its entire plan of stations and placed platforms on both sides of the track with the apparent intent and aim of pro-

viding passengers now with a safe place for alighting.

It is the view of the trial court that no liability existed because of the height of the step from the ground, that no liability existed because of failure to provide light, that no liability existed for failure to assist the passenger in alighting, and that consequently there could be no liability for any combination or union of these causes. One of three strands of rope may be insufficient to sustain a substantial weight while the three combined might well provide sufficient strength. Negligence would seem to be an inference in every case from all of the facts, and it would seem to be a dangerous as well as an unwarranted doctrine to separate an accident into its separate and component parts and by eliminating each part as insufficient to sustain liability, thereby aver that no liability could exist.

The bald question presented in this case then is this: "May a common carrier accept as a passenger for hire an elderly woman, stop its train at six o'clock on a winter's night over a public highway paved with rough Belgium block, provide no assistance to her in alighting, provide insufficient light for her to even see the distance of the ground below the step, and then insist that no question even of negligence is presented for consideration by a jury?"

It may be urged that the evidence here is at places in conflict and that the evidence in certain respects is not much corroborated, but if the plaintiff has made out a case she is entitled to have it submitted to a jury, and we respectfully contend that the evidence here is sufficient.

The subject seems to be stated with much terseness in a dissenting opinion of Justice Garrison

in *Kingsley* vs. *D., L. & W. R. R. Co.*, 81 N. J. L., 536 at 545: "It is wholely a question of care in the operation of a railroad."

Under the settled law, this plaintiff had a right to assume that the defendant had provided her with a safe place to alight. She was unable to see the distance of the ground from the step, and she had a right to assume that it was a safe and reasonable distance. The defendant knew or in the exercise of a reasonable care, should have known the condition of the Belgium block in the highway, which it provided as a place for the plaintiff to alight. It could have avoided the accident by having provided a platform, by having stopped its train to the west of the highroad, by providing a box to be placed on the ground to compensate for the heighth of the step, by providing a conductor or brakeman to assist the plaintiff down the unusual heighth. Having done none of these things, it would hardly seem to be in a just position to claim immunity.

It is respectfully insisted that the judgment of non-suit be reversed and a new trial granted.

Respectfully submitted,

LUM, TAMBLYN & COLYER,
Attorneys.

RALPH E. LUM,
ELMER KING,
Of Counsel.

New Jersey Court of Errors and Appeals

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BRIEF OF DEFENDANT-RESPONDENT.

Statement.

In view of the fact that the respondent cannot agree with the statement of the appellant as to how the accident to the appellant Emma E. M. Gore happened, even though the appellant's statement appears to be a reduction of the testimony in narrative form, we respectfully call the Court's attention to our view as to how this accident happened by setting forth at length, although it is very brief, the testimony given by the appellant Emma E. M. Gore in response to questions propounded to her by the Trial Court:

> "Q. When you say that you pitched, do you mean you pitched before you touched the ground at all? A. I lost my balance before I touched the ground at all.
>
> "Q. Before you touched the ground at all you lost your balance? Before I touched the ground at all I lost my balance.
>
> "Q. And by pitching, you mean you fell? Is that it? A. I did not pitch then; I twist-

ed, as I say; I had this right foot coming over the left foot.

"Q. Well, your left followed your right after coming over the left? A. Yes, and it twisted me around; I tried to catch myself, and pitched; I don't know whether I went one or two steps, then fell.

"Q. What do you mean, that you pitched one or two steps? A. Why, I just—as one does when walking off a stoop, and did not know that there was a stoop there; you pitch and usually gain your equilibrium; but as my foot was so far apart when I let go, I could not gain my equilibrium, as I tried to, and in so doing, pitched and down I went.

"Q. When you pitched, you let go before you touched the ground at all? A. I let go before I touched the ground, because the ground was not there.

"Q. But you did let go before you felt the ground? A. Yes.

"Q. And you were then pitching? A. Yes.

"Q. In what posture was you while you were pitching? A. I have difficulty of telling you that, I am sure.

"Q. As near as you can; just as near as you can give it to us? A. I was trying to get my balance, and I had my arms out; I failed to get my balance, and I went down.

"Q. So that you went along the ground how many steps before you fell eventually? A. Why, I would not say. I went out more than two steps.

"Q. But you did go two steps? A. I think I went two steps, as nearly as I can tell.

"Q. And then why did you fall? A. Because I could not get my balance.

"Q. That was the only reason why you fell, was it? A. Why, surely. The ground was so uneven that I think that had to do with my not being able to get my balance.

"Q. The ground was uneven where? A. Where I alighted; on the Belgian block.

"Q. You did not fall where you alighted? A. I did not fall where I alighted; I tried to save myself.

"Q. Yes, and you took a couple of steps?

A. Yes, but it was on the Belgian blocks I took the steps.

"Q. And then, after you had taken a couple of steps, you fell? A. Yes.

"Q. Because you were unable to get your balance? A. Yes.

"Q. What did the ground have to do with that? Just tell us what happened to your feet while you were taking the steps? A. The unevenness of the ground.

"Q. How was it uneven? Did you slip on the ground? A. No, but I stumbled.

"Q. Stumbled? A. Yes.

"You mean that you struck your foot against some obstruction? A. I might have.

"Q. You must have; did you? A. I could not swear to that. I don't know what I did. I tried to save myself, and that is all I do know about that part.

"Q. Well, now, you want to get it accurately what the unevenness had to do with your fall. That is what I want to find out. Did you strike your foot against any obstruction? A. I don't know.

"Q. You do not know. Did your feet slip down on any unevenness? A. I think it did, as near as I remember; but I don't know.

"Q. Well, do you remember whether it did or not? A. I don't know.

"Q. You don't know? Very well.

(p. 36, ll. 8-41; p. 37, p. 38, ll. 1-13).

"Q. Why do you say Belgian block—it was so dark that you could not see them? A. Because I went there afterwards and saw what it was.

"Q. Oh, that is the only reason why you say Belgian block? A. No; I know it was. My brother-in-law—

"Q. Why did you go afterwards to see what it was, if you knew what it was then? A. I did not know whether it was cobble or Belgian, and I asked my brother-in-law to go and see just what it was that I then stumbled on.

"Q. Then you did not go afterwards, did you? Your brother-in-law went.

"Q. And then he told you that it was Belgian block? A. No; I have been there since.

"Q. When were you there? A. I was there as soon as I was able to walk.

"Q. How long after the accident was that? A. Several months; but the blocks were there that had been there quite a while, for they were worn.

"Q. How did you know you went back there the next time, precisely where it was that you fell, when it was so dark when you stepped down that you could not see them? A. I could not see the ground.

"Q. How did you know what place on the ground it was that you fell? It was so dark that you could not see? A. I saw some people on the sidewalk in front of me as I stood on the platform.

"Q. On the sidewalk? A. On the sidewalk.

"Q. I understood you to say when you got out on the platform you looked for the brakeman or conductor? A. I did.

"Q. Why? A. To help me off.

"Q. You thought it was unsafe to get off without assistance? A. No, it wasn't that; but I was in the habit of having help.

"Q. Thought that you needed it? A. I wanted it.

"Q. You thought you needed it? A. Well, when I could not see, wouldn't anybody want it?

"Q. You did want it because you could not see? A. I could not see the ground.

"Q. I say, is that why you wanted it? A. Well, it was my habit; I always did.

"Q. Was that why you wanted it? A. Yes, that is why I wanted it.

"Q. You said that when you could not find a conductor or brakeman, you thought a while; what was it that you thought about? A. I did, as I did not have a light, and the distance was so great to the ground, I wondered—that is, I thought the other people had gotten off and I could.

"Q. Then you knew that the other people had gotten off in safety, didn't you? A. I

supposed they had. I did not see anyone lying around.

"Q. Well, there wasn't any other accident? A. None except mine.

"Q. And these men and women all got off there? A. I suppose so.

"Q. So far as you know about that? A. I don't know anything to the contrary; I don't know. So far as I can say, they did. (P. 39; p. 40, lines 1-32.)

A perusal of this testimony shows, therefore, that there will necessarily have to be eliminated from the combination of circumstances or alleged negligent acts of the respondent set forth on page 3 of their brief, the following specifications, to-wit:

1. That the step from which the plaintiff was forced to alight was unreasonably and unusually high.

2. That there was no platform upon which the plaintiff could alight, but that she was forced to alight upon the roadway crossing the railroad track.

3. That the roadway at that particular point was paved with rough, uneven, Belgian block. *which caused her to stumble and fall.*

These features eliminated, the proposition upon which this Court is called upon, at page 16 of the appellant's brief, to answer, must be modified to a very great extent, if not entirely changed. (Sec. p. 16 Appellant's brief.) However, in view of the fact that the appellant's counsel seem to feel aggrieved that the counsel for the respondent did not assist them in making their case (see p. 8, Appellant's Brief, 2d paragraph) we will answer at length why we conceive there was no obligation upon us to do so, in view of the fact that we contend that no liability was shown by the plaintiff's case and that the trial judge did not err in non-suiting the plaintiff.

THE LAW.

POINT I.

The situation presented in the instant case calls upon us to distinguish whether the defendant is to be judged for negligent operation rather than negligent construction.

That we are obliged to determine which phase of duty we are called upon to discuss is apparent, for the reason that in the former case a higher degree of care is necessary and required of the carrier than in the latter case.

The fundamental distinction between matters of operation and matters of construction have been well brought out by the two leading cases in this Court. The case of *Haver vs. Central Railroad Company,* 62 N. J. L., 282, deals with the question of the degree of care a carrier owes to a person being carried; while the train is in operation, and this Court there speaking through Justice Depue, says:

> "The carrier is under obligation to use the utmost case and diligence in providing suitable and sufficient vehicles for the conveyance of its passengers; to carry the passenger therein to the end of his route; to protect him against assault and other ill treatment by those employed by and under the carriers control while on the way; and to exercise the utmost vigilance and care in maintaining and guarding the passenger against violence from whatever source arising, which might reasonably be anticipated or naturally expected to occur in view of all the circumstances" (p. 284).

The case of *Dotson vs. Erie Railroad Company,* 68 N. J. L., deals with the duty of a carrier with respect to matters of construction and there this Court, speaking through Justice Hendrickson says:

> "It is undoubtedly a settled rule that a railroad company is under a duty to exercise ordinary and reasonable care to so construct and maintain station buildings, platforms, and approaches that they shall be safe for use by passengers" (p. 684).

That this situation was one of construction purely and not of operation is made manifest by the case of *Cullen v. West Jersey & Seashore Railroad Company,* 85 N. J. Law, p. 708, wherein Justice White speaking for this Court says:

> "The declaration averred a duty of the defendant to furnish a reasonably safe and fit place or platform for its passengers to alight from its train and a violation of that duty" (p. 709).

On the trial of the above case it appeared that the plaintiffs sought to amend their declaration to the extent of charging a negligent operation in stopping its train at a dangerous point when the car stops opposite a dangerous depression. But this Court there said that

> "The real question involved was whether or not the defendant had fulfilled its duty to provide a reasonably safe place at this point for its passengers to alight upon and the amendment therefore was quite unnecessary and immaterial" (p 709).

The distinction between the degree of care for an operating movement as distinguished from the duty which a carrier owes to a passenger in the construction of its station platform is fundamental.

The appellants have endeavored to gauge the liability of the defendant, not by the quality of its conduct but by the results of that conduct, thereby covering indiscriminately injuries resulting to the plaintiff from causes preventable by the exercise of due care on the part of the defendant and injuries that might have happened not-

withstanding the exercise by the defendant of the degree of care legally imposed upon it as a carrier of passengers (*Mason vs. Erie R.R. Co.,* 75 N. J. L., 524).

In reply to the cases cited in the appellant's brief, we feel that it is necessary to analyze a number of those cited because of the fact that the degrees of care owing to the plainiff would appear from the citation of authorities to be of a dual nature, to-wit, in some instances the cases cited are referred to as holding that a high degree of care was necessary and in others a reasonable degree of care. The particular facts in each case will show however that in no case has a carrier been held to the high degree of care unless the same can be designated or would be known as an operating situation. For instance in the case of *D. L. & W. R. R. Co. v. Dailey,* 37 N. J. Law, 527, the situation was of one train colliding with another train on the same track.

In the case of *Hansen v. North Jersey Street Ry. Co.,* 64 N. J. Law, 686, referred to by the appellants for the proposition that a common carrier is bound to exercise a high degree of care to its passengers and that this general duty includes a specific responsibility "as to the entrances and exits provided for its vehicles". The facts in that case show that it was not a matter of construction at all which concerned this court, but that the plaintiff was pushed from one of the car exits out of the car and upon the ground and that the carrier in that case failed to take a high degree of care to "protect its passengers from every danger that the exercise of reasonable foresight would anticipate" (p. 696).

The case of *Mettler v. the D. L. & W. R. R. Co.,* 77 N. J. Law, 97 was on a demurrer to the plaintiff's declaration, it appearing in the declaration that when the plaintiff stepped from the interior of the car to and upon the car platform thereof

(p. 98) he fell upon a piece of loose rounded iron, which caused his injuries. These facts themselves show that this case was a case of operation and not of construction.

The appellant's citation of the case of *Rivers v. P. R. R.*, 83 N. J. Law, 513, again makes reference to the fact that a high degree of care must be exercised by the carrier. An examination of the facts in that case as they appear in the opinion of this Court shows that the accident to the plaintiff occurred while the train was still approaching the station, a purely operating movement upon the part of the carrier.

At page 6 of the appellant's brief, reference is made to the case of *Falk v. The N. Y. S. & W. RR. Co.*, 56 N. J. Law, 380 for the purpose of showing the duty of a carrier as to the stoppage of its trains and furnishing reasonably safe and convenient places of ingress and egress from its cars and carriages. This case an examination shows was before the Supreme Court upon demurrer and what has been recently said by the Chancellor in the case of *Keeney v. D. L. & W. R. R. Co.*, 87 N. J. Law, about the Falk case is particularly applicable to the case at bar;

> "It must be perfectly obvious that there is a wide difference between the sufficiency of averments in a declaration to indicate that a certain place is a station &c. and lack of proof as in this case that such a situation in fact existed. * * * The trial judge was right in granting the non-suit because the question at issue arose upon uncontroverted proofs and was therefore one for the Court and not for the jury" (p. 507).

Aside from the case of *Falk vs. N. Y. S. & W. R. R. Company, supra,* which as we have noted was on demurrer to a declaration, and the case of *Rivers vs. P. R. R.*, 83 N. J. Law, p. 513, we have been unable to find any case in New Jersey

that deals directly with the question of lights aside from the case of *Central R. R. of N. J. vs. Van Horne,* 38 N. J. Law, 133, also cited by the appellants, p. 6 of their brief. This case it appears was also a case of a demurrer to a declaration and the furthest that the learned Chief Justice Beasley went in that case upon the question of light was when he discussed the stoppage of the train in the following language:

> "The Court would not be warranted in saying that it is not negligence to give notice of the approach to a station and then stop the train short of such station in the night time. Such a course would only tend to jeopard passengers for it would induce them to believe that they had arrived at the station designated and they would in the ordinary course go to the car platform. At night this must be the inevitable result."

We contend that under this case no rule of law can be spelled that there is an absolute obligation upon a carrier to furnish lights at its station. Each case we take it must be decided upon its own facts and it is only as Justice Minturn, speaking for this Court in *Kingsley vs. D. L. & W. R. R.*, 81 N. J. Law at 537, points out, if the absence of light was the superinducing cause of a plaintiff's accident, that a jury question is presented at all upon the question of light.

Looking again at the various acts for which the appellant seeks to hold the respondent liable, the first act appears to have been that the step from which the plaintiff was forced to alight was unreasonably and unusually high. We search in vain throughout the record of the entire case to find any evidence whatever as to the height of the bottom step of the car from which the appellant alighted to the ground. The best we can learn is that the step was a long distance. The situation presented by this kind of evidence

has been very aptly described in the case of *Foley vs. B. & M. R. R.,* in 79 N. E., 765 where the Court said that :

> "Mere expletive or declamatory words or phrases—unaccompanied by any evidence capable of conveying to the ordinary mind some definite conception of a specific physical fact and depending generally upon the degree of nervous emotion, exuberance of dictation and volubility of imagination of the witness and not upon his capacity to reproduce by language a true picture of a past event, are slight, if indeed they are of any assistance in determining the real character of the fact respecting which they are used."

And again as said in *Blue vs. Aberdeen and W. E. R. Co.,* 116 N. C., 955:

> "The words unusual and extraordinary as in common use very often are exaggerations of speech and in many cases if properly inquired into and explained would be found not to be synonymous with unnatural and unexpected."

See also *Flucks vs. St. Louis, I. M. & S. R. Co.,* 143 Mo. App., 17.

In our own state we have the case of *Traphagen vs. Erie R. R. Co.,* 73 N. J. Law, 759, which the appellants cite in their brief at page 8 for the purpose of having it made apparent that this Court would never stand for a rule of law that "a railroad company can construct the steps of its cars as it pleases" but an examination of the Traphagen case shows that there was direct and positive testimony as to the distance—that the step from which the plaintiff attempted to step down was about 24 to 26 inches from the ground (p. 760), while in the instant case there was no proof at all of any distance or height of the car step from the ground, and the plaintiff signally failed to prove as this Court there said they must,

> "Any departure from the usage of other railroads under which circumstances this Court held there was no proof which would justify a jury in finding the defendant company negligent on account of the height of the step"

for to have done so

> "would practically substiute the judgment of a jury for the judgment of the railroad managers which would vary in each case, and subject the railroad company to the danger of being found guilty of negligence no matter what plan was adopted" (pp. 761-2).

On the question that the defendant company was negligent in failing to offer assistance to the appellant we think that this is best answered by a reading of her testimony set out in our statement as to how the accident happened, and that portion of this Court's opinion in the Traphagen case wherein it is said that:

> "The failure to provide a foot stool and to assist the plaintiff in alighting was obvious to the plaintiff and if she had desired such assistance she should have at least made known her desire to the conductor who was close at hand. No liability attaches to the defendant by reason of these circumstances" (p. 760).

In connection with the point that there was no platform upon which the plaintiff could alight, but that she was forced to alight upon the roadway crossing the railroad track, an examination of the case will show that the trial court conceded for the purpose of placing liability on the defendant company that the place where the plaintiff intended to alight was a platform in the true sense of the word (Case, p. 46, lines 20 to 30) but held that:

> "There isn't any evidence in the case either that the roadway where this lady debarked

> from the train was not at the same height as this place that had been furnished by the railroad company for alighting" (p. 46, lines 27-31).

Here again the plaintiff signally failed in adducing any evidence of negligence as to the construction of the station platform.

The situation in this case appears at first blush to be quite similar in arrangement of facts to the case of *Fielders vs. North Jersey Street Ry. Co.*, 68 N. J. Law, 343, in that the defendant was charged with a combination of alleged negligent acts, but there the similarity ceases because "all of the alleged negligent acts were mere circumstances to be viewed with other circumstances as bearing on the question of negligence" (p. 345).

The disposition by the trial court of the instant case was quite analogous to the disposition of the court in the case of *Truesdale v. Erie Railroad,* 99 N. Y., 694, cited by the appellants at page 9 of their brief, where the Court said:

> "The jury should not be permitted to speculate and find that because there may have been holes or depressions at some points" (of the platform) "her foot landed in one of them, without any evidence to substantiate it" (p. 697),

while in the instant case, the Court said in directing a non-suit, that

> "I particularly asked Mrs. Gore the question whether she either slipped or stumbled and she said that she couldn't tell, did not know anything about that; if she could not say that there was and she was the only person testifying to the facts of the happening of the accident, of course the jury could not say anything about it. The jury must decide the case upon the evidence and not upon mere speculation, and if the woman herself who fell cannot say that the unevenness of the street or the roughness of the Belgian block had anything whatever to do with her falling, it would be

folly to say that the jury should be permitted to speculate when she herself was present in the accident and knew nothing whatever about it" (Case, p. 47, line 14 *et seq.*).

In the *Truesdale case, supra,* the Court held that the plaintiff should have been non-suited.

The remainder of the cases cited in the appel lant's brief on an examination show that in each and every one of the cases, with the exception of the case of *Texas & P. Ry. Co. v. Lee,* 151 S. W., 35 (which we are unable to find in that reporter), the defendant went to its defense and there were controverted questions of fact at the end of each case making it properly one for the jury.

We would but briefly refer to the salient features in some of those cases cited by the appellant.

In the case of *Ga. R. R. Co. v. Brown,* 74 S. E., 839, it appeared as a matter of fact that the platform constructed was below the cross ties of the railroad track.

In *Texas Central R. R. v. Claybrook,* 178 S. W., 580, it appears that the deceased was carried past her station and that the foot stool was placed for her to alight, and that the tilting of the foot stool was the cause of her injuries.

In *L. H. & S. Louis R. R. Co. v. Davis,* 162 S. W., 124, it appears that the injured party had previously gotten off a step which was only 13 inches high when on the night in question when she was injured, she was forced to alight from a step that was 2½ to 3 feet from the ground. This last case is cited as an authority on the question of the duty of the carrier to furnish lights at its station, and it cites as its supporting case the case of *C. N. O. & T. P. R. R. Co. v. Bell,* 70 S. W., 70, but an examination of that case shows that although at the time of the happening of the accident it was dark, the cause of the accident was that *the injured party thought that the foot stool had been*

provided for her and did not observe its absence and was thereupon injured.

In the case of *Teale v. S. Pac. R. R. Co.,* 129 Pac. Rep., 949, cited by the appellant on the question of light, it appeared that the railroad company had *made* the place so dark that the injured plaintiff could not see her hand before her face and moving about in such darkness she was injured.

In closing, we would remark that we feel the citation of but a portion of the dissenting opinion in the case of *Kingsley v. D. L. & W. R. R. Co.,* 81 N. J. Law, pp. 536-545, as dispositive of the questions presented by the instant case, is a novel method of upholding the law of this State, as established by this Court.

POINT II.

It is respectfully insisted that the judgment of non-suit by the trial court be sustained.

Respectfully submitted,

FREDERIC B. SCOTT,

Attorney and of Counsel with Respondent.

Telephone 1697 Worth THE WEIBEZAHL PRINT 25 Elm St., N. Y.

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Notice of Appeal.

Filed February 16, 1916.

New Jersey Supreme Court.

MORRIS COUNTY.

EMMA E. M. GORE and GEORGE W. GORE, *Plaintiffs,* *vs.* DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, a corporation, *Defendant.*	*Action at Law.* *Notice of Appeal.*

To Frederick B. Scott, Esq., Attorney for the defendant, or to whom it may concern:

Take notice that the plaintiffs appeal to the Court of Errors and Appeals from the whole of the judgment entered in the above entitled cause.

Yours, etc.,

LUM, TAMBLYN & COLYER,
Attorneys for Plaintiffs.

February 10, 1916.

Grounds of Appeal.

Filed February 16, 1916.

New Jersey Court of Errors and Appeals

EMMA E. M. GORE and GEORGE W. GORE, *Plaintiffs,* *vs.* DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, a corporation, *Defendant.*	*Action at Law.* *Grounds of Appeal.*

To F[illegible]k B. Scott, Esq., Attorney for the defe[illegible] or to whom it may concern:

Take [illegible]ice that the following are grounds of appeal which the plaintiffs-appellants hereby assign and upon which they will rely at the hearing:

Because the Trial Court non-suited the plaintiffs.

Yours, etc.,

LUM, TAMBLYN & COLYER,
Attorneys for Plaintiffs.

Amended Complaint.

Filed July 13, 1914.

New Jersey Supreme Court.

MORRIS COUNTY.

EMMA E. M. GORE and GEORGE W. GORE, her husband, *Plaintiffs,* *vs.* DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, a corporation, *Defendant.*	*Amended Complaint.*

The plaintiffs residing in Morristown, Morris County, say that:

FIRST COUNT.

1. That on February 3, 1914, the defendant was the owner and proprietor and had possession of, and, by its agents and servants, had the control and management of a certain passenger train which was operated and propelled by a certain steam engine on and along certain tracks from Morristown, Morris County, New Jersey, to Orange, Essex County, New Jersey, which said passenger train was operated by the defendant for the convenience and use of passengers for hire and reward to the defendant.

2. On said day at Morristown aforesaid the plaintiff, Emma E. M. Gore, became and was, at the special instance and request of the defendant, a passenger on said train for certain hire and reward to

the defendant, for the purpose of being safely and securely carried from Morristown to Orange, aforesaid, and the defendant then and there received the said plaintiff as such passenger in and upon a passenger coach attached to said train.

3. That it became and was the duty of the defendant to safely and securely carry the said plaintiff upon said train, and, upon arriving at plaintiff's said destination to stop said train at a place where plaintiff might safely alight therefrom, and to provide safe and proper means for the plaintiff to alight.

4. The defendant not regarding its duty in that behalf, when said train had reached plaintiff's said destination, did not stop said train at a safe and proper place for the said plaintiff to alight therefrom, and did not provide a proper place and means for plaintiff to alight therefrom, and it being night and dark, the defendant did not maintain or provide proper lights, so that the said plaintiff could see the dangerous conditions existing at that place.

5. The defendant failed and neglected to provide reasonably safe and proper means of exit from said train at Orange aforesaid, the place of plaintiff's destination, but so stopped said train at said station, and so maintained said station, train and alighting place that the steps and only means of exit from said train were an unusual, unreasonable and unsafe distance or height from the ground or surface to which said steps and means of exit led, and the defendant at that place did not provide, maintain or construct a platform or any other structure or arrangement, permitting or affording a reasonably safe exit to be made from said train, and defendant did not assist the said plaintiff in alighting from said train, although given opportunity so to do.

6. The said plaintiff relying upon the performance by the defendant of its duties, as aforesaid, did alight from the steps of said passenger train, and, by reason of the said negligence and carelessness of the defendant, and by reason of the said dangerous and improper alighting place, and by reason of the defendant's failure to assist the plaintiff in alighting, did fall to the ground.

7. That in said fall, caused as aforesaid, the plaintiff's hip was bruised, fractured and broken and the nerves and ligaments thereof were strained, torn and injured, and plaintiff's nervous system was shocked and injured, and she became and was sick, sore, lame and disordered, and remained and continue so from thence hitherto, so that she suffered and underwent great pain, and in the future will suffer and undergo great pain, and has been permanently injured, and has been and will be hindered and prevented from transacting and attending to her necessary and lawful affairs.

The plaintiff, Emma E. M. Gore, demands as damages, $10,000.

SECOND COUNT.

1. The plaintiff, George W. Gore, husband of Emma E. M. Gore, re-alleges Paragraphs 1, 2, 3, 4, 5, 6 and 7 of the first count.

2. The said George W. Gore, the husband of the said Emma E. M. Gore, by reason of the said carelessness and negligence on the part of the defendant, and by reason of the said injuries to his wife, lost and was deprived of her company, aid and assistance from the date of said accident, and will, in the future, be deprived of her company, aid and assistance, and was forced and obliged to lay out and expend, and did lay out and expend divers large sums of money amounting to $2,000 for doc-

tors, nurses and medicines and supplies in and about endeavoring to cure his said wife of her said wounds, bruises and injuries so received as aforesaid, and in the future will be obliged to spend large sums of money in endeavoring to cure his said wife of her injuries sustained as aforesaid.

The plaintiff, George W. Gore, demands as damages, $5,000.

LUM, TAMBLYN & COLYER,
Attorneys for Plaintiffs.

Answer to Amended Complaint.

Filed July 20, 1914.

New Jersey Supreme Court.

EMMA E. M. GORE, *et al.*, *Plaintiffs,* *against* THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY, *Defendant.*	*Answer to Amended Complaint.*

The above defendant, The Delaware, Lackawanna and Western Railroad Company, answering the allegations contained in the first count of the plaintiffs' amended complaint, says:

1. This defendant admits the allegations contained in the first paragraph of the plaintiffs' amended complaint.

2. This defendant says that it has no knowledge or information sufficient to form a belief, so as to answer the allegations contained in the second paragraph of the plaintiffs' amended complaint.

3. It admits as a general statement of its duties the allegations contained in the third paragraph of the plaintiffs' amended complaint, but as to whether the plaintiff, Emma E. M. Gore, was a passenger on one of its trains, as complained of in the plaintiffs' amended complaint, it has no knowledge or information sufficient to form a belief, so as to answer the allegations contained in said third paragraph of the plaintiffs' complaint.

4. It denies the allegations contained in the fourth, fifth and sixth paragraphs of the plaintiffs' amended complaint.

5. It has no knowledge or information sufficient to form a belief so as to answer the seventh paragraph of the plaintiffs' amended complaint.

This defendant, therefore, prays that the above action by the plaintiff, Emma E. M. Gore, be dismissed against it with its taxed costs.

This defendant, answering the allegations contained in the second count of the plaintiffs' amended complaint, says:

1. That it reiterates as its answer to the first paragraph of the second count of the plaintiffs' amended complaint its answers to the first, second, third, fourth, fifth, sixth and seventh paragraphs of the first count of the plaintiffs' amended complaint.

2. It has no knowledge or information sufficient to form a belief as to the allegations contained in the second paragraph of the second count of the plaintiffs' amended complaint.

Wherefore, it prays that the above action be dismissed against it with its taxed costs.

FREDERIC B. SCOTT,
Attorney of Defendant.

Morris County Supreme Court.

EMMA E. M. GORE,
Plaintiff,

vs.

D., L. & W. R. R. Co.,
Defendant.

Transcript of the testimony of George Gore and Emma E. M. Gore, taken at the trial of the above entitled cause, at the Court House, in Morristown, N. J., on October 14, 1915.

Before Hon. William H. Speer, *Judge,* and a Jury.

For the plaintiff, Lum, Tamblyn & Colyer; Elmer King, of counsel.

For the defendant, Frederic B. Scott.

Mr. Lum. With the permission of the court, I will call Dr. Webb out of order, as he is anxious to get back to the city.

HENRY V. WEBB, sworn for the plaintiff, testified as follows:

Direct examination by Mr. Lum.

Q What is your profession, doctor? A Physician.

Q Where do you live? A Orange, New Jersey.

Q How long have you been practicing as a physician? A Fifteen years.

Q Do you know Mrs. Emma Gore, the plaintiff in this case? A I do.

Q Have you ever treated her? A I have.

Q When, with reference to an accident? A I was called to see her on the 3d of February, 1914.

Q Where did you see her? A At Mr. John K. Gore's residence in Orange.

Q What was the condition at the time? A Suffering from a fractured hip, as I diagnozed the case.

Q Will you give us the details? Were there any other signs of injuries or bruises? A Well, I saw her so recently after the accident that the bruises themselves had not developed sufficiently just then; they developed later, of course.

Q Will you give the jury some definite idea as to the injuries to the hip? A I was called to see Mrs. Gore on the third of February, 1914, and she was suffering, as I diagnozed her case, from a fracture of the left hip, so called. Shall I tell anything about how the injuries—

Q Tell what you found was her condition? A I found from the conditions present that the hip was fractured, due to its immobility, pain, loss function, and different things which are the signs of a fracture.

Q Where was she taken from Mr. John Gore's residence? A To her home in Morristown.

Q How long did you see her, continue to treat her? A I think it was (referring) February 3d to July 29th, the same year, 1914.

Q When you next saw her after February 3d, did you find any bruises or other injuries? A You mean physical injuries?

Q Yes. A There were some bruises, yes, sir. I don't recall any other fractures, if that is what you mean.

Q No other fracture? A No.

Q How did her condition remain during the time that you continued to see her? A There was

an element of shock, of course; pains. She proved a thoroughly satisfactory patient; she was plucky and did not complain any more than you might expect; rather less.

Q Was such an injury as this apt to be painful to her? A Oh, yes; usually is very painful on motion especially; what requires very quiet position in bed, too. Any motion would usually cause pain.

Q What was the amount of your bill, doctor? A The total amount, I believe, is $348, my bill.

No cross examination.

HARRY T. MAXWELL, sworn for the plaintiff, testifies as follows.

Direct examination by Mr. Lum.

Q What is your profession? A A Doctor.

Q Where is your office? A In Morristown.

Q How long have you been practicing? A Three years.

Q Do you know Mrs. Emma E. M. Gore? A I do.

Q Have you treated her professionally? A Yes.

Q When first? A The first time I treated her in connection with this case was October 1, 1915.

Q 1915? A Yes.

Q This year? A Yes.

Q Where did you treat her? A At her home.

Q In what condition did you find her? A I was told to make a correction of this shortness of the left leg, which history told us was due to an accident received by getting off a train. I found the left leg half an inch shorter than the right.

Also found a curvature of the spine in the upper clavicular region; the upper part, between the shoulders.

Mr. Scott. I object to that, because it is not within the damages claimed within the complaint.

Mr. Lum. Then I ask permission to amend the complaint. This is an injury which appears at this late date, and there is a charge of permanent injury, I think. (Reads complaint).

The Court. The final injury in the matter is an injury to the hip. If you want to show by this physician that the injury he is talking about now is not a physical injury, but one that is secondary to the injury, a nervous injury, such as you charge, I will permit it.

Mr. King. I do.

Q Did you complete your answer? A I also found Mrs. Gore to be very nervous at that particular time. Whether that was due to the effects of the injury or not, I don't know; I don't think so—at that time.

Q Would such an injury as you found evidenced there be painful? A It was painful on motion if it got to a certain point.

Q This shortening of which you speak was due to the injury to the hip? A I would say yes.

Q Your bill? A You mean to the present time?

Q Yes? A Last month it was $38. This month so far it is about $18, I think.

Q Didn't I understand you to say that you saw her first in October of this year? A Yes.

Harry T. Maxwell, cross.

Q That is the month we are now in. How did you happen to have a bill for last month? A I mis-spoke first; pardon me.

Q Will medical attention continue to be necessary in your judgment? A Yes.

Q For approximately how long, if you can tell? A It is hard, very hard to say, but I would state close on to a year, for it would be very painful to walk so that a limp would not be noticeable.

Q And during that time what would you say as to continuance of medical services? A I don't understand the question.

Q During the year that you mention, before she will be able to walk without a limp, would medical services be necessary? A I meant with treatment.

Q What would be the average cost per month of that, as near as you can judge? A About $25.

Cross examination by Mr. Scott.

Q You say you first treated this Mrs. Gore for this accident in September of this year? A Yes.

Q Am I to understand from that, that you treated her before? A I was called once—twice.

Q For other injuries outside of this injury? A Yes, yes.

Q Are you her family physician? A Yes.

Q And have been for how long? A I have treated in the family for nine months.

Q Nine months inclusive of the last period? A Nine months to date.

Q And during that time you treated Mrs. Gore? A I treated Mrs. Gore twice the latter part of April; that is all; up until September.

Q But not on account of the injuries? A No; another condition.

Q You have described, in answer to a question propounded by Mr. Lum, that you found a curvature of the spine? A Yes.

Q In Mr. Lum's statement to the Court, we are led to believe that the condition that you found was a nervous condition and not a physical condition; will you describe to the jury just the distinction. A I don't mean that a curvature of the spine is a nervous condition; nor is it due to a nervous condition. Curvature of the spine is secondary to the fracture of the hip.

Q And the condition of the spine is a physical condition then? A Yes.

Mr. Scott. I desire to strike out so much of the Doctor's testimony as relates to the curvature of the spine, as it has been disclosed that that is a physical condition, and I feel, not within the declaration or the seventh paragraph of the complaint, and I am honestly surprised that such a claim is made, and am not prepared to meet it.

The Court. I think I shall refuse to strike it out because, while I think what Mr. Lum's testimony shows is a misconception of what he wanted to prove, at the same time the testimony of the Doctor is that a curvature of the spine is secondary to the injury to the hip; that the curvature of the spine is due to the condition of the walk endeavoring to get around the limp. If that were so, I suppose that would be a part of the injury to the hip. I will permit it to stand. Nobody brought anything out to show that, and I shall let the evidence stand because it is purely secondary to the injury to the hip.

Harry T. Maxwell, re-called.

Mr. Lum. May I recall the Doctor?

The Court. You may.

HARRY T. MAXWELL, recalled, testifies as follows.

By Mr. Lum.

Q Doctor, will you explain just what you meant by saying that the curvature of the spine was secondary to the injury to the hip? A On making the examination of this patient, I found the left hip bone was higher than the right; it was nature's way of compensating for any abnormality, working back toward the normal; the left hip being higher, naturally caused the lower part of the spine to incline toward the right, and in working back toward the normal, brought her back to the median line or the center of the body, higher up in the shoulders, above the shoulders; that would give you a curvature out to the right.

Q The curvature then was the result of an effort to accommodate the injury to the hip? A I would say yes.

Mr. Scott. No questions.

The Court. That won't do any harm, will it, Doctor?

The Witness. Beg pardon?

The Court. That curvature won't do any harm to this lady when she recovers from the limp, will it?

The Witness. When she recovers from the limp, well, she recovers from the limp and curvature can be properly brought back to normal.

The Court. You don't listen to the question. I asked you, when she has re-

covered, whether the curvature will do any harm to her? Not while she is recovering.

The Witness. When she has recovered there won't be any curvature.

The Court. Then there won't be any harm, Doctor, from it, will there? In other words, the answer to my question is, when she has recovered from the injury to the hip, the other matter of accommodation will have been corrected and there will be nothing left?

The Witness. Yes, yes.

(Take in testimony of George W. Gore and Emma E. M. Gore).

Mr. Lum. We have served notice to produce upon the other side, asking them to produce plans of the stations of various stations, Mr. Scott tells me that they have not been produced, but I understand by him that we can agree upon the point for which we wish them. With that in mind, I will attempt to state what I have in mind in reference to secondary evidence, and you will correct me if I am in error, Mr. Scott.

Mr. Scott. I have made no specific agreement. Mr. Lum served me with notice that he would offer secondary evidence. I have not produced the plans and specifications. I reserve such right as I have to object to any secondary evidence, as to its sufficiency.

The Court. I suppose you are entitled to regard it as secondary evidence, but not a stipulation.

GEORGE W. GORE, sworn for the plaintiff, testies as follows:

Direct examination by Mr. Lum.

Q What is your business, Mr. Gore? A I am supervisor of the Prudential Insurance Company.

Q Your office is in Newark? A My office is in Newark.

Q You are the husband of Emma E. M. Gore, one of the plaintiffs in this action? A I am.

Q You are yourself a plaintiff? A I am.

Q Where is your home? A In Morristown, N. J.

Q How long have you lived there? A Fifteen years.

Q Do you recall an injury to your wife on the 1st of February, 1914? A Yes, sir.

Q When did you first see your wife after the injury? A I was waiting for her at the station. I had come up from Newark. When the train came in, as she failed to alight, I supposed she had missed the train, and started toward the front of the station, and saw a crowd and went over and found it was Mrs. Gore.

Q Where was she at the time? A She was at the front—when I saw her, two men had lifted her and brought her quite near the station platform, near Cone street.

Q The train that you had gone to meet and from which she alighted was going in which direction? A East.

Q Toward New York? A Toward New York.

Q Has the station at Orange a platform both sides, or platform on one side only? A They had a small platform for the West trains; none for the other. There is just a track and the dirt.

Q About what time was this? A About six o'clock; in February it was.

Q Was it still daylight at six o'clock on the third of February? A No; it was dark.

Q What was the condition—

The Court. What time was that?

Witness. About six o'clock on the 3rd of February.

Q What was the condition of the road bed that you speak of, at the part where she alighted, as to lightness?

Mr. Scott. I object to that on the ground that he has said that when he first saw his wife, there was a crowd around her, and evidently he did not see the accident. There is nothing to show that he knows anything about the place where the accident occurred.

The Court. Until you show that he was at the place of the accident or the car, at the time he saw her, I will sustain the objection.

Q Are you able to tell us the spot where your wife was injured? A I could tell from the direction in which she came when I saw her.

Q Was she being carried when you first saw her? A She was being supported on either side by two gentlemen, and her face was very haggard looking as I came to her. I pushed the crowd aside as soon as I saw who it was, and came to her. She had moved forward several steps at that time.

Q Where was she then? A She was at the end, the east end of the platform, very close to the street, then. They had brought her over at an angle, to bring her upon the platform of the car to the station.

Q About how far had she moved? A Well, from where the platform that she stepped off, I should say, maybe, ten or twelve feet.

Mr. Scott. I ask that that be stricken out, unless he knows as a fact. He says from the platform of which she stepped off.

The Court. Yes; I will strike that out. He does not know anything about that. He did not see it. He might have been a mile away from there.

Q Where was your wife taken immediately after the accident? A To my brother's home in Orange.

Q By whom was she treated? A By Dr. Webb.

Q Later was she brought to Morristown? A Later she was brought—some two months—without getting very close to it, perhaps—some two months later, she was brought home in an ambulance.

Q Where did she remain during those two months? A At my brother's house.

Q Were the services of a nurse necessary during that time? A Yes; we had two nurses; one at once, that same night, and then later on an additional nurse, so that for a long time we had two nurses.

Q Have you paid anything for the services of the nurse or nurses? A I figure I paid about nine hundred dollars' nurse bills. That could be verified.

Q Were there any X-ray plates taken? A Yes; we had Mrs. Gore removed to the Orange Hospital two days afterward and X-rays taken of the injury.

Q Do you remember how much that was? A Thirty dollars; three plates at ten dollars.

Q You spoke of an ambulance; was there an expense in connection with that? A Thirty dollars; it cost thirty dollars to take Mrs. Gore up to Morristown in the Smith Ambulance.

Q Did you have the services of masseur? A Yes, for quite a while; some fifty dollars, I think, we paid a masseur.

Q Doctor Webb has testified that he treated your wife from February until July? A Yes.

Q In July, what happened? A We then had Dr. Heinke, of South Orange, come up; she was nearer and it was more convenient, and she began to treat Mrs. Gore.

Q How long did she treat her, do you know? A She has treated her until about the first of July of this year, beginning from the time that Doctor Webb ceased treating her.

Q Will you tell us what was paid Dr. Heinke? A I should suppose about four hundred dollars we paid Dr. Heinke.

Q Will you tell us whether or not this injury was painful to Mrs. Gore?

Mr. Scott. I object.

The Court. I will sustain the objection.

Q Will you tell us whether you were able to observe—whether the injury seemed to be painful? A It certainly did.

Q Before this accident what had been the state of Mrs. Gore's health? A Why, in fairly good health; we went about a great deal; she could stand any fair amount of doing things; she is not in robust health, but she was in good health.

Q Are the services of a doctor still required? A Yes.

Mr. Scott. I object.

The Court. Objection sustained. The question and answer will be striken out.

Q Are you still employing medical services? A We are.

George W. Gore, direct.

Q Did you examine this train after the accident; look at it at all? A At this particular train, that day, do you mean?

Q Yes. A No; I was simply interested in getting Mrs. Gore somewhere where she would have less suffering.

Q Did you examine the train later? A At a later date in Morristown, the same train, 5.05, I think it was. I went down to the station and looked it over—yes, sir.

Q Did you observe the steps on the cars?

Mr. Scott. I ask that I be permitted the right to examine preliminary to find out if it was the same train that he went down and examined, a certain train in Morristown.

The Court. You may cross examine.

By Mr. Scott.

Q Can you tell us how you would pick out any individual coach or car of a train? A No, I could not tell you that I could, but—

Q Could you tell by the numbers on the outside of the cars? A No, but the same number of steps and the same as the three steps on the car that I saw was on the car that Mrs. Gore was on.

Q The only thing that you can identify a train by is the number of steps on each car; you don't know which car Mrs. Gore fell from? A No, I do not; I do not know whether—

Q Do you know how many cars were in that train? A That she fell from?

Q Yes. A I could answer that if I would have time to figure it out. I knew at the time how many cars.

George W. Gore, cross.

Q Well, how many were there? A I think there were five cars, and then at South Orange, or one of the places, they added some more cars.

Q You were not on that train? A I was not on that train.

Q You don't know anything what they did at South Orange, do you? A No, except what Mrs. Gore said.

Q On that particular day?

The Court. You need not go any further; he doesn't know.

Mr. Lum. I wasn't offering it for that purpose; I was merely offering it for the purpose of showing that there is no standardization of steps; that some cars have three steps, some four steps and some five on the train, and under the case, in my judgment is as important to show that there is no standardization of steps.

Mr. Scott. We will admit that.

Mr. Lum. Very good.

Cross examination by Mr. Scott.

Q Doctor, you have often been at the Orange station? A Yes.

Q You have seen passengers alight from the eastbound trains? A Yes.

Q And in alighting from eastbound trains they get off on the side toward the station? A Yes.

Q And between the station—between the rails of the eastbound tracks and the rails of the westbound tracks, that is filled in with ballast and screenings, is it not? A Yes.

Q And it was at the time of the accident? A Yes.

Q That is the place where passengers on eastbound trains get off preparatory to going over to the station? A Yes.

George W. Gore, cross.

Q And that is the platform provided by the company there?

Mr. Lum. I object to that, that characterization; it is not a platform.

The Court. You seem to disagree with your client. He has already said that it is a platform. You disagree with him and I am going to take the witness' testimony, and not counsel's suggestion.

Witness. I would like to say that while Mrs. Gore—

The Court. No; you are not asked to say anything now. Your lawyer has asked you about the case, and the other side may object to what you are going to say.

Mr. King. We want to distinguish between legal platform and—

The Court. I understand you want to do it, but not in accordance with your statements.

Witness. You understand, Judge—

The Court. No; I don't understand anything but what you are asked.

By Mr. Lum.

Q Mr. Gore, will you explain what you meant by the word platform, which you used in connection with the eastbound track? A Yes; I did not mean to say that it was a platform at all. Of course, I have been saying that; I do not consider that bit of dirt a platform, and, besides, Mrs. Gore did not get off on that bit of dirt.

The Court. That will be stricken out.

Q Will you explain, Mr. Gore, what you mean by the word platform, which you used in your answer a moment ago? A Will you tell me what my answer was?

George W. Gore, cross.

Q You used the word platform in connection with the place where Mrs. Gore alighted from the eastbound track; is there any platform connected with the eastbound track? A There is no platform on the Orange station on the eastbound track.

By Mr. Scott.

Q But the passengers coming down the eastbound trains get off the eastbound track on the side toward the station between the westbound track, which space between the two tracks is filled with ballast and concrete and screenings, is it not?

Mr. Lum. I object to the question; in the first place it is double informed, and in the second place it contains an assumption that the place contains ballast and so forth.

The Court. Objection overruled.

Exception.

A I don't know what the composition of that ballast is; I don't know.

The Court. Haven't you already said that it was, Mr. Gore.

Witness. Well, Judge—

The Court. I am just asking you whether you had not said already, in response to a question by Mr. Scott, asked you previously.

Witness. Yes; then I would like to recall what I said.

The Court. Why do you want to recall it?

Witness. I am a little bit green at this, Judge.

The Court. Do you mean to say that because you are green you did not tell us all you thought about it?

Witness. No, sir

The Court. What is the point, then? Why did you say it if you did not mean it?

Witness. I did not know that went in as an answer to his question. That was all. I want to say that that is not a platform, in my opinion.

The Court. Well, we will strike that all out because we did not ask you that.

Q Doctor, I show you a basket of stone; was the platform at that time composed of stone of that character?

Mr. King. We object to the designation of counsel, of the use of the word platform.

The Court. I think I shall permit the question to be asked, because the witness had already answered the question once.

A I don't know.

The Court. We have got to assume that he means the platform that was first referred to.

Q You have no knowledge at all? A No.

Q Of what the platform was made of? A No. I have no knowledge what the road bed was made of.

The Court. You said you were down there many times, Mr. Gore?

Witness. I have been on the station a number of times.

The Court. Prior to the happening of the accident to your wife?

Witness. Yes.

The Court. Was your wife with you?

Witness. Prior to that?

The Court. Yes.

Witness. I guess so, yes. My brother lives in Orange, and we go to see him occasionally.

The Court. How often was your wife with you there?

Witness. Wasn't so many times, because I usually—I came up from business.

The Court. What do you say?

Witness. Oh, maybe twice.

EMMA E. M. GORE, sworn in her own behalf, testifies as follows:

Direct examination by Mr. Lum.

Q Mrs. Gore, you are the plaintiff in this case? A I am.

Q Or one of them. And how old are you, madam? A Sixty-four.

Q And you are the wife of Mr. George W. Gore? A I am.

Q You live in Oliphant Avenue, Morristown? A Oliphant Park, Morristown.

Q Do you remember taking a train at Morristown to go to Orange on the night or evening of February 3rd, 1914? A I do.

Q What train did you leave on? A I don't know whether it was the 5.05 or 5.10; what we ordinarily call the five o'clock train.

Q You took the train at Morristown? A I did.

Q Will you please tell the Court whether at the station in Morristown there is a platform alongside of the cars? A Yes; there is a platform.

Q Can you tell me how high the platform is above the rails? A Why, I should say about a foot.

Q How much? A I think about a foot.

Q On this car that you got on in Morristown, were you assisted on by any brakeman with a foot stool? A No.

Q Did a brakeman assist you on at all? A No.

Q You got on yourself? A Yes.

Q Of the train of cars, did you notice whether any were unlighted? A Yes.

Q How many were unlighted, according to your best recollection? A I don't know whether it was one or two.

Q The car in which you had gotten, was that next to the blind cars, the unlighted car? A No; I passed one lighted car and entered the second.

Q How many lighted cars were on the train at Morristown? A That I don't know. I approached the train from Morris Street steps, so that I did not see the length of the train, the full length.

Q Then you started on your way to Orange; had you gone to Orange many times before this and gotten out at the station? A I had been at Orange a few times before and had gotten off at the station.

Q I am speaking now in traveling from Morristown toward New York, or going east? A Yes.

Q What is your best recollection as to the number of times you have gotten off at Orange station from Morristown? A Why, I have perhaps—I don't know—four or five times, perhaps.

Q Covering what period? A Well, that was prior to my accident.

Q Yes, but for how long prior? A Oh, four or five years.

Q Now, when you had gotten—in getting off at Orange, prior to that time, where had you alighted? A About on the center of the platform at the Orange station, in that vicinity.

Q There was some question here about a platform and the stone that has been put in between the tracks; when you speak of platform, do you mean the stone filled in between the tracks or the concrete platform? A I stepped off on the balustrade—whatever it is; that is between the tracks; but I was about in the center of the length of the platform.

Q It was the balustrade that is filled in between the two tracks upon which you stepped? A Yes, that was where I alighted prior to my accident.

Q In getting off there—had you ever gotten off of the 5 or 5.10 before? A I don't remember that I ever had.

Q In going down on the other trains, had you had assistance of a brakeman with a foot stool in getting off at Orange? A Always.

Q What is that? A Always; never had alighted without that, I think.

Q In getting on at Morristown, did you have any difficulty in getting on the step? A No.

Q I mean from the platform you have got to step up to the first step? A Yes.

Q Was it easy to get up, or did you have difficulty? A Well, I don't know that I had—had difficulty, but it was not an easy step as steps now are.

Q When you get down to Orange and the train stopped, did you notice whether anybody called out Orange as being the station stop? A No.

Q However, you knew that you were at Orange, did you? A Yes.

Q And you attempted to get out? A Yes.

Q Did you notice any conductor or brakeman? A I did not see them; I looked for them.

Q Where did you sit in the car, in reference to the center or either end? A I sat forward of the center.

Q And then did you notice people getting out? A Yes; there were a few.

Q Did they precede you or follow? A They preceded me, I think.

Q How many went ahead of you? A Perhaps half a dozen; not more than that, I think.

Q Would you say whether they were women or men, or children? A I should say they were—I don't remember. I remember a man. I think there were women, and I think there were men.

Q Were you the last one that got off? A I think so.

Q When you got up and stepped out from the train, from the car on the platform, what did you—I won't ask you that. Had the last person gotten off this step before you started down, or did you follow after? A I think they had gotten off the step before I started down.

Q When you started down, how many steps did you go down? A Three; that is, counting the platform.

Q And then, after the third step, was there a step below that? A No.

Q What have you to say about the place you had stopped at; was there any light there? A Not sufficient light to see the ground.

Mr. Scott. I object to that; that is a conclusion.

The Court. Objection sustained. Strike out the answer.

Mr. Lum. I consent to that.

Q The light was dim there? A Very dim.

Q That is, the place where you could not see, the light was dim up there? A Very dim.

Q Did you see the ground? A I did not.

Q Why didn't you? A Not light enough.

Q When you attempted to get off, tell me how you did that? A I took hold of the rail with my right hand, as I stood on the lower step, and reached down with my left foot, as far as I could, and then let go with my hand and with my foot, but the ground was not there.

Q How much was it below your foot? A Well, I don't know; it seemed to me it was a long distance, and I lost my balance.

Q What did you strike, can you tell me that? A Belgian block.

Q What was their condition? Of course, you did not see them; as your foot struck, what did you feel about the Belgian blocks, whether they were rought or smooth? A They were rough.

Q What then happened to you? A Why, I pitched, and tried to gain my equilibrium, but failed and fell.

Q When you feel, where did you fall? A I fell at an angle across the westbound tracks, part way, and, in falling, I turned on my side, so that I struck my left hip on something.

Q Can you tell me where this place that you alighted was—was that where you previously alighted, or was it in the roadway? A It was in the roadway; it was where the street crosses the track.

Q Where the street crosses the track? A Yes.

Q You now know whether at that time there were Belgian blocks in the roadway? A Confident about that.

Q Did someone assist you to your feet that night? A I partly raised myself on my feet, and then felt myself being lifted on either side.

Q Where were you taken? A Right across the track to the platform.

Q Can you tell me whether you fell on the further side of Cone Street, going toward Newark, or the side toward the station? A The side toward the station.

Q You fell toward the side toward the station? A Toward the side toward the station.

Q Of Cone Street? A Yes.

Q Is there a trolley track running through Cone Street? A Yes.

Q How near did you fall on the other side of the trolley track, or this side? A This side.

Mr. Scott. By this side, you mean what?

Q The Morristown side? A The Morristown side.

Q Can you tell me whether there is a sidewalk across the railroad track on the west side of Cone Street? A No; there is no sidewalk there.

Q What physical pain did you suffer from this injury? A Do you mean did I have a fractured hip?

Q I am asking you what physical pain you suffered; the doctor told us what is the matter with you. A I suffered extraordinary pain.

Q Yes; for how long a time, Mrs. Gore? A Oh, for months and months, and I am still suffering.

Q Were you able to sleep nights? A No.

Q Could you lie on your hip? A Oh, not at all.

Q Can you now lie on your hip? A Yes; I can lie on my hip now.

Q What difficulty do you find in walking? A Well, I find pain and I can only walk a short distance.

Q Do you have any limp when you walk? A A little.

Q Does that interfere with your locomotion? A Oh, yes.

Q But it is getting better, isn't it? A It is getting better.

Q And you hope to fully recover? A I hope to.

Q This pain that you now suffer, do you find it decreasing or increasing as days go by? A Well, it is decreasing.

Q And quite perceptibly so? A When compared with several months back, yes.

Q What sort of heel did you have on your shoe that night? A A low heel.

Q What do you mean by a low heel? A Well, about like that (showing heel).

Q Have you the same sort of heel on your shoe now? A Yes.

Mr. Lum. May I ask the jury to see it.

The Court. You may.

Q Just show them your foot, will you—just your heel, so that they can see it? A (Witness exhibits heel to the jury).

Cross examination by Mr. Scott.

Q You told us in your direct examination, Mrs. Gore, that the step of the car when you got on at Morristown was not an easy step? A Not particularly easy, but it was not particularly hard; it was higher than some.

Q In your traveling down to Orange station prior to the time of the accident, was that in the day time or night time? A In the day time.

Q Have you any recollection as to the exact number of times you traveled down there, taking the period a year before the accident? A Oh, not more than once—

Q Not more than once? A In the year prior.

Q When you got on the train at Morristown, can you tell us about what car from the engine, or what

coach from the engine you got in? A That depends on how many dark cars there were—not lighted.

Q Did you see the engine? A I saw the engine; I passed the engine. I went to the train from the Morris Street station. I did not go into the station.

Q That is near the head of the engine? A Yes; I passed the engine.

Q Passed the engine? A Yes.

Q And do you recollect whether the first car was lighted? A No; the car was dark.

Q Do you recollect whether the second car was dark? A That I don't remember, whether there was two dark cars or whether there was only one.

Q Did you get into the car next to the dark car? A No; I passed one lighted car.

Q You passed one lighted car? A Yes.

Q And you went in that car and took a seat? A Got in the second lighted car and took a seat.

Q When you got into the car, where did you sit? A I sat on the right-hand side of the car forward of the center.

Q And after the train stopped at the Orange station, you saw these people walk forward to the door? A Yes.

Q And among those people were some men and women? A Yes.

Q And did you get out at the same time that these people were walking toward the door? A I don't remember whether—yes; I must have followed them.

Q And you followed them. At that time were you thoroughly active on your feet? A Yes.

Q And as a person of your age, you had good eye sight, perfectly good? A Yes; perfectly good.

Q And as these people went to the front door, did you, like passengers usually do, get out in the

aisle and follow them out to the platform? A I don't know; I suppose probably I did; that is the habit of passengers.

Q And as they went down, you went out on the platform, too? A I went out on the platform afterwards.

Q And as the last person before you went down, did you start to follow them down? A I think I waited until they were entirely off the car.

Q Did you notice those people get off? A They must have gotten off, because when I was at the edge of the step, there was no one else there.

Q Did you see any of these five or six persons get off? A I did not notice.

Q When you got to the platform outside of the car, the stairway was absolutely free and clear? A No; it wasn't so absolutely free when I reached the platform.

Q But when you started to go down the steps? A When I stepped down—

Q It was absolutely free and clear? A I think so, so nearly as I can remember.

Q Was there any interference with your progress as you went down the steps? A No, not the slightest.

Q In all your other trips to the Orange station, you have told us that you were always assisted by a brakeman? A Yes.

Q In your counsel's opening to the jury he has told us that you got your feet caught in some way; would you just tell the jury how it was that you got your feet caught in your dress?

Mr. Lum. We object to question being based upon a recitation of the opening.

The Court. Objection sustained.

Q As you went down the steps, Mrs. Gore, did your skirts, in any manner, interfere with your progress? A Not at all.

Q And you had absolute freedom of motion? A Perfect.

Q As you went down? A Yes.

Q When you got down to the bottom step, you say it was very dim? A It was.

Q Will you say it was dark? A It was dark enough for me not to be able to see the ground.

Q You could not see the ground at all? A I could not see the ground.

Q About how long did you wait on that step? A Well, the train don't wait very long, you know, ordinarily, at a station.

The Court. How long did you wait, he wants to know?

Witness. I don't know; I could not tell you how many seconds I waited.

Q A couple of seconds? A I could not tell you how many seconds I waited, as I stood there.

Q You judgment is that you waited a couple of seconds? A Yes, I should think more.

Q And then you proceeded to let yourself down? A Yes.

Q I did not quite get your description of how you let yourself down; will you explain the method of your letting yourself down, just before the accident happened? A As I stood at the edge of the steps, I looked for either the conductor or brakeman; neither were there. I then, after thinking a moment, took hold of the rail and lowered my left foot as far as I could; then I let go my right foot, and I immediately let go with my left foot and came down, and there was no ground where I supposed the ground was, and I pitched.

Q During this process of letting yourself down, you could not see the ground at that time? A No.

Q From the time that you started to let go until the time you struck the ground, it was impossible

for you to see the ground? A I did not see the ground at all.

By the Court.

Q When you say that you pitched, do you mean you pitched before you touched the ground at all? A I lost my balance before I touched the ground at all.

Q Before you touched the ground at all you lost your balance? A Before I touched the ground at all I lost my balance.

Q And by pitching, you mean you fell? Is that it? A I did not pitch then; I twisted, as I say; I had this right foot coming over the left foot.

Q Well, your left followed your right after coming over the left? A Yes, and it twisted me around; I tried to catch myself, and pitched; I don't know whether I went one or two steps, then fell.

Q What do you mean, that you pitched one or two steps? A Why, I just—as one does when walking off a stoop, and did not know that there was a stoop there; you pitch and usually gain your equilibrium; but as my foot was so far apart when I let go, I could not gain my equilibrium, as I tried to, and in so doing, pitched and down I went.

Q When you pitched, you let go before you touched the ground at all? A I let go before I touched the ground, because the ground was not there.

Q But you did let go before you felt the ground? A Yes.

Q And you were then pitching? A Yes.

Q In what posture was you while you were pitching? A I have difficulty of telling you that, I am sure.

Q As near as you can; just as near as you can give it to us? A I was trying to get my balance,

and I had my arms out; I failed to get my balance, and I went down.

Q So that you went along the ground how many steps before you fell eventually? A Why, I would not say. I went out more than two steps.

Q But you did go two steps? A I think I went two steps, as nearly as I can tell.

Q And then why did you fall? A Because I could not get my balance.

Q That was the only reason why you fell, was it? A Why, surely. The ground was so uneven that I think that had to do with my not being able to get my balance.

Q The ground was uneven where? A Where I alighted; on the Belgian block.

Q You did not fall where you alighted? A I did not fall where I alighted; I tried to save myself.

Q Yes, and you took a couple of steps? A Yes, but it was on the Belgian blocks I took the steps.

Q And then, after you had taken a couple of steps, you fell? A Yes.

Q Because you were unable to get your balance? A Yes.

Q What did the ground have to do with that? Just tell us what happened to your feet while you were taking the steps? A The unevenness of the ground.

Q How was it uneven? Did you slip on the ground? A No, but I stumbled.

Q Stumbled? A Yes.

Q You mean that you struck your foot against some obstruction? A I might have.

Q You must have; did you? A I could not swear to that. I don't know what I did. I tried to save myself, and that is all I do know about that part.

Emma E. M. Gore, cross.

Q Well, now, you want to get it accurately what the unevenness had to do with your fall. That is what I want to find out. Did you strike your foot against any obstruction? A I don't know.

Q You do not know. Did your feet slip down on any unevenness? A I think it did, as near as I remember; but I don't know.

Q Well, do you remember whether it did or not? A I don't know.

Q You don't know? Very well.

By Mr. Scott.

Q This step, Mrs. Gore, on these cars—you say that there was a platform and three steps? A Not beyond the platform; the platform forms one step.

Q The platform is one step; then there were two other steps? A Yes, that is my memory.

Q I have roughly drawn a sketch, Mrs. Gore; I ask you if that is what I am to understand; does that represent what we are to understand? This top line (indicating) where I have marked it the letter P, is the platform? A Yes.

Q You can see that? A Yes.

Q The next was step one and the next was step two? A That is my memory.

Q And then the next was where I have marked X; that was the ground? A Yes, the Belgian block.

Q That was what you called the ground; the platform, one and two steps? A As I remember it.

Q As you remember. Did you get off the head of the train, the forward end toward Hoboken? A Yes.

Emma E. M. Gore, cross.

By the Court.

Q Why do you say Belgian block—it was so dark that you could not see them? A Because I went there afterwards and saw what it was.

Q Oh, that is the only reason why you say Belgian block? A No; I know it was. My brother-in-law—

Q Why did you go afterwards to see what it was, if you knew what it was then? A I did not know whether it was cobble or Belgian, and I asked my brother-in-law to go and see just what it was that I then tumbled on.

Q Then you did not go afterwards, did you? Your brother-in-law went.

Q And then he told you that it was Belgian block? A No; I have been there since.

Q When were you there? A I was there as soon as I was able to walk.

Q How long after the accident was that? A Several months; but the blocks were there that had been there quite a while, for they were worn.

Q How did you know when you went back there the next time, precisely where it was that you fell, when it was so dark when you stepped down that you could not see them? A I could not see the ground.

Q How did you know what place on the ground it was that you fell? It was so dark that you could not see? A I saw some people on the sidewalk in front of me as I stood on the platform.

Q On the sidewalk? A On the sidewalk.

Q I understood you to say when you got out on the platform you looked for the brakeman or conductor? A I did.

Q Why? A To help me off.

Q You thought it was unsafe to get off without assistance? A No, it wasn't that; but I was in the habit of having help.

Q Thought that you needed it? A I wanted it.

Q You thought you needed it? A Well, when I could not see, wouldn't anybody want it?

Q You did want it because you could not see? A I could not see the ground.

Q I say, is that why you wanted it? A Well, it was my habit; I always did.

Q Was that why you wanted it? A Yes; that is why I wanted it.

Q You said that when you could not find a conductor or brakeman, you thought a while; what was it that you thought about? A I did, as I did not have a light, and the distance was so great to the ground, I wondered—that is, I thought the other people had gotten off and I could.

Q Then you knew that the other people had gotten off in safety, didn't you? A I supposed they had. I did not see anyone lying around.

Q Well, there wasn't any other accident? A None except mine.

Q And these men and women all got off there? A I suppose so.

Q So far as you know about that? A I don't know anything to the contrary; I don't know. So far as I can say, they did.

RALPH E. LUM, sworn for the plaintiff, testified as follows:

Direct examination by Mr. King.

Q Where do you live, Mr. Lum? A Chatham, New Jersey.

Q Do you commute on the D., L. & W. railroad? A Occasionally.

Q Have you had occasion to ride, and have ridden to Morristown for some length of time? A I have.

Q How frequently? A Quite often; sufficiently often so as to be entirely familiar with the stations and platforms on the road from Morristown to Hoboken.

Q What have you to say about the Morristown Station, as to platform?

Mr. Scott. I object. What was its condition at the time?

Mr. King. Yes.

Q How long has the Morristown Station been built? A The Morristown Station has been built approximately—been in the course of completion perhaps—it began three and one-half years ago.

Q Finished three and one-half years ago? A Approximately, yes.

Q Do you know whether there are station platforms at this station? A The station is so constructed that there is a platform at which passengers may alight on trains going both east and west. The old station had but one platform, and that was on the south side, so that trains going west had no platform at which passengers could alight. That has been changed by the new station.

Q How high is the platform above the track at Morristown, the eastbound track? A Several inches above the track.

Q Above the rail?

Mr. Scott. Specifically what is—

The Witness. Several inches, I should think; I could not give it to the inch, I would not expect to.

The Court. If you want it to stand, I will permit it to stand.

Mr. King. I want Mr. Scott to make his objection.

Mr. Scott. I am withdrawing the objection.

Q What have you to say about Chatham, where you live, is one built up there? A The same condition I have mentioned in reference to Morristown—at Chatham, except that the old station at Chatham had a platform; the station was located on the northerly side of the track, instead of on the southerly side as at Morristown; and that station has now been abandoned and a new structure erected, slightly to the northwest of the old station, with platforms upon both sides, so that passengers coming from the east or west have now platforms at which they may alight. That has been completed since this accident.

Mr. Scott. I ask that that part be stricken out.

Mr. King. "Finished there since the accident."

Mr. Scott. He has described Chatham Station, which has been completed since the accident.

The Court. If you want it out I will strike it out.

Q Has it been completed since the accident? A It has been in course—it was in course of construction at the time of the accident, and the whole work has been completed since.

Q Directing your attention to the platform— A Both platforms were in existence and were being used at the time of this accident.

Q Were there any other new stations between Morristown and Orange? A The same condition I have mentioned exists at the station at Summit. The platforms there are on both sides,

where formerly a platform was only on the north side. The next station is Short Hills, where a similar change has been made. The next station is Milburn, where a similar change has been made. The next station is Maplewood, where a similar change has been made—the old way station which existed between the two formerly, is now done away with. The next station is Short Hills, where at this time the change is made.

Mr. King. I consent that that be struck out.

The Witness. I think that is proper. The next station is Mountain Station, where the same change has been made. Now going on down, we strike Grove street, Roseville avenue, Newark and Harrison, coming to Hoboken, and at each of which places the same change has been made in the structure of the stations. In some of those places the station has been put on the north side and others on the south, but in each of the cases mentioned, the old station has been changed and a new station erected, providing for platforms on both sides of the track. And that same change is in course of progress at Convent and Madison.

Cross examination by Mr. Scott.

Q And at Brick Church the condition is the same as at Orange? A The same as at Orange; the same condition still exists.

Q Are you familiar with stations further up the line? A I was familiar, Mr. Scott, with some.

Q And there are a number of stations up the line? A At Morris Plains, the change is being

made, with the platform being placed on both sides of the track, and there are other stations still further up where that change is being made.

Q You say there are stations up the road in the State of New Jersey similar to the one in question? A There are.

Q Have you any knowledge of the construction of stations of other railroads similar to the Orange station at the time of the accident? A I should say yes.

Q Are you familiar with the Erie Railroad? A I am glad to say that I am not.

Q The Central Railroad of New Jersey? A I have been occasionally on it, yes. I was coming up from Freehold; I suppose I used that.

Q Do you know whether there are a number of stations similar to the Orange station as it was at the time of the accident on the Central Railroad of New Jersey? A I know that there are still some stations similar to that at Orange, with reference to platforms.

Plaintiff Rests.

Mr. Scott. I ask for non-suit, and I will state my grounds first: That the plaintiff has shown to be guilty of contributory negligence. Second, that there has been no negligence shown upon the part of the defendant company.

The Court. I will hear the other side.

(After the argument.)

The Court. Well, gentlemen, I think in this case that there ought to be a nonsuit, and these are the reasons that influence me in arriving at that decision: First of all, it is wise to state, I suppose, that there are three charges made here of negligence, or possibly four. The first charge made is that the railroad did not stop the train at a reasonably safe place, or use reasonable care in stopping at a safe place at which a passenger could safely alight from the train, at her destination.

Secondly, that the railroad company did not furnish proper light to enable her to safely alight from the train.

And thirdly, that the railroad company did not construct and maintain safe and sufficient platforms upon which the alighting of a passenger might be accomplished.

And fourthly, that the railroad company had steps that were too high and were constructed and maintained negligently.

It seems to me, first of all, that there isn't any proof in this case from which the jury could reasonably and fairly conclude that the place where this train stopped to enable this lady to alight, was an unsafe place to alight. We will assume, for the sake of the argument, that it was a street; that it was paved with Belgian blocks, and we will assume that the Belgian blocks felt rough to this lady's feet when she alighted, it seems to me that there is no evidence in the case whatever that the roadway was at all below the level of the station platform; and in dealing with this question of the platform it might be well, once and for all, to get that out of the way. There was a great deal of difficulty experienced in the early part of the evidence—rather the early part of

the introduction of the evidence, with respect to whether the space between the tracks which had been filled in with concrete, or with cracked stone, whatever it might be, up to about the level of the top of the track or thereabouts, was a platform; and Mr. Gore himself seemed to back off very rapidly from an admission in the early letting in of the testimony, that such a space was a platform. It seems to me that there isn't any doubt in the world that such a place is a platform. A platform, if my recollection serves me correctly—I haven't had a chance to look at the books this morning—a platform is simply a place constructed above the level of the circumjacent ground; and a railroad platform is a place constructed above the level of the circumjacent ground to facilitate the embarking and debarking of passengers from a train. That would seem to me to be the plain English or meaning of the word platform. And there isn't any evidence in the case at all, so far as I can see, that this place that had been furnished by the railroad company, which went to the height of the track, was not a platform in the true sense of the word. There isn't any evidence in the case either that the roadway where this lady debarked from the train was not at the same height as this place that had been furnished by the company for alighting.

So that, assuming, for the sake of the argument, that it felt rough to her feet—and almost any Belgian block pavement will feel rough to the light shoes that are worn by women. I suppose there is no knowing what kind of shoes she had on, except, as she said, the heels that she had on were very much lighter than the heels she had on today, and if you would have looked at the slant also, you would have observed that to a person stepping off a train, straight ahead, down

upon the ground, the Belgian block would naturally feel, not a smooth surface, but a rough surface, because Belgian block is not an entirely smooth surface. Now, there isn't any evidence in the case that at the point where she alighted there was any depression, or, as we have heard in some instances cited here, a saucer like depression, or that there was unevenness such as would cause the foot to slip, or that there were any pieces of Belgian block above the level of the street such as would cause one to stumble. I particularly asked Mrs. Gore the question whether she either slipped or stumbled, and she said she could not tell; did not know anything about that. If she could not say that there was, and she was the only person testifying to the facts, of the happening of the accident, of course the jury could not say anything about it. The jury must decide the case upon the evidence and not upon mere speculation; and if the woman herself, who fell, cannot say that the unevenness of the street or the roughness of the Belgian block had anything whatever to do with her falling, it would be folly to say that the jury should be permitted to speculate when she herself was present in the accident and knew nothing whatever about it; and to say that she has made out a case of negligence by reason of the place where she stepped out, is to assert a thing which is not the law in this State.

Now, with respect to the question of the light of this station, it seems to me that I do not need to say anything more than to refer to the case of Traphagen against the Erie Railroad Company, which is found reported in 44 Vroom. That case indicates that where the exigencies of the business may require in some respects higher steps than in others, there isn't any evidence in the case to

show that that isn't the same kind of a step with respect to the height that is used by other well conducted railroad companies. And with respect to the matter of light, there is no obligation whatever, cast upon the railroad company to furnish light, where they have not made the place extra hazardous, or anything of that sort. There is no case that holds that they are required to do that.

Now the next point is the situation here with respect to the combination of these elements, the platform, light and so on. If it was not negligence on the part of the railroad company with respect to the platform, then the platform was reasonably sufficient; as sufficient as the lady had a right to expect. If it was not negligence with respect to the platform, then the railroad company had fulfilled its duty with respect thereto, and she had no reason to expect anything else. If it was not negligence with respect to the light, the railroad company had performed their duty in that particular. If one says, well, it was a reasonably high step and it was Belgian block that she stepped upon, and there wasn't any light there, it seems to me we can, first of all, eliminate the question of both the light and the Belgian block, by saying that there is no evidence in the case with respect to those two, either singly or in combination, neither of which was the approximate cause of this injury. When she stepped down from the car upon the Belgian block, the fact that it was Belgian block did not cause the accident; it isn't proven that it did, and the burden rests upon the plaintiff to show that the accident was due to the negligence of the company with respect to the Belgian block. When she stepped down, if the accident had been caused by the Belgian block, if she could have seen the fact that there was a dangerous place there, had there

been light, then the two, in combination, in all likelihood, might have given rise to a presumption of negligence on the part of the railroad company in stopping at a dangerous place without affording the woman an opportunity of seeing that it was dangerous; but the defect with the reasoning of plaintiff's counsel, it seems to me, is this: that there isn't anything in the case to support the view that it was a dangerous place, and if there had been any light there she would have seen the danger there; had there been light there, she would have seen the Belgian block; had there been light there, what she would have seen would not have prevented the accident. So far as the evidence goes, I think there were several other people who had already stepped upon that Belgian block, and she would have stepped down upon the Belgian block. Now the fact that this step was reasonably high does not indicate negligence on the part of the company. And the fact plainly and definitely appears, as established by the plaintiff, in evidence in the case, when she says that those people, at least six people, some of whom were women, had apparently alighted in perfect safety from the same side and the same step before she got down. It seems to me to be perfectly well established that the proximate cause of the accident was that she stepped down and pitched before she touched the ground at all. That was why I was specially anxious to interrupt in your argument, that you had been slightly inaccurate in stating the manner of the happening of the accident thus generally. I was at pains to ask her whether she pitched before she struck the ground; she said she did, and that was what caused her to fall; that after she pitched and struck the ground, she was not able to get her balance. So that the real, proximate cause of this accident

was the fact that she pitched from this high step. She stepped down and while stepping, she pitched. She tried to recover from that pitching, and she could not do it; and neither by way of light or by way of Belgian block was there a contributing cause to the fact of the pitching. That was due to the high step, and the high step was not a negligent act. So that it seems to me, by reason of the line of cases cited in this State, that none of these causes, nor any set in combination, was the negligence of the defendant; and if none of them might be considered as the proximate cause of the accident, as I think the fact that she pitched by reason of her stepping down from the step was, the fact that she pitched was not caused by any negligence of the defendant. It seems to me that for these reasons which I have stated, there ought to be a nonsuit in the case, and you may have an objection entered in the record to that ruling.

Mr. King. I want to call your Honor's attention, before leaving it, to the fact that there isn't any evidence here that the defendant complied with the full crew act, and having pleaded the full crew act, the proof is that there wasn't a brakeman at this station provided for passengers. That is no part of our case to prove—to prove that they did have a full crew. I take the view that the proof shows that there was no brakeman on that train as the full crew act requires they should have.

The Court. I don't quite understand what you mean when you say it is not a part of your case.

Mr. King. I say we had a right to assume—if my statement is true, and if they had a number of cars, which I claim in this case they did have—they would have had a man there to help the people off.

The Court. The assumption is that they complied with the law.

Mr. King. That is what I am saying to you. Is that the proper procedure when they carry two or three cars dead. That is the very point I am making.

The Court. Well, the point is that you want me to submit to the jury the question as to whether or not they had a full crew, and because the men did not happen to be on the side at the time, and because one or two cars were dead, why if that is the point—

Mr. King. No, I didn't say that. I said the point I have is, if they had a full crew, and they carried two or three cars dead, there would have been a brakeman at this platform, or might have been near there. I am not objecting to your finding; you have ruled.

The Court. No, I want to have these things brought to my attention.

Mr. King. I say it is only fair to call your attention to that aspect of the case.

The Court. I am always very anxious to hear everything you have got to say. I see nothing whatever in what you have said—although you have said it extremely well—to change my mind about the matter at all.

The first point you raised is in regard to the full crew law. There is no charge in this declaration at all under which such a case might be predicated; and consequently it is aside from the issue. And even if there were anything in the case upon which it could be predicated, the presumption is that the railroad company had performed its duties and it was not negligent, and if anybody asserts that it was negligent, the burden of the establishment of that assertion rests upon the party asserting it. In this case there has been

absolutely no proof made to in any way fasten such negligence upon the company.

Now, with respect to the further remarks upon the point that has already been argued by Mr. Lum, I find nothing more than a plain and very pungent statement of the other side of that question. My recollection is perfectly clear on that point, that there is no single thing, and no combination of things that together can be charged as negligence against this company, which negligence the jury may conclude upon the evidence was the proximate cause of this injury. So, for the reasons already stated, I adhere to the ruling I have already pronounced, and you may have an objection entered on the record.

Postea.

Postea.

Filed November 10, 1915

New Jersey Supreme Court.

MORRIS COUNTY.

EMMA E. M. GORE and GEORGE W. GORE, *Plaintiffs,* *against* THE DELAWARE, LACKAWANNA and WESTERN RAILROAD COMPANY, *Defendant.*	*Action at Law.* *Postea.*

This case was tried before the Honorable William H. Speer with a jury at the Morris Circuit on October 13th, 1915.

The Court at the conclusion of the plaintiff's case directed a non-suit against said plaintiffs and in favor of the defendant.

WILLIAM H. SPEER,
Judge.

A true copy,

WM. C. GEBHARDT,
Clerk.