

Court of Errors and Appeals

OF NEW JERSEY.

LILLIAN PARCALL,
Plaintiff in Error,

vs.

NORTH JERSEY STREET
RAILWAY COMPANY,
Defendant in Error.

In Tort
On Writ of Error.

BRIEF OF PLAINTIFF IN ERROR.

The writ of error in this case brings up the single question as to whether the non-suit granted at the Circuit was proper. It appears that the plaintiff, a girl of thirteen (p. 8, l. 42) was riding on a trolley car of the defendant with her mother and sister. Desiring to alight at Gouverneur street (p. 9, l. 35; p. 15, l. 35) the mother notified the conductor (p. 9, l. 37; p. 23, l. 19) and the plaintiff went to the back platform preparatory to alighting (p. 10, l. 15; p. 23,

l. 25) when the conductor rang the bell to stop the car (p. 13, l. 20; p. 27, l. 35; p. 28, l. 25). While the plaintiff was on the platform and before the car stopped she was thrown from the platform by an unusual jar of the car (p. 10, l. 18; p. 20, l. 12) and injured (pp. 12 and 13).

The motion for non-suit was made and granted on the ground that there was no proof of negligence on the part of the defendant.

We submit that upon these facts a non-suit was improper.

The occurrence of a lurch or jerk of a street car of sufficient violence to throw a passenger off the platform who was there preparing to alight, justified an inference of a breach of the duty owed by the carrier, and falls within the maxim *res ipsa loquitur*.

Consolidated Traction Co. vs. Thalheimer,
30 Vroom, 474; *Scott vs. Bergen County*
Traction Co., 34 Vroom, 407.

In the case of *Paganini vs. North Jersey Street Railway Company*, the plaintiff, desiring to alight, went to the front platform of a moving car, and with a tap on the shoulder notified the motorman to stop the car. The motorman put on the brake and slowed down the car and while it was moving slowly the plaintiff placed his right foot on the step and his left on the platform preparatory to alighting when the car started so suddenly that it threw him off.

“It has not been contended, but that from such a sudden movement of the car the negligence of the motorman may be inferred. The company owes to a passenger a high degree

of care, and the occurrence of sudden and unusual jerks of the car have been recognized judicially as ground for the inference of negligence. *Traction Company vs. Thalheimer*, 30 Vroom, 474; *Scott vs. Bergen County Traction Co.*, 34 Vroom, 407.

* * * It is urged that the plaintiff's taking the position he did upon the steps of the car was, under the circumstances, such negligence as should bar his recovery.
* * *

It has been held by this Court that it is not negligence *per se*, for a passenger upon a street railway to go out of a moving car and stand upon the platform awaiting an opportunity to alight, and whether the exercise of due care would require the passenger, under such circumstances, to take hold of the hand rail there, is a question for the jury.

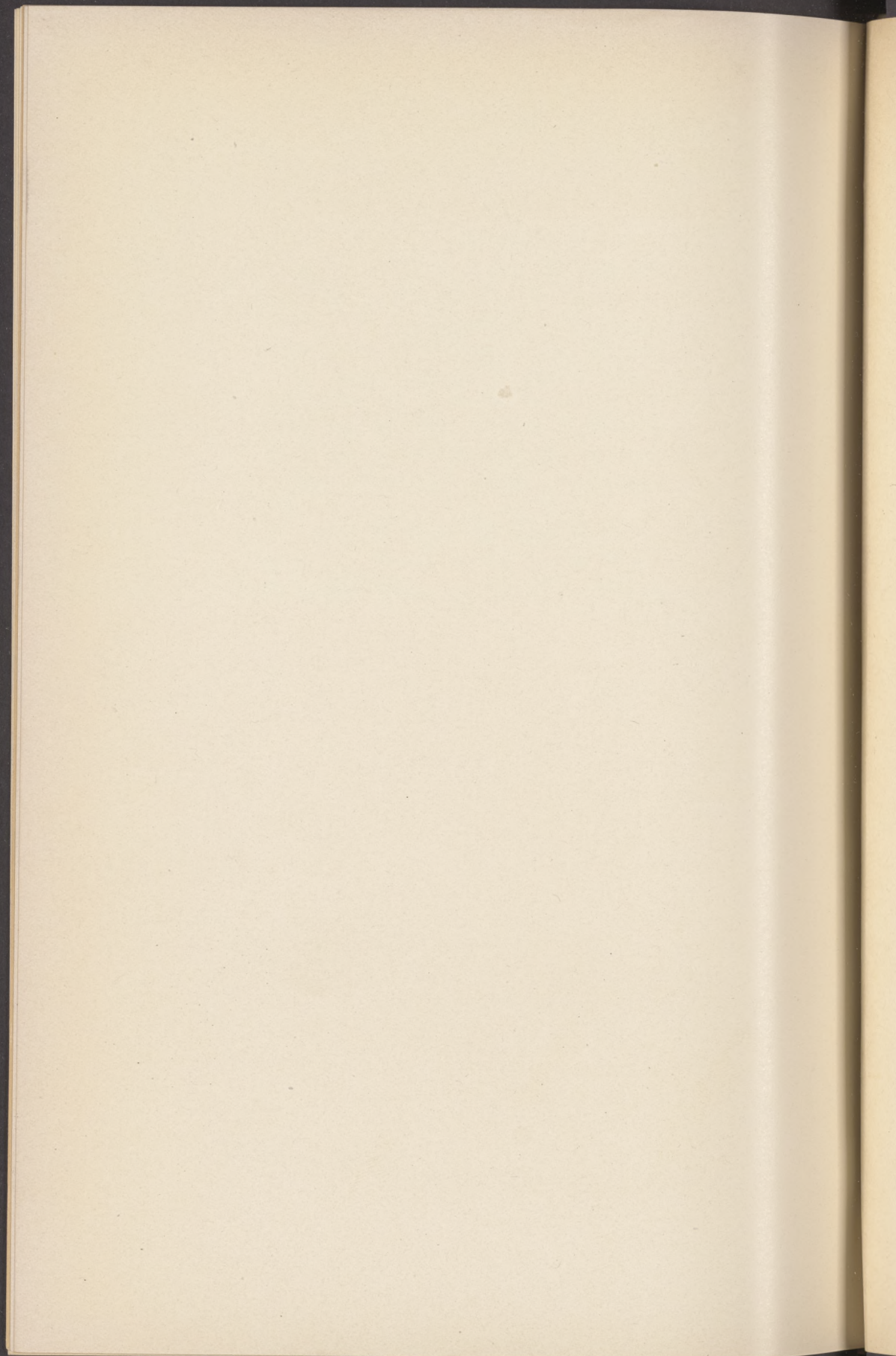
Scott vs. Bergen County Traction Co. Supra."

Paginini vs. North Jersey Street Railway Co., 41 Vroom, 385.

Respectfully submitted,

HARRY V. OSBORNE,
Attorney for Plaintiff in Error.

New Jersey State Library



COURT OF ERRORS AND APPEALS OF NEW JERSEY.

LILLIAN PASCALL,
Plaintiff in Error,

vs.

NORTH JERSEY STREET RAIL-
WAY COMPANY,
Defendant in Error.

In Tort.
On Writ of Error.

Brief of North Jersey Street Railway Com- pany, Defendant in Error.

The plaintiff, a girl twelve or thirteen years of age, was riding on a trolley car with her mother. As the car approached the cross-street where plaintiff and her mother were to alight, plaintiff's mother spoke to the conductor, *then* plaintiff went to the back platform; *after* plaintiff was on the back platform the conductor rang the bell for the car to stop; plaintiff stood on the platform, *the car still going fast*, and held on, *but not very tightly*, with her *left* hand, to a bar of a platform gate. She had hold of nothing with her right hand. Plaintiff was anxious to hurry from the car because she saw a friend, a cousin, on the sidewalk nearly half a block from the point where the car was going to stop. Plaintiff knew there was a switch at the point of the accident. As the car went on the switch, plaintiff was thrown off. The point where she was thrown off was apparently some feet before the car reached the *first* crosswalk of the cross-street, and when it had slowed up some. The car stopped at the *second* crosswalk, which (page 27) is the usual stopping place.

The point where plaintiff was thrown is where two tracks come together (p. 23), on account of there being a turn-out so that one car can pass the other, and it was evidently the car taking the switch at this turn-out that caused the motion of the car that threw the plaintiff. On this state of facts a non-suit was granted.

There is no evidence that the lurch of the car was anything more than is usual when the car takes a switch at a turn-out.

The motorman had no reason to anticipate that a little girl, attracted by her friend on the sidewalk, would go upon the rear platform so long before the car reached the stopping place; or that, if she did go on the platform, she would hold on only slightly, with her *left* hand, when her right hand was unemployed.

In the case of *Graf vs. West Jersey & S. R. Co.*, decided in the New Jersey Supreme Court November 13th, 1905, and reported at 62 Atlantic Reporter, at page 333, the syllabus reads: "Where a train, just as it stopped, gave a lurch to one side which caused the door of a car to shut upon the fingers of a passenger who stood in an open doorway, the facts did not warrant an inference of negligence; the motion of the car appearing to have been no more than the usual motion incident to stopping."

The court, in the above named case, shows the distinction between a usual motion and a violent and unusual lurch.

In the *Corkhill case*, 40 Vroom, at the bottom of page 99, the court said: "The cases that have held street railway companies liable for injuries to passengers caused by the lurch of a car have gone upon the ground that there was a *sudden increase of speed under circumstances that evinced a disregard of the safety of the passengers.*"

In the *Thalheimer case*, 30 Vroom, 474, there was a lurch or jerk sufficient to throw a grown woman

from the car. She was a leaving passenger who went to the rear platform after signaling the conductor and before the car stopped, just as did the plaintiff in the present case. It was held that the lower court was right in refusing to grant a nonsuit. But the case had an element in it that is absent in the case now under consideration. As the court well said, on page 476, "the occurrence of a lurch or jerk of the violence described, fairly justifies an inference that either the tracks were improperly laid or were out of order, or the brakes were improperly handled. At all events, the fact that such a lurch or jerk occurred as would have been unlikely to occur if proper care had been exercised, brings the case within the maxim *res ipsa loquitur*."

It is evident that the Thalheimer case would have been decided differently if the plaintiff's case had shown, as does the case of the plaintiff under consideration, that the lurch was that occasioned by the car switching from one track to another at a turn-out, that the lurch was no greater than was reasonable under such circumstances, that plaintiff knew of the existence of the switch, that plaintiff was holding on only with her left hand, and "not very tight," and that the car had not as yet approached near enough to the stopping place for any special duty of defendant to plaintiff as an alighting passenger to have arisen.

In the *Scott case*, 34 Vroom, page 407, after the conductor rang the bell for the car to stop, and as the car slowed down, the woman arose from her seat and went to the rear platform to await the stoppage of the car, and while she waited on the platform the car gave a lurch forward, and she was thrown. She thought the car had come to a standstill when the lurch forward took place, and threw her off.

The negligence in the *Scott case* seems obvious.

But what has it to do with our present case? In the present case, plaintiff, on page 23, line 30, says: "The car switched, and I was thrown off." On page 27, lines 10 to 20, she is asked: "You knew a switch was there didn't you?" and she answered, "Yes, sir." In the *Scott* case the woman seems to have counted on the fact that the conductor was standing on the platform, and she thought it was all right to stand there, for if it was not he would have said so. But in this case of ours, Lillian did not depend on the conductor, and in fact indicates that the conductor did not know of her movements, for, on page 24, line 20, when asked "When you went out on the back platform do you remember where the conductor was?" she answered: "He was either in the *front* or *back* of the car writing in a little book that he had." On page 28 it appears that plaintiff went onto the back platform *before* the bell was rung, and that she was on the platform while the car was going *fast*. It is clear that the present case has no very strong resemblance to the *Scott* case.

It is not contended that plaintiff had no right on the platform, nor is it contended that the question of whether or not she should have held on securely was for the court. It is contended, however, that in estimating the *extent and violence of the lurch*, the fact that she was not holding on tightly should be considered as it would cause a very slight lurch to throw her from the car. Especially is this true when it was not a forward or backward lurch of the car, but a *sidewise* movement, such as is usual in taking a switch.

In view of plaintiff's testimony that *she knew the switch was there*, (p. 27), it might very well be contended that it was negligence in plaintiff to go on the platform of a fast moving car, and fail to hold on tightly, when approaching the switch, *which she knew was there*. The non-suit was

granted because there was no proof of negligence on the part of the defendant. The motion for non-suit did not rest on the ground of the negligence of plaintiff. But it would seem to be the duty of a court to dismiss a case on failure of proof without any motion for that purpose ; and if this be so, it is perhaps the province of this court to consider, on this writ of error, the negligence of the plaintiff, even though that was not made one of the grounds of the motion for the non-suit.

In the Scott case the motion to non-suit was made on the single ground of the contributory negligence of Mrs. Scott, but the upper court seems also to have considered the question of the negligence of the defendant.

There would seem to be an inference in favor of the correctness of the ruling of a trial judge. In the Scott case and the Thalheimer case, the motion to non-suit was refused in the court below. And the higher court sustained the ruling of the lower court. In the present case, in which the motion to non-suit was *granted* in the court below, the ruling of the lower court should not be disturbed without sound reason. While cases like that of Scott and Thalheimer enunciate certain principles, we have not before us the evidence that formed the basis for the application of those principles, and we must therefore be careful to consider the *principles* of the decisions, rather than the decisions themselves.

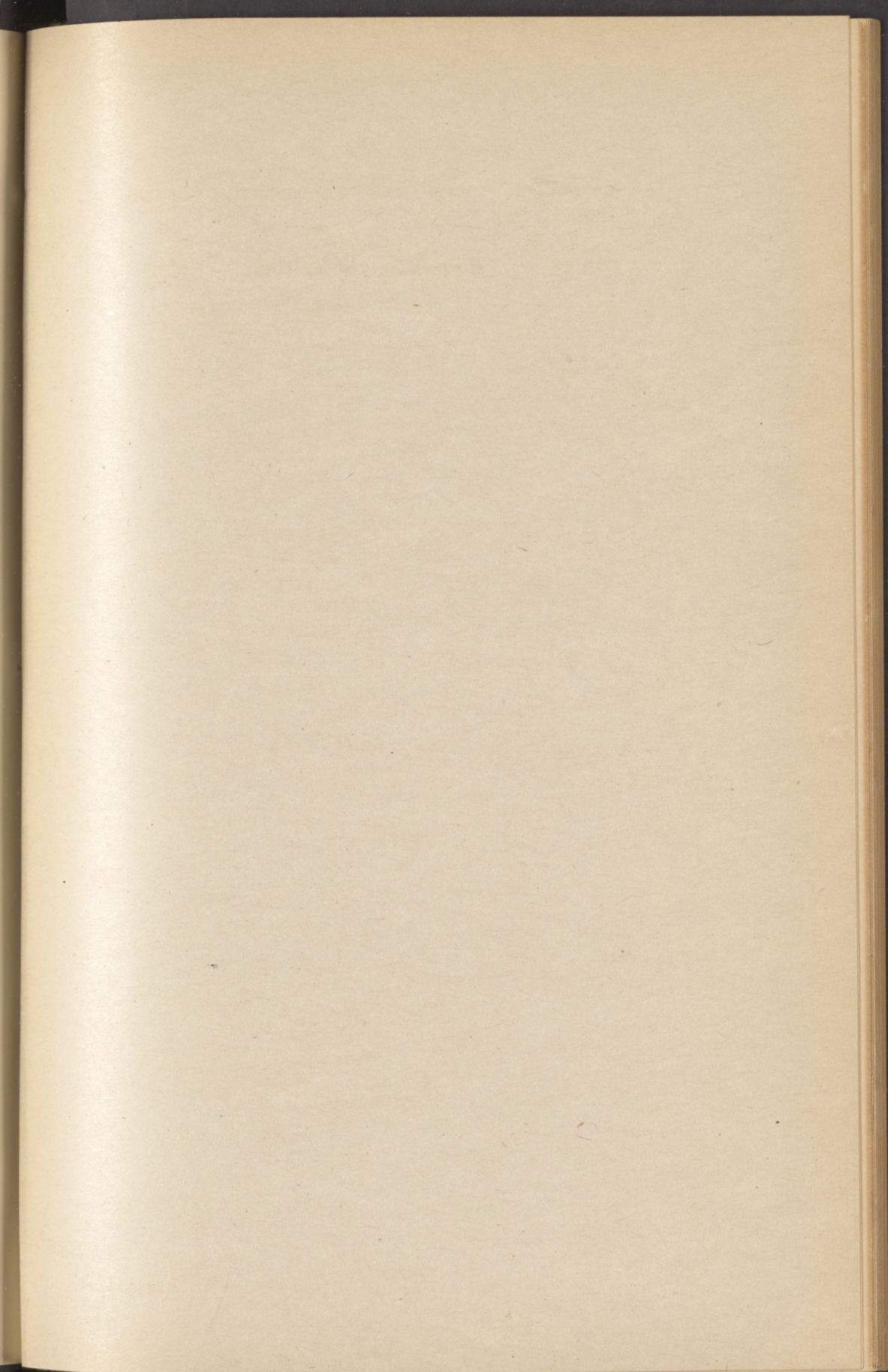
There is nothing to show any negligence on the part of the conductor. He pulled the bell, and then was busy with his book. There is nothing to show any negligence on the part of the motorman. He was still a considerable distance from the stopping place. There is nothing to show or from which to infer any defect in tracks or equipment. The movement of the car was not an unusual

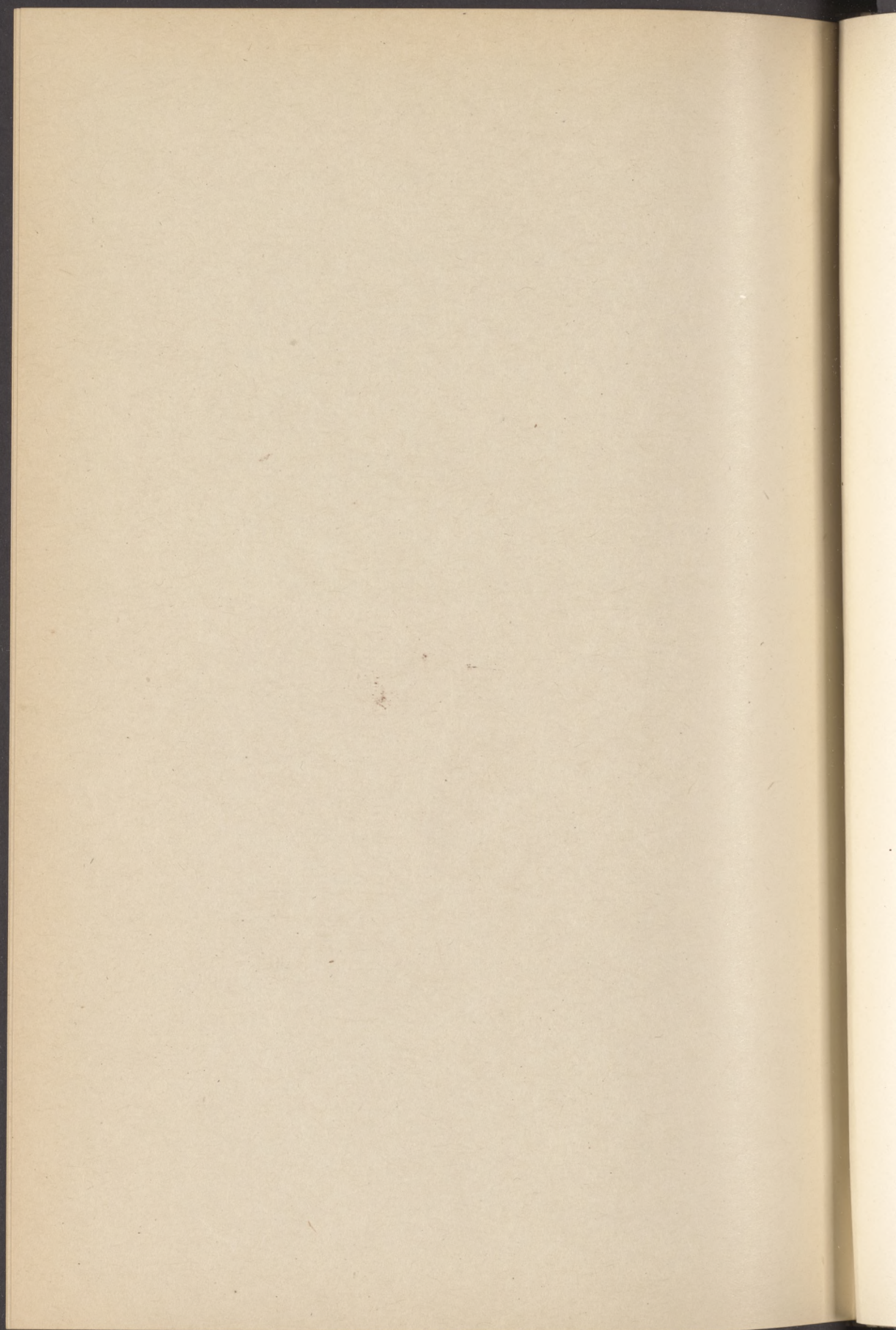
movement. It was the *usual* movement on taking a switch.

Respectfully submitted.

HOBART TUTTLE,

of Counsel.



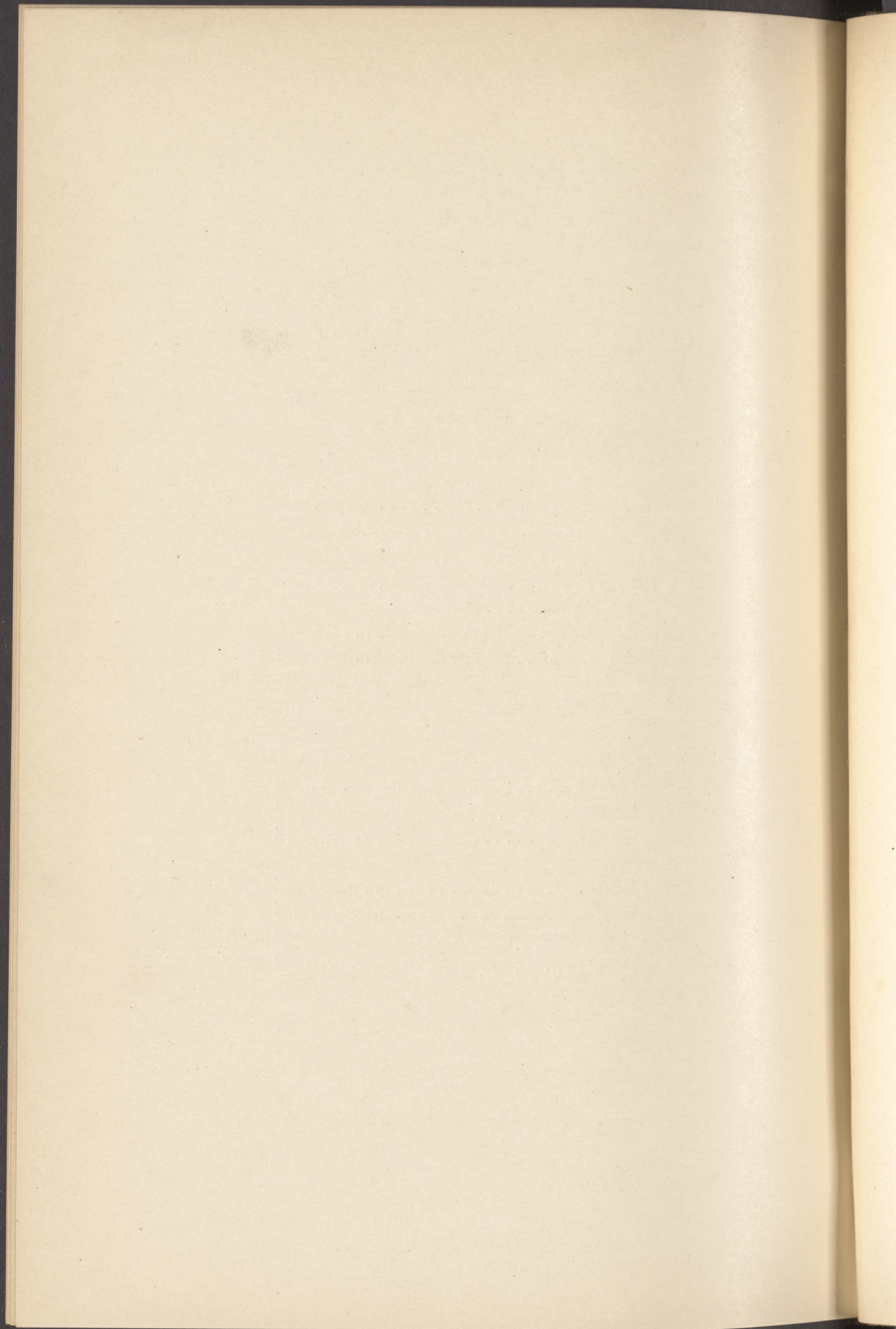


INDEX.

	Page.
Writ	1
Return	2
Summons	3
Declaration	3
Plea	6
Judgment	6
Consent	7
Testimony	8
Assignment of Error	31
Joinder in Error	32

TESTIMONY.

Elizabeth Pascall,	
Direct	8
Cross	13
Re-direct	22
Lillian Pascall,	
Direct	22
Cross	26
Dr. Frank S. Carpenter,	
Direct	30



New Jersey
Court of Errors and Appeals.

Writ.

New Jersey, ss: The State of New Jersey to
Wilber A. Heisley, Esquire, a
Judge of our Circuit Court in
(L. S.) and for the County of Essex,
GREETING:

Because in the record and proceedings and also
in the giving of judgment in a complaint which 30
was in our Circuit Court holden at Newark in
and for the County of Essex between Lillian
Pascall, by next friend, plaintiff, and North Jer-
sey Street Railway Company, defendant, in an
action in tort, manifest error hath intervened to
the great damage of the said plaintiff as by her
complaint we are informed, we being willing that
such error, if any there be, should in due man-
ner be corrected and full and speedy justice
should be done to the parties aforesaid in this be-
half, do command you distinctly and openly to 40
send under your hand and seal the record and
proceedings aforesaid with all things touching
and concerning the same to our Judges of our
Court of Errors and Appeals in the last resort
in all causes at Trenton on the 28th day of Feb-
ruary, nineteen hundred and seven, together with
this writ; that the record and proceedings afore-
said being inspected we may cause to be further

10 done thereupon for correcting that error what
of right and according to law and custom of the
State of New Jersey ought to be done.

Witness, William J. Magie, our Chancellor and
President Judge of our Circuit Court of Errors
and Appeals at Trenton aforesaid, the 9th day of
February, nineteen hundred and seven.

S. D. DICKINSON,
Clerk.

Harry V. Osborne,
20 Attorney.
(Filed March 30, 1907.)

Return.

State of New Jersey, }
County of Essex, } ss:

30 I, Wilbur A. Heisley, Judge Circuit Court, pre-
siding at one of the Essex Circuit Courts, Essex
County, New Jersey, do hereby certify and re-
turn to the Court of Errors and Appeals in the
last resort in all causes the judgment record and
proceedings together with all things touching and
concerning the same as by the within writ to me
directed I am commanded.

WITNESS my hand and the seal of said
(Seal) court and county this twenty-eighth
day of March, A. D. 1907.

40 WILBUR A. HEISLEY,
Judge.

(Filed March 30, 1907.)

Summons.

10

Essex County ss: The State of New Jersey to
 the Sheriff of the County of
 Essex, GREETING: Your are
 (Seal) hereby commanded to sum-
 mon North Jersey Street
 Railway Company, if in your county it may be
 found, so that it be and appear before our Cir-
 cuit Court to be holden at Newark, in and for
 the County of Essex on the twenty-third day of 20
 June, nineteen hundred and six, to answer unto
 Lillian Pascall in an action of tort to her dam-
 age Five thousand dollars as is said. And have
 you then and there this writ.

Witness, William S. Gummere, Esquire,
 Judge of our said Circuit Court at
 Newark aforesaid, the thirteenth
 day of June, nineteen hundred and
 six.

ARTHUR HORTON, 30
 Clerk.

H. V. Osborne,
 Attorney.

Pleas before the Judge of the Circuit
 Court holden at Newark in and for
 the County of Essex of the twenty-
 third day of June, A. D. 1906.

ARTHUR HORTON, 40
 Clerk.

Declaration.

Essex County, ss:

North Jersey Street Railway Company, the de-
 fendant in this suit, was summoned to answer
 unto Lillian Pascall, the plaintiff therein, in an

10 action of tort, and the plaintiff being an infant under the age of twenty-one years, Richard T. Pascall has been appointed to prosecute this action in her behalf, and thereupon the said Richard T. Pascall, her next friend, complains:

For that, whereas, the said defendant on the fifteenth day of April, nineteen hundred and six, at Newark, in the County of Essex, was the owner and possessor of a certain street railway operated through and upon a public street or
20 highway known as Ogden street, upon which railway cars of the said defendant were then and there run and propelled by electricity and were then and there used by the said defendant for carriage and conveyance of passengers at different points in the City of Newark for a certain hire and reward by the said plaintiff and the said defendant being such owner and possessor of said cars propelled as aforesaid, received
30 upon one of the cars so propelled by it as aforesaid, the said plaintiff as a passenger to be carried through and upon Ogden street in the said City of Newark, at or near the intersection of Gouverneur street, and it thereupon then and there became and was the duty of the said defendant to use due and proper care in the use, management and control of the said car that the said plaintiff should be safely and securely carried and conveyed by and upon said car operated by it as aforesaid, yet the said defendant not regard-
40 ing its duty in that behalf did not use due and proper care in the use, management and control of said car that the said plaintiff should be safely and securely carried and conveyed in and upon said car, but wholly failed and neglected so to do, and by its servants and employees so negligently and carelessly operated, managed and propelled said car and failed to safely and securely carry and convey the said plaintiff upon said car, but

negligently and carelessly permitted said car 10
to give an unusual jerk or lurch without notice
or warning, whereby the said plaintiff, who was
a passenger thereon and about to alight from
said car was, by the sudden motion of the said
car, thrown therefrom and upon the ground with
great force and violence and greatly cut, bruised,
wounded and injured in and about her body
head and limbs and thereby also suffered great
shock to her nervous system and was otherwise
internally injured so that the said plaintiff there- 20
by then and there became sick, sore, lame and
disordered and so continued for a long space
of time, during all of which time, plaintiff suf-
fered and underwent great pain and in the fu-
ture will suffer and undergo great pain and was
hindered and prevented and in the future will
be hindered and prevented from transacting her
necessary lawful affairs by her during all that
time to be performed and transacted and lost
and was deprived of and in the future will lose 30
and be deprived of divers great gains, profits
and advantages which she might and otherwise
would have derived and acquired, thereby also
the said plaintiff was and in the future will be
forced and obliged to lay out and expend divers
large sums of money amounting in the whole to
the sum of Five hundred dollars in and about
endeavoring to be cured of the said bruises,
wounds and injuries so received as aforesaid, to-
wit, at Newark aforesaid. 40

Wherefore the said plaintiff says that she is
injured and sustains damages to the amount of
Five thousand dollars, and therefore she brings
her suit, &c.

H. V. OSBORNE,
Attorney for Plaintiff.

10

Plea.

And the said defendant by John A. Bernhard its attorney, comes and defends the wrong and injury when &c and says that it is not guilty of the said supposed grievances above laid to its charge, or any or either of them in manner and form as the said plaintiff hath above thereof complained against it and of this it the said defendant puts itself upon the country, &c.

20

JOHN A. BERNHARD,
Attorney of Defendant.

 Judgment.

Therefore let a jury thereupon come before the judge aforesaid at Newark aforesaid, the second Tuesday of December next, who neither, &c., to recognize, &c., because, &c., and the same day is given to the parties here, &c.

30

At which time before the Judge aforesaid, come the parties aforesaid, by their attorneys aforesaid, and the Sheriff hath not sent here the writ to him in this behalf directed, nor hath he done anything thereupon.

40

And now at this day that is to say the thirty-first day of January, A. D. nineteen hundred and seven until which day the issues as aforesaid joined had been continued before the Judge aforesaid, at Newark aforesaid, come the parties aforesaid, by their attorneys aforesaid, and the jurors of the jury of whom mention is before made being summoned, also come who to speak the truth of the matter within contained, being chosen and sworn, and the Court after hearing the evidence on part of the plaintiff, and the plaintiff failing to produce further evidence on his behalf, and failing to prosecute his said suit in this behalf, the Court do thereupon order that the said plaintiff take nothing by his said writ but

that she and her pledges to prosecute be in mercy, 10
&c. And that the said defendants do go therefor
without a day.

Whereupon it is considered that the said de-
fendant do recover against the said plaintiff the
sum of twenty-two dollars and fifty-nine cents
as for their costs and charges by them in their
defence in this behalf laid out and expended and
by the Court now here adjudged to them
with their assent, according to the form of the
statute in such case made and provided and that 20
the said defendant have execution thereof, and
the said plaintiff in mercy, &c.

Judgment signed January 31, 1907.

WM. S. GUMMERE,
Judge.

Consent.

NEW JERSEY COURT OF ERRORS AND
APPEALS. 30

LILLIAN PASCALL, by next friend, Plaintiff in Error, vs. NORTH JERSEY STREET RAILWAY COMPANY, Defendant in Error.	}	In Tort on Writ of Error.
---	---	------------------------------

We hereby agree that the within state of the 40
case be abridged by the omission therefrom, of
the petition and order for the appointment of
next friend and the testimony of Dr. Frank S.
Carpenter, a medical witness.

Dated, March 29th, 1907.

H. V. OSBORNE,
Attorney for Plaintiff.
JOHN A. BERNHARD,
Attorney for Defendant.

10

Testimony.

ESSEX CIRCUIT COURT.

DECEMBER TERM, 1906.

20	LILLIAN PASCALL, by friend, vs. NORTH JERSEY STREET RAILWAY Co.	}	Tort.
----	--	---	-------

Transcript of shorthand notes of testimony taken in the above stated cause, upon the trial thereof, at the Court House, Newark, N. J., January 30, 1907.

30 Before: Hon. Wilbur A. Heisley, Judge, and a jury.

H. V. Osborne for the plaintiff.

John A. Bernhard for the defendant; Howard MacSherry of counsel.

Mr. Osborne opened for the plaintiff.

ELIZABETH PASCALL, sworn for the plaintiff:

Direct-examination by Mr. Osborne:

40 Q. Where do you reside? A. 175 Ogden street.

Q. Are you married? A. Yes, sir.

Q. And are you the mother of Lillian Pascall, the plaintiff, this little girl here? A. Yes, sir.

Q. How old is she? A. She is thirteen.

Q. Do you remember going on a trolley car last year in April, with Lillian? A. Yes, sir.

Q. Did anything happen to you at that time, or to her? A. To Lillian.

Q. What day of the month was it, if you remember? A. It was Easter Monday, or perhaps the 16th of April. 10

Q. Where were you going from and where were you going? A. We were at Hilton and were on our way home; we arrived safely; until we got to Mulberry and Gouverneur street; then in getting off I told the conductor and we were getting off and Lillian was ahead—

Q. Just wait a minute; you live on—A. On Ogden street. 20

Q. What is the street north of Ogden street running crossways? A. Fourth avenue.

Q. What is the street this side? A. Gouverneur.

Q. And where had you taken this car that you said you were on? A. Market street and Mulberry.

Q. And which way was this car going, north or south? A. North.

Q. What car line was it? A. Mulberry. 30

Q. Now, as you approached Gouverneur street what happened? A. Well it happened so suddenly that—

Q. Well, tell us nearly as you can, as near as you remember. Did you want to get off at Gouverneur street? A. Yes, sir.

Q. Did you indicate your desire to get off in any way? A. To the conductor.

Q. Where was the conductor? A. On the back platform. 40

Q. Where were you? A. Inside the car.

Q. Was it an open car or closed car? A. Closed car.

Q. Where was your daughter; was she with you? A. She was with me, she was ahead of me.

Q. Before or after you indicated your desire to the conductor did she get up? A. After.

10 Q. How far were you from the corner then, as near as you know, as near as you can tell? A. I couldn't say.

Q. She got up ahead of you and started out of the car? A. Yes, sir.

Q. What happened after she got up ahead of you and started out of the car? A. She got out on the platform and was thrown.

Q. What threw her? A. An unusual jar of the car; it kind of lifted me up, too.

20 Q. Do you know what caused that? A. I don't, unless it was something unusual in the track.

Q. Isn't there a switch there? A. There is. A single track.

Q. It is a single track? A. There is.

Q. At that point are there two tracks? A. One track.

Q. Is there a turn out? A. Single track, I don't know, a very large block, perhaps a quarter of a block, you know, they are very long blocks, 30 at a quarter of a block I found Lillian in the road.

Q. How far from the corner was it that she was thrown off? A. Well, perhaps twice as long as this here (indicating).

The Court: About ten feet.

Q. You think about ten feet; from the first crosswalk or the second? Do you know what I mean by the first crosswalk? A. The first, you mean at the right.

Q. Now wait; as you go towards Gouverneur 40 street, of course, there are two crosswalks crossing Mulberry street? A. Two.

Q. There is one this side of Gouverneur street and one the other side, is that right? A. Yes, sir.

Q. I call the one this side the first one, because that is the first you come to in going north? A. The first one.

Q. Was it about ten feet from that? A. From that.

Q. Do you know just before you reach Gouverneur street whether there is a turnout where two cars can pass? A. Two cars can pass? 10

Q. Yes. Do you know whether there is a turnout, whether there is a switch? A. No, sir; I doubt whether there is.

Q. And after Lillian had fallen when did the car stop? A. At Gouverneur street.

Q. Which side of the street? A. The other side.

Q. The other side of the street? A. The other side. 20

Q. Then did you get off? A. I got off and signed my name.

Q. What did you do after you got off? A. Signed my name and ran to my daughter.

Q. Who did you sign your name for, to what? A. For the traction company; signed my name; the conductor handed me a slip of paper and asked me to sign my name.

Q. Before you went back to your daughter did he do that? A. Yes, sir. 30

Q. Did he go back with you? A. No, sir; went right ahead and let me pick up the—

Q. Where was your daughter? A. In the street, in the gutter.

Q. Was she lying down or standing up? A. Lying down.

Q. Did he look back that way? A. No, sir, he had nothing to do with it; he went right on as if nothing had happened. 40

Q. Do you know whether your daughter had attempted to get off of the car, trying to step off on the street before it stopped? A. I couldn't say because it happened—I didn't have time; it happened so suddenly.

Q. Where was she the last time you saw her? A. On the back platform of the car.

Q. Standing still? A. Standing still.

10 Q. Now, after you went back to pick her up what did you do with her? Did you go back and pick her up? A. I went back to her and then we helped her home; several friends and I helped Lillian home.

Q. How far did you live from there? A. Just a half a block.

Q. In the middle of the block between Gouverneur and Fourth avenue? A. In the middle of the block.

20 Q. Well, did you put her to bed? A. No, sir; I didn't put her to bed, I attended her first; I applied hot water to the back of her head, she had a large lump on the back of her head the size of an egg, and complained of her back and hip; I applied witch hazel to her and put her to bed; the next morning I sent for my doctor.

Q. What doctor? A. Dr. Carpenter, our family physician.

30 Q. Were those injuries you speak of the only ones you noticed? A. At the time, but the next day I found a big blue mark on her back which is there yet.

Q. What part of her back? A. The small of her back.

Q. In the centre? A. Yes, in the centre.

Q. How long was she in bed? A. I didn't keep her in bed, I kept her in the house.

40 Q. How long did you keep her in the house? A. April, May, June and July, and in August I allowed her to go around out in the yard and take a little fresh air.

Q. And did she complain of any pain during that time? A. She was always in pain.

Q. Whereabouts? A. Her head, her body, and she is very nervous.

Q. What was her condition before the accident? A. A happy little child.

Q. Do you notice any difference now? A. I do.

Q. What difference is there now in her condition, and before the accident? A. She is very hysterical, even at night. 10

Q. From what? A. Hysterical; cries out at night.

Q. Has she entirely recovered from these various hysterical attacks that you say she has? A. No, she has not.

Q. Is she still nervous, or is she recovered from that? A. She is very nervous.

Q. Now, going back to the time you were on the car, approaching the street, do you know whether the conductor rang the bell or not? A. He did ring the bell. 20

CROSS-EXAMINATION by Mr. MacSherry:

Q. What is your husband's business? A. Engineer, stationary.

Q. Whereabouts? A. Battin & Company, Third avenue and Ogden street.

Q. Where do you live? A. 175 Ogden street. 30

Q. How long have you lived there? A. Ten or eleven years.

Q. Where had you been the day the girl was hurt? A. Up at Hilton.

Q. How far from Gouverneur street was your house? A. We live in the middle of the block between Gouverneur and Fourth avenue.

Q. You have been living there all these years? A. Yes, sir.

Q. You were thoroughly acquainted with that locality, were you not? A. Yes, sir. 40

Q. Been up and down over the trolley lines a great many times? A. I walk back and forth most of the time for one reason—

Q. Don't tell me, because it is going to be something bad about the company. A. No; I am almost blind—

Q. I say pardon me, I don't care to know. A.

10 Oh, all right; it is nothing about the company; it is about myself.

Q. I don't want to know; that is the trouble.

A. Oh, I thought you wanted to know. I go from Gouverneur up to Belleville avenue.

Q. Can't you tell us whether there is a curve on Gouverneur street? A. I couldn't tell you that today if I had been asked, because I didn't take notice.

Q. You can't tell us whether there is a curve
20 in the track there? A. There is a single track there.

Q. Is the street straight? A. No, sir.

Q. Is there a curve to it? A. A curve to the street, or track?

Q. A curve to the street? A. Not that I am aware of.

Q. Have you ever seen it? A. I have.

Q. The curve? A. Yes, sir.

Q. Is there one there? A. I don't know.

30 Q. If you have seen it why can't you tell us if there is one there or not?

Mr. Osborne: She didn't say she had seen the curve; she said she had seen the street.

Q. I want to know whether you can tell us whether there is a curve to that track in Gouverneur street; you have lived up there ten years?

A. If you had let me tell you a little while ago—

Q. No; I am afraid for a woman to go on
40 speaking. A. Well, I can't hardly see you from here.

Q. Why not? A. Because I am almost blind.

Q. I beg a thousand pardons. I didn't know that. A. I wanted to tell you, but you wouldn't listen.

Q. Were you in the same condition with your eyes at the time the child was hurt? A. I have been for the past ten years.

Q. And your eyes were about in the same con- 10
dition on April 16th when you—A. No, sir; not
as bad as they are today.

Q. Where did you get on board of the car? A.
Market and Mulberry.

Q. Anybody with you besides the little girl?
A. Yes, sir.

Q. Who? A. My little daughter Sarah.

Q. And how old is she? A. Ten.

Q. And how old was this little girl at the time?
A. She was twelve at the time. 20

Q. And what line of cars did you take? A.
Mulberry street line.

Q. Could you see well enough to travel alone,
or did you—A. Yes, I could see to travel.

Q. Could you see across the street? A. Yes,
sir; I can see you now better, but I couldn't be-
fore.

Q. And did you get a seat in the car? A. Yes,
sir; there were very few passengers in the car.

Q. What part of the car did you take your seat 30
in? A. The middle centre.

Q. And where did this little girl, the plaintiff,
sit? A. Right there, the centre.

Q. And where did the other little girl sit? A.
On the other side, looking out of the window.

Q. Now, you wanted to get off at Gouverneur
street? A. Yes, sir.

Q. Did you tell the conductor? A. I did.

Q. Did you tell him or the little girl? A. I
told him. 40

Q. Well, as the car was coming to Gouverneur
street, near the first corner, it was slowing up,
wasn't it? A. I was in the seat—

Q. No, just answer the question, please. As
this car got within ten feet of Gouverneur street
was it slowing up, or going as fast as it was
in the other part of the block? A. (The witness
shakes her head.)

10 Q. Can't you tell us? Are you ill? A. Kind of.

By the Court: Q. Are you too ill to testify?

A. I fell very poorly.

(The witness is handed a glass of water.)

Further CROSS:

Q. Now, can you tell us, when that car was getting near Gouverneur street, whether the car was slowing up or not? A. It wasn't slowing
20 up when I gave the signal.

Q. No; you gave the signal further down the block? A. Down the block.

Q. To the conductor? A. Yes, sir.

Q. Then did he ring any bell? A. He rang the bell.

Q. After he rang the bell did the car slow up?

A. (Not answered.)

By the Court: Q. After he rang the bell did the car begin to go slow, or did it keep going
30 as fast as it was? A. A little slower, but there was something unusual to that curve—

Further CROSS:

Q. How was it running when it got within ten feet of Gouverneur street; fast or slow? A. Faster.

Q. Faster? A. I think it was.

Q. I thought you said it slowed up after the bell was given. Don't you remember the car
40 was coming to a stop to let you people off at Gouverneur street? A. It didn't come to a very slow stop.

Q. I didn't ask you that. It wasn't going to stop at the first corner? A. No.

Q. It was going to stop at the second corner? A. Second.

Q. But it wasn't going very fast at the first corner or near the first corner? A. (Not answered.)

By the Court: Q. At the first corner it came 10
to was it going fast or was it going slow? A. It
was going fast and then it slowed up a little; that
is all I can remember.

Further CROSS:

Q. Now, can't you tell us whether the track is
straight there or not, or whether there is any
switch or curve? A. (Witness shakes her head.)

Q. You can't do it? A. Single track.

Q. A straight track, isn't it? A. No, sir; not 20
straight.

Q. Well, does it curve? A. Yes, and if I am
not mistaken a long curve.

Q. Where does that curve begin, before you
get to Gouverneur street or after? A. Right af-
ter you leave Clarke street.

Q. Where does it end? Does it end at Gouver-
neur street, or beyond it? A. At Gouverneur.

Q. Ends at Gouverneur? A. The end at
Gouverneur. 30

Q. Is there a turnout there? A. Sir?

Q. A turnout. Do you know what that is?
For one car to switch over and let another go
by? A. Well, I have noticed that a car stands
there while the other goes by, if that is what
you—

Q. That is what I mean? A. Yes, sir.

Q. Was there one there? A. No, there was
none there.

Q. Well, was it near that spot that the girl 40
was hurt? A. It was either there or further
up.

Q. Well, do you know? A. I think I said fif-
teen feet.

Q. Did you see this little girl hurt at all, Mrs.
Pascall, your daughter? A. Did I see her hurt?

Q. Yes. Isn't it a fact that you didn't see her
until after she was thrown? A. What was that,
sir?

- 10 Q. (Question read.) A. (No answer.)
By the Court: Q. Is that so? A. What is that?

Further CROSS:

Q. Isn't it a fact that you didn't see the little girl hurt; that you only saw her after she was thrown? A. I didn't see her thrown; I see her after she is hurt.

- 20 Q. You don't know whether she tried to jump off the car while it was moving or not, do you, of your own knowledge? A. That the child jumped off the car?

Q. Yes, while it was moving, or not, do you? A. Well, I know that she wouldn't do such a thing as jump off a car.

Q. Yes, I see that is the reason you say so, but so far as you saw yourself you don't know whether she did it or not, do you? A. No, I don't know.

- 30 Q. Do you know whether she has a little playmate whose first name is Fannie? A. No, sir.

Q. Do you know that she had any little friend on the sidewalk at the time she got hurt? A. No, sir.

Q. Did you hear her call out, "Oh, there is Fannie," just before she went off the car? A. No, sir; there is no such a girl living around as Fannie.

Q. I say did you hear her? A. No, sir.

- 40 Q. And did you see her go quickly past people and step off of the car opposite the place where some little girl stood on the sidewalk? A. No, sir.

Q. No, you didn't see that. Now, how far can you see across this room? A. I can see to the back of the room now, to the time.

Q. See the time. Well, where was the conduc-

tor at the time your little girl got hurt, do you know? A. On the back of the car. 10

Q. On the back platform? A. Yes, sir.

Q. And he got your name, did he, before you went to your daughter? A. Yes, sir.

Q. Did you know your daughter was hurt? A. No more than the conductor did.

Mr. MacSherry: I ask that that be stricken out; I didn't ask that.

Q. Did you know that your daughter was hurt when you gave your name? A. No. 20

Q. How did you come to give your name, then? A. The conductor asked me for it.

Q. You didn't know your daughter was hurt? A. I did not.

Q. Was the car standing still then? A. Yes, sir.

Q. You didn't give your name until the car got to the other side of the street, did you, and came to a standstill? A. Didn't give my—? No.

Q. When the conductor asked you to give him your name, didn't you ask him why he wanted your name? A. Not that I remember. 30

Q. Now, just listen to this, if you please: If you didn't see your daughter thrown from the ear, and you didn't know that she was hurt when you gave the conductor your name on the other side of Gouverneur street, after the car came to a stop, will you tell us, please, how you say that she was hurt ten feet this side of Gouverneur street first crossing? A. Will I say why she was—because I went to her that far. 40

Q. You found her in the gutter that far from Gouverneur street? A. (Not answered.)

Q. Don't you understand the question? A. I understand the question, but it isn't clear to me.

Q. See if I can make it clearer. How can you say where your daughter was hurt, when you didn't know she was hurt, until the conductor got your name? A. She told me herself.

10 Q. Then when you say you know where your daughter got hurt, it is from what your daughter told you? A. It is what I got afterwards.

Q. And what you say about the lurch of the car is from what she told you? A. Well, that I felt.

Q. Where? A. When I was in the car.

Q. Where did you feel it? A. In my feet, of course.

Q. Where was the car then? A. On the other
20 side of the crossing; hadn't got quite over yet.

Q. The other side of which crossing? A. (Illustrating.) This is one, and this is the other.

Q. Had it crossed either crossing yet? A. It was going.

Q. Was it going across the crossing when you felt the lurch? A. Going.

Q. Going where? A. Across.

Q. Across where? A. Going across Gouverneur street.

30 Q. What part of Gouverneur street? A. What part?

Q. Yes. A. I don't understand the question.

Q. Had it crossed either crossing? A. Are there two?

Q. There are two, aren't there? Haven't you said so, madam? A. I don't understand your question yet.

Q. Haven't you said there are two crossings at Gouverneur street? Do you know whether
40 there are two crossings there or not? A. (Witness shakes her head.)

Q. What is the trouble, don't you remember?

Mr. Osborne: What is the question?

A. I can't understand the question.

Q. Now, you know there are two crossings at Gouverneur street. Isn't that so? A. (Not answered.)

Q. Are there two crossings there, Mrs. Pascal? A. I can't answer that now.

Mr. MacSherry: I submit, if your Hon- 10
or please, if the witness is nervous, or
in a physical condition unable to answer
questions, it rather prejudices me in my
case to try and drag it out.

The Court: She has been offered as a
witness, and if she is incompetent as a
witness it is not your fault, if you cannot
elicit information from her. The jury
sees her conduct, and cannot criticise you
for asking questions; they will have to 20
consider her mental and physical condi-
tions.

Q. Where were you when this lurch took place?
What were you doing? A. (Not answered.)

By the Court: Q. Mrs. Pascall, don't you un-
derstand that question? He asks you, when the
lurch took place, what were you doing? Now,
why don't you answer? A. I have to think; it
doesn't come to me now.

Mr. Osborne: If you don't know, say so, you 30
can't answer anything you don't know.

Witness: I don't know.

Further CROSS:

Q. Well, if you don't know what you were
doing, how can you tell us the lurch took place?
How can you remember about the lurch if you
don't remember what you were doing? A. (Not
answered.)

Q. The next day after your daughter was hurt 40
do you remember seeing this gentleman here at
your house? A. Yes.

Q. Did you have any conversation with him?
A. Yes.

Q. Did you tell him that—by the way, was
your daughter home at that time; this is the day
after the accident? A. The day after the acci-
dent?

10 Q. Yes, the time that this gentleman called?
A. Yes, I remember him calling.

Q. Your daughter was at school at that time, wasn't she? A. She went to school in the morning.

Q. Now, did you have a conversation with this man? A. I did.

Q. Did you tell him that your daughter was at school? A. I did.

Q. Did you tell him that you didn't know how
20 the accident happened? A. I don't remember that.

Q. Do you say you did not, or you did?

Mr. Osborne: She don't remember.

Q. What is your best recollection? A. I don't remember.

Q. Did you say that your daughter was the first one of your party to get off the car, and that she fell getting off? A. I did not.

Q. Did you say that the car did not come to
30 a stop and then start up again? That you don't know what made your daughter fall? A. I don't remember that.

Q. Did you say that you could not honestly say that there was any unusual movement of the car at the time your daughter fell? A. No, sir.

Q. Or words like that? A. No, sir.

RE-DIRECT-EXAMINATION:

Q. Did he offer you any money?

Mr. MacSherry: Wait a minute.

40 A. Yes, sir.

Mr. MacSherry: Wait a minute. That I object to; it don't bind us.

LILLIAN PASCALL, sworn for the plaintiff:
Direct-examination by Mr. Osborne:

Q. Do you remember being with your mother last April—A. Yes, sir.

Q. —when you were thrown off this trolley 10
car? A. Yes, sir.

Q. Just tell us how it happened? Speak up
so we can hear. A. I was coming home from my
aunt's, and I was on a Mulberry street car, and
we were to get off at Gouverneur street. I saw
my cousin on the sidewalk, and I wanted to get
off first, and I was out on the platform.

Q. What is your cousin's name? A. Lizzie.

Q. Yes. Did anybody tell the conductor to
stop? A. My mother had. 20

Q. What did the conductor do when your moth-
er told him to stop? Did he do anything? A.
Not that I remember.

Q. You don't remember; but you got up and
went out on the platform? A. Yes, sir.

Q. And after you got on the platform—when
you did that, how far were you from Gouverneur
street? A. Maybe about a quarter of a block.

Q. And what happened after you got out on
the car platform? A. The car switched, and I 30
was thrown off.

Q. Thrown to the street? A. Yes, sir.

Q. Had the car stopped at the time you were
thrown off, or was it still going? A. It was still
going.

Q. How had it been going before that? Fast
or slow? A. Fast.

Q. And do you know what it was that threw
you? What did it feel like, if you know? A. I
saw that there was a curve in the track. 40

Q. There was a curve there? A. Yes, sir.

Q. Is that where the two tracks come together?
Is there a turnout there so one car can pass the
other? A. Yes, sir.

Q. And so for a little distance two tracks run
alongside of each other? A. Yes, sir.

Q. And then do they join each other? A. Near
Gouverneur street.

10 Q. And how far from Gouverneur street?
Very far? A. No, sir.

Q. They come together? A. Yes, sir.

Q. And is that where you were thrown, where those tracks come together, about? A. I think it was at the second—

Mr. MacSherry: You are suggesting.

Q. You say it was a short distance before you got to Gouverneur street? A. Yes, sir.

Q. When you went out on the back platform
20 do you remember where the conductor was? A. He was either in the front or back of the car writing in a little book that he had.

Q. Did he say anything to you? A. No, sir.

Q. Did you try to get off the car before it stopped? A. No, sir.

Q. Sure about that? A. Yes, sir.

Q. After you—what time of day was this? A. It was a little before six o'clock.

Q. After you were thrown down, what hap-
30 pened to you; did it hurt you? A. Yes, sir.

Q. What was the matter with you, if you remember? A. I fell on my back, and on my head.

Q. Did your mother take you home? A. Yes, sir.

Q. Did you go to school after that? A. I went the next morning.

Q. Is that all you went? A. I went in the morning, not in the afternoon.

Q. Why didn't you go after that? Why didn't
40 you go to school after the next morning? Why did you only go then? A. Mamma didn't think I was hurt, and she didn't know anything about it so when I came home in the afternoon she said I didn't look good, so she kept me home.

Q. Oh, when you went to school in the morning your mother didn't think you were hurt? A. No, sir.

Q. And did you have a doctor? A. Yes, sir; that noon she sent for him.

Q. After you came back from school? A. Yes, 10
sir.

Q. She didn't think you looked well? A. Yes,
sir.

Mr. MacSherry: How does she know
what her mother thought?

Mr. Osborne: That is what her moth-
er told her.

Q. When did you go back to school? Did you
go back again? A. I didn't go back that term.

Q. Are you going to school now? A. Yes, sir. 20

Q. When did you begin again to go to school?
A. In September.

Q. This term? A. Yes, sir.

Q. Well, how did you feel after this accident?
A. Nervous.

Q. Did you have any pain anywhere about
you? A. Not at that time, no, sir.

Q. When did you have pain? A. I have had
it all the time since.

Q. Whereabouts? A. In my hips, and some- 30
times all over my body.

Q. Have you had any pains in your back? A.
Yes, sir.

Q. Do you still have any pains? A. Yes, sir.

Q. Whereabouts? A. In my back; I can't
stand up very long, because it pains and aches
me.

Q. When you were thrown from the car what
were you doing? You were on the back platform,
you say? A. Yes, sir. 40

Q. And what were you doing? A. I was hold-
ing on, but not very tight.

Q. Were you standing still or walking? A.
Standing still.

Q. And you had hold of what? A. I think it
was an iron bar that goes there.

Q. Were there many people in the car? A. No,
sir.

10 Q. Anybody ahead of you to get off? A. No, sir.

Q. Was your mother behind you? A. Yes, sir.

CROSS-EXAMINATION by Mr. MacSherry

Q. Who have you talked with about this accident, do you remember? A. Sir?

Q. To whom have you talked about this accident? Talked with anybody about it? A. No, sir.

20 Q. No one at all? A. I haven't; no, sir.

Q. Sure you haven't? A. Yes, sir.

Q. You have talked with your mother, haven't you? A. Well, yes, mamma.

Q. You have talked with your father, haven't you? A. No, sir.

Q. Not about your getting hurt? A. Well, he knows I was hurt, but I haven't talked with him.

Q. Talked with the doctor about it? A. He asked me questions; I told him; yes, sir.

30 Q. You have talked with Mr. Osborne here, haven't you? A. Yes, sir.

Q. Of course. Well, now, do you remember this gentleman? Dr. Gale? A. Yes, sir; I believe he was down to the house.

Q. He was down to your house to make an examination of you, wasn't he? A. Yes, sir.

Q. Did you tell him how the accident happened? A. Yes, sir.

40 Q. Did you tell him you stepped off a car that was moving pretty fast? A. No, sir; I didn't step off.

Q. Didn't tell him that, eh? A. No, sir.

Q. On Ogden street below Gouverneur street? A. Yes, sir.

Q. Didn't say that to him, eh? A. No.

Q. What did you tell him? A. I told him I was thrown off when the car switched.

Q. You remember the tracks there, don't you? A. Yes, sir.

Q. Been over them a good many times? A. 10
No, sir; a very few times.

Q. You have played around there, haven't you?
A. Yes, but I haven't been far from the house.

Q. You knew a switch was there, didn't you?
A. Yes, sir.

Q. Were you going to school at that time? A.
Yes, sir.

Q. What school? A. Franklin Public School.

Q. You were hurt on the 16th of April, did you
go to school in May? A. No, sir. 20

Q. Did you go to school in June? A. No, sir.

Q. The school closed in June, didn't it? A.
Yes, sir.

Q. You didn't go in July? A. No, it was va-
cation.

Q. There wasn't any school to go to? A. Sum-
mer school, but I hardly ever go to summer
school.

Q. You didn't go to school in August, there
wasn't any school, and when school opened in 30
September you went on? A. Yes, sir.

Q. What part of the block were you in when
your mother told the conductor to let you off at
Gouverneur street? A. Between Gouverneur
and Clarke.

Q. And what, if anything, did the conductor
do when your mother said that; did he ring any
bell? A. Yes, sir; when I was on the platform.

Q. There are two crosswalks to Gouverneur
street, aren't there? A. Yes, sir. 40

Q. First and second, and the car stops on the
second crosswalk, doesn't it? A. Most of the
time.

Q. Now, when the conductor rang the bell, and
as the car got near Gouverneur street it began
to slow up some, didn't it? A. Yes, sir.

Q. So that at the time it got to the switch it
wasn't going as fast as it was when your mother
told the conductor? A. No, sir; but—

10 Q. And it wasn't going as fast as it was when the conductor rang the bell? A. No, sir.

Q. Yes, slowed up because it was going to come to a stop, isn't that so? A. Yes, sir.

Q. And you were seated near your mother? A. Yes, sir.

Q. And you got up from your seat down near the other block, didn't you, when your mother spoke to the conductor? A. Near which block?

Q. Half way in the block you got up from your
20 seat, didn't you? A. When I was near Gouverneur street.

Q. Was that after your mother had spoken to the conductor? A. I think it was.

Q. And was that after the bell was rung, or before? A. Before.

Q. Before the bell was rung? A. Yes, sir.

Q. You are sure of that? Now, you went right out of the door on the back platform, didn't you?

A. Yes, sir; the bell was rung when I was on the
30 platform.

Q. The bell was rung for the car to stop when you were on the back platform, is that right?

A. Yes, sir; but it hadn't slowed up much.

Q. Then you were on the back platform while the car was going fast? A. Yes, sir.

Q. And then after that the conductor rang the bell for the car to stop? A. Yes, sir.

Q. And you were standing on what part of the platform, how near the step? A. About a foot
40 or so.

Q. And how did you have hold of anything? With what hand? A. My left hand.

Q. Did you have anything in your right hand? A. Not that I know of.

Q. Did you have hold of anything with your right hand? A. No, sir.

Q. And you didn't have very tight hold with your left hand, did you? A. No, sir.

Q. And which way did you face? A. Toward 10 the east.

Q. Out of the car? A. Yes, sir.

Q. Did you look right out of the side of the car, or back of the car? A. I was waiting for the car to stop.

Q. And as it went on the switch, taking hold as you did with your left hand, and not tight, it was right there that you were thrown off? A. Yes, sir.

Q. Now, that is right, isn't it? A. Yes, sir. 20

Q. Where did the car go before it stopped? Do you know, or don't you know? A. Where did it go?

Q. The car stopped at Gouverneur street, didn't it? A. Yes, sir.

Q. And after the car stopped your mother came back to help you, is that so? A. Yes.

Q. Now you did have on the sidewalk a little friend of yours, didn't you? A. Yes.

Q. Was her first name Fannie? A. No, sir. 30

Q. What was her name? A. Elizabeth.

Q. And where was she, how far from Gouverneur street? A. Well, nearly half a block.

Q. And when you saw her, what, if anything, did you say? A. I told my sister that our cousin was on the sidewalk.

Q. Did you want to see her? A. Yes, sir.

Q. Did you want to join her on the sidewalk? A. Yes, sir.

Q. And that is the reason you went to the back part of the car? A. Yes, sir; to get off before my sister. 40

Q. Now, when you went to the rear platform, what, if anything did your sister do? Did she follow you? A. No, sir; my mamma come next.

Q. Was your mother on the platform when you went off? A. No, sir.

Q. Was she standing up when you went off,

10 or don't you know? A. I think she was standing up.

Q. But you don't know really, do you? A. No, sir.

Q. You intended to get off ahead of the rest? A. Yes, sir.

Q. To get to your little cousin? A. Yes, sir.

Q. Now that is right, isn't it? A. Yes, sir.

Q. Were there any other people on the back platform? A. No, sir.

20 Q. Was it a platform with a big rail in the centre, do you know that shuts off the conductor from the passengers? A. No, sir; I don't think it was.

Q. What did you have hold of with your left hand? A. I think it was the gate, the bar of the gate.

Q. Was the gate open? A. Yes, sir.

30 Adjournd until January 31, 1907, at ten o'clock a. m.

Newark, N. J., Jan. 31, 1907.

Continued pursuant to agreement.
Appearances as before noted.

40 DR. FRANK S. CARPENTER, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

By consent of counsel the testimony of this witness is omitted.

Plaintiff rests.

Mr. MacSherry: I move for a nonsuit, upon the 10
ground that there is absolutely no proof of neg-
ligence on the part of the defendant.

The Court: Motion granted.

Plaintiff's counsel excepted to the ruling of
the Court and the same is allowed, and signed
and sealed accordingly.

WILBUR A. HEISLEY (L. S.)
J.

20

Assignment of Error.

COURT OF ERRORS AND APPEALS.

LILLIAN PASCALL,
Plaintiff in Error,

vs.

NORTH JERSEY STREET RAILWAY
COMPANY,
Defendant in Error.

In Tort.

30

Afterwards, that is to say, as of the present
term, in the Court of Errors and Appeals, in the
last resort in all causes of the State of New Jer-
sey, comes the said Lillian Pascall by Harry V.
Osborne, her attorney, and says that in the record
and proceedings aforesaid, and also in the mat- 40
ters recited and contained in the said bill of
exceptions, and also in giving the judgment afore-
said, there is manifest error in this, to-wit:

For that the said judge, before whom, etc.,
at and upon the aforesaid trial of the said issue
so joined between the parties aforesaid, after the
said plaintiff had rested her case, granted the
motion of the said defendant that the plaintiff be



