

## In Chancery of New Jersey.

BETWEEN	}	
THE ELMIRA IRON AND STEEL		<i>On Bill, &amp;c</i>
ROLLING MILLS COMPANY,		<i>Petition of</i>
Complainants,		
AND		
THE ERIE RAILWAY COMPANY,		<i>Casper Klein.</i>
Defendants.		

To his Honor, THEODORE RUNYON, Chancellor.

The petition of Casper Klein humbly shows that on the tenth day of August, eighteen hundred and seventy-five, at about half past nine in the evening, your petitioner went to the station of the Erie Railway at Passaic, in this State, for the purpose of taking the train on said Erie Railway for New York, leaving said station at thirty-seven minutes past nine in the evening. Your petitioner purchased a ticket for New York of the station agent. The said train arrived at the station on time. After the same was stopped, your petitioner attempted to pass from the platform of the station, to get upon a passenger car of said train, when he was struck by 10 the locomotive of a train westward bound from New York, coming at great speed, and thereby your petitioner received severe bodily injuries, (from which he still suffers,) and was obliged to incur expense for surgical treatment, care and attendance.

And your petitioner further shows that the said train upon which he attempted to get was a regular passenger train of the Erie Railway Company, stopping at Passaic, for the purpose of taking on passengers for New York.

And your petitioner further shows that the injuries received by your petitioner were caused by the negligence of Hugh J. Jewett, 20 Receiver of the said The Erie Railway, and his servants. Your petitioner therefore humbly prays that your Honor will grant him leave to bring an action in the Supreme Court of this State against the said Hugh J. Jewett, Receiver as aforesaid, for damages for injuries received as aforesaid. And your petitioner will ever pray, &c.

THOMAS M. MOORE,  
Solicitor and of Counsel with the Petitioner.

Dated October 4, 1875.

## IN CHANCERY OF NEW JERSEY.

BETWEEN	}	<i>On Bill, &amp;c.</i>
THE ELMIRA IRON AND STEEL ROLLING MILLS COMPANY,		
<i>Complainants,</i>		
AND		
THE ERIE RAILWAY COMPANY,		<i>Petition of Casper Klein and Mary Klein, his wife.</i>
<i>Defendants.</i>		

To his Honor, THEODORE RUNYON, Chancellor.

The petition of Casper Klein and Mary Klein his wife, humbly shows, that on the tenth day of August, eighteen hundred and seventy-five, at about half-past nine o'clock in the evening, your petitioner went to the station of the Erie Railway at Passaic, in this State, for the purpose of taking the train on said Erie Railway for New York, leaving said station at thirty-seven minutes past nine o'clock in the evening. Your petitioner Mary Klein, purchased a ticket for New York of the station agent. The said train arrived at the Passaic station on time. As soon as the same

10 was stopped, your petitioner, Mary Klein, attempted to pass from the platform of the station across an intervening track, to get upon the said train, when she was struck with great force by the locomotive of the train coming from New York. And that she received severe bodily injuries, and was obliged to incur expense for surgical treatment, care and attendance.

And your petitioners further show, that the said train upon which said Mary Klein attempted to get was the regular passenger train of the Railway Company, stopping at Passaic to take on passengers for New York. And your petitioners further show and

20 charge that the injuries received as aforesaid were caused by the negligence of Hugh J. Jewett, Receiver of the said Erie Railway Company and his servants. Your petitioners, therefore, pray that your Honor will grant them leave to bring an action in the Supreme Court of this State, against the said Hugh J. Jewett, Receiver as aforesaid, for damages for the injuries received by your petitioner, Mary Klein, as aforesaid.

And your petitioners will ever pray, &c.

Dated Oct. 4, 1875.

THOMAS M. MOORE,  
Solicitor and of Counsel with the Petitioners.

## ORDER.

Upon reading said petition and the deposition of Casper Klein, and after hearing Thomas M. Moore, of Counsel for said petitioners, and Cortlandt Parker, of Counsel for said Receiver, and on consent of said Counsel for said petitioners, and for said Receiver,

Ordered, that said petition and deposition of Casper Klein be filed, and that it be referred to the Vice-Chancellor to examine into the matters in said petition and deposition referred to, and to report whether there exists any liability on the part of said Receiver by reason of said alleged injuries, and if he shall report that there is such a liability, to further inquire and report, as to amount of damages sustained by each of said applicants, and whether the same should be paid out of the assets of said Erie Railway Company in the hands of said Receiver, and to report any special matter that may seem to him material, and to advise the Court as to the proper order or decree to be made in the premises. 10

THEODORE RUNYON, C. 20

## TESTIMONY.

Before his Honor A. V. VAN FLEET, Vice-Chancellor.

THOMAS M. MOORE, of Counsel with Complainant.

CORTLANDT PARKER and R. WAYNE PARKER, of Counsel with 30  
Defendant.

Testimony taken in the above suit on November 13th, 1875, at the Vice-Chancellor's Chambers, in Newark, N. J., by stenographer.

## COMPLAINANTS' COUNSEL OPENED.

Complainants' Counsel then called—

John S. Strange, sworn :

Q. State where you reside and your profession ? 40

A. I reside in Passaic.

Q. Your business ?

A. Civil engineer and surveyor.

Q. Did you make a survey of the Erie R. R. Station at Passaic?

A. I did.

Q. And its surroundings ?

A. I did.

Q. Does that [pointing to a diagram—the smaller one of the two used on the trial] represent truly the locality of their station, depots and tracks? 50.

A. It does.

Q. What is the distance from the front of the depot to the first rail of the westward bound track?

A. From the door of the ladies' waiting room it is 15 and 7-10 feet.

Q. There is a little projection from the depot, what is that?

A. A bay window.

Q. What is the size of that bay window?

A. It projects about 3 feet 9 inches.

10 Q. Near the track and south of the depot you have marked a little square place, what is that?

A. That is the flagman's shanty.

Q. How near is that to the track?

A.  $7\frac{1}{2}$  feet to the east rail of the west track.

Q. What is the distance from the nearest point of the depot to what you have designated here as "Real Estate Office"?

A. It is about 30 feet—35 feet.

*By Defendant's Counsel :*

20 Q. From the nearest what?

A. From the nearest point of the depot.

*Further Direct-Examination :*

Q. What is the width of that street called Washington place?

A. 54—56 feet.

Q. And how wide is East Main Avenue in the neighborhood of the flagman's shanty?

A. It is about 40 feet.

30 Q. And how wide is the street on the other side, called Main Avenue?

A. 56 feet.

Q. Now, standing upon the platform of the station by the door of the ladies' room, how far down the track can you see, towards New York?

*By Defendant's Counsel ;*

Q. Did you try it?

A. I did.

*Further Direct Examination :*

40 Q. Well?

A. Exactly outside the door of the depot, do you mean?

Q. Yes, sir?

A. By looking through the two windows,—that is, the glass in the bay window you might see fifty feet, but not over that.

Q. Standing on a line with the front of that bay window, how far can you see toward New York?

A. You can see the centre of the westward bound track for 300 feet.

50 Q. Do you know whether a flagman is kept there at that point —at *that* crossing? [Pointing to map.]

A. I saw one during the day there at the times I crossed it.

Q. Is one kept there at night?

A. I am not so certain about that.

Q. Are you frequently about the depot?

A. Very.

Q. Is that place much frequented?

A. Very much indeed.

Q. Is there much travel or not in Washington place at that crossing?

A. A good deal. 10

Q. How about on Main avenue?

A. There is considerable in East Main avenue.

Q. What effect does that flagman's shanty have upon the view looking towards New York from the station down the track?

A. To any one near the depot doors it obstructs the view considerably,—that is, I mean near the ladies' room door.

Q. What is the distance between the edge of the platform and the track of the railroad?

A. The platform goes right up to the track.

Q. What is the width of that platform by the ladies' room door? 20

A. 15 feet, 7-10 of a foot, I think; I have given that before.

Q. Do you know anything about the regular trains,—what trains were due there and left that station for New York in the month of August last?

A. No, sir.

Q. In the evening?

A. I do not.

[Complainants' Counsel offered the diagram he had been using in evidence.] 30

*Cross-Examined:*

Q. Is this map made to scale?

A. Yes, sir.

Q. Is the distance from the flagman's shanty to the track carefully measured?

A. Yes, sir.

Q. And the size of the flagman's shanty?

A. Yes, sir. 40

Q. What is the distance from the depot to the beginning of the curve,—say to River street,—the furthest point you can see, east, without taking the range of the other track?

A. You can see 1,400 feet.

Q. From the edge of the platform?

A. From the edge of the platform.

Q. By placing your rule flat on that map, and passing it by the flagman's shanty, that would show you where you begin to see the first down track at any particular point, would it?

A. And in front of the bay window, do you mean? 50

Q. Yes, sir.

A. Yes, sir.

Q. Well, the map is intended to be correct, and the lines are ruled straight?

A. Yes, sir.

Q. And the scale is what?

A. Sixty feet to an inch.

10 Complainants' Counsel also called—

**Horace H. Eldred**, sworn:

Q. In the month of August last, what was your business?

A. Agent of the Erie Railway at Passaic.

Q. At what hour in the evening in the month of August was there a daily train going from Passaic to New York?

A. There was more than one train; do you wish one train or two?

Q. Well, between 9 and 10 P. M.

A. There was one at 9:37.

20 Q. At what time did that train leave Paterson!

A. I could not tell without reference to a time-table

Q. Look at this time-table and state whether that is a time-table for that month? [Handing witness the paper afterwards marked as Exhibit B.]

A. Yes, sir; that is the time-table for the month of August—at 9:25 it left Paterson.

Q. For what purpose did that train stop at Passaic?

A. To take passengers for the east.

30 [Complainants' Counsel offered said time-table in evidence, and same was marked Exhibit B.]

Q. Were you at Passaic on the 10th of August last?

A. I was.

Q. On the evening of that day?

A. Yes, sir.

Q. Were you there at the time the 9:37 train for New York reached Passaic?

A. I was not at the depot, but I saw the train reach the depot?

40 Q. Do you recollect any body being injured that night—about that hour?

A. Yes, sir.

Q. Just state what you know about the transaction?

50 A. I was in Ansell's ice-cream saloon, which is immediately opposite the depot, and I saw train No. 70, which is the 9:37 train, approaching the station, and on—about—time, as near as I can judge; and as I was looking out I saw the freight train approaching from the east, and at about the point when the engine got on a line with the depot, or very near that, I heard a whistle, either from that or the passenger train; I am not able to judge which train it was whistled. The passenger train was just about stop-

ping, or had just about come to a stand still, and I immediately came over to the depot, judging from the short whistle that there was some trouble. When I got over there I found some excitement, and that Mr. and Mrs. Klein were injured. Mr. Klein, I believe, at the time I got there was lying on the platform near to the raise which ran up to the freight house, and Mrs. Klein was nearly under the train, that is between the two tracks, the eastward and westward bound tracks; and she was under the passenger train or partly so. They were removed from there and brought into the depot; and I did not see them from that time until late 10 in the evening.

Q. Where were you when you heard the whistle?

A. In Ansell's ice-cream saloon.

Q. Just show where that building is on the map?

A. It is right next to *this*, [pointing to map]. I saw the train from the door, and I came right over to the depot. [Witness pointed to red block at the corner of Bloomfield avenue.]

Q. Are you acquainted with the rules of the Erie Railway Company?

A. Which rules? 20

Q. In respect to freight trains approaching a station?

A. I don't know whether there is any,—I don't know what rule you have reference to.

Q. In respect to the ringing of bells and sounding the whistle?

A. It has been customary, I believe, for freight trains—[interrupted.]

[Defendant's Counsel objected.]

[Objection overruled.]

Q. State what the custom has been? 30

A. Well, to ring the bell as it approaches a crossing,—I can state on further recollection that there was an order issued particularly bearing on Paterson, but amended so as to apply to other stations; it was a telegraphic order that freight trains must be kept out of the way of passenger trains at the stations; and may be there is some rule laid down in the book with regard to it, but I don't remember it at present.

*By Defendant's Counsel:*

Q. Was this order you speak of issued before or after the accident? 40

A. Sometime before.

*Further Direct Examination:*

Q. How soon after you came out of Ansell's saloon did you pass over the track to the station?

A. Well, as soon as the freight train was out of the way, so that I could get round.

Q. Did you see Mr. Klein immediately upon your going on the platform of the station? 50

A. Yes, sir ; as soon as I got up to the place where he was.

Q. How long did you stay there looking at him ?

A. I merely glanced to see what the trouble was, and as soon as I saw, I immediately went into the telegraph office.

Q. Before Mr. Klein was removed from the platform, or before he was taken away from the ladies' room, did the conductor or the engineer of the freight train come to the station ?

A. Well, at about the time, I think it was,—while Mr. Klein laid in the ladies' room, the conductor of the freight train came to  
10 the ticket window in the ladies' room, I think it was.

Q. What was the number of the freight train ?

A. Well, it was an irregular freight train ; there was no number attached to it.

Q. Who was the engineer on that freight train that evening ?

A. I could not give you the name of the engineer.

Q. Do you know who the engineer was, outside of his name—did you know him by sight ?

A. I don't know that I ever saw the engineer.

Q. Please point out on that map where the engine of the freight  
20 train was at the time when you heard the whistle,—or when you heard some whistle ?

A. At the time Mr. Corwin's train arrived at the west side track of Washington Place, the freight train engine was about on a line with the same point.

*By Defendant's Counsel :*

Q. When was it you heard the whistle ?

A. The whistle was just at the time the two engines met.

Q. Just as the two points of the engines came together ?  
30 A. Well, that is as it appeared to me.

Q. Just as the two points of the engines came together ?

A. That is as near as I could see from the point where I stood; yes, sir.

*Further Direct-Examination :*

Q. That is as near as you could see. You cannot tell which engine it was you heard whistle ?

A. No, sir ; I could not.

Q. You stated that you thought from the sound of the whistle  
40 that something was up ; what was there peculiar in the sound of the whistle, and what did that whistle indicate ?

A. Well, sir, one short whistle was for the brakeman to put on brakes.

Q. How did the sound of the whistle differ in this case from the ordinary sounding of the whistle when freight trains approach a crossing ?

A. Well, freight trains don't generally whistle when they come to a crossing ; they only ring the bell.

Q. What is the usual sign for putting brakes on a train ?

50 A. A short sound.

Q. What sort of a whistle is usually given ?

A. One short whistle.

Q. What does a long whistle indicate ?

A. I don't know particularly ; I suppose it indicates passing a station, and to put on brakes more gradually.

Q. At what rate was the freight train moving at the time you saw it ?

A. Well, I could not tell you what rate it was moving at ; I am not accustomed enough to know the speed of trains to state at what rate it was going. 10

Q. How soon did the freight train stop after you saw it ?

A. Well, I could not state positively because I did not see ; all I know is that it went quite a way past the depot before it was stopped.

Q. Was it a long or a short train ?

A. My recollection is it was a long train for the Eastern Division.

Q. Did you see Mr. and Mrs. Klein after they were removed into the ladies' room ?

A. No, sir.

Q. After you saw Mr. Klein laying upon the platform and you went into the telegraph office, did you see either of them on that evening afterwards ? 20

A. Yes, sir.

Q. Where ?

A. At the house of Mr. Biegel.

Q. What was Mr. Klein's condition when you saw him upon the platform ?

A. Well, I did not notice particularly, but he apparently, to me, was senseless as he laid there.

Q. How did he appear afterwards when you saw him at the house of Mr. Biegel ? 30

A. He appeared to be suffering some

Q. Did you converse with him any, at the house ?

A. I think I did speak to him ; I am not positive.

Q. What signs did he give of suffering ?

A. Well, when one of the physicians attempted to move him he groaned ; that is the way he made his suffering known.

Q. Does the Company have a flagman stationed at Washington Place crossing at the depot,—or did it in the month of August last ? 40

A. Yes, sir.

Q. Was the flagman there that evening ?

A. No, sir ; I suppose you want me to make direct answers—yes or no.

Q. Your answer is all right,—is there much travel across that crossing at Washington place ?

A. Yes, sir.

*Cross-Examined :*

Q. Let me see if I understand you ; I think I understood you 50

aright. As I understand you you stood *here*, [referring to map], or about *there*, and when Mr. Corwin's train had got to the crossing of Washington place.—and as I understood you was still moving —[interrupted.]

A. Yes, sir,—as near as I can tell,—there were some cars on the switch here, and I had to see over the top of the cars, so I could not say distinctly.

Q. Well, you thought it was still moving?

A. Yes, sir: from the car tops, and the smoke-stack of the engine

Q. And then, just at that time the freight train came up and these two engines seemed to meet at this crossing?

A. Yes, sir; at *this* side of the crossing near the depot.

Q. And then you heard the whistle just as it got to the crossing?

A. Yes, sir; just as the engines met.

Q. And that whistle somehow or another made you think something was wrong?

A. Yes, sir.

Q. Then must you not have supposed at the time that the whistle was made by the freight engine?

A. That was my supposition.

Q. You would not have supposed there was anything wrong with the train that had just stopped?

A. No, sir.

Q. And you did suppose at that time that it came from the freight engine?

A. Yes, sir.

Q. What was the reason you thought so?

A. Well, the passenger train was nearly stopped, so I thought it came from the freight train, although I don't know.

Q. Before these trains met, had you seen anything of Mr. or Mrs. Klein?

A. Not that I am aware of.

Q. And you went over to the depot because you thought there was something wrong?

A. Yes, sir.

Q. Was not there a pretty good view of the down track of the railroad, from the platform?

A. Yes, sir.

Q. The head lights of both engines were lit, were they not?

A. I could not tell.

Q. That's the usual rule, is it not?

A. Yes, sir.

Q. After dark?

A. Yes, sir.

Q. And it was dark then, wasn't it?

A. It was so dark that I could see the smoke and fire coming from the freight engine.

Q. Was it really dark?

A. It was dark; it was half-past nine.

Q. And you say that you saw by the smoke-stack, and the lights on top of the passenger train over the ventilators, that it was moving?

A. Yes, sir.

Q. And that is the way you knew Mr. Corwin's train was moving?

A. Yes, sir.

Q. You are not employed on the Erie railroad any more?

A. No, sir.

Q. You left when?

10

A. On the 31st day of August.

Complainants' Counsel also called—

**Henry P. Simmons**, sworn:

Q. You live in Passaic?

A. Yes, sir.

Q. On the evening of the 10th of August, when this accident happened that has been referred to, were you anywhere about the depot, or in that locality?

20

A. Yes, sir.

Q. State where you were?

A. In that locality.

Q. State what you noticed that evening, and what your movements were?

A. Well, where I was sitting ain't marked on that map, but there is a small office, what we called Luny D. Bogert's office, about at—[interrupted.]

Q. Is not that on the map there?

A. Oh, yes; "Real Estate Office;" that's the one,—well, then, I was a sitting in there, sir; in the neighborhood of about half past nine o'clock, and I makes the remark, says I, I will see whose a coming off of the train, the down train; and then I will go home.

Q. That is the train for New York, you mean?

A. Yes, sir; and when I came about *there*—[pointing to map] right opposite to Mr. William Franklin's news office, just about there, I heard—[interrupted.]

Q. State where Franklin's news office is?

A. It is in the end of the depot.

40

Q. Which end?

A. Well, I calls this the south end, but *they* call it the east end, but I call it the south end—it is on the south end of the depot; well, just as I was about there my attention was drawn down to the train coming up, which was then about *here*—[witness pointed below River street]. It was just round the corner.

Q. Well.

A. She appeared to slack up on account of the curve, and the very minute she came round the curve on the straight line, she increased her speed, and I says to myself, says I, there's an accident—[interrupted].

50

[Defendants' Counsel objected.]

Q. Never mind what you said to yourself ; state what you saw ?

A. Well, sir ; the people was to come from that passenger train, and, sir, the freight train increased her speed all the way up, and ran right into these passengers that was a coming off the train.

Q. Did you hear any bells sounded by the freight train, or any whistle sounded ?

A. No, sir—no sir.

10 Q. Do you live in the vicinity of the railroad ?

A. Yes, sir ; right by it.

Q. Have you lived there long ?

A. All my life time, pretty near.

Q. What would you judge to be the rate of speed that the freight train was going at ?

A. Mr. Moore, I could not tell, but she was a going along fast.

Q. When you reached the front of the news station, upon what is called by you the south end of the depot, did you notice the passenger train ?

20 A. Yes, sir.

Q. Explain the position of that passenger train as you then saw it ?

A. The passenger train,—the locomotive of it was just passed Washington Street—in Washington Place they have got it here, but I call it Washington Street. It had just got *here*, and was to a stand still—a perfect stand still, when I first saw it.

Q. At the time you noticed the passenger train was at a stand still, where was the freight train ?

30 A. The freight train was just about *here*,—just about Passaic Street, [pointing to map] I am referring to the locomotive, now—not the cars.

Q. Do you mean west or north ?

A. I mean coming north ; coming up ; please understand that I didn't mean the whole train, I only speak of the locomotive.

Q. After passing the station where did the freight train stop ?

A. Well, the freight train stopped about as far as I could see, away above my house.

Q. Just give us the distance as well as you can ?

A. About 200 yards from my house it is to the depot.

40 Q. Well, state now what else you saw at that time, after the freight train had reached the station ?

A. Well, I walked right round the corner of the depot, and I saw a gentleman lying on his back nearly alongside of the up track ; the up track you know is nearest to the depot ; only he was on the platform, not on the track, but on the platform ; and I saw a lady lying a little higher up—further north ; she was lying a little closer to the approach that runs up to the freight office.

Q. On the same platform ?

A. Yes, sir.

50 Q. Well, what was done with those persons while you were there ?

A. Well, the gentleman was carried into the ladies' room and laid on the floor, and the lady was laid upon a wheelbarrow; a large wheelbarrow that they have there for baggage,—she was laid on that.

Q. On a truck?

A. Yes, sir.

Q. Was there anything further that you saw?

A. Well, I was around there—I did not pay so much attention to the lady as I did to the man, and the two children that was around there. 10

Q. What signs of injury did you see on Mr. Klein?

A. Well, Mr. Klein, if that's his name, was very much cut up; terribly cut up; he had a cut right over his eye, and in the neck, right *here*, [witness illustrated by his own neck] and he was bleeding very profusely—*very* profusely.

Q. Did he speak?

A. No, sir; I did not think the man would live 15 minutes.

Q. After he was taken into the ladies' room did he speak?

A. No, sir; not that I heard.

Q. Did you go with him when he was taken to Mr. Biegel's house? 20

A. No, sir.

Q. What hurts did you see upon Mrs. Klein, if any?

A. I did not take any notice of Mrs. Klein.

Q. Did you notice any flagman there that evening?

A. No, sir.

Q. Are you about the depot a good deal?

A. Yes, sir.

Q. Do they generally keep a flagman there at nights?

A. No, sir; they never have one there at nights.

Q. Do they keep one there in the day time? 30

A. Yes, sir.

*Cross-Examined:*

Q. You say that when you first saw the freight you stood about there? [pointing to map.]

A. Just about there.

Q. Was that the first you saw of the passenger train too?

A. The passenger train?—when I heard her blow off her steam I was into Bogert's real estate office.

Q. And then you came out? 40

A. Yes, sir.

Q. Now when did you first see the passenger train?

A. I saw it the moment I came out of the real estate office; that is, I mean the locomotive, not the train—understand me.

Q. You say that when you got on the platform you said to yourself that there would be an accident?

A. I did.

Q. And you looked up the track?

A. When I came about here—[interrupted.]

Q. Where? 50

A. *Here*, right *here*—[showing on map] when I came there I heard that train coming up, and I looked round, and then she opened her valves and increased her speed, and that is what drew my attention to it; she kept increasing her speed all the way up, and then I said to myself there is going to be an accident.

Q. You said before that this was when you were at Franklin's news depot?

A. That is Franklin's Depot.

Q. When you got to *that* place then you heard her coming up  
10 here?

A. Yes, sir.

Q. When you looked up the track?

A. I did not look up the track; I looked down the track.

Q. What then?

A. I saw this passenger train coming out right *here*; that was when I was coming down Washington place to my house, I saw this passenger train coming out *here*, [pointing to map,] and then I saw this other train coming up, and I started out of the news shanty and made this observation to the individuals there; I will  
20 see who comes out of the train and then I am going home; there was a number of people in there.

Q. Do you know whether there is an up or a down grade from where the freight train passed round the curve to the depot?

A. I should say it was down from the depot to the curve, the water runs that way; I am confident of it—that it grades down.

Q. Was this a heavy or a light freight train?

A. It was quite a train; I have seen heavier ones; I should say it was a train of 20 cars, if not more; I should say about 20  
cars.

Q. How much did you have to do with Mr. Klein yourself; did you attend to him yourself?

A. No, sir; I looked *at* him for some time.

Q. Was there a big crowd round?

A. Yes, sir; quite a crowd around.

Q. And you were in the crowd?

A. Well, I don't know that I was; I looked at that man some time, I tell you, and I did it because I considered it an outrage.

Q. And that is the reason you looked at him, you say?

A. Yes, sir.

Q. Because you considered it an outrage?

A. I certainly considered it an outrage, and I said so at the time.

Complainants' Counsel also called

**George Gebhardt**, sworn.

Q. In the month of August last were you living in Passaic?

A. Yes, sir; I was.

Q. Where were you employed?

A. At Terhune's drug store.  
50

Q. Please point out on the map where that is ?

A. [Witness did so.]

Q. What is the situation of that drug store with reference to Ansell's saloon ?

A. It is next to it.

Q. Adjoining it ?

A. Well, yes, sir.

Q. On the evening of August 10th last, were you at the drug store ?

A. Yes, sir. 10

Q. At the time the 9:37 P. M., train reached Passaic where were you ?

A. Sitting outside the door.

Q. Please point out on the map where you were sitting ?

A. About *there* [pointing.]

Q. In front of the drug store ?

A. Yes, sir.

*By Defendant's Counsel :*

Q. Just in front of the drug store ? 20

A. Yes, sir.

*Further Direct-Examination :*

Q. On Main avenue ?

A. Yes, sir.

Q. Can you see from there over to the depot ?

A. Yes, sir.

Q. Now please state what you noticed about the trains at that time,—about 9:37 ?

A. Well, sir ; about a quarter past nine I went and sat outside 30  
the store and stayed there until the train came along at 9:37, and  
it stopped at the depot, and then I noticed the freight train coming  
up round the curve ; she opened out her speed and came right  
up this track, and I made the remark to Mr. Ansell, who was  
sitting on the stoop, that somebody was going to get killed unless  
that train stopped, for it did not whistle nor yet ring the bell.  
The down train stopped as the freight train got about Passaic  
street, and the freight train ran right straight along, and I  
looked, expecting to see somebody get hurt, and I saw the passen-  
gers getting off at the depot ; I saw passengers getting off the 40  
train in the depot ; I was sitting on the opposite side from the  
depot and had to look under the cars, so I stooped down and I could  
see the passengers about half-way up their bodies. Well, the  
freight train ran right along and passed this train, and I see  
two or three people standing there, and the up train struck a man  
and I saw him fall, so I jumps up and pulled the door shut and  
ran over to the depot, and at the time I got there they had picked  
the lady up and put her on a truck, and the man laid on the plat-  
form, and somebody was taking off his watch and other things  
out of his pocket at that time ; I helped carry him in the depot, 50

and Dr. Herrick sent me for sponges, and I got them and helped wash him off, and then I helped to carry him down to Mr. Biegel's.

Q. When you first looked under the train, where did you see the people whom you mentioned as having seen?

A. It was at first opposite the ladies' room door of the depot; they came out of the ladies' room.

Q. Were they then on the track or on the platform?

A. When I first saw them they were just stepping off the platform to the track.

10 Q. As they were stepping from the platform to the track, where was the freight train?

A. About that time I guess it was about between Passaic street and Washington place,—very near to that flagman's shanty.

*By Defendants' Counsel :*

Q. Was that when they were stepping off the platform?

A. Yes, sir.

*Further Direct Examination :*

20 Q. Is the platform higher than the track, or on a level with it?

A. It is level with the rails.

Q. At what point did the freight train increase its speed?

A. Just after she passed up round the curve.

Q. In what condition was Mr. Klein when you saw him in the ladies' room?

A. I thought he was dead.

Q. Did he show any signs while you were there, of life?

A. No, sir; I could not see any; I looked.

Q. Did you assist in taking him to Mr. Biegel's?

30 A. Yes, sir.

Q. When did he show signs of life?

A. When we first took him in the house, that I saw.

Q. Well, what signs did you see of life?

A. Well, when we went to put him in bed, he groaned while we were putting him in bed.

*Cross-Examined :*

Q. You say you sat in front of the store and the first thing you saw was the freight train?

40 A. No, sir; I saw the other train first.

Q. Where did you see the other train?

A. Just as she came out round the curve.

Q. As she came up past this train, where was it you first began—or where was that train when you first began to look underneath the cars?

A. Just west of Passaic street, when I began to look under the cars.

Q. And where then were Mr. and Mrs. Klein?

50 A. They were getting on the train then—just stepping off the platform, to try and get on the train, I suppose.

Q. Stepping off the platform and on to the track ?

A. Yes, sir ; that is, off the platform on to the ground, which is about two inches.

Q. And you looked under the cars the moment the freight train was at Passaic street ?

A. Yes, sir ; and then I saw this train coming, and then I looked under again to see if any body was struck or not.

Q. When you first looked under the cars you saw them ; now this time you looked, where were they then ?

A. I could not say that I saw them then ; when I first saw them the freight train was about half way between Passaic street and Washington street. 10

Q. How did you come to see the freight train when it was dark ?

A. I could see from the sparks flying out of the engine where it was, and I could hear it.

Q. Did you see whether it had a light ?

A. A head-light ?

Q. Yes.

A. Yes, sir. 20

Q. And you say the sparks were puffing out ?

A. Yes, sir ; and I could see from that, that he increased his speed after coming round the curve.

Q. How near did he increase the speed ?

A. Well, I could hear him puffing hard.

Q. Well, don't you always have to increase speed when you begin to go up a grade ?

A. I increase mine when I go up.

Q. Yes, sir ; but don't they on freight trains when they go up grade ? 30

A. Yes, sir ; and so do I.

Q. And you puff hard, I guess, when you go up a grade ?

A. Yes, sir.

Q. Well, now, you say that you saw these people on the track, did you keep your head down looking under the cars until they were struck ?

A. Yes, sir.

Q. And they stood on the track all that time ?

A. Well, it only took an instant—I just saw them step off and stand there a minute. 40

Q. How many were there altogether ?

A. I should say 3 or 4 of them ; they went in succession one after the other.

Q. They did not go all at once ?

A. No, sir.

Q. Mrs. Klein went first, did she not—or don't you know ?

A. I could not tell.

Q. You could not see over the cars, could you ; there were two rows of cars between you and these people, weren't they ? 50

A. No, sir; there was not; there was a row of cars on the switch—the last car was *here*. [Witness showed on map.]

Q. When you saw these people were they moving a little way up the track, or down the track, or square across the track; did they move straight across the track, or up and down?

A. No, sir; they were going up the track as they came from the door; that is, as they stepped off the platform.

Q. You say they moved a little up the track?

A. Yes, sir.

10 Q. Their backs then were towards the freight train?

A. Yes, sir.

Q. And that was when they were stepping right on the track that you speak of the freight train being where you say it was?

A. Yes, sir.

Q. Now you are acquainted with the locality there—from the front of the platform as you step on the track you can see down the track to where,—standing just where you get off the platform you could see way down to the curve, could you not?

A. Yes, sir.

20

Complainants' Counsel also called—

**James G. Cadmus**, sworn:

Q. On the 10th of August last, between 9 and 10 o'clock at night, were you anywhere about the locality of the Erie Railway Station at Passaic, and if so, tell us where you were?

A. I was sitting there in a chair.

Q. Where?

A. In front, or on one side of the real estate office of Bogert's.

30 Q. Who else was there with you?

A. Well, I could not mention but half a dozen, I guess; there were 3 or 4 outside, and 5 or 6 inside.

Q. Did you notice Henry P. Simmons there?

A. I did not; he might have been inside; I was outside.

Q. Did you notice the passenger train due at Passaic about 9:37?

40 A. Well, I did; I was sitting there and I heard the train coming down, and I asked the person sitting alongside me if that was the 9 o'clock train; he said, yes, and I told him I was going home; so I started off and walked across to the corner of Speer's building, and by the time I got there that train had stopped, and as she

stopped I looked round and saw the freight train coming; just as I stepped ahead to go round the corner I saw her coming.

Q. Where was the freight train when you saw her?

A. As I turned my head she was right on me in an instant, and passed right by the other locomotive.

Q. Did the freight train sound the whistle or ring the bell?

A. I did not hear it.

Q. At what rate was the freight train going?

50 A. I could not tell that; she was running at a pretty lively speed.

*Cross-Examined :*

Q. Which is Speer's building ?

A. [Witness pointed out in the map.]

Q. And you say you came from that office ?

A. Yes, sir.

Q. And when you got to the corner of Speer's building the passenger train stopped ?

A. Well, she was coming down as I got off the chair and started for home.

Q. Where is home ?

A. I go down Passaic street and cross over *here*—[witness showed on map.] Then I rose up from my chair and saw the train coming into the depot, so I walked over and as I got over on the other side I stopped right there, and held on to see the train stop, and as she stopped she was letting off steam, and I turned to go on, and I saw the freight train coming, and as I turned round the corner the train was right on me ; I stopped and saw the train go by ; I saw her pass the other locomotive and about one half of the train passed me before I stepped on again to my home.

10

20

Q. What I want to know is this : When you first turned the corner I understood you to say the freight train was right on you, is that so ?

A. No ; I took my eye off this train and turned round, and then the other train came right along on my left, and in an instant she passed the other train.

Q. And you don't know any more about it except that ?

A. That's all.

*Re Direct-Examination :*

Q. You live in Passaic ?

A. I do.

Q. Where ?

A. Within 200 yards of the depot, and I have lived there for 30 years.

Q. You have your business there ?

A. Yes ; I am a farmer, if that is a business.

Q. And you were just sitting about the real estate office ?

A. Yes, sir ; I go down there most every night in the Summer time, and have a talk.

30

40

Complainants' Counsel also called

**Albert H. Romaine**, sworn.

Q. Did you go to New York from Passaic on August 10th last on the 9:37 train ?

A. Yes, sir ; I go down every night with the exception of Saturday night—in the Summer season.

Q. At the time the 9:37 train reached Passaic station and stopped, where were you standing ?

50

A. I was standing on the crosswalk from Bedell's corner over to Washington place.

Q. Just point that out on the map ?

A. From *this* point over to there ; I suppose it is about 20 feet from the corner ; I was crossing from Bedell's shop across to the depot to take the train.

Q. Did you notice the freight train coming from New York ?

A. Yes, sir.

Q. Just tell what you noticed relative to the two trains ?

10 A. At the time I reached this point, about twenty feet from the corner, I noticed in looking through, under the cars, a gentleman and lady passing from the depot over to the down train, that is all, I believe, I saw.

Q. Well !

A. The down train was at a stand still, and the baggage car, which was part of the first passenger car,—the smoking coach,—has a door at the end which is generally kept locked so that any one can't get in, but I thought I could get in.

Q. Well !

20 A. And at the time this passenger train stopped I should judge that the engine of the freight train reached that flagman's shanty.

Q. Did you hear any bell rung or whistle sounded on the freight train ?

A. I heard the whistle sound on the freight train, between the flagman's shanty and the lower part of the depot.

Q. At the time you looked under the cars—[interrupted.]

[Defendant's Counsel objected to question on ground that he had not said he looked under the cars.]

30 *By the Witness* : Yes ; I looked down under the train as I was coming up to the depot ; I was standing up and looked under them *that* way. [Witness illustrated.] And I saw these people passing over from the depot to the train.

Q. Were they in a row, one behind the other ?

A. From the position I stood in the man and woman looked to be alongside each other.

Q. Did you notice any children with them ?

A. No, sir ; I did not.

40 *Cross-Examined* :

Q. From the position in which you stood, you saw both the man and the woman ?

A. I saw both of them.

Q. Did they move from the depot up the track or not ?

A. I cannot tell you.

Q. At the time the passenger train stopped, the freight train had just about reached the flagman's shanty, you say ?

A. Yes, sir ; the engine of the freight train had reached the flagman's shanty.

50 Q. So that the engines almost met one another when the passenger train came to a full stop ?

A. Yes, sir; and the passenger train rang its bell until they stopped.

*By Complainants' Counsel :*

Q. That is the passenger train ?

A. Yes, sir.

*Further Cross-Examined :*

Q. You were not asked anything about speed, sir; was this freight train coming up the grade in the usual way ? 10

A. Yes, sir.

Q. They generally have to puff hard up a grade, don't they ?

A. Yes, sir.

Q. Do you think that indicates speed ?

A. I did not take any notice of that at all.

Q. Can you judge so as to tell us how fast they were going ?

A. Well, I could not judge the speed very well.

Q. Can you say whether you thought it was very fast or that it was rather slow, or such as freight trains usually run at ?

A. I did not think it was slow; I think it was at the usual run of trains that came up there. 20

Q. Of freight trains ?

A. Yes, sir.

Q. Did you see these people struck ?

A. No, sir.

Q. Did you hear of it ?

A. I got on the baggage car and saw that something had occurred; I had a basket with me and I sat it down on a seat in one of the cars and looked out of the window to see whether anybody was hurt. I looked out and saw a man lying down with his head a kind of over *here*, and I saw over *here* [witness pointed to map], between the track what I thought was a bundle of clothes at first; I stayed there a few minutes and some body went for Dr. Herrick, and carried the man in the depot, and afterwards I saw the woman sitting on a wheelbarrow, reclining backwards on the wheelbarrow; she was sensible then. The train waited about five minutes and I stood around there and finally got on the train and we went on down. 30

Q. You did not see them struck and don't know exactly about that? 40

A. No, sir.

Q. Can you state when you saw them together, whether they were on the track or platform ?

A. I feel satisfied they were in between the two tracks when I first saw them.

Q. Where was the freight train then ?

A. It was about *here* [witness pointed out on map].

Q. Then they had already crossed the track ?

A. No, sir; they were just about doing so.

Q. I thought you said they were between the tracks ? 50

A. Well, they were crossing between the rails and going up the track.

Q. And they were there when you saw this train about *here*?

A. Yes, sir; I noticed the train coming, and I noticed them about *here*, just about crossing the westward bound track.

Q. That was just as the freight train was at the flagman's shanty?

A. Yes, sir.

Q. And as the other train was just coming to a stop?

10 A. Yes, sir.

Q. As the freight train was at the flagman's shanty and these people were between the rails of the track, this was all simultaneous?

A. Yes, sir.

*Re-Direct-Examination :*

Q. How far above Mr. Klein was Mrs. Klein lying at the time when you first saw them?

20 A. I could not state exactly the distance, but I suppose ten or fifteen feet—that is, Mr. Klein lay about *here*, and she laid about *there* [pointing to map], between the two tracks, I should judge it was *here*. She looked like a bundle of clothes; I did not know it was a woman at first.

Q. The truck on which Mrs. Klein was reclining is bent up at the ends in *this* way [Counsel illustrated with his hands]?

A. Yes, sir.

Q. And you say she was lying on this?

A. She was reclining back on this at first, and she finally sat up.

Q. Was she conscious?

30 A. She was conscious; yes, sir.

Q. What demonstrations did she give of consciousness?

A. Well, I saw her fixing herself.

Q. Did you hear her talk?

A. No, sir.

Q. Was any body beside her assisting her?

A. Some people were round there, but I don't know whether they were assisting her or not.

*Re-Cross-Examined :*

40 Q. Where do you reside, Mr. Romaine?

A. Paulison Avenue, Passaic.

Q. Your business is in New York?

A. Yes, sir.

Complainants' Counsel also called—

**John Duffus**, sworn :

Q. You live in Passaic?

A. I do.

50 Q. What is your business?

A. Real estate and insurance.

Q. Are you a Justice of the Peace, also?

A. Yes, sir.

Q. On the night of August 10th last, between the hours of 9 and 10 o'clock, where were you?

A. I was coming from the City Hall.

Q. Did you notice a train at the depot?

A. I noticed the freight train coming along at a pretty rapid speed, and there was a train at the depot I saw, and I thought there would be a likelihood of an accident—that was my impression, but I did not know until afterwards that there had been an accident.

Q. Did you hear any bell rung or whistle sounded from the freight train?

A. I did not.

Q. Where was the freight train when you saw it?

A. The freight train was I think at the middle of the Passaic Street crossing.

*Cross-Examined :*

20

Q. Where were you when you noticed it?

A. I was in Main Street.

Q. Where is the City Hall, which way, east or west from the depot?

A. The City Hall is right *here*. [Witness showed on map.]

Q. West of the depot?

A. Yes.

Q. How far west?

A. I could not tell.

Q. About?

30

A. It is about I should say 300 feet.

Q. You were going from the City Hall to where?

A. On my way home.

Q. Which way is that?

A. Going towards Terhune's drug store?

Q. How far had you got from the City Hall?

A. I suppose I had got about 200 to 250 feet.

Q. And you saw the two trains come up and pass one another?

A. I saw the freight train coming up, and I saw them pass one another; yes.

40

*Re Direct-Examination :*

Q. The City Hall is on the corner of Prospect Street and — Avenue?

A. Yes, sir.

*Re-Cross-Examination :*

Q. You were going towards Passaic Street, and had got away past the flagman's shanty in *this* direction, had you not?

50

A. I was about there as the freight train was coming up ; I did not notice anything until my attention was called to it.

Complainants' Counsel also called

**John C. Herrick, M. D.,** sworn.

Q. You live at Passaic ;

A. Yes, sir.

10 Q. On the evening of August 10th last, were you called to attend to people who had been hurt at the Passaic depot ?

A. I was.

Q. State the condition in which you found those persons after you came there, and what you did with respect to them ?

A. On that evening between 9 and 10 o'clock I was called ; I was at my office, and was called by Mr. Crowell to go and see some persons who had been injured at the depot. I went over immediately, and went into the ladies' waiting room and there I found Mr. Klein lying on the floor, bleeding from the head, and  
20 apparently—well, I cannot remember exactly as to that. There was a crowd of people in the sitting room, and I made my way to Mr. Klein and felt his pulse and examined him, and then I called for water and I proceeded to wash his wounds, especially those about the face ; after doing so I ordered that he should be carried to his friend Mr. Biegel's house, where he had been visiting. They procured a shutter or some boards, and put him on it and carried him down to Mr. Biegel's. At that time I did not see Mrs. Klein, but while they were carrying her husband to Mr. Biegel's I passed her walking down between her two children, and being  
30 supported by persons walking with her.

Q. What injuries did Mr. Klein sustain ?

A. At the time I found he had an injury on the head just below the eye—the right eye ; an abrasion of the skin ; his upper lip was cut so as to be almost cut through ; his under lip was also bruised and cut, more inside than out.

Q. Did you notice anything about his teeth or gums ?

A. I noticed at the time he was deficient two front teeth on the under jaw.

Q. These were the injuries you discovered at the depot ?

40 A. Yes, sir.

Q. Did you discover at the depot symptoms of any other injury ?

A. I did not

Q. And in what condition did he appear—his nervous state, at the depot ?

A. Well, I don't know that he said anything ; I don't remember that he groaned, but that he was suffering from the effects of extensive injuries I am positive.

Q. What was done with him ?

50 A. He was carried to Mr. Biegel's by parties at the depot, and

when they arrived there they proceeded to remove his clothing, and we examined further as to the extent of his injuries.

Q. Did any one assist you at Mr. Biegel's ?

A. Yes ; Dr. Van Riper

Q. What other injuries did you find he had sustained ?

A. We found that the bone of the pelvis was broken, called the ilium, and that his ribs were fractured.

Q. This ilium you speak of is the upper bone of the hip,—of the pelvis ?

A. Yes, sir.

10

Q. Will you show us by the diagram in this book [producing a book on surgery], what part was broken,—what portion of the pelvis ?

A. Yes, sir [witness did so]; *this* is one-half of the pelvis,—and *this* was the bone broken ; it was broken across transversely, in the upper third.

Q. Was it a partial or complete fracture ?

A. A complete fracture of that bone.

*By Defendants' Counsel :*

20

Q. Where is that bone ?

A. It is that hip bone that projects on the side, here.

Q. And that is the one that was broken ?

A. Yes, sir ; it was broken across transversely.

Q. It runs back, does it not ?

A. Yes, sir.

Q. And that was broken ?

A. Yes, sir.

Q. Is that the whole of the hip, or only part of it ?

A. A part of it—there is one on each side.

30

Q. *That* is the whole hip ? [Pointing to diagram.]

A. Well, the hip comprises all the bones ; it was the whole bone of the upper hip.

*Further Direct-Examination :*

Q. How many ribs were fractured ?

A. Two ribs.

Q. Was there any injury underneath the ribs ?

A. No more than we always find with fractures of ribs ; there was the cough and pain that generally attends a fracture of the 40 ribs.

Q. There is a membrane right under the ribs ?

A. There is.

Q. Was not that bruised ?

A. It was irritated, and that caused this cough and pain ; Mr. Klein was also bruised elsewhere, but nothing serious.

Q. What did you do with him at the house of Mr. Biegel ?

A. We placed him in a comfortable position and applied the usual appliances for fractures of these bones, and then gave him anodynes to quiet him for the night.

50

Q. Did you keep him under the influence of anodynes ?

A. For the first two or three days we did, more or less, as the symptoms required.

Q. What symptoms did he give of suffering ?

A. He gave symptoms of suffering from the fractures of the ribs and the pain in his side, and especially from coughing ; he complained of pain in the region of the pelvis, especially from the fracture, but there was very little complaint of pain in the neighborhood of the fracture of the pelvis.

10 Q. He was taken to the house on the 10th of August ; how long after that did you attend him ?

A. Until the first of September.

Q. How long did this cough continue ?

A. It continued up to that time, and even now he has more or less of a cough, which is probably due to the fracture.

Q. How does the fracture of the ribs cause such cough ?

A. By irritation of the membrane beneath them, which is conveyed to the lung, by sympathy, or sometimes it is extended by irritation.

20 Q. Is the cough attended by pain ?

A. While the fracture is uniting it is, because it allows the parts fractured to rub, or to be moved, which always excites pain.

Q. As that cough continues is there a continual irritation of that membrane, as long as the cough continues ?

[Defendant's Counsel objected to question as leading.]

Q. When does the cough cease ?

A. I cannot say.

Q. In ordinary cases when ought the cough which you say at-

30 tends a fracture of the ribs to cease ?

A. When the irritation from the fracture ceases, which is longer or shorter in different persons, and according to the extensiveness of the fracture.

Q. Well, you attended him until the first of September ?

A. Yes, sir.

Q. How soon after that did you see him ?

A. Not before the 18th of September ; I went away at that time and left him in the hands of Dr. Van Ripér ; I returned on the 17th of September, and I think I saw him the next day, he

40 was then at Mr. Biegel's.

Q. What was his condition ?

A. He was up, and I saw him down stairs in the parlor of Mr. Biegel's ; he was able to walk but not without a limp, and he had to use a cane in doing so.

Q. That was on the 18th ?

A. Yes, sir.

Q. Did he remain in town after that ?

A. I think he did for a short time ; but how long I cannot say, as I did not see him again for some time.

50 Q. How long was it after that before you saw him again ?

A. I don't recollect, but I think it was about a week.

Q. Do you know when he left Passaic to go to New York?

A. I don't.

Q. From your knowledge of his constitution, how long will he suffer from the effects of the fracture of the ribs?

A. I cannot say positively how long.

Q. Well, with reasonable certainty?

A. This book, and that is an authority, speaks of their suffering from the effects of fracture of the ribs for one or two years afterwards; but I cannot say that he will suffer for so long. 10

Q. What is the effect upon the system generally, of a fracture of the pelvis?

A. I think it has no prolonged effect so far as my knowledge goes; it is a rare fracture and I cannot speak from experience.

Q. Are there not other pains felt in other parts of the body than that in which the fracture is sustained?

A. No, not usually; there are exceptional cases, but it is not usual.

*Cross-Examined:*

20

Q. Were these fractures simple or compound?

A. Simple fractures.

Q. All of them?

A. Yes, sir.

Q. Now the fracture of the ribs that are dangerous and last for years are confined as a general thing to where the ribs are driven into the lungs or the membrane by violence, are they not; and there may be a great difference in these cases?

A. Yes, sir; they are more apt to be dangerous when driven in.

Q. And therefore any book that says a fracture of the rib could last two or three years cannot apply to every case, but they may be more or less dangerous according to the extent of it? 30

A. I should judge it could not apply to every case, because it might be more or less severe.

Q. How came you not to see Mr. Klein but once or twice after the first of September?

A. Because he was not in need of treatment,—the fractures united, and he was suffering lameness which took time to dispel.

Q. How many times did you say you saw him after that?

A. Twice, as near as I can recollect; I saw him at my office once or twice since, and I think before he came to see me, it was twice I saw him. 40

Q. This lameness you speak of, what was that?

A. It was a halt in his gait, which he had to relieve with the help of a cane.

Q. Do you know, sir, whether he had a cough or not before this accident happened?

A. I do not, sir.

Q. Do you know anything about his condition at the time you first saw him? 50

A. You mean on that night, the 10th August?

Q. Yes, sir.

A. I do not.

Q. Did you attend Mrs. Klein afterwards?

A. I did at the house; I first attended her at the house. After I and Dr. Van Riper got through with Mr. Klein, we looked after her.

*Re-Direct-Examination :*

10 Q. What were the injuries Mrs. Klein sustained?

A. We found a fracture of one of the bones of the shoulder, called the scapular—a projection of that bone called the acromion process; we found that fractured.

Q. That is one of the prongs of the shoulder blade, is it not?

A. Yes, sir; one of the extensions. [The witness showed the part referred to on diagram in book on surgery.]

Q. Was it a complete or a partial fracture?

A. A complete fracture.

Q. How long did you attend her?

20 A. As long as I did Mr. Klein,—up to the first of September; and after I came back I saw Mrs. Klein once or twice.

Q. What effect attended the practice?

A. She had pain in the shoulders from moving the arm, and also at times when she did not; that was the principal effect at that time.

Q. How long did these effects continue?

A. Well, she is suffering from the effects of it yet; she is not able to move her arm as freely as before the fracture. I would also state in connection with her injuries that she received a sprain  
30 of the right hip, which she suffered from more than from the fracture.

Q. State more particularly about that injury to the right hip; what is the nature of the sprain?

A. The same as when a person sprains his ankle; the muscles were wrenched in such a way as to cause her to suffer pain from the sprain which she received.

Q. How long did she continue to suffer pain from the spraining of her right hip?

A. I cannot say positively, but for sometime up into Septem-  
40 ber, she was suffering from it; when I left she complained of it, and also when I returned; she also had an abrasion of the face, similar to that of Mr. Klein, but not so serious—that soon healed.

Q. I want to ask you again in reference to Mr. Klein's injury he received to the ribs; what was the nature of the pain that he suffered; what sort of pain did he suffer?

A. A sharp, lacerating pain, peculiar to fractures of the ribs.

Q. From your knowledge of Mrs. Klein's physical condition and the nature of the injuries she received, how long will she in all probability suffer from the effects of this fracture?

50 A. It is a difficult question to answer, positively; trouble with the shoulder, generally, lasts for some months after the injury.

Q. Well, how about the injury to the right hip ?

A. That only exists slightly now.

*Further Cross-Examined :*

Q. How long was Mrs Klein kept in bed ?

A. Well, she was in bed and out again several times ; she was not confined to her bed entirely ?

Q. Well, I ask how long she was confined to her bed ?

A. After the accident she did not go to bed immediately, and then in a short time—say a week after that she did, and remained 10 in bed for perhaps a week ; I cannot be positive as to just the length of time.

Q. Why did she not go to bed immediately ; did it not need it at first ?

A. No, sir ; for the injury to the shoulder it was not necessary for her to go to bed, and the injury to her hip did not seem to require it at first, but she complained of so much pain there that we thought quiet would benefit it, and therefore advised it, and I don't think she remained in bed more than a week.

Q. Did you not advise it because she walked about too much ? 20

A. I don't remember.

Q. Well, that is a reason for advising people to go to bed after their being up ?

A. Yes, sir ; we thought that more quiet would benefit it.

Q. It was not necessary to go to bed you say, for the shoulder injury ?

A. No, sir ; we had to keep it quiet, but it was not necessary to keep it quiet by her lying down.

Q. The hip injury then was worse after the accident took place—does not that generally come from a person having used it too 30 much, and don't you so consider it ?

A. We did not consider so at the time.

Q. Then you mean to say that at that time you did not consider the cause of the renewal of the trouble with the hip, that she used it too much ?

A. No, sir.

Q. What did you think it was caused by ; don't they get better if not used ?

A. Usually ; we did not assign any cause to it, only that it was 40 so.

Q. Was not the probable cause of that, that it was used too much ?

A. I cannot say that it was, or I should have thought so at the time.

Q. Well, I ask you if that is not probable ; can you assign any other cause ?

A. No, sir ; only her hip was sprained and she suffered from it.

Q. That often causes it, does it not—being used too much ?

A. It is caused so ; we usually have patients keep quiet for a sprain, but at first we did not consider it of sufficient importance 50

for that, but after a while we thought it was necessary because she complained so much.

Q. Then you would have considered it better for her if she had been quiet from the beginning?

A. If it had been from that cause, yes, sir.

Q. Was not the reason you sent her to bed because you thought she had not been quiet enough and ought to be kept quieter?

A. Yes, sir; I suppose we did.

10 *Direct Examination :*

Q. Where was Mrs. Klein kept during this time prior to your telling her to go to bed?

A. In the room with her husband—in the same room.

Q. Where did she stay at night?

A. In the same room.

Q. What did she sleep on?

A. On the lounge at first.

Q. Well, during the day time what was she doing?

20 A. I could not say as to that; she was quiet during the day, except when not reclining.

Q. Was she moving about the room?

*By Defendant's Counsel :*

Q. Were you there all day?

A. No, sir.

*Further Re-Direct-Examination :*

Q. How do you know she was not kept quiet?

A. I don't know it; I only saw her while I was there.

30 Q. What was there while you were there that indicated she was not kept quiet?

A. Nothing more than she was up; not reclining.

Q. What was she doing then?

A. She might be moving a chair from one part of the room to another for some purpose.

Q. Did she vary from your instructions any?

A. No, sir; not that I am aware of.

Q. What is the amount of your bill against Mr. Klein for attending Mr. and Mrs. Klein?

40 A. I cannot say exactly the sum of my bill; but Dr. Van Riper and mine together came to \$132.

*Re Cross Examination :*

Q. Do you remember how many visits you each made there?

A. I made 42; I think Dr. Van Riper made 37.

Q. What is Mr. Klein's bodily health now; is it not good, otherwise than the cough you speak of?

A. I have not examined him lately.

Q. You suppose he is cured now?

50 A. Well, as far as they can be in this time; there is a callus

grows over the fracture, round the place where the fracture was, &c. [Witness explained by book.]

Q. You may have a little irritation from it although the bone is as sound as it was before?

A. No, sir; the bone is not so sound now, it may be eventually.

Q. That little pain is nature's provision for strengthening the bone?

A. Yes, sir; the callus is

Q. That callus comes from the irritation?

A. No, sir; the fracture brings the callus there as a protection 10 to strengthen the bone

Q. And that you say causes a little irritation?

A. There it always more or less of this dull pain, similar to rheumatism.

Q. Well, it does not prevent you going about your ordinary occupation?

A. It does at first, but the longer you go, the less it does.

Complainants' Counsel also called

20

**Cornelius Van Riper, M. D.**, sworn.

Q. What is the amount of your bill against Mr. Klein for services in attending Mr. and Mrs. Klein?

A. Well, the amount of the two bills is \$132.

Q. When were you called in to attend Mr. Klein and his wife?

A. Well, it was after they had reached Mr. Biegel's house.

Q. What did you then find Mr. Klein's injuries to be?

A. Well, he was lying on the floor, and Dr. Herrick was washing the wounds of his face and dressing them when I first saw him, and as I could do nothing there with him I went to look after Mrs. Klein, and I found her ear-ring had been torn out and she had a cut in *here*,—right at the end of her ear and cheek, and a piece of her ear-ring had been broken out and driven in her cheek, part of which I discovered that night and part the next day; and then I think she had a slight scalp wound right *here*. [Witness showed.] I cleaned that out, and after I got through with her I then went to Dr. Herrick and examined Mr. Klein, who was in bed, and we then discovered this fracture of the ilium. 30

Q. How did Mr. Klein act through this; did you discover any symptoms going to manifest a sense of suffering? 40

A. I think he complained of his side, or there was some groaning or something of that kind; if I remember rightly I stood by while Dr. Herrick examined his ribs; we had not discovered the fracture of ribs yet—our attention was drawn to the fact when he was groaning and complaining of pain in the side, and he examined more closely, I think, and then discovered this fracture of the ilium; his attention was called to that by his groans of pain.

Q. In what part of the body did he complain of pain?

A. Well, he complained of his side all the while, that is that evening; I don't know now whether we discovered that fracture 50

of the ribs that night or the next day, but he complained considerably that night.

Q. What was the opinion of yours and Dr. Herrick as to the character of those injuries, whether they were dangerous to life or not?

A. Well, we concluded that that would depend altogether on the amount of internal injury he had received.

Q. Did you express to him any fears or apprehensions you had with regard to his life?

10 [Defendant's Counsel objected. Question overruled.]

Q. What was the nature of the pain that he suffered from the fracture of the ribs?

A. Well, a sort of short pain, generally with inspiration,—that is in breathing,—the same pain as you have in pleurisy.

Q. How long did you attend him?

A. I attended him from that evening until somewhere about the latter part of September,—I don't remember just the date,—and I have seen him two or three times since in the office.

20 Q. How long was he confined to his bed?

A. Well, that I could not positively say; he was out of bed before the 18th of September,—before Dr. Herrick came back,—in fact I think he was in a chair at that time.

Q. How did he move about the room after he got out of bed?

A. When he got out of bed he did not move about at all; we helped him out of bed.

Q. How long was it before he could walk?

A. I could not say positively, but he was walking when Dr. Herrick came back, about the 18th of September; he had come

30 down stairs, I think then.

Q. In reference to Mrs. Klein, what injury did she receive?

A. She had these abrasions of the face, and a few superficial scalp wounds, and the fracture of the acromion process, and this fracture of the scapular of the shoulder blade, and also the spraining or straining of the muscles, or ligaments and muscles of the hip joint.

Q. What effect did that injury to her hip joint have upon her system?

A. Well, the same effect as a sprained ankle would.

40 Q. Do you know anything about the present condition, physically, of either Mr. or Mrs. Klein?

A. No, sir; I do not; I have not examined them for the last month or six weeks, and not then, only I saw them when they came in the office, but I did not make any examination of them.

Q. From your knowledge of the nature of these injuries and the condition of Mrs. Klein, and from the nature of the injuries, how long do you suppose that she will suffer from the effects of the injuries?

A. I could not tell, sir.

50

Q. Well, say with reasonable certainty, I did not suppose you could tell certainly.

[Defendants' Counsel objected.]

Q. What is your opinion from your knowledge of the nature of those injuries and the condition of Mrs. Klein, as to whether she will suffer any effect from those injuries, for a long time or a short time?

A. Well, that is a question; and I can't see how I can possibly tell; it depends a great deal in these cases of fracture and pain, upon what kind of constitution you have got to deal with; if you have a person with rheumatic tendencies, it will sometimes trouble them a whole life time; where a ligament or bone has been injured, the pain will follow them a whole life time, if they have a disposition to rheumatism, where in other cases where they have not such tendencies, it will not. She will suffer from these injuries for some time in the future, but I could not say for how long; with regard to the shoulder injury, that is a ligamentous union, and in that case it makes it a little longer healing, and she may never be able to raise that arm completely up as she did before the injury, and still she may be able to.

*Cross-Examined:*

Q. Will it be a fair statement of the case to say that if a person had rheumatism in their system that it would all collect about that fracture?

A. A person may be of a rheumatic temperament and that may manifest itself years afterwards, at the spot injured.

Q. I want to know whether if any person had rheumatism in their constitution, if instead of having it in one spot and then in another, that such a fracture as this would collect all the pain to that particular spot?

A. It might centre right in those spots, in a chronic form of rheumatism.

Q. What I meant to ask is whether this hurt would not take the rheumatism that was already in a man and put it all there at the spot injured, or do you mean to say it would bring rheumatism into him?

A. No, sir; I mean that a man with rheumatic disposition would be more likely to have it there than anywhere else, because that would be a weaker spot than any other.

Q. But the rheumatism must be there first, in the man?

A. It would have to be in his constitution; I don't mean to say that a fracture would have any thing to do with producing rheumatism, but if he was a rheumatic man he would be likely to feel it in that spot.

Q. You don't mean to say then that the fracture would have any thing to do with bringing rheumatism to any one, but that any one with a rheumatic tendency, who had it in his constitution, would be more likely to feel it in these spots?

A. Yes, sir.

Q. I understand you not to consider the flesh wounds of any great consequence in this case, except as producing pain?

A. No, sir; of course Mr. Klein will have a scar left, but Mrs. Klein's were superficial.

Q. The hip sprain you say caused longer pain, but it has no general effect upon the system, has it?

A. Except in the same way with regard to rheumatism; you will find that a person who has had an ankle sprained will ever afterwards have a weakness there.

*Re-Direct-Examination:*

Q. Doctor, any one having received this injury, would they not be more apt to take rheumatism than they would if they had not received any such injury?

A. It is on the same principle as with consumption; if a person has a rheumatic disposition he may feel the effects afterwards; if a person has a consumptive constitution and takes a heavy cold, it would be more likely to start consumption; and it is the same way with a person injured in this way; if he has a rheumatic constitution, an injury of this sort would be more likely to start rheumatics in the part injured, than it would have been if he had never been injured.

Complainants' Counsel called

**Augustus Hurtig**, sworn:

Q. Where do you reside?

A. In New York.

30 Q. Where did you reside in August last?

A. At Passaic.

Q. At what place?

A. At Mr. Biegel's house.

Q. Were you away from home on the 10th of August?

A. Yes, sir.

Q. At what time did you reach home?

A. By the 7 o'clock train.

Q. Did you see Mr. Klein and Mrs. Klein on the night of August 10th?

40 A. No, sir; not before they went home; I saw them before they left, though.

Q. Where?

A. In the depot.

Q. About what hour?

A. About a quarter past nine.

Q. At the time the 9:37 train arrives there, where were you?

A. I was right in the depot.

Q. In which room, the gentlemen's or the ladies'?

A. The ladies' room.

50 Q. Did you go out on the platform?

A. Not at that time.

Q. Well, at what time did you ?

A. Well, before it got there.

Q. Well, I mean with reference to the 9:37 train ; about what time did you go out on the platform ?

A. Oh ! we were standing inside the ladies' room.

Q. When was that ?

A. At 9 o'clock.

Q. Before the train got there ?

A. Yes, sir ; I was standing right in front of the door speaking 10 to them.

*By Complainants' Counsel :*

Q. Inside or out ?

A. I was in front of the door.

*Further Direct Examination :*

Q. Did you attempt to cross the track for the 9:37 train, that is to go to it when it arrived ?

A. Yes, sir. 20

Q. For what purpose ?

A. Just to help them get the children on the train.

Q. Now describe how Mr. and Mrs. Klein and the children and yourself attempted to cross the track ?

A. The train was coming from Paterson down the line and the train stopped ; so Mrs. Klein went ahead and Casper Klein went ahead, and I took the two children and was going to pass them up to the car.

Q. Did any of you have any bundles ?

A. I had a basket. 30

Q. How did you take the two children over ?

A. I took them in one of my hands.

Q. Did you have hold of both the children or one ?

A. I had both the children ; yes, sir.

Q. Just describe what happened ?

A. Well, while Mrs. Klein was going for the cars, Mr. Klein followed her and I was behind with the young ones, trying to pull them along, and Mrs. Klein was already across the track and Mr. Klein was following her, and I was the last, and then the train came up and passed by me and I pushed the two children right 40 back

Q. What did you do ?

A. I recovered from the train from being the last out of the cabin : I went the last out of the ladies' cabin.

Q. Well, did you stand still and let the train strike you ?

A. No, sir.

Q. Then what did you do ?

A. I was not far enough to it.

Q. As soon as you saw the other train coming, what did you do ?

A. I had not time yet to go on the track. 50

Q. Did you hear any bell or any whistle ?

A. No, sir.

*Cross-Examined :*

Q. You say you met Mr. and Mrs. Klein first in the station ?

A. Yes, sir.

Q. And had you not seen them before, that day ?

A. No, sir ; not to my knowledge.

10 Q. Where did you come from ?

A. From the house.

Q. You were there then after they had gone ?

A. Yes, sir ; they were gone.

Q. Did you not say you went with them from the house to the station ?

A. No, sir.

Q. How did you know they were at the station ?

A. I understood they were going home, and I wanted to see them before they left.

20 Q. You said something about talking to them in the waiting room ?

A. Yes, sir ; the persons were all in the waiting room.

Q. Well, you were talking outside, in front of the room, were you not ?

A. I don't hardly remember.

Q. Did you not talk outside the room ?

A. Yes, sir.

Q. And on the platform ?

A. Yes, sir.

30 Q. After you had been talking inside the room ?

A. Yes, sir.

Q. You did not go back in the room again, you staid outside talking ?

A. Yes, sir.

Q. Until the train came up ?

A. Yes, sir.

Q. Just as people when they are interested in friends that are going away, try and see as much of them as they can ?

A. Yes, sir.

40 Q. What place were you going to in the train—were they going to get on the train opposite the ladies' door, or up the track or down the track, or where was it ?

A. It was just about across, two or three or four feet across from there, right across from the door.

Q. Now when you saw that freight train, how close was it to you ?

A. The freight train was just about there.

Q. Very close ?

A. Yes, sir ; about from *here* to the end of this building, about.

50 Q. Not nearer than that ?

A. No, sir ; ten or fifteen yards.

Q. What attracted your attention to it?

A. My attention?

Q. Yes, sir; were you not hit over the back with a cane; don't you remember that?

A. No, sir.

Q. Did not somebody push or poke you, or do something to you to make you look round?

A. No, sir.

Q. Are you sure of that?

A. Sure. 10

Q. You can see down the track a good way there, can't you?

A. Yes, sir; about 300 feet.

Q. Cannot you see down to the curve, where it bends?

A. Yes, sir.

Q. Then why did you not see the freight train before; did you not look that way?

A. I did not look that way, and still I did not hear any thing.

Q. You say you did not look that way?

A. No, sir.

Q. I suppose you were talking just before going on the train, 20 were you not?

A. Yes, sir.

Q. Talking as the cars approached?

A. No, sir; not at the time when the cars approached, because his wife and Mr. Klein went ahead and I was looking after the children.

Q. You had been talking up to that time and had not looked that way at all, had you?

A. We were talking as the passenger train came down, then we stopped. 30

Q. You did not look to see if any train was coming the other way, did you?

A. No, sir.

Q. You say you stopped talking the moment the passenger train came down?

A. Yes, sir.

Q. You were standing opposite the train and walked out to assist them to get on the moment it stopped?

A. Yes, sir.

Q. Did you begin to walk out while the train was still coming? 40

A. No, sir.

Q. Are you sure of that?

A. Yes, sir; the train had stopped still.

Q. And then you walked right on the track?

A. Yes, sir.

Q. And you walked out the moment the train stopped still, without looking the other way?

A. I noticed that when the train stopped still, Mr. Klein went across and Mrs. Klein, and then I followed them.

Q. And how long were you there before the freight train 50 came up?

- A. About two or three minutes.
- Q. Standing on the track? After you started to go across the track how long were you there before the freight train came up?
- A. I was not there at all.
- Q. Well, how long were they there?
- A. Just as long so as they could get to the cars.
- Q. Was that all?
- A. That was all.
- Q. And you say that they went on without looking up or down
- 10 the track, and that you saw that freight train first when it was within ten or fifteen yards of you?
- A. Yes, sir; I had just enough time to pull the children back.
- Q. Did you remember seeing *this* gentleman *here*, there?
- A. I might have seen that gentleman; yes.
- Q. Do you remember seeing him?
- A. No, sir [pointing to Mr. Crowell].
- Q. You are sure you was not touched or struck by any one?
- A. No, sir; I was not touched or struck.
- Q. And you say you took the children off yourself; did no
- 20 any one else help you?
- A. No, sir.
- Q. Then you are sure you pulled the children off yourself?

## RECESS OF HALF AN HOUR.

Complainants' Counsel also called

**Caspar Klein**, sworn :

- Q. Where do you live?
- 30 A. 74 Broome street, New York.
- Q. What is your business?
- A. Marbling—book edge marbling.
- Q. Did you go up to Passaic in the month of August last?
- A. Yes, sir.
- Q. Where were you stopping?
- A. At Mr. Biegel's.
- Q. Was your wife there?
- A. Yes, sir.
- Q. How long was she there?
- 40 A. She was there for a week.
- Q. On a visit?
- A. Yes, sir.
- Q. On the night of the 10th of August did you go to the depot?
- A. Yes, sir.
- Q. Please explain for what purpose you were there and all that transpired that evening with reference to yourself and wife?
- A. I went up there to get my family home; I was going to take the 8:15 train and I missed that, and so we went back to Mr. Biegel's house again and were going to take the next train,
- 50 and so we started away when it was about 20 minutes past nine

o'clock—10 minutes past nine, so as to get up to the depot in time; I went into the ladies' room and stopped there until I heard the whistle of the Paterson train.

Q. Then what?

A. So then we went out on the platform and saw the train coming down; she came down and stopped, so we went to pass through the tracks; my wife went ahead of me and I came afterwards, and the two children and a friend of mine who had them along came next; he was to hand them up to us.

Q. Then what happened?

10

A. Then I was pushed on the side, and that is all I know.

Q. Where did you next find yourself?

A. In Mr. Biegel's house.

Q. Do you recollect anything that transpired after you were struck at the depot?

A. No, sir.

Q. Where were you hurt?

A. Up on the hip here and two ribs.

Q. And two teeth knocked out?

A. Yes, sir; *these* two upper teeth; [witness showed]; and I 20 was hurt on the face.

Q. Did you feel any pain?

A. Yes, sir.

Q. What part of your body?

A. On the ribs and on my hip and on my back.

Q. You were taken to Mr. Biegel's and put in bed there, were you?

A. Yes, sir.

Q. Were you conscious that same night that you were taken there?

30

A. Well, all I know is I found myself on the bed afterwards, and the doctor had hold of me.

Q. How long were you confined to your bed?

A. Nearly four weeks steady.

Q. And then after that four weeks were you up and about?

A. The doctors let me out of bed on a chair, having my legs up.

Q. When did you begin to walk around?

A. As soon as they gave me a chance.

Q. To walk round the room I mean?

A. Oh! I walked round the room on two crutches.

40

Q. For how long did you have to use two crutches?

A. I used them for five weeks.

Q. For five weeks after you got out of bed the first time?

A. Yes, sir.

Q. How long did you remain at Mr. Biegel's after you got out of bed the first time?

A. Five weeks, pretty near.

Q. Then you went back where?

A. Back to New York.

Q. Have you walked since that time, since you have been to 50 New York without the aid of a crutch or a cane?

- A. No, sir.
- Q. What have you used to assist yourself ?
- A. I have always had a stick or a crutch, for the doctors told me that if I could leave my crutch I should walk with a cane, but I should try my crutch first ; I had two crutches at first, because I could not walk with one you know.
- Q. Do you have any pain yet from these injuries ?
- A. Yes, sir.
- Q. State where ?
- 10 A. In my hip and ribs, whenever the weather changes.
- Q. What kind of suffering do you have from the injury in your ribs ?
- A. I feel a kind of pain, a sticking pain in there.
- Q. What is the nature of the pain you have in your hips ?
- A. Well, it is a kind of pain in moving.
- Q. How long was it, reckoning from the present time back, that you went to New York since your injury ?
- A. A little over four weeks now.
- Q. Have you attempted to work any since you have been back ?
- 20 A. Yes, sir ; I tried the first week, but I had to leave off, so I broke off for two days and then started again, and I had to leave off again, but I could not get along better, and now I have to sit down once in a while, if I get a chance to have to rest.
- Q. What is the effect of your being on your feet ?
- A. I have to stand up to my work.
- Q. Well, what effect do you feel from that ?
- A. I feel a weakness, and when I move pains.
- Q. Did you buy a ticket on this day when you expected to take the train ?
- 30 A. I had an excursion ticket ; my wife bought it on the same night.
- Q. Did you see her buy it ?
- A. No, sir ; I stopped outside and she bought it at the same time.
- Q. At the station ?
- A. Yes, sir.
- Q. In crossing over to the train you wished to take, did you hear any whistle or bell of any train ?
- A. No, sir.
- Q. Before this accident what was the condition of your health ?
- 40 A. Good.
- Q. Did you ever use a cane before that time ?
- A. No, sir ; never in my life—I had no occasion.
- Q. How many persons are there in your family ?
- A. Three children.
- Q. During the time you were in Passaic where were your children ; while you and your wife were at Biegel's house ?
- A. Two of them were with us.
- Q. Where was the other child ?
- A. On a visit, sometimes up to see us at night, and went down
- 50 next morning.

- Q. How old is the other child ?  
 A. 14.
- Q. Who provided for the other child ?  
 A. A friend of ours it boarded with.
- Q. How long did that child board there, and at how much a week ?  
 A. Boarded there 4 weeks.
- Q. And how much did you pay a week ?  
 A. \$3.50.
- Q. In New York what was your income from your business there ? 10  
 A. \$15 a week.
- Q. What were your expenses per week, for your family in New York ?  
 A. \$12 to \$13.
- Q. Who did you have to attend you and your wife in your sickness at Mr. Biegel's besides the two doctors ?  
 A. A man named Biegel went there and nursed—Charles Biegel and a Mrs. Eckert.
- Q. Do you know what Mrs. Eckert's bill was against you ? 20  
 A. Something a little over \$10, I guess.
- Q. This is Mrs. Eckert, is it [pointing to a person in the room] ?  
 A. Yes, sir.
- Q. What was the condition of your wife's health, before this accident ?  
 A. Very good.
- Q. Did she leave Passaic before you, or afterwards ?  
 A. She left before me.
- Q. How long before you did she leave ?  
 A. Four weeks, I think.
- Q. Has your wife been able to do the same work since she was 30 injured, as she did before ?  
 A. No, sir ; and she is not able now, at the present time.
- Q. What work did she do before you were hurt, that she cannot do now ?  
 A. She used to be working at sewing, &c.
- Q. Did she sew for any body besides your family ?  
 A. Yes, sir.
- Q. She took in sewing ?  
 A. Yes, sir.
- Q. And what was the income you derived from her taking in 40 sewing ?  
 A. Sometimes \$3 or \$4 a week.
- Q. What other work cannot she now do that she used to do ?  
 A. She cannot do washing.
- Q. Do you have to hire a person to do that ?  
 A. Yes, sir.
- Q. How much does that cost you ?  
 A. It costs me \$1, and then perhaps for ironing, fifty cents.
- Q. And that makes it— ?  
 A. That is \$1.50. 50

- Q. \$1.50 a week, for washing and ironing ?  
 A. Yes, sir.  
 Q. What did you lose by reason of this accident in the way of property, if anything ?  
 A. I lost a good coat, and there is the watch that a boy brought down the next day to Biegel's house [witness produced a broken silver watch].  
 Q. That is the watch, is it ?  
 A. Yes, sir.
- 10 Q. Does it go now ?  
 A. No, sir ; and it is not worth while repairing.  
 Q. How long have you had it ?  
 A. Two years, now.  
 Q. What did it cost ?  
 A. Eighteen dollars.  
 Q. Well, what else ; was there anything else destroyed ?  
 A. My coat was torn.  
 Q. What did your wife lose ?  
 A. A pair of ear-rings, or only one of them ; and she lost her
- 20 hat.  
 Q. What was the ear-ring worth ?  
 A. Five or six dollars.  
 Q. What else ?  
 A. Her dress was all cut and tore up.  
 Q. How much was the dress damaged ?  
 A. Her dress was \$25, and that is not any thing worth any more now.

*Cross-Examination :*

- 30 Q. Did you try to get this watch repaired ?  
 A. Yes, sir.  
 Q. And could not do it ?  
 A. No, sir.  
 Q. Do you know anything about the value of your wife's dress ?  
 A. Yes, sir.  
 Q. Do you know what it is worth ?  
 A. Yes, sir.  
 Q. How do you know ?  
 A. I bought it.
- 40 Q. Do you know what it cost ?  
 A. Yes, sir.  
 Q. And you have stated the correct amount ?  
 A. Yes, sir.  
 Q. Has your wife tried washing lately ?  
 A. Yes, sir ; she tried it once.  
 Q. When ?  
 A. About a week ago, and she had too much pain the next day.  
 Q. Does she not do any work ?  
 A. She does a little sewing on the machine, but not by hand.
- 50 Q. Which limb was hurt ?

A. The right—no the left.

Q. You say you were up at Passaic that day and you went up the night before, and spent the day there—now how did you spend the day?

A. In the family.

Q. Of Biegel?

A. Yes, sir.

Q. Did you not go out any?

A. I went out once, sir.

Q. Did you go to any garden?

10

A. No, sir.

Q. Or any saloon?

A. Yes, sir.

Q. How many times?

A. Only once that day.

Q. When was it you went into a saloon?

A. The same day.

Q. What part of the day?

A. After supper.

Q. About what time?

20

A. Well, I cannot tell you exactly the time, but it was after 7 o'clock.

Q. Whose saloon was it?

A. Van Kessels'.

Q. Near the station?

A. Yes, sir.

Q. Did you go from the station or from the house to the saloon?

A. From the house.

Q. Did you go from there to the station?

30

A. No, sir; I went back to Mr. Biegel's.

Q. Then Mr. Hurtig was not with you in *that* saloon?

A. No, sir.

Q. Were you not with him in any saloon?

A. Yes, sir.

Q. Then that was another time?

A. Well, it was the same night.

Q. What time was it?

A. That was a quarter after 9.

Q. Which saloon was that?

A. On the corner right from the depot, kept by Mr. Donhaeur.

40

Q. How long were you there?

A. I was not 5 minutes there.

Q. Was your wife with you?

A. No, sir.

Q. Just Hurtig and yourself?

A. Yes, sir.

Q. How many drinks did you have?

A. One glass of beer.

Q. Did you go with Mr. Biegel to that saloon?

A. Yes, sir.

50

- Q. Were any others in your company ?  
 A. Yes, sir.  
 Q. Were any others when you went with Hurtig ?  
 A. No, sir.  
 Q. How long did you stay there when you went with Mr. Biegel ?  
 A. A little over 5 minutes.  
 Q. Did you have several glasses of beer all round there ?  
 A. I had two glasses of beer, that is all.  
 Q. Is your head pretty strong ?  
 10 A. Yes, sir.  
 Q. I have no intention to insinuate that you were at all tipsy, but did you feel the beer at all when you went to the station ?  
 A. No, sir.  
 Q. Are you sure you did not have any more beer than that you have mentioned ?  
 A. Yes, sir ; only three glasses of beer.  
 Q. You said you heard the whistle of the train, and that you and your wife and Mr. Hurtig went out on the platform ?  
 A. Yes, sir.  
 20 Q. And staid there while the train came up ?  
 A. Yes, sir.  
 Q. Did you stand near the edge of the platform, or where did you stand ?  
 A. I stood close to the edge of the platform ; close to the track, when we heard the train coming.  
 Q. Close to the rails ?  
 A. I stood close to the edge of the platform.  
 Q. Did you stand near the building or near the rails ?  
 A. Near to the building.  
 30 Q. Were you within a foot of the building or were you standing close to the rails ?  
 A. I stood close to the rails.  
 Q. Were you talking to your wife or to Mr. Hurtig ?  
 A. To my wife and Mr. Hurtig at that time.  
 Q. You did not see that freight train until it struck you, did you ?  
 A. No, sir.  
 Q. You did not see it at all ?  
 A. No, sir.  
 40 Q. Can you remember, Mr. Klein, as you went out of the station, did you have to go off to the right or the left ?  
 A. I went right straight ahead.  
 Q. If you went straight out and the freight train came sideways you would have seen it, were you walking away from the freight train ?  
 A. Yes, sir ; I was walking up to the next car towards Paterson ; I wanted to get on the train there.  
 Q. Then you were walking up the track towards Paterson ?  
 A. Yes, sir.  
 50 Q. And did you not walk up the track some little distance ?

- A. No, sir; I walked across about a couple of steps.
- Q. How far up the track did you go towards Paterson?
- A. About 15 feet—about that.
- Q. Somewhere about that?
- A. Yes, sir.
- Q. Who was ahead?
- A. My wife.
- Q. Who was next?
- A. I was.
- Q. How far off were you from her? 10
- A. A couple of steps.
- Q. And Mr. Hurtig and the children were how far off from you?
- A. He was behind me; he followed right after me with the two children.
- Q. And you did not look round to see if any train was coming the other way?
- A. I did not; I looked to see if any train was coming from Paterson.
- Q. Have you travelled on that road before? 20
- A. Yes, sir.
- Q. You knew the cars ran on the right hand track, did you not?
- A. Yes, sir.
- Q. Were you talking when you went on to the track?
- A. No, sir.
- Q. How long from the time you started from the edge of the platform to the train was it until you were struck; were you walking fast or slow?
- A. I was walking about as fast as usual.
- Q. Well, how long was it, I ask, from the time you left the platform until you were struck? 30
- A. I don't know.
- Q. Well, how long were you walking?
- A. Just a step or two.
- Q. Did you see anybody else there?
- A. I saw some more people there.
- Q. Were they getting off the cars or getting on, or what?
- A. Yes, sir; they were getting off the cars and getting on, too.
- Re Direct-Examination :*
- Q. Who went with you down to Von Kessel's saloon? 40
- A. Mr. Biegel.
- Q. Who else?
- A. I don't know who the other gentleman was, only they asked me to go along; the other gentleman got a suit measured at Mr. Biegel's tailor.
- Q. The other man got a suit measured?
- A. Yes, sir.
- Q. Well, then you went to the saloon?
- A. Yes, sir.
- Q. Did you drink lager beer? 50

- A. Yes, sir.  
 Q. Are you in the habit of drinking lager?  
 A. I am ; I drank two glasses there.  
 Q. Then you went back to Mr. Biegel's?  
 A. Yes, sir.  
 Q. That was before the 8:16 train?  
 A. Yes, sir.  
 Q. Where was you wife at that time?  
 A. She was in the house.  
 10 Q. When you came back, did your wife go back with you to the depot to catch the 8:16 train?  
 A. Yes, sir.  
 Q. You missed it and went back to Mr. Biegel's?  
 A. Yes, sir.  
 Q. Did Mr. Hurtig go with you when you went up to the station to take the 9:37 train?  
 A. No, sir.  
 Q. Who went with you?  
 A. Nobody, but myself and family.  
 20 Q. Where did you come across Mr. Hurtig?  
 A. I met him at the depot.  
 Q. How did you come to go with him to the other saloon?  
 A. He invited me and so I went along with him, and I took one glass of beer and I left him there while he was paying for it and went back to my family.  
 Q. Did Mr. Hurtig come back to you afterwards?  
 A. Yes, sir.  
 Q. After he came back to the ladies' room, you all stepped out of the ladies' room, where did you stand talking ; on what part of  
 30 the platform?  
 A. A kind of close to the track.  
 Q. Then when you attempted to go across, in what direction did you go?  
 A. A kind of a slanting ways.  
 Q. How many steps had you taken from the time you were struck?  
 A. Well, I do not remember exactly—about a couple.  
 Q. Where was the door of the car, or the steps of the car that you expected to get into?  
 40 A. A slantways from where I began to walk from.  
 Q. How near being opposite the ladies' room door were the steps of the car you expected to get on?  
 A. About three or four steps up.

*Re-Cross-Examination :*

- Q. When did you go to work again?  
 A. About four weeks ago I tried.  
 Q. Not until then?  
 A. No, sir ; I started to work then.  
 50 Q. That was about the middle of October?

A. Yes, sir.

Q. Now you work pretty steady, do you not?

A. Yes, sir.

Q. How are you working?

A. Out of four weeks I have lost about a week.

Q. Then you work about three-quarter time?

A. Yes, sir.

Complainants' Counsel also called

10

**Mary Klein**, sworn :

Q. Do you remember being at the depot on August 10th last, for the purpose of taking the 9:37 train?

A. Yes, sir.

Q. Did you buy a ticket?

A. Yes, sir; I bought an excursion—that is, I bought a ticket.

Q. Do you remember Mr. Hurtig being there?

A. Yes, sir.

Q. Did Mr. Klein go out with him?

A. Yes, sir; he went out with him for a few minutes.

20

Q. How long were they gone?

A. About a few minutes.

Q. Did you drink any beer that day?

A. No, sir.

Q. None whatever?

A. No, sir.

Q. After you passed from the ladies' room, did you converse on the platform with any one?

A. No, sir; only with my husband and Mr. Hurtig and the children; I had a bundle there, and talked in the ladies' room.

30

Q. State what happened about the accident?

A. Well, I tell you, when I heard the cars coming from Pater-son I stepped out of the ladies' room and waited until the train came, then I passed over to them, and as soon as I started over a whistle came, and then the car struck me in the side, and that is all I can recollect you know; as soon as the car struck me, I do not know any thing more.

Q. Then you were taken to Mr. Biegel's house?

A. Yes, sir.

Q. Which arm was hurt?

40

A. This one. [Witness showed.]

Q. Where do you suffer pain?

A. Right here in the shoulder; I cannot reach higher than that up. [Witness showed.]

Q. Any other part of your body?

A. Here in my right leg I suffer; I could not stand on my leg and foot,—and afterwards I had to creep round the room with my hands on chairs and things in the room.

Q. Is there any kind of weather that you suffer more with your leg than at other times?

50

A. I suffer always with that leg yet, but still when I walk about a block it hurts me more; my shoulder hurts me awfully,— I cannot lift my hand up to fix my hair.

Q. Who does the washing for you?

A. A woman on the floor with me, that my boy was stopping with.

Q. Have you attempted to do any housework?

A. I did a little housework, but I cannot wash any more, if I do, *this* arm and *that* shoulder hurts me worse.

10 Q. What work used you to do?

A. I used to do sewing.

Q. Cannot you do it now?

A. I cannot sew for any body; and I can hardly sew my own work.

Q. What damage did that accident do to your clothing?

A. Well, I lost my hat, and my dress was all tore through my back; and my ear-ring was torn out of my ear.

Q. After you were taken to Mr. Biegel's, where did you lie?

A. I was laying on the lounge.

20 Q. Did you walk round the next day?

A. I could not walk round the next day, nor yet for weeks; after that I could not walk at all for some time; I used to creep round three or four steps at a time, and there were three weeks I could not lift my foot that high [witness showed].

Q. Where did you have the most pain, in your leg or in your shoulder?

A. In my leg most; I have no pain in my shoulder until I am using my arms, then I have pain.

Q. Were you ever subject to rheumatism?

30 A. No, sir.

Q. How much did you used to earn, weekly, from outside work?

A. Sometimes \$3 or \$4 a week.

*Cross-Examined:*

Q. Did you get it every week, or only occasionally?

A. Oh, yes; you know I lived twelve years in that place, and I have the whole custom round there.

Q. You do not have it all the time do you?

40 A. Yes, sir; I did, as much of it as ever I could do.

Q. You did not do it all the while, but only once in a while, did you?

A. No, sir; I always had as much as ever I could do.

Q. Do you remember which way you started for the cars, whether you went to the right or left?

A. When the cars stopped from Paterson, I started for the cars, over the track.

Q. How came you not to see the train when you started right over?

50 A. I did not think a train was coming from that way.

Q. Did you cross over straight, or did you to the right or left ?

A. Well, I was crossing slantways over.

Q. To the right ?

A. Yes, sir.

Q. Do you remember which cars you were entering between ; whether you went to get on the platform between any two cars of the train, and do you remember which they were ?

A. I do not remember that.

Q. You do not remember whether the platform was between the last car and the next car to the last car, or not ? 10

A. No, sir.

Q. You did not look up the track while you crossed over, then ?

A. No, sir ; because I had my eyes always fixed on the train that came from Paterson, because I had missed the first train, and I did not want to miss the next one ; I had always heard the cars whistle when they came anywhere, and I did not hear anything of the cars when I crossed over.

Q. Your leg does not pain you very much now, does it ?

A. Oh, yes ; it pains me when I work a little ; fearful. 20

Q. Is it getting better all the time ?

A. Yes, sir ; it gets better.

Q. Is your arm better than it was ?

A. Yes, sir ; it is better than it was first off. I could not lift it up *this* high then, first off. I could not lift it further than *this*, if you gave me the world.

Q. But it is better than it was, is it not ?

A. Oh, yes ; it is better because at first I could not lift it at all.

COMPLAINANT RESTS.

30

Defendant's Counsel opened and called

**Henry D. Blunden**, sworn :

Q. You are a civil engineer ?

A. Yes, sir.

Q. You were not at this accident ?

A. No, sir.

Q. Were you employed by the railroad company to make a map of the scene of it ? 40

A. Yes, sir.

Q. Is that your map ?

A. Yes, sir.

Q. Where is your office ?

A. At the general office of the Erie Railroad.

Q. Under Mr. Morris ?

A. No, sir ; under Mr. Searing.

Q. Just tell me the scale of this map ?

A. This is 40 feet to the inch, and *this* one is 10 feet to the inch.

[Pointing to a small map drawn inside of large one.] 50

- Q. Is this carefully made from actual measurement except as to the train, which of course was not there?
- A. No, sir; the train was not there
- Q. Nor those two points "D" and "E"?
- A. No sir
- Q. The length of the cars—are they from actual measurement?
- A. Yes, sir.
- Q. And the assumption that that train was two cars, a baggage car and the engine?
- 10 A. Well, it contained two cars, because the baggage car is part of one of the cars.
- Q. But the length of the cars was taken from those in actual use, was it not?
- A. This is about the same train.
- Q. And this train and the freight train are carefully measured, are they?
- A. Yes, sir.
- Q. And this actual train was measured by you?
- A. Yes, sir; I believe there was a change of one car made
- 20 though.
- Q. When was it made, do you remember?
- A. This survey made?
- Q. Yes, sir; and the measure of that train made?
- A. About two or three weeks ago.
- Q. And this is Mr Corwin's train still, is it not?
- A. I believe so.
- Q. Now one other matter. You have stopped that train with the assumption as I see that this platform was between the last car and the next to the last on a line of about 20 feet north of the
- 30 ladies' room door, have you not?
- A. It is 40 feet.
- Q. Well, it is 40 feet over in that way?
- A. Yes, sir.
- Q. If it was a little nearer the ladies' waiting room door the engine would be a little nearer *here*? [Counsel pointed to map.]
- A. Yes, sir.
- Q. This is made carefully to scale, and these measurements are made carefully?
- A. This depot itself and the tracks have been recently surveyed,
- 40 and this drawing here is taken from the correct maps.
- Q. How were you guided in making your locations—you put that point how far from one building, and how far from another?
- A. So many feet from *that* point, [witness showed on map] the raised platform extends to there and then it goes on to the level.
- Q. Then *this* is a slant? [Pointing to map]
- A. Yes, sir.
- Q. And you put it near the corner of that raise on the platform?
- A. Yes, sir.
- Q. And *this* point, how about that? [Pointing to map.]
- 50 A. That was put so many feet from *this* point again.

Q. How were you guided in locating that ?

A. Simply from information ; the spot was pointed out when I measured it.

Q. By any body here ?

A. Yes, sir ; by Mr. Crowell.

Q. And you measured it and put it on the map according to the information of Mr. Crowell ?

A. Yes, sir.

Q. And the other spot, was that also pointed out by him ?

A. Yes, sir. 10

Q. And the other matters are all matters of individual measurement ?

A. Yes, sir.

Q. Have you measured to see how far it is from the front of the ladies' room door that you can see down the track ?

A. You can see standing in advance of that about 1,400 feet.

Q. How far in advance must you get to clear that flagman's house ?

A. I take it as a person standing out that way [witness illustrated.]

Q. Standing out about how many feet ? 20

A. About 6 feet.

Q. The head light then would be visible down here ? [Pointing to curve.]

A. Yes, sir.

Q. Round *this* curve ?

A. Yes, sir.

Q. Then it is not high round here ?

A. No, sir.

Q. So that you could see the cars just as well round the curve as not ? 30

A. Yes, sir.

*Not Cross-Examined.*

[Defendant's Counsel offered in evidence said map, which was thereupon marked Exhibit No. one for Defendant.]

Defendant's Counsel also called

**Joseph A. Crowell**, sworn :

40

Q. Your residence ?

A. Passaic

Q. Your occupation ?

A. Printer and publisher.

Q. You were at this accident ?

A. Yes, sir.

Q. And saw it ?

A. Yes, sir.

Q. Where were you when it took place ?

A. About five feet from where Mr. Klein was struck. 50

Q. Just state how your attention was attracted to him, and what you did and saw ?

A. I was hurrying across the track, endeavoring to get across the track ahead of the approaching freight train to get to the passenger train, and my attention was called to these people standing on the track ; they had just before stepped out of the ladies' room and stepped upon the track. I noticed the danger and yelled to them several times, but they did not seem to hear ; the down train was letting off steam very loudly, and they did not seem to hear me ; and the gentleman close to me was Mr. —, that gentleman  
10 who was here this morning, I forget his name.

Q. Mr. Hurtig ?

A. Yes, sir.

Q. When you halloed out to them, how far were you away from them ?

A. I was between them and the ladies' room ; I stood myself not over three feet from them.

Q. Where did they stand ?

A. On the track, between the rails of the westward bound track.

20 Q. Were they moving or standing still ?

A. Just at that moment they were standing still, with the exception of Mrs. Klein, and she had gone on a little ahead, towards the other rail and she was just stepping over the rail as she was struck.

Q. Well, sir ; go on with your story ?

A. Not hearing my warning, I stuck the gentleman ahead of me with my cane on the shoulder or head, somewheres, to draw his attention, and he turned round to see what it was ; and he saw the head-light of the engine, within fifteen or twenty yards of him,  
30 and he sprang off on to the platform behind him ; he had hold of the children in his hands when he was standing on the track, and he sprang back and left the children there ?

Q. Well, sir.

A. Then I seized the little girl by the hand and pulled her back, and she had hold of the little boy's hand, and that pulled him off too and threw them back against one of these gentlemen who was standing back near a truck that stood there, and the children went against him ; then I went to call Mr. Klein's attention to the danger, but it was too late, and at the same instant he was struck ;  
40 the bumper of the locomotive striking him on the left hip, threw him over and spun him round and round three or four times like a top ; it was that motion with his face down on the platform that caused the laceration of his face by scraping it on the platform ; he struck against my legs as he fell, and I had to get out of the way, thinking he would throw me under the cars. Mrs. Klein was struck almost at the same instant ; she was about three feet further up the track, just stepping over the rail to the other side ; and she apparently went under the wheels, but I did not notice that, for the children seemed to be seized with a frenzy and  
50 wanted to get through to their mother ; and they halloed out at

the fate of their mother ; and they wanted to get under the wheels to their mother ; and it was all I could do to hold them or keep them from throwing themselves under the wheels ; as soon as the train passed I saw Mrs. Klein laying there between the tracks, and Mr. Klein lay where he fell at the end of the raise of the platform.

*By the Vice-Chancellor :*

Q. One fell on one side of the westward bound track and one on the other ? 10

A. Yes, sir.

*Further Direct-Examination :*

Q. You pointed out these places to Mr. Blunden, did you ?

A. Yes, sir.

Q. You pointed them out on the spot, did you ?

A. Yes, sir.

Q. Is that about the correct place, as far as you can judge ?

A. That is where the man was thrown and also the place where the lady went [here witness pointed out on map] ; I could not see her until the train passed me, expected all the while she was under the wheels, but after the train had passed we found her lying on the track. 20

Q. Go on ?

A. I supposed Mr. Klein was killed, and I went and got Doctors Herrick and Nottingham, and Dr. Herrick arrived first and took charge of the case ; when I got back there was a crowd round Mr. Klein, and he laid there apparently senseless on the platform ; under Dr. Herrick's directions he was immediately removed to the sitting room, and when I got back Mrs. Klein was sitting on the truck, the truck was right to the west of the ladies' room door ; Mrs. Klein was then not insensible, but was apparently delirious, she could not give any account of herself, or her name, or anywhere where she was hurt at that time ; about 10 or 15 minutes afterwards she gave me her name and where she lived. 30

Q. I want to ask you if you know what platform of the cars they were trying to get on ?

A. It was the platform between the second and the last cars ; I was endeavoring to reach the last car, my wife was on the platform and I was to meet her and I was endeavoring to get there to keep her from getting off, she was to be on the front platform of the last car. 40

Q. When you were making for her was the train stopped ?

A. No, sir.

Q. Can you tell whether it was stopped after they were struck ?

A. It came to a stop just about the same instant as he was struck, or not half a second before ; the conductor had not got off, he generally gets off first ; I don't think the conductor was off then ; I don't think any body was off until after the freight train had passed. 50

Q. Then you were pressing towards the same platform they were going for?

A. Yes, sir.

Q. Can you tell whether it was towards the right or left or just opposite the ladies' room door?

A. It was a little past I suppose, 5 or 6 or 10 feet off from the ladies' door.

Q. At what place were you when you saw the freight train first?

A. I was leaning against the window of the telegraphic office  
10 outside.

Q. If you stood farther out could you see farther or not, from the depot?

A. The same distance, clear down to the curve; I saw the other train come round the curve above there about the same distance above as this came round below, both trains came round a curve simultaneously.

Q. Do you know whether any of these people looked round as they were pressing towards the cars,—Mr. and Mrs. Klein?

A. No, sir; I do not

20 Q. Did they talk or not, or were they quiet when you saw them?

A. The gentlemen were talking together; Mrs. Klein was a little in advance of the gentlemen, who were talking and gesticulating.

Q. Can you state where the locomotive of the passenger train was when it came to a stop?

A. It must have been right on the crossing, or very near to it.

Q. Do you remember seeing the locomotive itself?

A. It was not to the crossing, because I did not go round any particular distance out of my way to go to the train; it was not  
30 to the flagman's shanty.

Q. But it was across the first crossing, was it not?

A. It was about in the middle of the street.

Q. When you went for a doctor?

A. Yes, sir; the flagman's shanty is on the south side, and the depot is on the north and about a half of that street was covered by the locomotive, on the south side of the street—the crossing.

*Cross-Examination :*

Q. Mr. Klein's body after that accident laid south of the truck,  
40 did it not?

A. Southwest; no, it didn't—it laid due west.

Q. About alongside of the truck?

A. No, sir; the truck stood there [witness pointed]. Mr. Klein's body laid here; his head was towards the truck and the truck stood at the end of the slant.

Q. From the time he was struck, how many times did his body whirl around?

A. A good many times; it went round like a top.

Q. What was the distance from the point where the body was  
50 struck, to the place where it rested?

A. I should judge it must be five or six feet.

Q. On which side of the bay window were you standing looking at the freight train?

A. Right in front of it, leaning against the window.

Q. You did not start immediately upon seeing the freight train to warn any body, did you?

A. Well, I supposed it would stop.

Q. When did you come to a conclusion that it would not stop?

A. Well, generally when they stop they slowup as soon as they get round the curve. 10

Q. At what place was the freight train when you came to the conclusion that it would not stop?

A. In the vicinity of Passaic street.

Q. At the rate that that freight train was coming, how many seconds would it take to reach the place where you were standing?

A. Probably it would take about three-fourths of a minute.

Q. As soon as you discovered it was not going to stop you were very much excited, were you not, knowing that your wife was on the train coming from Paterson?

A. No; in a case like that I do not get excited until it is all over, and then I am frightened to death.

Q. Were you not very apprehensive that your wife would be struck by that train?

A. Yes, sir.

Q. Did you see your wife before the train struck this man,—did you see her on the platform?

A. Yes, sir; she came out while the train was in motion.

Q. Were you standing north of Mr. Klein and Mr. Hurtig, or south of them on the track?

A. South—south-east. 30

Q. Between them and the freight train?

A. No, sir; between them and the ladies' room—and the depot.

Q. Were you between the rails of the track?

A. Yes, sir.

Q. You were between them, that is between them and the ladies' room, and were you not also a little south of them, or were you north?

A. I was south, if any thing, but I was not between them and the cars.

Q. Which man was next to you, Mr. Hurtig or Mr. Klein? 40

A. Mr. Hurtig.

Q. And Mr. Hurtig and Mr. Klein were conversing together?

A. Yes, sir.

Q. Were they facing each other?

A. No, sir; their faces were turned towards the train as if they were just on the point of going to the train.

Q. Were the children between Mr. Klein and Mr. Hurtig, or on the side towards you?

A. Mr. Hurtig had the children by the hand at the time, and Mr. Klein was a little in advance of him, and it was, I think, the 50

right hand that Mr. Hurtig had the children by, and he was between me and Mr. Klein, and he had the children to the right.

Q. Why did you not strike Mr. Klein as well as Mr. Hurtig?

A. Mr. Hurtig was between Mr. Klein and myself.

Q. How far was Mr. Klein,—could you not easily reach him with the cane?

A. No, sir.

Q. You say the engine was letting off steam?

A. Yes, sir; of the down train, very loudly.

10 Q. How did you hear the conversation between Mr. Hurtig and Mr. Klein then?

A. I saw them talking, and did not hear it.

Q. You judge from gesticulation then?

A. Yes, sir; and their general demeanor.

Q. And feeling the approach of danger, you did not care much to listen or notice what their demonstrations were, did you?

A. I noticed that they were so engaged that they did not hear me halloo; between that and the steam they did not notice the danger, and it struck me at the time that they were careless.

20 Q. This all transpired in an instant, did it not,—the whole thing?

A. Yes, sir; very quickly.

Q. You are the editor of the Passaic City Herald?

A. Yes, sir.

Q. And also the correspondent of the Paterson Press?

A. Occasionally.

Q. Did you not write this article at the time and publish it for the daily press, or was it not published in the daily press?

30 A. It was substantially my article, but there is a little egotism there I did not indulge in.

Q. I see it states in here "Mr. C. was hurrying across the track to warn his wife, who had been spending the evening in Paterson, of the danger, fearing that she would jump off directly in front of the approaching train; in so doing Mr. Crowell noticed the people mentioned directly on the westward track, and utterly ignorant of their danger"—is that true?

A. Yes, sir.

40 Q. "He attempted to call their attention to their situation, but the noise was too great for them to hear, whereupon he lifted his cane and gave the unknown man a knock that might have staggered him so that turning around to confront his assailant he saw his danger and sprang from the track,"—is that true?

A. Yes, sir.

Q. Did Mr. Klein or his wife manifest symptoms of pain after they were at the depot?

A. Yes, sir.

Q. In what way?

A. Mr. Klein complained of a pain in his back, the lower part of his back; it was almost impossible to understand what he said,

but I could understand that ; I made that out ; he had his mouth covered with blood, so that his articulation was imperfect.

Q. I see it states in the article, "Soon, however, he revived, and complained greatly of a pain in his back, his groans of agony being most distressing,"—is that so ?

A. Yes, sir ; there are some remarks at the end of the article that I did not write though.

Defendant's Counsel also called

10

**Samuel W. Corwin.**

Q. Your employment ?

A. Conductor.

Q. On what road ?

A. The Erie Railroad.

Q. How long have you been a conductor ?

A. Two years last Fall on that train.

Q. How long have you been a conductor altogether ?

A. Oh, I have run trains for the last sixteen years.

Q. And have been conductor on train number 20 how long ? 20

A. Two years last Fall.

Q. You were on that train last August, were you not ?

A. Yes, sir.

Q. Did you point out to Mr. Blunden the cars of that train for him to make measurement from ?

A. Yes, sir ; he spoke to me about that train and asked me whether that was the same train or not.

Q. Is it the same train ?

A. Yes, sir.

Q. And no other cars ? 30

A. I would not be certain about the exact cars.

Q. Are the cars you have now on the train any different in size ?

A. Oh, no ; they are all the same.

Q. Do you remember that particular night ?

A. I do.

Q. And stopping there at 9:37 at Passaic ?

A. I do.

Q. Just tell what you remember about it, what occurred and where you were at first ?

A. I was on the first car. 40

Q. You stood between the baggage and the first car, did you ?

A. Yes, sir.

Q. Well, sir, go on ?

A. As the train came to the depot I looked out as I always do, and looked down the track and I saw the freight train coming ; and I stood there on the car until the train went by ; I saw passengers on the depot platform, but I did not see any of them coming on the train except Mrs. Klein ; I saw her but I did not see any man on the track at all.

Q. Did any one get off your train ? 50

A. Not where I was.

Q. And you saw Mrs. Klein come on the track and get struck, did you?

A. I did not see her get struck; I saw her just ahead of the engine; the engine at that time I suppose was twenty feet from her—may be more than that.

Q. It was past you?

A. Yes, sir; it was past me.

Q. Did you see Mrs. Klein then?

10 A. Yes, sir; for just a second.

Q. Was the engine by you then?

A. It was passing me then.

Q. When the engine struck her you suppose it was twenty feet past you, do you?

A. I should judge about that, perhaps it was a little more.

Q. And you saw nobody else?

A. No, sir.

Q. Was or was not your train at a stop when the freight engine passed you?

20 A. I think my train had stopped when the engine passed me.

Q. How long did the engine pass you before your train did stop?

A. Oh, it was just stopped.

Q. Can you judge the speed of trains, if so how fast was the freight train going?

A. I should judge the freight train was going from eight to ten miles an hour, as near as I can judge, but I did not notice particularly.

30 Q. After this accident did you see Mrs. Klein and the other person who were hurt?

A. Yes, sir.

Q. How long did you wait there?

A. Well, we staid there about five minutes,—might possibly be a little longer than that; I waited until after they had sent for a doctor, and until after Mr. Klein was carried into the ladies' room.

Q. Did you see Mrs. Klein?

A. Yes, sir; she sat on a baggage truck.

Q. What was she doing, if anything?

40 there and I don't remember of hearing her say any thing.

Q. Now the freight train—did that stop?

A. Not immediately—it went up the track a little distance.

Q. Did it whistle or not before it struck them?

A. It did.

Q. When you saw Mrs. Klein was she standing still, or had she started across the track, or what?

A. She was walking up the track, west from the depot and across it.

50 Q. Could she have seen the freight train if she had turned around?

- A. She could ; it was in plain sight.  
 Q. The track is perfectly straight there, is it not ?  
 A. Yes, sir.  
 Q. Was the head-light of the freight engine lit ?  
 A. Yes, sir.

*Cross-Examined :*

- Q. There was a head-light on your engine, was there not, Mr. Corwin ?  
 A. Yes, sir. 10  
 Q. Was not the effect of that in passing the people on the platform, to blind them, so they could not see any other on the down track ?  
 A. I think not ; I don't think it shines far enough on the platform to do that ; it might if they had been on the same track as my engine was on.  
 Q. Your engine was letting off steam, was it not ?  
 A. Yes, sir.  
 Q. Was your engine ringing its bell ?  
 A. I could not say. 20  
 Q. That is an awkward place to get on your train, is it not ?  
 A. I never thought it was.  
 Q. You are obliged to cross over the track and step up on the car ?  
 A. You have to step on the car, yes.  
 Q. And persons are obliged to be very careful ?  
 A. It would be natural for them to do that.  
 Q. Did not a man break his leg or knee there a short time ago, in trying to get on one of those trains—a Mr. Smith ?  
 A. I don't remember. 30  
 Q. Don't you remember such a circumstance as that happening ?  
 A. No, sir.  
 Q. It is very high from the ground,—the first step of the car, is it not ?  
 A. Yes, sir ; it is a pretty high step.

*Re Direct Examination :*

- Q. Did you ever know a man so blind that under the effect of one light he could not see another ?  
 A. Not at the depot ; no, sir. 40  
 Q. Do you remember where the heads of the locomotives were when your train came thoroughly to a stop ?  
 A. Just about opposite, as near as I can remember.  
 Q. Where on the map was it that your train thoroughly stopped ?  
 A. About the middle of Washington street, as near as I can remember.  
 Q. You are sure it stopped there ?  
 A. Yes, sir.  
 Q. And you would have noticed if it had went to another place ? 50

A. If it went much by that I would.

Q. You would have noticed if it had varied very much from that?

A. Yes, sir.

Defendant's Counsel also called

**John D. Garrison**, sworn :

Q. Your employment ?

A. Baggage master, Erie Railway.

10 Q. Were you at Passaic on that train—the 9:37 train ?

A. Yes, sir.

Q. Under Mr. Corwin ?

A. Yes, sir.

Q. Do you remember the accident ?

A. I do.

Q. Did you see the parties struck ?

A. No, sir ; I did not.

Q. Do you remember the freight train passing there ?

A. Yes, sir.

20 Q. When the two trains met there, was your train at a stand still ?

A. Well, just about, I suppose.

Q. Where did it come to a stop—your engine ?

A. About at Washington street.

Q. Do you know whether or not when your engine stopped there was any signal given from the freight train, and if so what ?

A. Well, just about the time they met our engine, the freight train engine whistled.

30 Q. Do you remember that ?

A. Yes, sir.

Q. What more did you see after that, sir ?

A. I did not see any thing more until after the train passed, then I got off and saw Mr. Klein.

Q. What made you get off ?

A. Well, I stood there and looked over the track and saw Mr. Klein lying there, and so I walked over and saw him.

Q. What became of the freight train ?

A. She ran up around the curve and stopped and sent back a flagman ?

40 Q. To see what damage was done ?

A. Yes, sir.

Q. Was that a heavy or light freight train ?

A. It was a full freight train, I judge.

Q. How fast was it running ?

A. Not over eight or ten miles an hour.

Q. Can you tell me from your experience on the road and your knowledge of the appliances used on the road, how long it would take to stop a train ?

50 A. Well, some trains can be stopped quicker than others ; if the engineer helps, then they could stop pretty quick.

Q. What do you mean by the engineer helping them ; do you mean reverse ?

A. Yes, sir ; but if he does not reverse, she will run quite a distance.

Q. What do you call a pretty quick stop ?

A. Well, to stop in about three trains length if he reverses and uses steam, and if it is on a level.

Q. In three trains length do you say ?

A. About that I should judge.

Q. Do you mean a train of twenty cars ?

10

A. Yes, sir.

Q. Is that the best he could do ?

A. That is about as good as he could do running eight or nine miles an hour with a loaded train.

Q. You did not see these parties on the platform at all ?

A. No, sir.

*Not Cross-Examined.*

20

Defendant's Counsel also called

**John McGlynn.**

Q. What is your occupation, or what was it on August 10th last ?

A. A brakeman.

Q. On train seventy ?

A. Yes, sir.

Q. Do you remember the accident that took place at Passaic ?

30

A. I saw it after it had happened.

Q. Did you see it at the time it happened ?

A. No, sir.

Q. What do you remember taking place when you came up to Passaic ; do you remember the freight train passing there ?

A. Yes, sir.

Q. Do you remember whether your train had stopped or was moving yet, when the freight train passed ?

A. We stopped just as the freight train passed us.

Q. Do you know whether or not the freight train whistled ?

40

A. Yes, sir ; I heard it whistle.

Q. Where was it when it whistled ?

A. Passing right between the two head cars ; when it passed me it was whistling yet, but I cannot tell when it began.

Q. Well, he was keeping it up then ?

A. Yes, sir ; he whistled as he passed between the two platforms of these front cars.

Q. Was the train stopped a little way off ?

A. Yes, sir.

Q. Do you know the engineer of that engine ?

50

A. No, sir.

Q. You never did know him ?

A. No, sir.

*Cross-Examined :*

Q. You say the freight train was whistling when it was between the platform of which cars ?

A. The two head cars, and she was whistling yet as it passed the platform of the two head cars.

Q. You noticed it was whistling then ?

10 A. Yes, sir ; I don't know when she commenced to whistle, I was brakeing on the forward end of the second car.

Defendant's Counsel recalled

**Samuel W. Corwin.**

Q. Is the engineer of the freight train that passed you at Passaic on the night of the tenth of August, in the employ of the Railroad Company yet ?

A. I think not.

20 Q. When did he leave their employ ?

A. He left their employ the next day, or the next day but one, I understand.

Q. Did he leave word where he was going ?

A. No, sir.

Q. Do you know where he went to ?

A. No, sir.

*Cross-Examined :*

Q. Had that engineer been upon the road for a long time ?

30 A. I don't know anything about him.

Q. He took his own discharge and went away, did he not ?

A. That I don't know.

DEFENDANT RESTS.

Complainant's Counsel called

**Henry Beigel.**

40 Q. Mr. Klein and his wife staid at your house during their sickness ?

A. Yes, sir ; Mrs. Klein came up on a visit to see us in Passaic, and she staid there eight days with her two children, and her husband staid in New York.

Q. But after they were sick I mean, how long were they at your house during the sickness ?

A. Mr. Klein and his family were there four weeks, the whole family ; then Mrs. Klein left and I guess it was pretty near four weeks more that Mr. Klein was there.

50 Q. How much is your bill against them for attention to them, and for hire in addition during their sickness ?

A. Mr. ——— told me if I would send my bill down to the Company they would pay it, and I made my bill out and sent it down, and it was a hundred and twenty-four dollars and seventy-five cents, or else a hundred and twenty-one dollars and seventy-five cents.

Q. Either one of those figures?

A. Yes, sir; because there was something I had to get out of my own pocket; I had to pay for bandages, and ice and such things.

10

*Cross-Examined:*

Q. How much did you charge a week?

A. I charged for the whole family twenty dollars a week.

Q. Twenty dollars for four?

A. Yes, sir; and the other boy was coming up; he came up in the evening and went off in the morning.

Q. And five dollars a week for Mr Klein during the other four weeks?

A. No; I charged ten dollars a week for Mr. Klein, and I had several other expenses which ran up the four dollars and seventy five cents. 20

### OPINION.

The petitioners in this case allege they have sustained serious personal injuries in consequence of the negligence of the employees of the Receiver of the Erie Railway Company, and they ask a remedy for the recovery of their damages, either in this Court or that they may be permitted to sue at law. I think the rule may be considered settled, that when an injury results from the default or misconduct of a Receiver appointed by a Court of Equity, while acting under color of the authority of the Court,—there being no dispute as to the power of the Court to make the order under which he claims to have acted,—the Court may, in its discretion, either take cognizance of the question of the Receiver's liability and determine it, or permit the aggrieved party to sue at law. But if the power of the Court is disputed, the Court then has no choice; it must assume exclusive jurisdiction and inhibit the aggrieved person from seeking redress against the Receiver in any other tribunal. Any other course when its jurisdiction is assailed would be an abandonment by the Court of both its power and dignity. *Aston vs. Heron*, 2 *Mylns and Keen*, 390; *Parker vs. Browning*, 8 *Paige*, 398

In this case the power of the Court is not questioned, and the parties have consented that the matters in controversy shall be determined here.

50

It was not seriously disputed the Receiver must be held liable if actionable negligence was shown. Upon principle it would seem to be clear, that no person can be permitted to exercise the rights and powers of a common carrier, especially when they embrace the franchises granted to a railroad corporation, except subject to the duties and liabilities of common carriers. Whether the Receiver is regarded as the officer of the law, or the representative of the proprietors of the corporation, or its creditors, or as combining all these characters, he is intrusted with the powers of the corporation, and must therefore necessarily be burdened with its duties and subject to its liabilities. There can be no such thing as an irresponsible power, exerting force or authority without being subject to duty, under any system of laws framed to do justice. It is an inseparable condition of every grant of power by the State, whether expressed or not, that it shall be properly exercised, and that the grantee shall be liable for injuries resulting directly and exclusively from his negligence in its use.

Both upon principle and authority I think it must be held, that a Receiver operating a railroad under the order of a Court of Equity, stands, in respect to duty and liability, just where the corporation would, were it operating the road, and that the question whether or not the Receiver is liable for negligence must be tested by the same rules that would be applied if the corporation was the actual party defendant before the Court. *Mcara's Admr. vs Holbrook and Rosevelt*, 20 *Ohio*, 137; *S. C. 5 Am Reports*, 633; *Blumenthal vs. Brainerd*, 38 *Vermont*, 402; *Paige vs. Smith*, 99 *Mass.* 395.

The petitioners were injured while passing from the depot at Passaic city to a passenger train, leaving that place for New York at thirty-seven minutes after nine o'clock in the evening. They had purchased tickets giving them a right of passage to New York on this tram. At this point there are two tracks, and the depot building stands about sixteen feet east of the exterior rail of the east track. The train to New York was standing on the west track, making it necessary for passengers going from the depot to the passenger train to cross the east track. There was no other means of passage. The petitioners on hearing the signal of approach of the train they intended to take, passed out of the depot with their two children and a friend, who had the children in charge, to assist them in getting on the train; they stepped from the platform of the depot on the track—the platform being on a level with the track—just as the passenger train stopped, and were making their way, diagonally, from the point where they first stepped on the track to the platform, between the second and last car of the passenger train, with their backs to the source of peril, when the locomotive of a westward bound freight train on the east track, running at the rate of eight or nine miles an hour, struck them, throwing the husband on one side of the track, and the wife on the other, and seriously injuring both. The proofs show the injuries were inflicted by the locomotive of an irregular freight train, without number, and that it

gave no warning of its approach or danger, until it was opposite the locomotive of the passenger train, and so close upon the petitioners that they could only escape by comprehending the danger at the very instant the signal was given and the exercise of great presence of mind in the face of sudden and appalling peril; then its whistle was blown, but just at that moment the locomotive of the passenger train was making a very loud noise in letting off steam. None of the employees of the Receiver in charge of the depot, or either of the trains, seem to have made any provision whatever to avert the danger of having a freight 10 train pass this point while the passenger train was there discharging and receiving passengers. Indeed the agent in charge of the depot seems to have been utterly unconscious of danger or criminally indifferent to his duty, for on the arrival of the passenger train at the depot he was at an ice cream saloon near there, where he remained until the alarm was sounded.

These facts, in my judgment, establish a clear case of actionable negligence.

The Counsel of the Receiver, however, deny the right of the petitioners to compensation, on the ground that they in part con- 20 tributed, by the want of ordinary caution, to the injuries they sustained. They indeed assert the petitioners have been guilty of that description of contributory negligence, which, by statutory provision, disbars all right of action. The sixty-seventh section of the Act concerning Railroads (*Revision*, 714,) declares that if any person shall be injured whilst walking, standing or playing on any railroad, such person shall be deemed to have contributed to the injury and shall not recover damages therefor; but it is also declared, that the rule thereby established shall not apply to any person crossing a railroad at a lawful crossing. It is perfectly 30 manifest I think this statute does not touch the case in hand. The legislative intent is plain. It was intended to disbar a recovery by a person who sustained an injury while committing a trespass in using a railroad as a foot path, or a place to stand or to play, but the law makers have not said, and I presume never will say, that a person who is injured by the negligence of the managers of a railroad while crossing its track from the depot to the cars, that being the only passage way provided, shall be remediless. The petitioners, at the time of the injury, were, by invitation of the management of the road, on a lawful crossing, for a lawful purpose, 40 using the only means of approach to the cars provided for the use of passengers. In my opinion the case does not fall within either the letter or the spirit of the statute.

It is also said that a railroad track is a place of great danger, that any person who goes upon it incautiously or without using all reasonable precaution to escape injury, assumes the hazard, and if injury ensues, is without remedy. That is undoubtedly the rule to be applied in determining the liability of a railroad corporation where the injury is sustained by a person while crossing the track on a public highway. *Pennsylvania R. R. Co. v. Mathews*, 50

7 *Vroom*, 532. Such places are in public judgment, points of such extreme peril, that the law making power has declared all railroad corporations shall mark them by public notice as places of danger. (*Revision* 695, § 7.) But this rule has no application to the case, where, by the arrangement of the corporation, it is made necessary for passengers to cross the track in passing to and from the depot to the cars. They are bound to provide a way by which passengers may pass in safety. If the way provided crosses a track, no train should be permitted to pass over it at the point where passengers are required to cross it, while a train on the opposite track is receiving and discharging passengers. The mode in which the trains were run in this instance, made disaster almost absolutely certain. The utmost precaution could scarcely have averted at least weekly accidents. A running arrangement by which a special or irregular freight train must pass over the track intervening between the depot and a passenger train on the opposite track, just at the time the passenger train is discharging and receiving passengers, without the slightest provision being made for notice to be given of the approach of the freight train, or that it was expected to pass there at that time, I hope is a rare novelty in railway management, and I think must be regarded as an example of gross mismanagement.

There may have been reasons rendering it necessary for the freight train to pass this point just as the passenger train was discharging and receiving passengers,—none however were shown; but if such necessity existed, it made this point one of extraordinary peril, and the manager of the road was bound to provide extraordinary safeguards. I respect the rule as tersely stated by Chief Justice Beasley in *Pennsylvania R. R. Co. vs. Mathews*,  
 30 *supra*. “When the company has created extra danger, it is bound to use extra precautions,” and it may be added, the precautions to be adopted must be adequate to insure the safety of every passenger who exercises ordinary care. The petitioners in attempting to pass from the depot to the cars, in the absence of all warning of danger, had a right to regard themselves in a place of safety, where they might safely give their whole attention to the business in hand, and were not bound to be on the look out for extraordinary perils created by the gross mismanagement of the persons in charge of the road.

40 In my judgment there was no contributory negligence on the part of the petitioners.

The question of damages in this class of cases is always one of great difficulty; with regard to some of the elements, the judgment cannot have anything like a certain guide or measure. Neither of the petitioners have fully recovered from their injuries. The duration and extent of their future disability nobody can tell, the physicians examined would not even hazard a decided opinion. The sum awarded must cover present loss and that which may arise from future incapacity. According to the established rule it  
 50 must also embrace compensation for pain and suffering. How can

they be estimated? What rule shall be adopted? What degree and duration of pain shall be esteemed equivalent to one hundred dollars and what to one thousand dollars? In dealing with such elements of compensation, it seems to me the best conclusions can scarcely be regarded as productions of the judgment. Both petitioners sustained serious injuries. Mr. Klein lost two front teeth, and sustained a fracture of one of the bones of his hip and two ribs. He was totally disabled for more than two months, and cannot now make full time at his work. Mrs. Klein sustained a fracture of her shoulder blade and a sprain; she is still disabled. 10 Several articles of wearing apparel were destroyed. Mrs. Klein can only recover for her personal injury and suffering. The loss of income from her incapacity, as well as the expenses of her cure, must be recovered by her husband. I think the amount she is entitled to recover is five hundred dollars, and that the amount to be recovered by Mr. Klein is seventeen hundred and fifty dollars.

The injuries having been inflicted while the road was under the control of the Receiver, and he being liable in his official capacity for the damages, I think they, together with the taxed costs of the proceedings for their recovery, should be paid out of the current 20 earnings of the road. The claim, in my judgment, may be properly included in the expenses incurred in operating the road, and should be paid out of the fund appropriated for that purpose.

IN CHANCERY OF NEW JERSEY.

	THE ELMIRA IRON AND STEEL ROLLING MILLS COMPANY,	} <i>On Bill, &amp;c.</i> <i>And Petition of</i> <i>Casper Klein</i> <i>for leave to sue, &amp;c.</i>
	<i>Complainants,</i>	
	AND	
10	THE ERIE RAILWAY COMPANY,	
	<i>Defendants.</i>	

This matter coming on to be heard before the Vice-Chancellor, in presence of Thomas M. Moore, Esquire, of Counsel for the petitioner, and R. Wayne Parker and Cortlandt Parker, of Counsel for Hugh J. Jewett, Receiver appointed in this cause, and the parties having been heard by witnesses and Counsel as to the matters in dispute between them, such having been ordered by the Chancellor without objection thereto in lieu of bringing an action at law, and it thereupon appearing that said petitioner was on the tenth day of August last past seriously injured while seeking to enter the cars of the Erie Railway Company, then in possession and under the management of the said Hugh J. Jewett, the said Receiver, by his agents and servants by and through the negligence of his said servants and agents and without contributory negligence on the part of said petitioner ;

It is thereupon, on this fifth day of January, one thousand eight hundred and seventy-six, on motion of said Thomas M. Moore, so adjudged and decreed, and it is further ordered and decreed that said Receiver is liable as such, and said petitioner is entitled to demand and have of and from the funds in the hands and under the control of the said Receiver, and not from himself personally, the sum of seventeen hundred and fifty dollars, which is hereby adjudged as a just compensation to the said petitioner for the damages by him suffered as aforesaid, besides his reasonable costs to be taxed, and order is hereby made that said Receiver do pay said petitioner or his solicitor said sum of money and costs on receiving from him a discharge under his hand and seal of all actions by reason of said injuries and negligence aforesaid.

And it is further ordered that any moneys already paid by the said Receiver for medical attendance, nursing or other expenses of the said petitioner and his wife Mary Klein, incurred after the reception of his injury, be allowed as so much on account of this compensation herein awarded to be paid to him, such deductions to be subject to the supervision of the Vice-Chancellor.

THEODORE RUNYON, C.

I respectfully advise the foregoing decree.

Dated January 5, 1876.

A. V. VAN FLEET, V. C.

50 A true copy.—H. S. LITTLE, Clerk.

## IN CHANCERY OF NEW JERSEY.

<p>THE ELMIRA IRON AND STEEL ROLLING MILLS COMPANY, <i>Complainants,</i></p> <p>AND</p> <p>THE ERIE RAILWAY COMPANY, <i>Defendants.</i></p>	}	<p><i>On Bill, &amp;c.</i></p> <p><i>And on Petition of Mary Klein, and her husband, for leave to sue, &amp;c.</i></p>	<p>10</p> <p>10</p>
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This matter coming on to be heard before the Vice-Chancellor, in the presence of Thomas M. Moore, Esquire, of Counsel for petitioner, and R. Wayne Parker and Cortlandt Parker, of Counsel for Hugh J. Jewett, Receiver appointed in this cause, and the parties having been heard by witnesses and Counsel as to the matters in dispute between them, such hearing being ordered by the Chancellor without objection thereto in lieu of bringing an action at law, and it thereupon appearing that the said petitioner, Mary Klein, wife of Caspar Klein, was on the tenth day of August last past seriously injured while seeking to enter the cars of the Erie Railway Company, then in possession and under the management of the said Hugh J. Jewett, the said Receiver, by his agents and servants, by and through the negligence of his said servants and agents, and without contributory negligence on the part of said Mary;

It is thereupon, on this fifth day of January, one thousand eight hundred and seventy-six, on motion of said Thomas M. Moore, Solicitor of said petitioner, so adjudged and decreed, and it is further ordered and decreed, that said Receiver is liable as such for and said Mary is entitled to demand and have of and from the funds in the hands and under control of the said Receiver, and not from himself personally, the sum of five hundred dollars, which is hereby adjudged as a just compensation to the said Mary for the damages by her suffered as aforesaid, besides her reasonable costs to be taxed, and order is hereby made that said Receiver do pay said Mary or her Solicitor, said sum of money and costs, on receiving from her a discharge under her hand and seal, jointly with her said husband, of all actions by reason of said injuries and negligence aforesaid.

THEODORE RUNYON, C.

I respectfully advise the foregoing decree.

A. V. VAN FLEET, V. C.

A true copy.—H. S. LITTLE, *Clerk.*

NEW JERSEY COURT OF APPEALS IN THE LAST RESORT IN  
ALL CAUSES.

BETWEEN

HUGH J. JEWETT, *Appellant*,

AND

CASPAR KLEIN, *Respondent*.

} *On Bill. Petition*  
} *of Caspar Klein,*  
} *&c. Petition of*  
} *Appeal.*

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To the Honorable the Court of Appeals in the last resort in all causes at law: The humble petition of Hugh J. Jewett, the Receiver of The Erie Railway Company, the appellant in the stated cause, respectfully shows that your petitioner finds himself aggrieved by an order and decree made in the Court of Chancery by His Honor, Theodore Runyon, Chancellor of New Jersey, bearing date the fifth day of January, in the year eighteen hundred and seventy-six, in a cause wherein The Elmira Iron and Steel Rolling Mills Company are complainants, and The Erie Railway Company are defendants; made upon the petition of the said Caspar Klein in the following respects; to wit: that the said decree declares and decrees that the said petitioner was injured by or through the negligence of the servants or agents of the said Receiver; and also without contributory negligence on the part of said petitioner; and also that the said petitioner is entitled to demand, or have of and from the funds in the hands and under the control of the said Receiver, the sum of seventeen hundred and fifty dollars as compensation for the damages by him suffered by reason of his injury mentioned in his petition, besides costs; and also that the said Receiver shall pay said sums. And your petitioner humbly appeals from all and every part of said decree of the Chancellor, which decrees as aforesaid, on the ground that the same is erroneous, for that the said petitioner was not injured by or through the negligence of said servants or agents of the Receiver, or without contributory negligence of the petitioner, and for that the said petitioner is not entitled to demand or have from said funds any compensation for his damages or costs aforesaid, nor to have said Receiver pay any sum for said damages or costs.

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Your petitioner therefore prays that the said decree of the Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to your Honorable Court shall seem meet.

PARKER & KEASBEY,  
*Solicitors of Appellant.*

CORTLANDT PARKER,  
*Of Counsel with Appellant.*

50 Dated the tenth day of February, eighteen hundred and seventy-six.

NEW JERSEY COURT OF APPEALS IN THE LAST RESORT OF ALL  
CAUSES.

BETWEEN	}	<i>On Bill. Petition of Mary Klein, &amp;c.</i>
HUGH J. JEWETT, <i>Appellant,</i>		
AND	}	<i>Petition of Appeal. 10</i>
MARY KLEIN AND CASPAR KLEIN, HER HUSBAND, <i>Respondents.</i>		

To the Honorable the Court of Appeals in the last resort in all causes at law : The humble petition of Hugh J. Jewett, the Receiver of The Erie Railroad Company, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by an order and decree made in the Court of Chancery by his Honor, Theodore Runyon, Chancellor of New Jersey, bearing date the fifth day of January, in the year eighteen hundred and seventy-six, in a cause wherein The Elmira Iron and Steel Rolling Company are complainants and The Erie Railway Company are defendants, made upon the petition of said Mary and Caspar Klein in the following respects, to wit: that the said decree declares and decrees that the said Mary Klein was injured by or through the negligence of the servants or agents of the said Receiver, and also without contributory negligence on the part of said Mary Klein, and also that she is entitled to demand or have of and from the funds in the hands and under the control of the said Receiver the sum of five hundred dollars, as compensation for the damages by her suffered by reason of her injury, mentioned in her petition besides costs; and also that the said Receiver shall pay said sums. 20

And your petitioner humbly appeals from all and every part of said decree of the Chancellor which decrees as aforesaid, on the ground that the same is erroneous, for that the said Mary Klein was not injured by or through the negligence of said servants or agents of the Receiver or without contributory negligence of the said Mary Klein, and for that the said Mary Klein is not entitled to demand or have from said funds any compensation for her damages or costs aforesaid, nor to have said Receiver pay any sum for said damages or costs 40

Your petitioner therefore prays that the said decree of the Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to your Honorable Court shall seem meet.

PARKER & KEASBEY,  
*Solicitors of Appellant,*

CORTLANDT PARKER,  
*Of Counsel with Appellant. 50*

Dated the tenth day of February, eighteen hundred and seventy-six.





