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PLAINTIFF'S WITNESSES

DEFENDANT'S WITNESSES

Notice of Appeal to Court of Errors and Appeals

(Filed July 24, 1929)

New Jersey Supreme Court

No. 403, May Term, 1929

CARLETON AGRY, *Plaintiff-Respondent,* vs. PENNSYLVANIA RAILROAD COMPANY, a corporation, *Defendant-Appellant.*	Action at Law

To WALL, HAIGHT, CAREY & HARTPENCE, Esqs.,
Attorneys for and of Counsel with Defendant-Appellant:

PLEASE TAKE NOTICE that the plaintiff appeals to the Court of Errors and Appeals of the State of New Jersey from the judgment entered in this cause in the above entitled court.

SAMUEL TARTALSKY,
Of Counsel with Plaintiff.

Grounds of Appeal

(Filed July 3, 1927)

NEW JERSEY COURT OF ERRORS AND APPEALS

CARLETON AGRY, *Plaintiff-Appellant,* vs. PENNSYLVANIA RAILROAD COMPANY, a corporation, *Defendant-Appellee.*	On Appeal

The plaintiff-appellant states the following grounds of appeal in this cause:

1. That the Supreme Court erred in reversing the judgment of the First District Court of Jersey City.

2. That the Supreme Court erred in not affirming the judgment in favor of the plaintiff entered in the First District Court of Jersey City.

SAMUEL TARTALSKY,
Of Counsel with Plaintiff-Appellant.

Notice of Appeal

(Filed February 6, 1929)

FIRST DISTRICT COURT OF JERSEY CITY

CARLETON W. AGRY, *Plaintiff,* vs. THE PENNSYLVANIA RAILROAD COMPANY, a corporation of Pennsylvania, *Defendant.*	In Tort.

To:

CARLETON W. AGRY or HARRY TARTALSKY, his Attorney:

SIR:

TAKE NOTICE That the Defendant in the above cause, The Pennsylvania Railroad Company, a corporation of Pennsylvania hereby appeals to the New Jersey Supreme Court from the judgment of the First District Court of Jersey City rendered in the above-stated action on the 17th day of January, One Thousand Nine Hundred and Twenty-Nine.

THE PENNSYLVANIA RAILROAD COMPANY,
By WALL, HAIGHT, CAREY & HARTPENCE,
Its Attorneys.

Dated, February 5th, 1929.

Service of a copy of this notice is hereby acknowledged this 5th day of February, 1929.

HARRY TARTALSKY,
Attorney of Plaintiff.

Specification of Errors

NEW JERSEY SUPREME COURT

CARLETON W. AGRY, *Plaintiff-Respondent,* vs. PENNSYLVANIA RAILROAD, a corporation, *Defendant-Appellant.*	Action at Law On Appeal Brief specification of determinations of the First District Court of the City of Jersey City, with which defendant - appellant is dissatisfied in point of law.

The following is a specification of the determinations of the First District Court of the City of Jersey City with which the defendant-appellant is dissatisfied in point of law:

1. At the close of the plaintiff's case, the attorneys for the defendant-appellant moved the Court for judgment of non-suit, on the ground that (1) the plaintiff had failed to show a cause of action against the defendant; (2) that plaintiff had failed to show negligence on the part of defendant and (3) that the evidence showed that plaintiff had been guilty of contributory negligence. The Court refused so to find, and defendant-appellant prayed for and was granted an exception to the Court's said ruling. The Court erred in denying said motion, and defendant-appellant is dissatisfied with the same in point of law.

2. At the close of the defendant's case, the attorneys for the defendant-appellant requested the Court to give judgment for the defendant. The Court refused to grant this request, and defen-

dant-appellant prayed for and was granted an exception to the Court's said ruling.

(a) The Court erred in its said determination, and defendant-appellant is dissatisfied with the same in point of law.

(b) The Court erred in failing to grant defendant's motion for judgment, for the reason, that there was no evidence of negligence on the part of the defendant.

(c) The Court erred in failing to grant defendant's motion for judgment for the reason that from all the evidence adduced, plaintiff was guilty of contributory negligence such as to bar it from recovering any judgment in its favor.

Dated April 4, 1929.

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys of Defendant-Appellant.

Grounds of Appeal

(Filed March 7, 1929)

NEW JERSEY SUPREME COURT

CARLETON W. AGRY, *Plaintiff-Respondent,* vs. PENNSYLVANIA RAILROAD COMPANY, a corporation, *Defendant-Appellant.*	Action at Law

The appellant states the following grounds of appeal:

1. The Court erred in overruling Defendant's motion for judgment of non-suit.

2. The Court erred as a matter of law in giving judgment for the plaintiff.

WALL, HAIGHT, CAREY
& HARTPENCE,
Attorneys of Defendant-Appellant.

Service of a copy of this within notice is hereby acknowledged this 4th day of March, 1929.

HARRY TARTALSKY,
Attorney of Plaintiff-Respondent.

Summons

FIRST DISTRICT COURT SUMMONS

State of New Jersey,
County of Hudson, } ss.:
City of Jersey City,

The State of New Jersey, to the Sergeant-at-Arms of the First District Court of the City of Jersey City or to any Constable of said County,

(L.S.)

Summon

The Pennsylvania Railroad Company, a corporation of Pennsylvania to appear before the First District Court of Jersey City, to be held at the First National Bank Building, Entrance, No. 20 York Street, in said City, on the third day of January, One Thousand Nine Hundred and Twenty-eight, at ten o'clock in the forenoon, to answer unto Carleton W. Agry on an action in Tort, Damage Five hundred dollars.

Witness, Charles L. Carrick, Esq., Judge of said First District Court at Jersey City aforesaid, the twenty-seventh day of December in the year One Thousand Nine Hundred and Twenty-nine.

(A true copy.)

B. FRANCIS MARRON,
Clerk.

Harry Tartalsky,
Plaintiff's Attorney.

State of Demand

(Filed December 27, 1929)

FIRST DISTRICT COURT OF JERSEY CITY

CARLETON W. AGRY, *Plaintiff,* vs. THE PENNSYLVANIA RAILROAD COMPANY, a corporation of Pennsylvania, *Defendant.*	IN TORT

Plaintiff residing in Jersey City, Hudson County, New Jersey, complains of the defendant and alleges:

1. That on April 15th, 1928, plaintiff was a passenger on a train owned, operated and leased by the defendant company.

2. That on said date plaintiff was lawfully upon the rear platform of said train and as the train approached the station which the said plaintiff was destined for, said defendant, its agent or servant, negligently and carelessly caused said train to lurch forward and cause the door on said train to catch plaintiff's hand between the door and door jamb, which plaintiff was forced to put his hand against in an endeavor to prevent himself from falling forward.

3. That the negligence and carelessness of the defendant, its agent or servant consisted in this:

State of Demand

that it failed and neglected to properly fasten the door which led to the platform on said train; that the door fastener was in a negligent and improper condition; that it failed and neglected to make proper inspection of the door fastener on said train; and it was otherwise negligent and careless in that it caused said train to lurch forward and cause said door to close upon plaintiff's hand.

4. By reason of the negligence and carelessness of the defendant, its agent or servant, plaintiff sustained severe and serious injuries to the right hand. Plaintiff was compelled to and did require medical services in an endeavor to cure himself of the injuries sustained. Plaintiff was unable to pursue his employment for a long period of time and was compelled to and did engage the services of another to carry on his employment at great cost and expense to the plaintiff.

Plaintiff claims judgment in the sum of Five Hundred ($500.00) dollars, together with costs of suit.

HARRY TARTALSKY,
Attorney for Plaintiff.

Transcript of Judgment

(Filed February 13, 1929)

State of New Jersey,
Hudson County, } ss.:
City of Jersey City,

FIRST DISTRICT COURT OF JERSEY CITY

Before: Myron C. Ernst, Esquire, acting for Charles L. Carrick, Esquire, *Judge*.

No. - 177352
Carleton W. Agry,
Plaintiff,

vs.

Pennsylvania Railroad Company, a corporation of Pennsylvania,
Defendant.

In Tort,
Damages $500

COSTS	CITY	AL
Summons	1.50	
Service		60
Trial Fee	1.50	
	3.00	60
Bond	1.00	

Harry Tartalsky, *Plaintiff's Attorney*.

Wall, Haight, Carey & Hartpence, *Defendant's Attorneys*.

A summons was issued tested December 27, A. D. 1928, returnable January 3, A. D. 1929, at 10

o'clock in the forenoon at the Court Room of the said Court in the City of Jersey City. The Constable returned the summons as follows, viz.: I served the within summons December 28, 1928, on O. L. Carr in charge of the principal office of the defendant company, by reading the same to him and delivering to him a copy thereof.

ROBERT J. LIVINGSTON,
Constable.

Plaintiff's demand filed December 27, A. D. 1928.

January 17, A. D. 1929, the plaintiff appearing and the defendant appearing the trial of the cause was proceeded with as follows:

Upon application of defendant, G. Hooper Harris was appointed and sworn as stenographer.

On the part of the plaintiff, Dr. Ellis J. Chapman, Carleton W. Agry were sworn and testified.

One bill and one slip offered and received in evidence.

On the part of the defendant, William Van Liew, Newton D. Hickman and Michael Ratigan were sworn and testified.

Whereupon it is on this seventeenth day of January, A. D. 1929, by this Court considered and adjudged that said Carleton W. Agry, plaintiff, recover against said Pennsylvania Railroad Company, a corporation of the State of Pennsylvania, defendant, the sum of Three hundred and sixty-nine dollars, damages, and Twenty-two dollars and five cents, costs of suit.

February 6, 1929, Notice of Appeal filed by defendant.

February 6, 1929, Appeal Bond filed by defendant.

Clerk's Certificate

I, B. Frances Marron, Clerk of the First District Court of Jersey City, Charles L. Carrick, Esquire, Judge, do hereby certify that the foregoing is a true copy of the Summons, State of Demand and Transcript of a Judgment of the said Court.

In witness whereof, I do hereby set my hand as Clerk of the said Court this thirteenth day of February, nineteen hundred and twenty-nine.

B. FRANCES MARRON,
Clerk.

(seal)

A true copy.

FRED L. BLOODGOOD,
Clerk.

Testimony

FIRST DISTRICT COURT OF
JERSEY CITY

Before: Hon. MYRON ERNST, *Judge.*

CARLTON W. AGRY,
Plaintiff,

against

THE PENNSYLVANIA RAILROAD COMPANY, a Corporation of Pennsylvania,
Defendant.

Jersey City, N. J., January 17, 1929,
at 3:30 P. M.

Appearances:

HARRY TARTALSKY, Esq., *for the Plaintiff;*

Messrs. WALL, HAIGHT, CAREY & HARTPENCE, *for the Defendant;*

By GEORGE G. TENNANT, JR., Esq., *of Counsel.*

ELLIS JEAKING CHAPMAN, called as a witness by the plaintiff, having been first duly sworn, testified as follows:

Direct Examination by Mr. Tartalsky:

Q. You are a licensed physician of the State of New Jersey? A. I am.

Q. Did you at any time treat Mr. Carlton W. Agry, Doctor? A. I did.

Q. What date was that? A. From April 15th to May 21st, 1928.

Q. What did you treat him for? A. For a fracture and a lacerated nail of the middle finger of the right hand.

Q. You submitted a bill to him for your services? A. I did.

Q. Is this a copy of the bill, or is that the bill? A. That is right; that is the bill.

Q. That is the bill you submitted to him? A. Yes.

Q. What is the amount of that bill? A. Nineteen dollars.

Mr. Tartalsky: I offer it in evidence.

(Received in evidence and marked Exhibit P-1.)

Q. Could you tell whether or not this finger could be used during the interim of the period in which you stated you treated him? A. No, it could not be used.

Q. Why couldn't it be, Doctor? A. Because it was done up in splints to facilitate the union of the broken fragments of the bone.

Q. Can you tell whether an injury of this kind is a painful one? A. Yes, it is painful.

Mr. Tartalsky: No further questions.

CROSS EXAMINATION by Mr. Tennant:

Q. Was this finger done up during the interim from April 15th to May 21st? A. Yes.

Q. He could go about his usual business, could he? A. Well, he could not use that hand. I don't know. I am no expert on his business.

Q. You say he could not use that hand from April 15th to May 21st. By that you mean that for the entire period the hand was isolated? A. Yes.

Mr. Tennant: That is all.

(The testimony of this witness was taken out of order during the trial of another case, so that the doctor could leave, it being stipulated that if the case was not reached and was tried before Judge Carrick the testimony could be transcribed for use at the trial before Judge Carrick.)

Mr. Tartalsky: If your Honor please, I desire to amend that paragraph of the complaint which reads: "lawfully upon the rear platform"; I want that to read "the front platform."

The Court: No objection to that.

(Complaint amended accordingly.)

CARLETON W. AGRY, the plaintiff, called and sworn as a witness on his own behalf, testified as follows:

Direct Examination by Mr. Tartalsky:

Q. Mr. Agry, on April 15th, 1928, were you a passenger on the Pennsylvania Railroad? A. I was.

Q. Did you pay your fare at that time? A. I paid my fare to the conductor.

Q. And is this the receipt which you received from the conductor? A. That is it.

Mr. Tartalsky: Any objection?

Mr. Tennant: No.

Mr. Tartalsky: I offer it in evidence.

(Marked Exhibit P-2.)

Q. Where were you destined for? A. Linden, New Jersey.

Q. Tell the Court what happened while you were a passenger on the train; what, if anything, happened to you while you were a passenger on the train? A. I sat in the seat waiting for the station to come, and when the brakeman opened the door and announced the station, I got up and left my seat and walked to the forward end of the car; the end nearest the engine; and as I walked, the train was then slowing up, and as I went to pass through the door, to steady myself from the motion of the train, I grasped the nearest object I could reach, which happened to be the door jamb, and I commenced to pass on then and the door shut with a jam and caught my finger in the jamb. Then the brakeman happened to be——

Q. (Interrupting) Now, what is it that caused you to steady yourself? What is it that caused that? A. The slowing up of the train and the final stop was sufficient to make me feel as if I was going to lurch forward and I grabbed the side of the door because it was the nearest object at hand.

Q. Did you see the brakeman open the door? A. I saw him open the door.

Q. Did you see what he did when he opened the door? A. He announced the station.

Q. Did you at any time ever touch the door? A. I did not.

Q. When you were passing through, did you touch the door? A. Not to my knowledge.

Q. And as you say, when you passed the threshold to steady yourself from lurching forward, you grabbed the nearest object, and the door slammed shut? A. Yes.

Q. What happened after that? A. The brakeman was on the rear end of the car forward, and I heard him say to me, "Well, you got a good one, then," or something to that effect, because I had blood on my finger. I had pulled my finger toward me, and it was bleeding, dropping on the platform, and so he steadied me going down the stairs and we got on the platform, and he looked out and called back to the conductor who was down the platform, probably a distance of about one car's length, and then he came up, because he said a man had been injured—had had his finger hurt in the door, and he came up and looked at it and said to me, or to a colored man on the platform, whom I took to be a porter, to take me down to the station agent's office and get a doctor for me.

Q. Did they get a doctor? A. They got a doctor, yes.

Q. Do you know the name of the doctor? A. Doctor Hendricks.

Q. Did he treat you? A. He treated me the first day.

Q. Do you know what happened to your finger

—what injury you sustained to your finger? A. It was broken; the bone of the middle finger of the hand and under the nail.

Q. And then what happened after you had seen this doctor, Doctor Hendricks? A. After I got back to Jersey City, I got my own doctor that evening.

Q. Who was that? A. Doctor Chapman.

Q. And he treated the finger? A. He undid it and treated that finger.

Q. And during what period of time did you continuously have Doctor Chapman with reference to the injury to your finger? A. This happened on the 15th of the month, and I was going to him, or he came to me, for treatment, for about four weeks after.

Q. Is this the bill that you received from Doctor Chapman? A. Yes, that is it.

The Court: That has already been testified to.

Q. Did you pay the bill? A. Yes.

Q. What is your business? A. Insurance underwriter.

Q. What amount do you average a week? A. About one hundred dollars.

Q. About one hundred dollars a week? A. Yes, sir.

Q. As the result of this injury were you incapacitated in any way from pursuing your employment? A. I certainly was.

Q. Tell the Court in what manner. A. I was unable to use my hand; that is, a pen, to write with, or even a pencil, and it pained me, and as it was my finger stuck out to such an extent that,

really, I could not control the other fingers and had to wear a bandage for about four weeks, and I was not very presentable to present myself to prospective buyers and I couldn't figure, as I often have to do. I am paid for writing.

Q. Were you paid while you were out of the office? A. I was not.

Q. And this continued for how long a period? A. Four weeks, before I had the bandage off.

Q. How much did you expend, if anything at all, for medicines? A. Outside of doctor's bills?

Q. Outside of doctors, I mean, for medicine. A. Probably about five dollars; it may have been a little less.

Q. You say you earned about a hundred dollars a week? A. Averaged about a hundred dollars.

Q. And you were unable to pursue your regular business for a period of about four weeks? A. Yes.

CROSS EXAMINATION by Mr. Tennant:

Q. When did you first see the brakeman? A. I saw the brakeman first when he opened the door.

Q. What direction was he coming from? A. He was coming from the car forward, I imagine.

Q. The car ahead of the car that you had been in? A. Yes.

Q. That was when the car was approaching Linden? A. Yes.

Q. Your stop? A. Yes.

Q. What did he do? A. He opened the door and announced the station.

Q. And then what did he do? A. I don't know where he went, but I found him forward on the platform of the car ahead. He inquired about my finger being hurt.

Q. All you know is that he opened the door? A. That he opened the door, yes.

Q. You don't know what he did next? A. I could not tell you that.

Q. You don't know whether he closed the door, or left the door in the catch? A. I know he opened the door, and it was free for me to walk out. I didn't have to open it again, and neither had it been shut.

Q. Where were you standing when your hand caught in the jamb? A. I was just passing from the threshold, and to save myself, I put my hand up, and I was on the platform, as the door slammed. I hadn't pushed it out. I had moved out right to the platform.

By the Court:

Q. Was the train going smoothly at that time or not? A. No, it had not slowed down to the point where there was the final jerk at the last end of the stop.

Q. Was it running smoothly, or what was it doing? A. It had been gradually slowing up, but as a final thing it came as a jerk—a sudden stop —enough to make me lose—or make me feel that I wanted to grasp something.

By Mr. Tennant:

Q. Are you familiar at all with the vestibule cars of the Pennsylvania trains? A. I never gave them any particular thought.

Q. Have you travelled on Pennsylvania trains to any extent? A. In what respect?

Q. I am referring now particularly to the grasping irons that the Pennsylvania Railroad places on the vestibules in four distinct places on

each vestibule. A. I haven't given them any thought.

Q. Did you notice any such grasping irons? A. I have on others, but I can't say that I did on this particular one.

Q. Did you notice the grasping-irons after the accident happened? A. No, sir. I was too much excited. I naturally think there should be—there should have been—they may have been there, but I didn't see them.

Q. What was the position of the door when you went through it? A. Open.

Q. What do you mean, open? A. I mean open so that I had free access to go out without touching the door; opened wide, apparently, for me.

Q. From your statement, I can't tell whether it was open and swinging, or open and stationary, or almost closed. A. If I may repeat, possibly the idea was this. As I passed through the door, I had no occasion whatever to think of the door, because it was opened sufficiently wide for me to pass without any trouble whatsoever.

Q. From all you know, the door may have been swinging a little bit, and was swinging wide enough so that you could pass through it? A. Apparently, to me, as I remember it, it was open far enough for anyone to pass through comfortably, if I may make that clear to you.

Q. And yet although you were not certain whether that door was stationary, you are certain that you put your hand on the jamb? A. I know I did, because the door caught me there—caught the finger on the jamb.

Q. As a rule, when you take the trouble to put your hand up on the jamb, don't you look at it?

Mr. Tartalsky: I object to "as a rule."

Q. In this particular case, did you or did you not look to see whether that door was going to swing through and come on your hand? A. I had no reason to think about it.

Q. Did you look to see whether that door was going to swing? A. I did not.

Q. You did not look to see? A. No.

Q. Where was this brakeman when he said to you, "Well, you got a good one then?" A. On the rear platform of the car forward.

Q. Of the car forward? A. Yes.

Q. Was that the same brakeman that had announced the station? A. He evidently was, because—well, I can't say the same one, but naturally I expect that it would be. I couldn't say that it was.

Q. Then assuming that it was—and I think we have a right to assume it was—if that brakeman had gone on to the car forward and had left your car, and so far as you know, he had, may it not be that then he did either one of two things when he left your car: either he had gone out and shut the door, or he had gone out and left the door open?

Mr. Tartalsky: I object to that. We are not assuming anything here.

The Court: The objection is sustained. The only question here is whether the accident happened by reason of this door. That is all; whether he opened it or closed it—that doesn't make any difference.

(Discussion off the record.)

Q. You say that you average $100 a week in

wages—in salary. Is that all in commissions? A. That is commissions.

Q. Is that all in commissions? A. All in commissions, yes.

Q. Were you totally unable to transact business during the subsequent four weeks? A. Yes.

Q. You could not do anything at all? A. No, sir.

Q. Why did you go to the office? A. To look at any mail that I might have had and to keep in touch with any changes that may have come up, or anything in the line of office business.

Q. You say you were totally unable to transact business during those four weeks subsequent to the accident? A. Totally unable to earn any remuneration in the way of doing business.

By the Court:

Q. What is your business? A. Insurance underwriter.

Q. Couldn't you write? A. I could not write.

Q. How do you do your business? Go out in the field and get insurance? A. Go out in the field and solicit prospects for life insurance, and to do that, I have to get the information from them, at least, as to whether they are interested or not interested, and if they are interested, we usually have to go into figures and draw up a program for a man, explaining different things to the man, to interest him in taking out a policy.

Q. Do you write life or industrial insurance? A. Straight life insurance.

Q. Who with? A. The Equitable Life.

By Mr. Tennant:

Q. Were you not able to dictate to a stenographer? A. I could do that, yes.

Q. Do you still maintain that you were not able to transact business during the four weeks subsequent to the accident? A. I do.

Q. Would you mind telling me what you mean by not being able to transact business? A. I tried to explain to his Honor that if I tried to use a pencil it would be so awkward that you couldn't really trace what kind of figures I was making, or what I was writing. It was a painful operation to try to hold a pencil.

Q. But you were able to go to your office and examine your mail and keep up with things in general? A. I didn't have any figuring to do. It was simply a matter of reading a letter that came in the mail.

Q. And yet you say you were totally unable to transact business? A. So far as any life insurance was concerned, yes.

Mr. Tartalsky: That is all. That is the plaintiff's case.

DEFENDANT'S CASE

WILLIAM C. VAN LIEW, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination by Mr. Tennant:

Q. What is your occupation? A. Brakeman on the Pennsylvania Railroad.

Q. Were you brakeman in attendance on the train in which the preceding witness, Mr. Agry, was a passenger, on April 15th, 1928? A. I was.

Q. What cars were you stationed between, as far as the cars were concerned? A. The two head cars.

Q. And those two head cars included the one he was riding in? A. They did.

Q. What were your duties on that occasion? A. Opening and closing the doors and announcing the stations.

Q. In the course of traveling in the regular way, what do you do as you approach a station? A. As we near the station——

Mr. Tartalsky: (Interrupting) That is objected to. It was what he did in this particular case.

The Witness: In this particular case I did the same.

Q. What did you do in this particular case? A. Well, as we approached the Linden station, I opened the door in the first car and announced the station, Linden, and as I turned around to open the door of the second car——

Q. (Interrupting) The second car; that would be the one Agry was in? A. Yes; as I turned around to open the door of the second car, this gentleman stood there, holding his right hand bleeding, and I said, "My, how did that happen?" and he said, "I caught it in the door." I said, "Do you think we had better have a doctor for you?" and he didn't answer me. The train was then moving along and finally stopped at the station platform, and he went down the steps and I

went with him, and when we got on the platform, I called the conductor, and the conductor took his name and took charge of the rest of it.

Q. Did Mr. Agry give any cause for the accident, as to how it happened, or why? A. He told the conductor.

Q. In your presence? A. In my presence—that he didn't think the door would close so quick. He didn't think the door would close so quick.

Q. What did he mean by that?

Mr. Tartalsky: I object to what Mr. Agry might have meant.

The Court: The objection is sustained.

Q. Had you been in that car before? A. Yes, sir, at every station from Jersey City to Linden.

Q. And the preceding station was what? A. South Elizabeth.

Q. And the train was traveling from South Elizabeth to Linden? A. Yes.

Q. Now, when you left the car at South Elizabeth, what was the condition of the door? A. Perfectly closed and latched.

Q. When was the next time you went in through that door? A. You want to know the next time I went into it?

Q. Yes. A. Well, when I went to——

Q. (Interrupting) Wait—I will withdraw that. Did you go through that door again, or handle that door at all until after the accident? A. Not between South Elizabeth and Linden. No one went through there.

Q. You are sure of that? A. Yes.

Q. Are you the only brakeman that could have gone through? A. Yes.

Q. Did you make any examination of the mechanism and working of this door at this time? A. Yes, very particularly, to see that it was perfect at that time.

Q. On that day? A. On that day.

Q. Before the accident? A. No, the door gave us no trouble and stayed perfectly latched every time it was opened and closed, and after the accident happened, we took particular notice to see that it was all right, and opened it and closed it.

By the Court:

Q. Do you know who opened the door before you—who was the last one to open it? A. No; I know that I closed it.

Q. But you don't know who opened it after you closed it? A. It was closed leaving South Elizabeth.

Q. Do you know who closed it? A. Who closed it in South Elizabeth?

Q. Yes. A. I did.

Q. Now, do you know who opened it afterwards? A. No.

Q. When you came through and this man's finger was hurt, was that door open? A. Yes.

Q. You don't know if any people were ahead of him? A. He was the only man who got off that platform at Linden.

CROSS EXAMINATION by Mr. Tartalsky:

Q. You were a brakeman at this time? A. Yes.

Q. And you collected Agry's ticket? A. I believe I took his ticket. I wouldn't be sure about that.

Q. When do you remember first seeing Mr. Agry? A. On the platform, holding his hand.

Q. That is the first time you ever saw him? A. Yes.

Q. You don't know whether you collected his fare? A. I wouldn't say for sure.

Q. It is not very usual to sell people tickets on the train. If you sell tickets on the train, you usually remember. You don't sell many through the day? A. Plenty of them.

Q. You don't know whether you collected Agry's ticket? A. I wouldn't remember him particularly,—no.

Q. You don't know, as a matter of fact, that you did collect the ticket, do you? A. I wouldn't say for sure.

Q. Do you remember announcing the South Elizabeth station? A. I do.

Q. What did you do when you did that? A. Opened the door.

Q. And you left it open, didn't you? A. No, sir.

Q. And what else? A. Let me get you straight. When we approached the South Elizabeth station, I opened the door and announced the station.

Q. What did you do with the door? A. It is catched open and it is in place and caught.

Q. And its place is to stay that way? A. Yes.

Q. And then you go to the other car, don't you? A. From one door to the other. Is that what you mean?

Q. Yes. A. Yes.

Q. Who closes the door? A. I do.

Q. When do you close the door? A. When the signal is given to start.

Q. You go and close both doors? A. Right.

Q. As you approached Linden, you walked in

as usual and announced the station. Isn't that so? A. In the combined car I announced.

Q. And also in the car in which Mr. Agry was sitting? A. When I went to announce in that car, this gentleman stood there with his right hand bleeding, and my attention was given to him—to this man, then, and I didn't announce it then.

Q. You didn't see him open it? A. No.

Q. All you know is that it had been opened? A. Yes.

Q. It may have been the other brakeman——

The Court: (Interrupting) He does not know.

Q. You made a particular examination of the mechanism, you say, before the train started? A. I didn't say that.

Q. Your own testimony is that you made an examination of—— A. (Interrupting) I said after the accident had happened.

Q. And at no time before that? A. There was no trouble with that door whatsoever.

Q. You didn't examine it before the accident, did you? A. No; had no reason to.

NEWTON W. HICKMAN, called as a witness by the defendant, being first duly sworn testified as follows:

Direct Examination by Mr. Tennant:

Q. Mr. Hickman, you were the conductor on this train? A. I was.

Q. When was the accident first brought to your attention? A. On arrival at Linden, when we made this station stop, the baggage master—Mr. Van Liew, called me up to the first or second car, and I seen a gentleman there holding his hand, and he said, "This gentleman has just smashed his finger."

Q. Did you step out on the station platform at Linden? A. Yes.

Q. You mean this man here? A. This man here. He said "closing the door, I caught my finger. I didn't think it would come to so quick." That was the statement made in the presence of the baggage-master.

Q. You remember that distinctly? A. Absolutely.

Q. And as the train pulled into the Linden station, how was it operated, so far as concerns any jar or jerk on arrival at the station? A. Absolutely no jar; normal service for that afternoon.

Q. Any unusual jars? A. No unusual jars. We have to place on the detention report that we record all unusual jars; none noted for that day.

Q. Mr. Hickman, I presume you are familiar with the vestibule equipment on one of these trains such as you ride in every day? A. Absolutely, yes.

Q. Will you explain how this grasping iron hangs? As to how near the door they hang?

Mr. Tartalsky: Objected to; unless he knows the car in question.

Q. Do you know the car in question? A. Absolutely.

Q. Will you testify with reference to the car

in question? A. With reference to the car in question, yes.

Q. Do you want the question repeated? A. No; it was standard equipment.

Q. You say standard equipment; that doesn't mean anything to us. Will you explain just how the grasping irons are situated in reference to the door? A. Along the columns of the door, there are two grab-irons, I presume about twenty-six or twenty-eight inches on each side of the door. Anybody can grasp the irons or columns getting out of the end of the car. Likewise, at the end of the steps, on the left, there is one, and one on the right of the steps.

Q. As one passes through the door, how near to these grab-irons would they be?

Mr. Tartalsky: Objected to. It might be a small person or a large one.

The Court: Objection sustained.

Q. If a door is opened, it is set in a catch? A. Yes.

Q. Each door is set in a catch? A. Yes.

Q. Nothing but an unusual jerk would take it out, of itself? The normal stopping of the car or train would not take it out? A. Absolutely no. It takes a jerk.

CROSS EXAMINATION by Mr. Tartalsky:

Q. Of course, in your experience you have had them come out of place, haven't you? A. I couldn't recollect in the last number of years. I might have had one some time before—but it is too far to go back.

Q. Did you take this gentleman to the doctor? A. No; the colored baggage porter.

Q. Is he here in court? A. I don't know.

Q. You say he made a certain statement to you in the presence of the baggage master. A. I mean Mr. W. C. Van Liew, yes; he is in the capacity of baggage master or brakeman on that train.

Q. He is not here in court?

The Court: He didn't testify that he said that. He testified the man just said, how could he get his finger caught, and he got an awful cut, or something. He didn't say that he said that.

The Witness: The brakeman I don't recall said that.

The Court: All I understood the brakeman to say was that this man didn't really say how it happened, except he got his finger caught, and he said he got a bad cut. There is no conversation of that kind.

Mr. Tennant: We have a witness who not only will testify that it was in good working order after the accident, but who will testify it was in good working condition before the accident.

The Court: You can put that witness on if you want.

MICHAEL RATIGAN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. Tennant:

Q. You are car inspector for the Pennsylvania Railroad? A. Yes.

Q. On April 15th, 1928, did you inspect the car in question involved in this accident? A. Yes.

Q. Did you inspect the doors? A. Yes.

Q. And did you examine the door catches to see that they held? A. Yes, I pushed back the door and twisted it.

Q. Did you notice whether this particular car was equipped with hand-holds in good order? A. Yes, sir; four handholds on it.

Q. Was everything involved in the equipment at that end of the car in good order? A. Yes.

Q. Positive? A. Yes.

Q. When did you make this examination? A. About eleven A. M.; in the morning.

(It is stipulated that the accident occurred between one and three o'clock in the afternoon.)

CROSS EXAMINATION by Mr. Tartalsky:

Q. Do you want the Court to understand that every day you tried these doors that way? A. When I pushed the door back, I tested the doorholds.

Q. How do you do that? A. Pushed it back and pulled it back again and shut the car to see how the door support worked.

Q. A good lurch would take it out? A. No.

Q. You would have to take it out by hand? A. You would have to pull it.

Q. Very hard? A. Very hard, yes.

Q. Do you want us to believe that you have got to use a man's strength to take that door off the latch? A. When it throws back, it is not quite straight, and it takes a good pull to take it up.

CARLETON W. AGRY, recalled:

Examination by Mr. Tartalsky:

Q. Had you ever been to Linden before? A. I never had, before.

Q. You heard this man testify that you went to the door. Will you please tell us how you came to go to the platform at that time at that Linden station? A. I went to the platform after the station had been announced. I didn't know how far the station was, or how far up the railroad it was.

Q. And you didn't proceed to the platform until after the station was announced? A. No.

Q. And at the time you went, the door was open? A. The door was open.

Mr. Tartalsky: That is the plaintiff's case.

(Both sides rest.)

Mr. Tennant: I don't think my opponent has shown that the Railroad is responsible for having that door open.

The Court: I was very careful about

that, and I thought that the brakeman would be able to tell me that he saw somebody—a man or a child—open that door and leave it open. That is the reason why I asked him that question. He said that he just saw this man. That was my object in asking the question, to see if he saw anybody other than the brakeman opened the door.

Mr. Tennant: We have only the story of the plaintiff that he didn't open the door, and there was one of the employees of the defendant who testified particularly that the door was closed, and, so far as he knew, the plaintiff must have been the man who opened it.

The Court: They say that the door worked properly, and that it was closed, but they do not say that this man opened it. That is why I asked this brakeman the question.

I HEREBY CERTIFY this transcript to be a true record of the state of the case, as the same was heard by me on January 17th, 1929.

Dated, February 13, 1928.

MYRON C. ERNST,
Judge.

Opinion

(Filed June 21, 1929)

NEW JERSEY SUPREME COURT

No. 403, May Term, 1929

CARLTON AGRY,
Plaintiff-Respondent,

vs.

PENNSYLVANIA RAILROAD COMPANY, a corporation,
Defendant-Appellant.

Submitted May 8th. Decided

On appeal from the First District Court of Jersey City.

For Defendant-Appellant:

WALL, HAIGHT, CAREY & HARTPENCE.

For Plaintiff-Respondent:

HARRY TARTALSKY.

Before: Justices PARKER, BLACK and BODINE.

Per Curiam:

The plaintiff, a passenger on one of the defendant's trains, approaching the station stop passed out of the car onto the vestibule, the door being opened. He took hold of the jamb of the door, the train giving a lurch the door closed cutting his fingers.

The record is silent on any motion for a non suit or a direction of a verdict. The brief for the defendant states that these motions were made. The record, however, is not in accord. Coming to the merits, no negligence of the railroad company was proved, and there was no proof that the door, the hinges or the jamb were out of order. Lurches of trains are to be expected. Persons who put their hands in door jambs do so at their own peril.

The judgment should be reversed.

Filed June 21, 1929.

FRED L. BLOODGOOD,
Clerk.

Rule for Judgment

NEW JERSEY SUPREME COURT

CARLTON AGRY, *Plaintiff-Respondent,* vs. PENNSYLVANIA RAILROAD COMPANY, a corporation, *Defendant-Appellant.*	Action at Law

This matter coming on to be heard before the Court at the May Term, 1929, on an appeal from the judgment of the First District Court of Jersey City, and the Court having considered the arguments of counsel, and being of opinion that said judgment should be reversed:

IT IS THEREUPON ORDERED, That the said judgment of the First District Court of Jersey City under review be reversed, set aside and for nothing holden, and that the record be remitted to the said First District Court of Jersey City to be proceeded with according to law.

Entered, July 15th, 1929, on motion of

WALL, HAIGHT, CAREY & HARTPENCE

New Jersey Court of Errors and Appeals

CARLTON AGRY,
Plaintiff-Appellant,

vs.

PENNSYLVANIA RAILROAD COMPANY,
Defendant-Appellee.

BRIEF OF PLAINTIFF-APPELLANT.

Plaintiff appeals from a judgment of the Supreme Court reversing a judgment recovered by him in the First District Court of Jersey City where the case was tried by the Court without a jury. Appellant urges that the Supreme Court erred in reversing the judgment because the record presented nothing for that Court to review. There was absolutely no legal question presented to the Supreme Court. There was no motion for a non-suit, no motion for judgment, no objection to any evidence, no request for any finding and no objection to the finding of the Trial Court. In short, the record presented only a disputed question of fact which the Judge of the District Court resolved in favor of appellant.

The Facts.

On April 15, 1928, plaintiff was a passenger on defendant's train bound for Linden, New Jersey. The brakeman opened the door and announced the station. Plaintiff walked to the forward end of the car and due to a sudden jerk or stop (Case, p. 20), to steady and prevent himself from falling, plaintiff

grasped the nearest object he could reach, which was the door jamb. The door shut with a jam, injuring his fingers (Case, pp. 16, 17, 20). Plaintiff testified as follows in response to the Court's queries (Case, p. 20):

> "By the Court:
>
> Q. Was the train going smoothly at the time or not? A. No, it had not slowed down to the point where there was the final jerk at the last end of the stop.
>
> Q. Was it running smoothly, or what was it doing? A. It had been gradually slowing up, but as a final thing it came as a jerk—a sudden stop—enough to make me lose—or make me feel that I wanted to grasp something."

Defendant denied that there was any unusual jar and asserted that the door was in good working condition and that it would require an unusual jar to loosen it from the catch. Defendant's witness testified (Case, p. 31):

> "Q. If a door is opened it is set in a catch? A. Yes.
>
> Q. Each door is set in a catch? A. Yes.
>
> Q. Nothing but an unusual jerk would take it out, of itself? The normal stopping of the car or train would not take it out? A. Absolutely no. It takes a jerk."

Clearly, the testimony presented factual questions. Did the train come to a sudden stop? Did the train jar? What caused the plaintiff to fall forward? If the door was properly fastened, defendant's witness testified, it would require an unusual jar to shut it. Was the door properly fastened? If it was properly fastened, why did it shut and smash the fingers of plaintiff? These were matters to be determined by the Court itself sitting as the trier of the fact. Surely, it was within the province of the

Court to accept plaintiff's view, as it did, and render a verdict in his favor. This verdict should not have been disturbed by the Supreme Court, but on the contrary, it should have affirmed the judgment.

The defendant assigned as error in the Supreme Court the refusal of the District Court to grant a non-suit and motion for judgment. This appellant directed the attention of the Supreme Court to the fact that no such motions were made and that there was no determination of the District Court in point of law which the Supreme Court was called upon to review. In its opinion, the Supreme Court found that there were no motions made as alleged by defendant. In its *per curiam* opinion (Case, pp. 36-37) the Court said:

> "The record is silent on any motion for non-suit or a direction of a verdict. The brief for the defendant states that these motions were made. The record, however, is not in accord."

Under these circumstances, the Supreme Court should have affirmed the judgment for the plaintiff. However, the Supreme Court went further and reviewed the merits of the case, which, we respectfully urge, under adjudicated cases, it had no power to do. The Supreme Court said:

> "Coming to the merits, no negligence of the railroad company was proved, and there was no proof that the door, hinges or the jamb were out of order. Lurches of trains are to be expected. Persons who put their hands in door jambs do so at their own peril.
>
> The judgment should be reversed."

The Supreme Court erred in determining as a matter of law, on appeal, that the defendant was not negligent and that plaintiff was contributorily negligent, for under the evidence in this case, these were questions of fact solely within the province of

the trial court for its determination. It is the function of the trier of the fact to determine whether under given circumstances, a sudden lurch or stop of a train and the shutting of an alleged properly fastened door thereof upon the fingers of a passenger, are within the realm of negligence or not. We believe that it is impossible for an Appellate Court to determine what kind of a sudden lurch or stop of a train is within the classification of negligence or what kind of a sudden jerk or stop is within the category of reasonable care. So long as there is evidence of an unusual or sudden stop or lurch, there is a *prima facie* establishment of negligence. That this is the law, we will later show by cases of this Court.

POINT ONE.

There being no legal question presented to the Supreme Court, there was nothing for it to review.

The uniform rule of law as declared by this Court and the Supreme Court in innumerable cases establishes the rule that where a record brought up from a District Court to the Supreme Court fails to show any legal question presented to the Supreme Court, the judgment of the trial court should be affirmed, there being nothing for the Supreme Court to review.

In *Blanchard Bros.* v. *Beveridge,* 86 Law 561, the Court of Errors and Appeals reversed a judgment of the Supreme Court reversing a judgment of the the District Court, Chancellor Walker, speaking for this Court, said at page 562:

> "The judge of the District Court gave judgment for the plaintiff, and that judgment was

reversed by the Supreme Court upon the ground that there was no evidence to support the trial court's finding.

The appellant, plaintiff below, contends that as the state of the case presented to the Supreme Court showed no objection to evidence, no request for any finding, and no objection to the finding of the trial court, there was nothing for that court to review. This is correct.

This court, in Simmons Pipe Bending Works v. Seymour, 80 N. J. L. 465, upon the authority of an earlier case in the Supreme Court, held—

> 'The state of case fails to show that any legal question was presented to the trial court. There is no objection to evidence, no request to find, and no exception to the actual finding. There is, therefore, no determination of the District Court in point of law or upon the admission or rejection of evidence for us to review. O'Donnell v. Weiler, 72 N. J. L. 152.' * * * there was no record before the Supreme Court upon which it could reverse the judgment of the District Court; and, therefore, the Supreme Court's judgment must be reversed, to the end that the District Court's judgment shall be allowed to stand."

To the same effect are:

Ruggles v. *Ocean Accident, &c., Co.*, 89 N. J. L. 180;

E. L. Downs v. *Owen Magnetic, &c., Co.*, 92 N. J. L. 93.

POINT TWO.

There was evidence of defendant's negligence supporting the District Court's judgment.

We respectfully submit that the Supreme Court erred in reversing the judgment of the District Court on the ground that no negligence of the railroad company was proved. Plaintiff was a passenger on a railroad train of defendant and defendant was obliged to exercise a high degree of care. The sudden jerk or stop of the train and the loosening of the door from its catch causing the door to shut on the fingers of the plaintiff who placed his hand on the door jamb to steady or prevent himself from falling because of the unusual motion of the train, was evidence of negligence (Case, p. 20). The facts in this case are identical with the cases of

Colletto v. *Hudson & Manhattan R. R. Co.*, 90 N. J. L. 315;

Field v. *D. L. & W. R. R. Co.*, 69 N. J. L. 433,

decided by this Court, and the recent case of *Barney* v. *Hudson & Manhattan R. R. Co.*, decided by the Supreme Court in 7 Adv. Rep. 477, 145 Atlantic 5, in each of which cases, judgments in favor of the plaintiffs were affirmed.

In *Colletto* v. *Hudson & Manhattan R. R. Co.*, *supra*, plaintiff was a passenger on defendant's train, in order to save himself from falling as the train was passing a curve in the track, put his hand against the door jamb. His hand was injured by the closing door. In that case, there was no proof of any extraordinary jerk or lurch of the car. This Court adopted the opinion of the Supreme Court, and held, at page 315:

"We think it may properly be inferred from the testimony that unless fastened the door was liable to close when the car was running around a curve, even if there was no unusual lurch, and that to prevent this the defendant company had provided the car with a lock or latch to hold the door in place, and that this accident occurred because the guard neglected to properly fasten the door.

We think that the case was open to a finding that the negligence of the defendant was in failing to throw the door far enough open so that the lock would hold it in place, and that with knowledge to be imputed to it that the door would not stay in place during ordinary operation unless it was properly held by the latch; the duty arose to so fasten the door as to prevent its movement during ordinary operation of the car. * * *

The second point is, that the plaintiff was guilty of contribtuory negligence as a matter of law. To this we cannot accede, for, according to the plaintiff's * * * it became necessary, on account of the sudden motion of the car to steady himself, and he had a right to assume that the door was perfectly fastened, and if it was, what he did was perfectly safe."

In the case of *Field* v. *D. L. & W. R. R. Co., supra,* plaintiff, a passenger, as he approached his destination, prepared to alight, and while standing inside of the car near the rear door, which was open, a violent jerk or start of the train threw him to the ground, and he was injured. This court held that it was not error to refuse a non-suit, nor to refuse to direct a verdict, but an assue of fact was presented requiring submission to a jury.

In *Barney* v. *Hudson & Manhattan R. R. Co., supra,* plaintiff was a passenger who sustained injuries to her fingers which were squeezed between the jamb and the door of a car. When the train started, she lost her balance and grasped the jamb

of the open inter-communicating door which the conductor closed upon her fingers. The Court determined that it was not irrational for the trial court to infer negligence and affirmed a judgment in plaintiff's favor.

The evidence in the case at bar established negligence. When the Supreme Court said: "Lurches of trains are to be expected", it overlooked the testimony in this case that the train came to a sudden stop or jerk, and the further testimony by defendant that if the door were properly fastened, it would require an unusual lurch to cause it to shut. When the Supreme Court said "Persons who put their hands in door jambs do so at their peril", it erred, for, to apply the language of this Court in the case of *Colletto* vs. *Hudson & Manhattan, supra,* "it became necessary (for plaintiff), on account of the sudden motion of the car, to steady himself, and he had a right to assume that the door was perfectly fastened, and if it was, what he did was perfectly safe."

It is a fundamental rule of law that on an appeal from a District Court to the Supreme Court, the judgment under review is to be sustained on factual questions if there be any evidence to support it.

Breithart v. *Lurich,* 98 N. J. L. 556;
Duff v. *Prudential Ins. Co.,* 90 N. J. L. 646.

There was evidence to support the District Court, and it is urged that the judgment of the Supreme Court be reversed.

Respectfully submitted,

SAMUEL TARTALSKY,
Of Counsel with Appellant.

New Jersey Court of Errors and Appeals

CARLTON AGRY, *Plaintiff-Appellant,* vs. PENNSYLVANIA RAILROAD COMPANY, a corporation, *Defendant-Appellee.*	Action at Law

BRIEF FOR DEFENDANT-APPELLEE

Statement of the Case

Plaintiff, Carlton Agry, was a passenger on a train of the defendant Railroad, bound for Linden, New Jersey, on April 15th, 1928. As the train approached Linden, the plaintiff went to the forward end of the car in which he had been riding and as he passed across the threshold of the car door, took hold of the door jamb to steady himself as the train came to a stop. The door shut, and caught and injured plaintiff's finger.

Plaintiff brought suit in the First District Court of Jersey City where a trial, without a jury, was had on January 17th, 1929. A judgment was entered for plaintiff in the sum of Three hundred and sixty-nine ($369.00) Dollars damages together with costs of suit. Defendant appealed from said judgment to the Supreme Court, which

reversed same and held for defendant. Plaintiff appeals from this judgment of the Supreme Court.

Argument

The Supreme Court decided correctly in reversing the judgment of the First District Court of the City of Jersey City, since:

(1) This case was properly before the Supreme Court on appeal, there being a question of law presented for its review.

(2) There was no evidence from which the Trial Court could find that defendant had been guilty of negligence, and

(3) From all of the evidence adduced, plaintiff was guilty of contributory negligence as a matter of law such as to bar him from recovering any judgment in his favor.

I

This case was properly before the Supreme Court on appeal, there being a question of law presented for its review.

In the "Grounds of Appeal" (R. p. 6) to the Supreme Court, defendant stated as one of the grounds:

> "The Court erred as a matter of law in giving judgment for the plaintiff."

The fact that the trial court erred as a matter of law in giving judgment for plaintiff, was a valid ground of appeal, well within the province of the Supreme Court to consider in reversing the judgment of the trial court, and of this court on the present appeal.

A party aggrieved by a judgment awarded by the court in a cause tried without a jury, may review any errors made by the court in giving such judgment, without request for a specific finding of law or fact, or law and fact, and objection to an adverse finding.

Counsel for the defendant-appellant, in Point I of their brief have quite evidently overlooked Sec-

tion 25 of the Practice Act of 1912 (L. 1912, C. 231, p. 382) as amended by L. 1916, C. 62, p. 109, supplementing L. 1903, p. 537, which reads as follows:

> "Bills of Exceptions and Writs of Error in civil cases are abolished * * * Where causes are submitted to the court to be heard without a jury, any error made by the court in giving final judgment in the cause shall be subject to change, modification or reversal *without* the grounds of objection having been specifically submitted to the court." (Italics ours.)

In the case of *Smith* v. *Cruse,* 101 N. J. L. 82, Chancellor Walker, speaking for the New Jersey Court of Errors and Appeals, said on page 83, *et seq.*:

> "This was a case in the First District Court of Newark, tried by the judge without a jury. Judgment was rendered in favor of the plaintiff and against the defendant, and the latter appealed to the Supreme Court, where the judgment was affirmed. Appeal was then taken in this court.
>
> "In the Supreme Court's *per curiam* it is stated that the record before that tribunal showed no legal basis for review because it did not appear that there was any request on behalf of defendant for a finding of law or fact, or of law and fact, and exception taken thereto; hence there was

no point presented which could be reviewed on appeal. * * *

"It is not necessary for a party to request the court, in cases where a jury is waived, to make specific findings of law or fact, or law and fact. It is sufficient if he claims judgment in his favor upon testimony adduced upon the trial. And the court, sitting without a jury, cannot enter judgment for either party without a finding in favor of that party. A judgment presupposes a finding of facts in favor of the successful party, even if such finding be not expressed in terms, and also presupposes that, in the opinion of the judge, that party is entitled to the judgment by law arising upon the facts.

"In the case at bar it does not appear that either side made any request for findings. But the judge of the District Court, in the state of the case settled, said, 'I find the facts to be as follows,' and then goes on and specifically finds the facts upon which he rests his judgment.

"Now, the amendment to the Practice Act, P. L. 1916, p. 109, provides that when cases are submitted to the court to be heard without a jury, ANY ERROR made by the court in giving final judgment shall be subject to change, modification, or reversal *without the grounds of objection having been specifically submitted to the court.* There is no requirement that the defeated party must have preferred a request for a finding of law or fact, or law and fact, and except to an adverse finding, in order to secure a review of the judgment; but appeal is given to him, as matter of right, although he did

not submit the grounds of objection to the trial judge. But this refers only to errors residing in the final judgment and not occurring in the proceedings on the trial.

* * * * *

"The reason for this statute is obvious, and is fully explained in our opinion in *Pannonia Building and Loan Association* v *West Side Trust Co.,* 93 N. J. L. 377, 381, wherein we held that this act of 1916 permits a review of any errors of law residing in the findings of the trial judge, provided such errors shall be specified in grounds of appeal filed and served."

* * * * *

"The practice of the circuit courts (which is governed by the Practice Act) applies to the district courts, except where otherwise provided. * * * As there is no provision in the District Court Act which precludes the application of Pamph. L. 1916, p. 109, to the district courts, we hold that it does so apply."

Of the cases cited by counsel for the plaintiff-appellant under Point I in their brief, the following were decided prior to the Statute of 1916 above quoted:

Blanchard v. *Beveridge,* 86 N. J. L. 561, decided in 1914;

Simmons Pipe Bending Works v. *Seymour,* 80 N. J. L. 465, decided in 1910;

O'Donnell v. *Weiler,* 72 N. J. L. 142, decided in 1905.

Ruggles v. *Ocean Accident, etc., Co.,* 89 N. J. L. 180 (also cited by Counsel under Point I), was decided on June 19, 1916. Chancellor Walker, speaking for the Court of Errors and Appeals, said on page 102:

> "It is obvious that the judge, sitting without a jury, was not bound to take the question of warranty into consideration and make a finding thereon, *without a specific request therefor.*"

citing *Blanchard Brothers* v. *Beveridge, supra* (italics ours). That the case at bar is entirely different from the *Ruggles* case is too apparent for argument.

Counsel has also cited under Point I of their brief the case of *E. L. Downs Co.* v. *Owen Magnetic Car Co.,* 92 N. J. L. 93. This case went no further than the Supreme Court, which held that the proper objection had not been made in the District Court, and hence, affirmed the judgment. Justice Minturn, in his opinion, mentions several facts, a careful examination of which will disclose that this case has no bearing on the case at bar. The trial court in the *Downs* case filed a written statement of its conclusions, whereas no statement of any sort was filed in the instant case. Justice Minturn, on page 94 of his opinion, says that chapter 62, of the laws of 1916 "contemplates that objection of some character shall appear on the record." We submit that this requirement is answered in our grounds of appeal (R. p. 6). But irrespective of this point, the opinion of the Court of Errors and Appeals, in *Smith* v. *Cruse, supra,* should control the case at bar, especially when it is considered that all of the decisions cited by Justice Minturn in the *Downs* case were rendered *prior* to the enactment of the 1916 Statute.

II

There was no evidence from which the Trial Court could find that defendant had been guilty of negligence.

The plaintiff's testimony as to the accident is as follows:

> "A. I sat in the seat waiting for the station to come, and when the brakeman opened the door and announced the station, I got up and left my seat and walked to the forward end of the car; the end nearest the engine; and as I walked, the train was then slowing up, and as I went to pass through the door, to steady myself from the motion of the train, I grasped the nearest object I could reach, which happened to be the door jamb, and I commenced to pass on then and the door shut with a jam and caught my finger in the jamb. Then the brakeman happened to be——
>
> "Q. (Interrupting) Now, what is it that caused you to steady yourself? What is it that caused that? A. The slowing up of the train and the final stop was sufficient to make me feel as if I was going to lurch forward and I grabbed the side of the door because it was the nearest object at hand" (R. p. 16).

Plaintiff further testified (R. p. 20) that the train had been gradually slowing down until it came to the point "where there was the final jerk at the last end of the stop." The defendant's conductor, Mr. Hickman, has testified

that there was no *unusual* jar as the train pulled into Linden; that if there had been an unusual jar, the trainmen would have had to indicate same on their daily detention reports (R. p. 30). From this testimony, it is only reasonable to conclude that the jerk which the plaintiff felt as the train came to a stop was the normal or customary jerk with which all train passengers are familiar. Proof of such a jerk is not proof of such negligence as to render the carrier liable for plaintiff's injury. *Raebur* v. *Public Service Railway Company,* 89 N. J. L. 366, 367.

There was uncontradicted testimony that the door catches, hand holds and all other equipment in connection with the particular car involved in the accident, had been examined only several hours before the accident transpired (R. p. 33). All of this equipment was standard equipment including the two 26-inch grab-irons on each side of the door (R. p. 31).

From the above and from all the evidence found in the record, it will thus appear that there was nothing unusual about this accident. Such things have happened time and again, and the Courts of this State as well as those of other States too numerous to mention are *unanimous* in holding that on such facts as these, the defendant carrier has not been guilty of negligence.

In *Graf* v. *West Jersey R. Co.,* 62 Atl. 333, Justice Swayze, speaking for the Supreme Court, said:

> "The only question necessary to be considered is whether there was negligence on the part of the defendant. The only testi-

mony of negligence is that of the plaintiff. He was a passenger, and when the conductor called the name of the station 'got up and went to the forward end of the car, and in order to avoid the final jerk of the train, as it always gives a little kind of jerk, held his hand up and steadied himself on the jamb of the door; the door was open; and all of a sudden the train gave a kind of a lurch to one side, just the second it stopped, and the door shut down on his fingers.' He subsequently testified that the car went too far, and he naturally thought there would be a jerk. *The motion of the car which caused the door to close seems to have been no more than the usual motion which the plaintiff himself anticipated, and we think fails to warrant an inference of negligence.*'' (Held that the trial Judge should have granted the motion of non suit.)

In *Shaughnessy* v. *Boston & Maine R. R.*, 222 Mass. 334, Chief Justice Rugg said:

''There was no evidence of negligence on the part of the defendant. The car door was opened by a passenger and not by an employee of the railroad, and swung together causing the injury, all before the train came to a stop. There is no more reason to attach the plaintiff's injury to fault of the defendant, than to the conduct of the fellow passenger in insecurely or improperly adapting the door to the catch. *Cosey* v. *New York, New Haven, etc., R. Co.*, 207 Mass. 443. *Faulker* v. *Boston & Maine R. Co.*, 187 Mass. 254.

''Moreover a railroad common carrier is

> not bound to keep its doors, when opened by others, from closing at a time when the train is in motion and it commonly has no reason to expect passengers to be standing upon the platform. *Weinschenk* v. *New York, New Haven, etc., R. Co.,* 190 Mass. 250, 252. *Renaud* v. *New York, New Haven, etc., R. Co.,* 210 Mass. 553."

In *Christensen* v. *Oregon Short Line Railroad Co.,* 99 Pacific 676, 20 L.R.A. N.S. 255, 257, Justice Frick, speaking for the Utah Supreme Court, said:

> "Can it be said that, because there is some evidence that car doors are usually provided with a catch to hold the door open while passengers are passing in or out of the car at stations, and that because this door was not held open, therefore the catch was defective? Before this inference can prevail, it seems to us it should be made to appear that the door was in fact placed back so as to come in contact with the catch, and that it was not held in place by it. If, under such circumstances, the catch did not hold, it might possibly be inferred that the catch was defective. Can it be assumed that the appellant was negligent in not seeing that the door was placed back sufficiently to interlock with the catch? This, it seems, would be wholly unreasonable. Car doors, as a matter of common, if not universal, knowledge, are not entirely under the control of the employees of the railroad company, but are used at pleasure by the passengers for the purpose of passing in and out of the car, or in passing from

car to car. If, therefore, it be said that it is the duty of the railroad company to see that every car door is fastened back when it is opened, it must follow that the company must station a servant at every door to attend to the fastening of it in case the passing passenger either leaves it unlatched in closing it or unfastened to the back catch when opening it. To merely have a servant fasten the door, and then leave it, would be of little, if any, use, since any passenger might unfasten it the next moment. If the law does not impose the duty upon the railroad company to keep a constant watch upon the car doors, then no negligence is shown in this case."

L'Hommedieu v. *Delaware, L. & W. R. Co.,* 101 Atl. 933 (Pennsylvania Supreme Court), involved a similar accident which had been caused by the defendant's trainman shutting the open door upon the plaintiff's fingers. There being no proof that the trainman actually saw plaintiff's fingers, a compulsory non suit was ordered and this was affirmed by the Supreme Court, *supra.*

There are other cases too numerous to mention, all of them lending *direct support* to the proposition that on such facts as the Court is here confronted with, the carrier has *not* been guilty of negligence.

Cornett v. *Baltimore & Ohio R. R.,* 195 Fed. 59 (C. C. A. 3rd);
Dawson v. *Md. Electric Railway,* 86 Atl. 1041-1042;
Hardwick v. *Georgia R. Co.,* 85 Ga. 507;

Weinschenck v. *New York, N. H. & H. R. Co.,* 190 Mass. 250;
Tracy v. *Boston El. R. Co.,* 217 Mass. 569;
Rodriquez v. *Interborough R. T. Co.,* 147 N. Y. Supp. 242;
Miller v. *Manhattan R. Co.,* 96 N. Y. Supp. 270;
Skinner v. *Wilmington R. Co.,* 128 N. C. 435;
Goss v. *Northern Pacific R. Co.,* 48 Oregon 439;
Merton v. *Michigan Central R. Co.,* 150 Wisc. 540;
Drury v. *North Eastern R. Co.,* 70 L. J. K. B. 830;
Elliott on Railroads, Sec. 1633, at page 531;
Hutchinson on Carriers, Sec. 927.

At the trial of this case, counsel took occasion to refer to *Whalen* v. *Consolidated Traction Co.,* 61 N. J. L. 606, as authority for the proposition that "when a passenger shows that he was injured through some defect in the appliances of the carrier, or through some act or omission of the carrier's servant, which might have been prevented by due care, then the jury have the right to infer negligence, unless the carrier proves that due care was exercised." Since no defects have been shown in the appliances of the carrier, nor acts nor omissions on the part of the carrier's servants, which caused the injury complained of, it is obvious that this rule has no application to the case at bar.

Counsel in his brief has cited the cases of:

Field v. *D., L. & W. R. R. Co.,* 69 N. J. L. 433;

Barney v. *Hudson & Manhattan R. R. Co.*, 145 Atlantic 5;
Coletto v. *Hudson & Manhattan R. R. Co.*, 90 N. J. L. 315,

in support of the proposition that the evidence in the case at bar justified a finding by the trial court that the defendant had been guilty of negligence.

A careful examination of each of these cases reveals that the facts involved therein are entirely dissimilar to those in the case at bar. In *Field* v. *D., L. & W. R. R. Co., supra,* the plaintiff was injured as the result of a "violent jerk or start of the train, which threw him out of the door and over the chain which connected the two iron guards of the last platform. He landed on his head between the rails of the track, received a cut six or seven inches in length, extending through the skull to the cranium. The fall also produced concussion of the brain and he was otherwise seriously injured.

In *Barney* v. *Hudson & Manhattan R. R. Co., supra,* plaintiff was injured when defendant's conductor closed an open door upon her fingers.

Colletto v. *Hudson Manhattan R. R. Co., supra,* presents several features which were not present in the case at bar. In the *Colletto* case the car involved was so crowded that plaintiff was forced to stand near the door. This door was not the ordinary type of door which swings on hinges (such as in the case at bar) and with which reasonable men are presumed to be familiar, but was a sliding door, which moved on a sliding groove and for the operation of which

any carrier would normally supply a guard or trainman. The door in the *Colletto* case was located at the *end* of the car, and was not normally open when the train was in motion. It was used solely for the purpose of passing between cars and not as in the case at bar, for the entrance or exit of passengers. Consequently, it was not a door which would normally be operated by a passenger. There the jerk of the car and the movement of the door were unusual, in that (at least the Court so inferred), they were the direct result of the motion of the car in rounding a bend in the track. In the case at bar, on the other hand, the jerk of the car and the closing of the door were, according to plaintiff's own testimony, due to the final motion of the car as it came to a stop. As we have indicated on page 3 of this brief, such motion was not unusual but rather was normal and hence to be anticipated by any reasonable person. To quote the words of Justice Swayze in *Graf* v. *West Jersey R. Co., supra,* it was "no more than the usual motion which the plaintiff himself anticipated."

III

Plaintiff was guilty as a matter of law of contributory negligence, such as to bar him from recovering any judgment in his favor.

We have quoted *supra* (page 8 of this brief) from page 16 of the record, where plaintiff testified that he *voluntarily* placed his hand on the door jamb and left it there until the door swung shut and caught his finger. This alone made him guilty of contributory negligence.

In *Shaughnessy* v. *Boston & Maine R. R., supra,* the plaintiff had placed her hand on the door jamb, as in the case at bar. In finding her guilty of contributory negligence, Chief Justice Rugg said:

> "It was said of one travelling on a steam railroad in *Hickey* v. *Boston R. R.,* 14 Allen 429, 'a passenger is not justified in incurring risks unnecessarily, however rare the chances may be that he will suffer by it. If then, the position upon the platform was taken voluntarily and without reasonable cause of necessity or propriety,' there is no exercise of due care. This statement of the law in substance has been approved and affirmed in *Fletcher* v. *Boston & Maine R. Co.,* 187 Mass. 463, and other cases cited. It thus is extremely doubtful whether the plaintiff was in the exercise of due care."

In *Texas Railway Co.* v. *Overall* (82 Texas 247), a brakeman had closed the train door on plaintiff's hand, as it rested on the door jamb.

Justice Gaines, speaking for the Texas Supreme Court, said:

> "It seems to us that the act of the plaintiff in placing his hand in such a position upon the jamb of the door that it would certainly be injured by anyone closing the door, was an act of negligence. The door, though 'securely fastened, was capable of being suddenly closed, and was likely to be closed by either passengers or employes of the Company, and especially by persons who desired to enter the water closet of the car."

To the same effect are *Hannon* v. *Boston R. R. Co.*, 65 N. E. 809, and *Cashman* v. *N. Y., N. H., R. Co.*, 87 N. E. 570. See Thompson on Negligence, Section 3978.

Plaintiff further testified (R. p. 21) that he was *not* looking at the door as he passed through the doorway, that he believed there was sufficient room for him to pass through without any trouble, but he was uncertain whether the door was in a swinging or stationary position.

Two witnesses testified (R. p. 26, p. 30) that immediately after the accident, plaintiff remarked that he did not think that the door would close so quickly. Counsel did not take the trouble to cross examine them on this testimony, nor did he make the slightest attempt to disprove same, although he recalled plaintiff to the stand in rebuttal (R. p. 32). In view of these facts, the only reasonable conclusion that can be drawn from them is that plaintiff *saw* the door swinging towards him as he had his hand on the door jamb, but that he took a chance and failed to withdraw his hand from said jamb before the door closed on it. All of which, we respectfully submit, is conclusive evidence of plaintiff's contributory negligence.

Conclusion

It is respectfully submitted that the judgment of the Supreme Court should be affirmed.

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