

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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MARY T. DOTSON, et al., )  
Plaintiffs, Defendants in Error, )  
vs. ) In Tort. 10  
ERIE RAILROAD, ) Plaintiff's Brief.  
Defendant, Plaintiff in Error. )

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FACTS.

On the evening of September third, nineteen hun- 20  
dred and two, the plaintiff, Mrs. Dotson, a married  
woman, at about a quarter before seven o'clock in  
the evening, went to the station of the defendant  
company at Englewood, in order to take a train  
for her home at Highwood, New Jersey. When  
she went upon the station platform there was a  
train standing at the station on the far track bound  
for Jersey City, and which train was discharging pas-  
sengers. She walked along the station platform to-  
ward the station building in about the center of the 23  
platform. When the passengers came down she was  
carried to the edge of the platform next to the track  
on which the train would go which she was intending  
to board (P. 19, L. 30, &c.). As she was walking  
along this platform the train approached her from  
the rear and a part of the engine, called the bumper,  
struck her, knocking her down and injuring her  
(P. 67, L. 39, &c.). The engine was one of the large  
type, the bumper and other parts of which extended  
beyond the plank which separated the stone plat-40

form from the rails, and over the platform (testimony of Engineer, case, P. 67, L. 37, &c.).

The plaintiff's testimony showed that no bell was rung or whistle blown or signal given, although there was a train standing at the station discharging passengers and passengers were going up and down the platform to and from the station.

The Court left to the jury to decide, first, whether the plaintiff herself was guilty of negligence contributory to the injury.

Second, whether the defendant was guilty of negligence in having a platform constructed so close to the track that parts of the locomotive and cars proceeding along the track should overreach the platform, and

Third, whether the engineer was guilty of negligence in the management of his engine under all the circumstances, and instructed the Jury to make a special finding of these questions, with an assessment of damages if they found for the plaintiff.

The jury found that the plaintiff was not guilty of contributory negligence and that the defendant was guilty of negligence in constructing its platform in the manner disclosed by the testimony.

#### POINTS.

The first assignment of error is based upon the Trial Judge's refusal to order a non suit.

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#### I.

THE TESTIMONY DISCLOSED A CASE WHICH REQUIRED SUBMISSION TO THE JURY ON THE GROUND AS TO WHETHER THE DEFENDANT HAD PROPERLY CONSTRUCTED ITS PLATFORM.

The evidence discloses that this platform, where the plaintiff was walking was made of crushed stone and along the outer edge thereof there was a plank-  
ing between the platform and the track which made

a clear demarcation of where the edge of the platform was, and also that the engine which struck the plaintiff was a new engine of a large class, having been in use not over three or four years, and that when it ran along the track it overlapped a part of this gravel platform, but just how much does not appear.

The rule is well settled and needs no citation of authority to prove it, that toward a passenger a common carrier owes a high degree of care. The evidence is undisputed that this lady was a passenger. 10 We submit that if there was any error committed in leaving to the jury the question as to whether this platform was properly constructed, it was an error favorable to the defendant, and our opinion is that the Court should have directed the jury, that if the defendant constructed its platform so close to the rail that a train passing along would overlap it and would be liable to injure passengers lawfully using the same, that such construction would be dangerous and would be negligence per se in the defendant. 20

It cannot be doubted that the platform was constructed for the use of passengers, and it was intended that any passenger might and that any passenger had the legal right to use any part of the platform which was not being used by others, and that when the company propelled along the track trains which would extend over the platform and be liable to hit passengers using any part of it, there being no notice of this danger given or provided, 25 then the company would be guilty of negligence per se.

In the case of *Langan vs. St. Louis, Iron Mountain and Southern Railroad Company*, 72 Mo. 392, the plaintiff, who had gone to the platform of the station to assist a friend to board a train, was struck by the bumper of an engine as he was walking along the platform. In the trial court he recovered a verdict, but on appeal to the Court of Appeals, this was reversed, but on appeal from the Court of 40

Appeals to the Supreme Court, the Court of Appeals was reversed and the judgment of the trial court affirmed. The Supreme Court held that the questions were for the jury.

In the Court of Appeals of New York, in the case of Dobecki vs. Sharp, receiver, reported in 88 N. Y. 203, the plaintiff's intestate crossed one track and stood upon a narrow platform between two tracks, waiting to take a train. While standing in this position, the plaintiff's intestate was struck by a train passing along on the track which he had crossed. Parts of this train projected over the platform three or four inches. The Court of Appeals held that the negligence of the plaintiff's intestate and also of the defendant company, were for the jury, and sustained a verdict for the plaintiff. This case appears not to be so strong for the plaintiff, as the one at bar.

Justice Miller, in reading the opinion of the Court, says: "Assuming that they (cars) did extend beyond the platform to the smallest extent proven, and in this form may have caused the death of the deceased or injured persons upon the platforms, it was a question of fact for the jury, whether this was negligence on the part of the defendant. Under ordinary circumstances a traveler would be justified in going upon a platform erected for the accommodation of passengers and in waiting there to take any passing train. The question raised on the motion for a nonsuit as to the contributory negligence of the deceased was also for the jury. We think he had a right to be upon the platform for the purpose of prosecuting the journey he had started to take. It was erected for the accommodation of travelers and they have the right to assume that they may be there without being exposed to unnecessary hazard or danger." (Citing) *Brassell v. N. Y. C. & H. R. R. Co.*, 84 N. Y. 241."

"Railroad companies conveying passengers, combining in themselves the ownership as well of the road as of the cars and locomotive, are bound to

the most exact care and diligence, not only in the management of trains and cars, but also in the structure and care of the track and in all the subsidiary arrangements necessary to the safety of the passengers."

McElroy v. Nashua, &c., R. Corp. 40 Cush. (Mass.) 400.

International, &c., R. R. Co. v. Halloren, 53 Tex. 46, 37 Am. Rep. 744.

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Virginia Central R. R. Co., v. Sawyer, 15 Gratt, (Va. 230).

Searle v. Kanawha, &c., R. R. Co., 32 W. Va., 370.

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II.

THE PLAINTIFF WAS NOT GUILTY OF<sup>20</sup>  
 NEGLIGENCE AS MATTER OF LAW, NOR  
 WAS SHE GUILTY OF NEGLIGENCE IN  
 FACT.

According to her statement when she reached the platform and was walking along it to the station, there was a train standing on the far track, discharging passengers, and that these passengers came along the platform and she was crowded to the outer edge where she was obliged to walk; that she was intending to take a train going in the opposite direction to<sup>20</sup> that in which the standing train was bound. The evidence discloses that the train which she expected to take was due two or three minutes after the standing train should have gone.

She did not know of the approach of the train behind her, nor did she know, nor could she have known, nor could she be expected to have known, that in case there did come to the station a train, any part of the engine would overlap the platform so as to strike her, nor had she any reason to believe that<sup>40</sup>

the train would pull into the station while another train on the opposite track was standing there discharging passengers.

The most knowledge that she could have or be chargeable with, is that a train was standing at the station discharging passengers; that another train which she intended to board was due about two minutes later; that the platform was there provided for her to walk upon and that she had the right to use  
 10 any part of it which was most convenient and accessible.

Whether she used the platform, is a question which the jury was called upon to decide, and that the jury properly decided it, cannot be doubted.

She must have been walking on the gravel platform, or she could not have been thrown in the manner all the evidence shows she was thrown. That the engine would over reach the platform provided by the defendant, she could neither in law nor in fact be  
 20 called upon to anticipate, and she had, in law, the right to assume that the platform, and all parts of it, were safe for her to walk upon and that she would be free from injury caused by either defects or obstructions upon it."

D., L. W. R. R. Co. v. Trautwein, 23 Vr.,  
 169.

In this case the Court stated, "The company must also provide safe means of access to and from its stations for the use of passengers, and passengers have  
 30 a right to assume that the means of access provided are reasonably safe."

Longmore v. G. W. R. R. Co., 19 C. B., N.  
 S., 183.

Surely, if she had the right to assume anything, she had the right to assume, in this case, that the platform provided for walking on and every part  
 40 thereof was reasonably safe, and that she could walk

upon it, using care, without anticipation of injury from either engine or cars propelled along the adjoining track.

In the case of *Exton v. C. R. R. Co.*, 33 Vr., 7, the Court held that "a passenger has the right to assume that the usual passage leading from the ticket office of a railroad station to the baggage room is safe for use for the purpose of obtaining baggage to be checked, and the use of it cannot be contributory negligence, when the dangers of the used passage-<sup>10</sup> way were not perceivable or avoidable by the passenger in the exercise of ordinary care in the use of the depot and passageway, and the question whether such care has been exercised, where two opposite inferences can be reasonably drawn from the evidence in this respect, is for the jury to determine."

In the case at bar, the following facts are almost self evident:

First—That the plaintiff did not know a train was<sup>20</sup> approaching her from the rear.

This the plaintiff testifies to, and her testimony does not seem to be discredited and the jury, as they had a right to, believed it.

Second—That she did not know and could not be expected to know, that the engine or any part thereof would overlap the platform provided by the defendant company for use by passengers.

Third—That as a train was standing at the station<sup>30</sup> discharging passengers, she would reasonably suppose that no other train would run into the depot on the adjoining track.

Fourth—That if a train approached her from behind while she was walking along the platform, that she would receive timely warning of its approach if she appeared to be in any danger.

Fifth—That the train which she was to board would not arrive at the station two or three minutes ahead of time.

The evidence is that train No. 240, which was the train standing at the station, was on time. (Case P. 78, L. 25). This train was due, according to the time-table, offered in evidence by the defendant (Case P. 82, L. 35), at 7.33 o'clock, and the train which struck Mrs. Dutton, was due, according to said time-table, at 7.36 o'clock.

Under these facts, the jury which would have found that this woman was guilty of contributory  
10 negligence in walking as she did in a place where she did, especially with a number of passengers coming along the platform and crowding her as she testifies, would be liable to feel that their intelligence was questionable. However, this is not a question of the weight of testimony, but simply whether it was properly left to the jury for its decision.

If the question of the defendant's negligence, and the plaintiff's contributory negligence, were proper  
20 matters for the jury's consideration, there seems to be nothing in the additional assignment of errors, to require discussion, and we respectfully submit that judgment should be affirmed with costs.

JOHN P. STOCKTON,  
Attorney of Defendant in Error.

WARREN DIXON,  
Of Counsel.

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NEW JERSEY

Court of Errors and Appeals

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MARY T. DOTSON AND HUSBAND,

*Defendants in Error,*

*v.*

ERIE RAILROAD COMPANY,

*Plaintiff in Error.*

Nov. T. 1902.

Error to

Supreme Court.

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**Brief for Plaintiff in Error.**

The declaration avers that the plaintiff, while proceeding along the railroad platform at Englewood to procure her ticket for passage, was forced to the outer edge of the platform and compelled to walk along the same while passengers were being discharged from a train standing at the station, and that the railroad company failed to give a warning by bell or whistle of the approach of a train and to keep a proper lookout on the locomotive, and to manage the train carefully, and to properly and carefully construct the platform so that the same should not be too close to the track, so that the approaching locomotive ran against plaintiff, Mary T. Dotson, while she was walking along the platform, thereby injuring her.

The pleadings thus raise two questions:

First. Whether the engineer was careless in managing his engine.

Second. Whether the platform was improperly constructed.

In charging the jury (p. 92) the Court instructed them that if they found for plaintiff, they should find a special verdict, stating whether it was based upon the negligence of the engineer in the management of his engine, or in the negligence of the company in the construction of its platform. The jury returned a verdict for plaintiffs, and said they founded it upon the negligence of the railroad company in constructing the platform (p. 92).

The charge of negligence by the engineer is thus disposed of by the verdict; and, indeed, the evidence was so overwhelming on this part of the case that the verdict could not have been otherwise. All that remains, therefore, to be considered is the charge of negligence in the construction of the railroad platform.

Not a word of evidence was introduced by the plaintiff to show that the platform was out of order or that the method of construction was improper.

McNAMARA (p. 27, l. 35) partially described the platform, and it was fully described by the defendant's engineer, HOPPER (p. 48 *et seq.*). The platform is over 700 feet long, extending from Palisade avenue northwardly to and beyond the station to the next street. It is level with the top of the rails. Near to the rails it consists of two planks, about 18 inches wide; the rest of it is of crushed stone, except around the station building, where it is flagging; it is all on the same level. At its narrowest point it is 10.7 feet wide; at its widest part 50 feet or more; east of it is the driveway for carriages of crushed stone, from four to six inches lower than the platform and open and accessible to foot passengers. Directly in front of the station for a distance of about 285 feet the platform extends across the westbound track and over to the eastbound track, so that passengers on the latter track may walk across the former to the station building. There is no dispute whatever as to the nature and character of the platform,

nor is there any evidence or opinion by any witness that the same was improperly constructed.

The plaintiff, Mary T. Dotson, on September 3d, 1901, being big with child and within a few days of delivery, after spending the day with her mother in Englewood, went to the station on Palisade avenue to take train No. 239, which was scheduled to leave Englewood at 7:36 P. M., to return to her home at Highwood, which is the next station north of Englewood. When she came to the railroad she turned northward on the station platform and walked northwardly towards the station to get her ticket. The train which she was about to take approached in the same direction upon the track alongside of the station platform on which she was walking. She proceeded 200 feet or more along this platform, and was struck on her left side and thrown down by the engine slowly approaching from behind. The platform at the point where she was struck was 10.7 feet wide, and a wide roadway was adjacent to it, as above described. The evidence is that the engine bell was ringing by air, and the engineer blew his whistle. He stopped his train as quick as he could, and it moved only a few feet after striking plaintiff. The allegation that there was a crowd on the platform which pushed her upon the track entirely failed in the proof.

Plaintiff's statement is (p. 14, l. 30): "I was coming up on the platform and made way for the passengers to come, and with that I was carried towards the outside." (p. 18, l. 16): "It was dusk and the electric light was lit; it was light enough to see." (l. 24): "There was quite a crowd; I had to edge like that so that I could get some air; I was smothered."

On cross-examination (p. 21): "*Q.* Was anybody near you when you were hit? *A.* I had to get out of the way of the passenger. I could not say. *Q.* You don't know of any? *A.* No, sir."

Her witness, McNAMARA, who saw the accident, testifies that there was nobody with her, no crowd about

her, nor anything on the platform to obstruct her in the use of it at the point where the accident occurred (p. 28, l. 12); also (l. 23), "She was walking in the center at first, and she gradually came towards the track." (l. 36): and that there was nobody on the platform between him and her.

Plaintiff's witness, WILSON (p. 30, l. 10), said: "She was coming up in a somewhat diagonal direction; she was walking near the train, and I called to her, and I think the last witness did the same thing, and the next thing I saw she was struck." (l. 21): "There was nobody, as far as I remember, except herself where she was at the time she was hit." (p. 31, l. 12): "She was walking diagonally towards the train, and the train was behind her, coming towards her." (l. 15): The platform was crushed stone; there were two planks running parallel with the rail about nine inches wide, making a space of 18 inches between the crushed stone and the rail. At the time she was struck she must have actually reached the plank. (p. 33, l. 10): The train was going very slowly when it struck her. It had been crawling up for 400 or 500 feet waiting for the other train to get out of the way.

McCLAY, a passenger testified that he was about three paces from the lady that got hurt, walking towards her; that she was first walking in the middle of the sidewalk and when the engine came within a few paces before her she seemed to walk towards the engine until it hit her (p. 45, l. 10); the bumper struck her in the side; engine going about as fast as a man could walk and ran 10 or 12 feet after it hit her. (p. 46): "I was the nearest person to her; no crowd near her; nothing whatsoever to hinder her from using the platform."

JOHN PARSELL, engineer, (p. 66): "Was running slowly into the station; saw Mrs. Dotson on platform ahead walking along. When I got 3 or 4 feet from her she walked right over and the bumper hit her; she changed her course; I applied emergency brake; stopped train quick; just end of bumper glanced her; no obstruct-

tion around or no person near her; she was alone. She was just about on the edge of the plank furthest from the rail next to the crushed stone."

BLAUVET, conductor, (p. 73, l. 20): "Did not see accident but saw plaintiff immediately after; one person picking her up; no one else near; no crowd around."

MARSHALL, a passenger on train (p. 81, l. 29): "Saw plaintiff struck; was 25 feet from her, walking towards her. She was walking in about centre of platform; she gradually walked over as if she was going to cross the track. I hallooed two or three times. No obstruction about her."

Train No. 240, eastbound, had just stopped at Englewood Station and discharged 15 or 20 passengers and had moved on eastward, being on time. The last car of this train passed the engine which struck plaintiff, opposite Wells, Fargo office, 200 or 300 feet south of station.

The witnesses McNamara, McClay, Wilson and Marshall were all passengers who had arrived on this train, No. 240, and had passed over the westbound track and were on the same platform as plaintiff when they saw her struck (pp. 17, 44, 30, 81).

#### I.

#### *The Refusal to Direct a Verdict for Defendant Was Error.*

No negligence in the management of trains had been shown (as was afterwards found by the jury), and the charge of careless construction was not supported by a particle of proof. On the contrary, the evidence showed an uncommonly long, wide, capacious platform, which would probably have accommodated one thousand people safely. Plaintiff admitted that she knew the train was coming; in fact, was walking along the platform for the very purpose of embarking upon it; the train was on time; her progress was unhindered and the accident hap-

pened, as explained by her own witnesses and those of the defense (between whom there was no disagreement on this point), because in walking up the platform she suddenly veered over towards the track and walked directly in front of the approaching locomotive. The bell on it was ringing by air; the whistle was blown and passengers called out to her. Nothing but her own gross negligence is accountable for the accident. A verdict should have been directed for defendant.

## II.

*The trial court erred in leaving to the jury the question whether there was negligence in the construction of the platform.*

As before said, there was no evidence that the platform was out of order, or that the method of construction was improper. The railroad being a double-track road and there being a station on but one side of it, it is necessary for eastbound passengers to cross one track to reach the other. The platform was consequently made upon a level with the tracks, a very common method of construction, and probably the safest one as yet devised. It was made of crushed stone, except alongside the rails, where planking was placed against the rails and spiked to the ties, precisely the construction that is seen everywhere throughout the State on grade crossings of public highways. The reason for having the strip of planking 18 inches wide outside the rails is obvious; the planking extends as far as the ties extend, and the planks can be readily taken up in repairing the track and replacing the ties. Moreover, the crushed stone or gravel cannot be well maintained close to the rail without rutting.

The trial court, without any evidence, assumed that these strips of plank next to the rail were intended for some other purpose than the rest of the platform. He says (p. 85, l. 29): "It must have been evident to every adult person that that plank was not intended for per-

sons to walk." (l. 36): "Then you come to this question: Was it negligence in the company itself to have that gravel platform approach so near to the rail that passengers would be likely to be in danger, even if they exercised reasonable care in the use of the platform, and did this accident spring out of this kind of negligence on the part of the company?"

The judge, in effect, instructed the jury that the company invited passengers to walk upon any part of the crushed stone platform without giving heed to approaching trains; that is, to walk within 18 inches of the rail, and that the planking was a warning that you should not walk any nearer. This was entirely unwarranted by any evidence and was a theory not outlined in the pleadings, in counsel's opening or in the proofs. There was no such issue in the case. Defendant had no warning to meet any such issue by proofs. It is a matter of the commonest knowledge and observation that railway cars project fully two feet beyond the rails, and this charge, after telling the jury that the 18 inches of planking was placed there to warn passengers off, left it to the jury to say whether they were not actually invited by the crushed stone to draw near and heedlessly walk where the cars must strike them.

We submit this was reversible error, not only because there was no evidence to sustain the issue, but also because what is proper construction of a railroad is not a question for the jury, in the absence of an express issue, framed and tried on the theory of specified defects in construction. A declaration averring negligence must point out and describe the defects complained of and prove them. In this case the jury can do nothing but guess whether this platform was a proper one or not. Certainly there is no presumption that its design is wrong. The presumption is the other way. There is no evidence to guide the jury. To leave it to a jury to say, without evidence, whether railroads are properly constructed, would be to establish as many rules for rail-

road construction as there are juries; one would find the platform safe; the next one dangerous.

It is legal error to contrive ingenious theories unsupported by evidence and submit them to juries with the hint that they may spell out a verdict from them.

The law requires the plaintiff to prove negligence. It is not to be presumed and guessed at. "It will not do to submit a question of negligence to a jury where the facts are equally consistent with the presence or absence of negligence; or where the jury could do no more than surmise as to the negligence of defendant."

*Cadwell v. Arnheim*, 152 N. Y. 182, 190.

"No man is in law an insurer that the acts which he does, such acts being lawful and done with care, shall not injuriously affect others. The common rule, quite institutional in its character, is that in order to sustain an action for tort, the damage complained of must have come from a wrongful act." *Marshall v. Welwood*, 9 Vr. 339, 343 (Beasley, C. J.); *Ulshowski v. Hill*, 32 Vr. 375.

The construction of the platform was the same as in the case of *Atlantic City R. R. v. Goodin*, 33 Vr. 395, yet it does not seem to have occurred to this court to find anything questionable about such a platform. Judge Collins describes it (p. 395) and below inferentially speaks of it as "convenient."

A platform on the same level with the tracks was in evidence in *Klein v. Jewett*, 11 C. E. G. 474, 477; *S. C.*, 12 C. E. G. 550; and although the fact is mentioned both in chancery and on appeal, neither court at all criticises the construction.

### III.

*The undisputed evidence shows that the company's duty to provide a platform was amply fulfilled and the verdict is therefore contrary to law.*

A railroad company is only required to build platforms of sufficient dimensions to accommodate passen-

gers getting on and off at their stations. *Harkey v. T. & P. Ry. Co.*, *Fed. Cas.* 6065; *Taylor v. Penn. R. R.*, 50 *Fed.* 755; *Moreland v. Boston &c. R. R.*, 141 *Lass.* 31; *Keeley v. Manhattan Ry.*, 112 *N. Y.* 440; *Toplin v. Buffalo R. R. Co.*, 106 *N. Y.* 136. Where the plaintiff fell over milk cans on a platform, there being room enough to pass on either side, held that the company was not liable. *Falk v. S. F. & N. P. R. R.*, 97 *Cal.* 114. Where a platform is wide enough to give room for safety, the fact that it is so built that the edge nearest the track cannot be safely occupied as a standing place while trains are passing, is not negligence. *C., B. & Q. R. R. v. Mahon*, 47 *Ill. App.* 208. Where a person puts himself so near an approaching train as to be struck and injured, the company is not liable. *McGeehan v. Lehigh Valley R. R. Co.*, 149 *Penn. St.* 148 (24 *Atl.* 205). Where a passenger walks so near the track as to be struck by an approaching train, the company is not liable. *Penn. R. R. v. Bell*, 120 *Penn. St.* 58. Where a passenger was waiting for a train on the platform and stood so near that he was struck by the bumper of the engine, the company was not liable. *Matthews v. Penn.*, 148 *Penn. St.* 491 (24 *Atl.* 67).

The company's duty is to exercise ordinary and reasonable care to so construct and maintain its stations and platforms that they shall be safe for the use of passengers. This duty is not so rigorous as the duty with respect to its cars, roadbed and appliances. "There is no valid reason why a railroad company should be held to a higher degree of care in maintaining its station buildings than that to which an individual owner of buildings used for ordinary purposes is held."

4 *Ell. on Railroads*, sections 1590, 1641.

"If it has a reasonably safe and suitable platform, it is not liable for a purely accidental injury to a passenger thereon." *Ibid*, section 1641.

The passenger must take reasonable care also. A passenger who trips over the feet of a baggage-master engaged in unloading baggage in the usual way, where

there are eight or ten feet of unobstructed platform in which to pass, cannot recover.

*Conover v. Concord, &c., R. R., 67 N. H. 311.*

"A company which has provided all reasonable facilities for ingress and egress from its station houses has done its full duty in that regard. No company can be bound to suppose that passengers who do not know the way will neglect the means open to their sight and go off in the darkness somewhere else."

*Sturgis v. Detroit, &c., R. R., 72 Mich. 619, 622.*

Where there was a ditch near to and parallel to the track crossed by a bridge fifteen feet wide, having one plank eight inches shorter than the rest, all of which was plainly visible when the accident occurred, held that the crossing bridge was obviously sufficient, and no negligence was to be charged respecting its construction.

*Stocks v. Suffolk, &c., R. R., 107 N. C. 178.*

When a passenger in going to a train fell over lumber which he knew was there but had forgotten about, he was held guilty of contributory negligence.

*Reed v. Axtell, 84 Va. 231.*

Where the platform was two and one-half feet higher than the rail, the distance between the outer line of the car and the platform eleven inches, and of the three steps on the car the lower one was eight inches below the top of the platform and one foot seven inches from the side thereof; the second step was two feet two inches from the side of the platform and four inches lower than the top thereof, and the plaintiff descended from the car to the second step, and, without having hold of the railing, and, without looking, stepped out and fell between car and platform, there was no proof that the platform was not constructed in the ordinary way, nor that the space was greater than the exigencies of business required. No evidence of any previous accident. Held no evidence of negligence by the company and no basis for recovery. The Court says: "No

structure is ever so made that it may not be made safer. But, as a general rule, when an appliance or machine or structure not obviously dangerous has been in daily use for years, and has uniformly proved adequate, safe and convenient, its use may be continued without the imputation of culpable imprudence or carelessness.

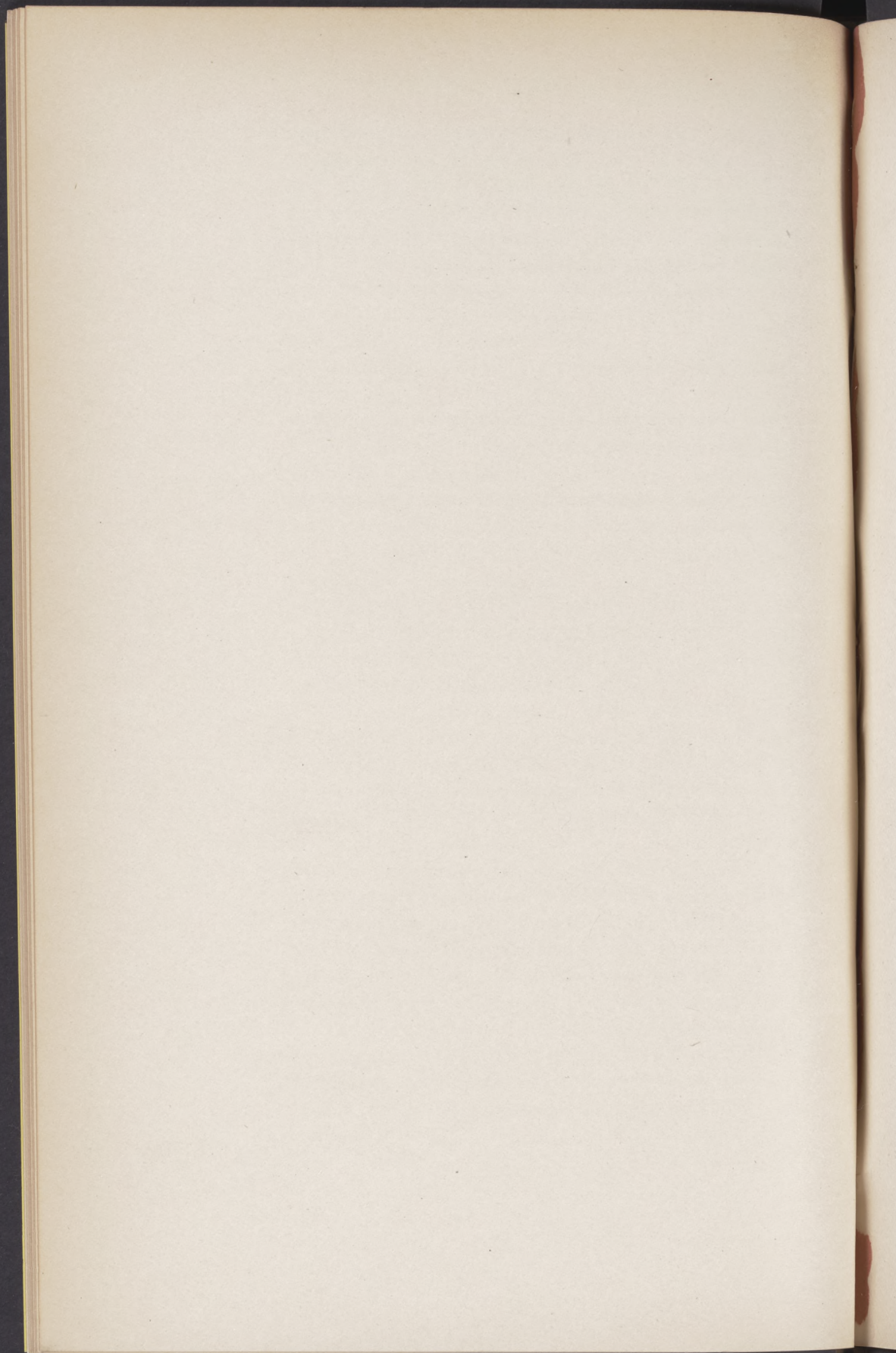
*Lafflin v. Buffalo, &c., R. R.*, 106 N. Y. 136,  
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## IV.

*The judgment should be set aside and a new trial granted.*

CORBIN & CORBIN,  
*Attorneys for Plaintiff in Error.*

November, 1902.



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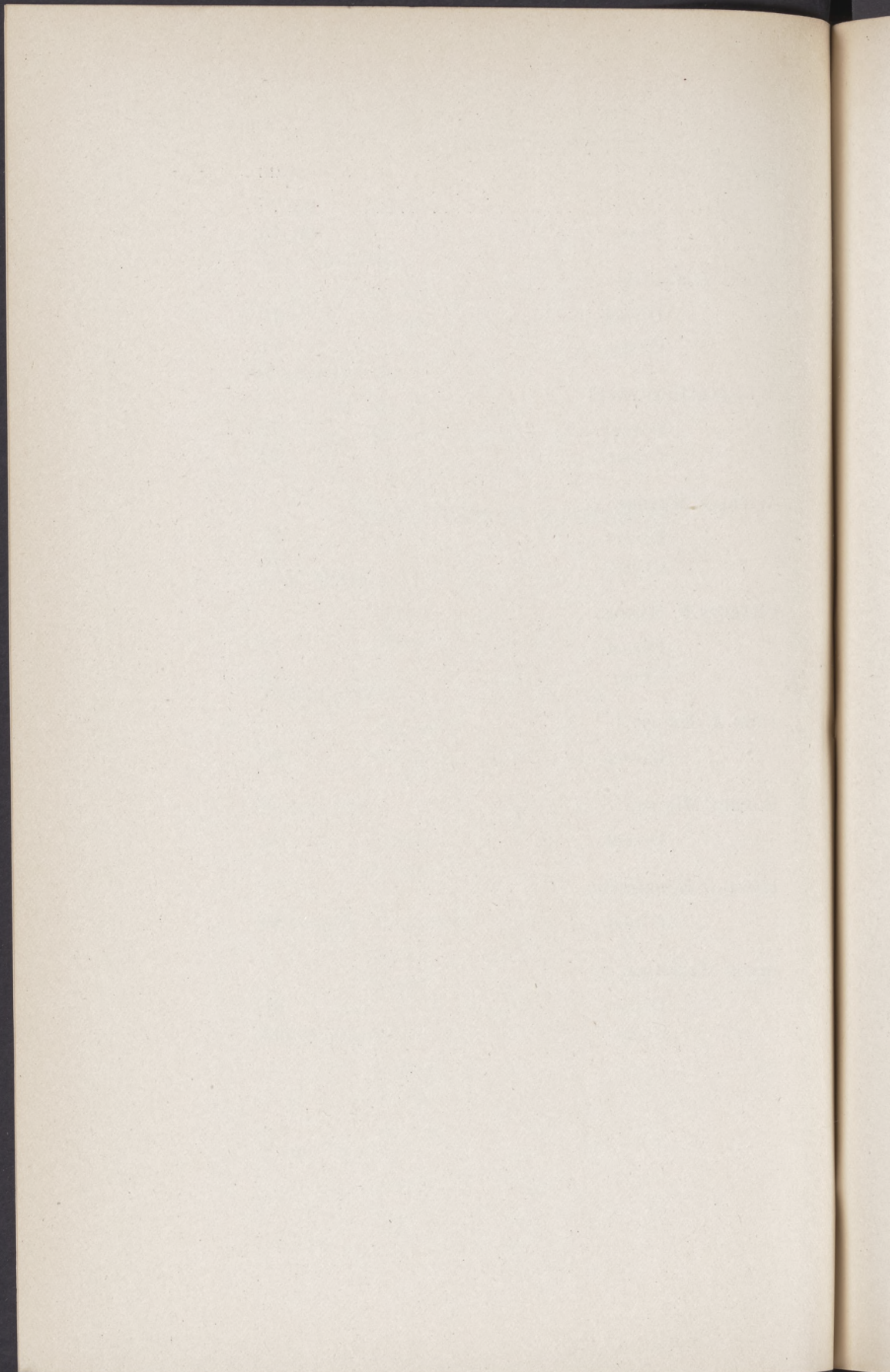
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WILLIAM BLAUVELT.	
Direct.....	72
Cross.....	74
WILLIAM MEYERS.	
Direct.....	75
Cross.....	76
CHARLES F. HANDY.	
Direct.....	77
Cross.....	78
JOHN A. KROPF.	
Direct.....	78
ROBERT MINERLY.	
Direct.....	79
EDWARD ROBERTSON.	
Direct.....	80
SIMON MARSHALL.	
Direct.....	81
Cross.....	82



## WRIT OF ERROR.

(Returnable Nov. 7, 1902.)

STATE OF NEW JERSEY, SS.

The State of New Jersey to the Chief Justice and other Justices of our Supreme Court of Judicature;

### GREETING:

Forasmuch as in the record and proceedings, and also in the giving of judgment in a certain plaint which was in our said Supreme Court of Judicature, before you, between Mary T. Dotson and Joseph Dotson, her husband, plaintiffs, and Erie Railroad Company, defendant, impleaded with Northern Railroad Company of New Jersey, in an action of tort, manifest error hath intervened, to the great damage of the said defendant as it is said; we being willing that the error, if any there be, should in due manner be corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be thereupon given and affirmed, that you distinctly and openly send under your seal the records and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the seventh day of November, nineteen hundred and two, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon for correcting that error what of right and according to law ought to be done,

WITNESS: William J. Magie, Esquire, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the eighteenth day of [L. S.] October, nineteen hundred and two.

CORBIN & CORBIN,  
Attorneys.

S. D. DICKINSON,  
Clerk.

## DECLARATION AND PLEA.

## NEW JERSEY SUPREME COURT.

Of the nineteenth day of July, nineteen  
hundred and two.

BERGEN COUNTY, SS.

10 The Erie Railroad Company (a corporation), and  
The Northern Railroad Company of New Jersey (a  
• corporation), the defendants in this suit, were sum-  
moned to answer unto Mary T. Dotson and Joseph  
Dotson, her husband, in an action of tort, and there-  
upon the said plaintiffs, by John P. Stockton, their  
attorney, complain:

For that whereas, the said defendants at all times  
hereinafter mentioned, were and still are corporations  
20 doing business in the State of New Jersey, and at the  
time of the committing of the grievances hereinafter  
mentioned, were and still are engaged in the business  
of railroading, and being so engaged in said business  
at said times were the owners, operators, managers,  
possessors and in control of a certain railroad, rail-  
road tracks, railroad cars and locomotives, railroad  
station, platforms and appurtenances situated at and  
running in and through Englewood, in the County  
of Bergen aforesaid, and being so engaged in said  
30 business of railroading, and being so in possession,  
control and management of said railroad, depot,  
tracks and certain cars and locomotives running in  
and over said tracks and to and past said depot, the  
said defendants were engaged in the business of re-  
ceiving passengers at said depot, to be carried in and  
upon said cars so operated, managed and controlled  
by the said defendant companies, for hire, for the  
mutual accommodation and profit of said passengers  
and the said companies.

40 And whereas, the said Mary T. Dotson, then and

still being the wife of the said Joseph Dotson, on the third day of September, nineteen hundred and one, in the evening, became and was a passenger to be transported in cars of said defendant companies, to wit, at Englewood, in the County of Bergen aforesaid, and being such passenger, she, the said Mary T. Dotson, went in and upon the platform of the said station or depot at Englewood, provided by the said defendant 10 companies, to receive passengers intending to board said trains, and being upon said platform she was proceeding along the same toward the said station for the purpose of procuring her ticket for passage on one of the said trains of said defendant companies, as she lawfully might and could do.

And whereas, just before and at the time of the entrance of said plaintiff, Mary T. Dotson, upon the platform of said defendant companies, and while she 20 was proceeding along the same for the purpose aforesaid, one of the trains of said defendant companies was standing at said station and was discharging and had discharged a large crowd of people therefrom, who were proceeding along said platform in an opposite direction to that in which the said plaintiff, Mary T. Dotson, was proceeding, and by which said crowd of people the said plaintiff, Mary T. Dotson, was forced to the edge of the said platform and was compelled to walk along said platform at the outer edge 30 thereof, near one of the tracks of the said defendant companies.

Whereby, it became and was the duty of the said defendant companies to use due and reasonable care in the running of their said train of cars and locomotive on the track next to the said platform where the said plaintiff Mary T. Dotson was walking and to use due and reasonable care to sound a bell or whistle, as a warning of the approach of said train and locomotive on said track to said station and platform and 40

to keep a reasonable lookout on said locomotive for passengers walking along said platform near to said track and to use due and reasonable care in the operation and management of said train and locomotive while running the same along said track up to and along the said platform while another train was standing at said station discharging said large crowd  
10 of passengers, and to properly and carefully construct said platform so that the same should not be so close to the said track on which they were running their said locomotive and cars, as that any part of said locomotive or cars would overlap said platform and strike passengers walking along the same in the place provided by said companies for said passengers to walk.

Yet, the said defendant companies, disregarding their said several duties in this behalf, negligently, unlawfully and unjustly intending to injure, prejudice and aggrieve the said plaintiff, Mary T. Dotson, then and still being the wife of the said Joseph Dotson, on the day and year last aforesaid, at Englewood, in the County of Bergen aforesaid, failed and neglected to use due and reasonable care in the running of their said train of cars and locomotive on the track next to the said platform where the said plaintiff, Mary T. Dotson, was walking, and unlawfully and negligently failed and neglected to use due  
20 and reasonable care to sound a bell or whistle as a warning of the approach of said train and locomotive on said track, to said station and platform, and unlawfully and negligently failed and neglected to keep a reasonable lookout on said locomotive for passengers walking along said platform near to said track, and negligently and unlawfully failed and neglected to use due and proper care in the operation and management of their said cars and locomotive while running the same along said track up to and along the said  
30 platform while another train was standing at said sta-  
40

tion discharging said large crowd of passengers, and unlawfully and negligently failed and neglected to properly and carefully construct said platform so that the same should not be so close to the said track on which they were running their said locomotive and cars, so that no part of said locomotive or cars would overlap said platform and strike passengers walking along the same in the place provided by said companies for said passengers to walk, so that the said locomotive and train of cars so being operated by the said defendant companies, and under their control and management, along the said track, with great force and violence ran into and upon and against and over the said plaintiff, Mary T. Dotson, then and still being the wife of the said plaintiff, Joseph Dotson, while she was walking along the said platform so provided by the said defendant companies for the use of passengers as aforesaid, she being in the exercise of due care on her part, and withour any knowledge or warning of the approach of said train and locomotive which was proceeding along said track in the same direction in which she, the said Mary T. Dotson, was walking, and thereby threw her violently to the ground. 10 20

Whereby, by means of the premises as aforesaid, the said Mary T. Dotson, then and still being the wife of the said Joseph Dotson, became and was greatly injured in her head, limbs, body and mind, internally and externally, and therefrom suffered great pain and anguish of body and mind, to wit, from thence hitherto and evermore during her natural life will be greatly injured in her head, limbs, body and mind, internally and externally, and in the future will suffer great pain and anguish of body and mind. 30

Wherefore, the said plaintiffs say that she, the said Mary T. Dotson, has been injured and suffered damage in the sum of twenty thousand dollars, and therefore they bring their suit, &c. 40

And for that whereas, the said defendants at all times hereinafter mentioned were and still are corporations doing business in the State of New Jersey, and at the time of the committing of the grievances hereinafter mentioned, were and still are engaged in the business of railroading, and being so engaged in said business at said times were the owners, operators, managers, possessors and in control of a certain railroad, railroad tracks, railroad cars and locomotives, railroad station, platforms and appurtenances situated at and running in and through Englewood, in the County of Bergen aforesaid, and being so engaged in the business of railroading, and being so in possession, control and management of said railroad, depot, tracks and certain cars and locomotives running in and over said tracks and to and past said depot, the said defendants were engaged in the business of receiving passengers at said depot, to be carried in and upon said cars so operated, managed and controlled by the said defendant companies, for hire, for the mutual accommodation and profit of said passengers and the said companies.

And whereas, the said Mary T. Dotson, then and still being the wife of the said Joseph Dotson, on the third day of September, nineteen hundred and one, in the evening, became and was a passenger to be transported in cars of said defendant companies, to wit, at Englewood, in the County of Bergen aforesaid, and being such passenger, she, the said Mary T. Dotson, went in and upon the said platform of the said station or depot at Englewood, provided by the said defendant companies to receive passengers intending to board said trains, and being upon said platform, she was proceeding along the same toward the said station for the purpose of procuring her ticket for passage on one of the said trains of said defendant companies, as she lawfully might and could do.

And whereas, just before and at the time of the en-

trance of said plaintiff, Mary T. Dotson, upon the platform of said defendant companies, and while she was proceeding along the same for the purpose aforesaid, one of the trains of said defendant companies was standing at said station and was discharging and had discharged a large crowd of people therefrom, who were proceeding along said platform in an opposite direction to that in which the said plaintiff, Mary T. 10 Dotson, was proceeding, and by which said crowd of people the said plaintiff, Mary T. Dotson, was forced to the edge of the platform and was compelled to walk along said platform at the outer edge thereof, near one of the tracks of the said defendant companies.

Whereby, it became and was the duty of the said defendant companies, to use due and reasonable care in the running of their said train of cars and locomotive on the track next to the said platform where the 20 said plaintiff, Mary T. Dotson, was walking, and to use due and reasonable care to sound a bell or whistle, as a warning of the approach of the said train and locomotive on said track, to said station and platform, and to keep a reasonable lookout on said locomotive for passengers walking along said platform near to said track. and to use due and reasonable care in the operation and management of said train and locomotive while 30 running the same along said track up to and along the said platform while another train was standing at said station discharging said large crowd of passengers, and to properly and carefully construct said platform so that the same should not be so close to said track on which they were running their said locomotive and cars, as that any part of said locomotive and cars would overlap said platform and strike passengers walking along the same in the place provided by said companies for said passengers to walk. 40

Yet the said defendant companies, disregarding their several duties in this behalf, and unlawfully and unjustly intending to injure, prejudice and aggrieve the said plaintiff, Joseph Dotson, on the day and year last aforesaid, at Englewood, in the County of Bergen aforesaid, so negligently, carelessly and unlawfully operated, propelled and ran their said train of cars and locomotive along said track up to and along said platform whereon the said Mary T. Dotson was then proceeding, and so unlawfully and negligently failed and neglected to use due and reasonable care to sound a bell or whistle as a warning of the approach of said train and locomotive on said track, to said station and platform, and unlawfully and negligently failed and neglected to keep a reasonable lookout on said locomotive for passengers walking along said platform near to said track and negligently and unlawfully failed and neglected to use due and reasonable care in the operation and management of their said train of cars and locomotive while running the same along said track up to and along said platform while another train was standing at said station discharging said large crowd of passengers, and unlawfully and negligently failed and neglected to construct said platform so that the same should not be so close to the said track on which they were running their said locomotive and cars, so that no part of said locomotive or cars would overlap said platform and strike passengers walking along the same in the place provided by said defendant companies for said passengers to walk, so that by reason of said negligence as aforesaid, the said locomotive and cars were with great force and violence run upon, against and over the said Mary T. Dotson, then and still being the wife of the said Joseph Dotson, while she was walking along said platform in the exercise of due care on her part.

Whereby, the said Mary T. Dotson became and was greatly injured in her head, limbs, body and

mind, and underwent great pain and suffering, and the said plaintiff thereby was obliged to lay out and expend and in the future will be obliged to lay out and expend large sums of money in and about endeavoring to cure his said wife, Mary T. Dotson, of her said injuries and to alleviate her said suffering, and by means of the premises the said Joseph Dotson has been deprived, and in the future will be deprived 10 of the companionship, comfort, consortium and services of his said wife, Mary T. Dotson, which but for said injuries he would otherwise have had and enjoyed.

Wherefore said plaintiff says that he has been injured and suffered damage in the sum of five thousand dollars, and therefore he brings his suit, &c.

And the said defendant Northern Railroad Company of New Jersey impleaded with Erie Railroad 20 Company, by Corbin & Corbin, its attorneys, comes and defends the wrong and injury, when, &c., and says that it is not guilty of the said supposed trespasses above laid to its charge, or any or either of them, or any part thereof, in manner and form as the said plaintiffs hath above thereof complained against it. And of this the said defendant puts itself upon the country, &c.

And the said defendant Erie Railroad Company impleaded with Northern Railroad Company of New 30 Jersey, by Corbin & Corbin, its attorneys, comes and defends the wrong and injury, when, &c., and says that it is not guilty of the said supposed trespasses above laid to its charge, or any or either of them, or any part thereof, in manner and form as the said plaintiffs hath above thereof complained against it. And of this the said defendant puts itself upon the country, etc.

## POSTEA.

Afterwards, to wit, at a Circuit Court holden at Hackensack, in and for the County of Bergen, before Jonathan Dixon, Esquire, one of the Justices of the Supreme Court, at the September term in the year nineteen hundred and two, according to the form of  
10 the statute in such case made and provided, come as well the said plaintiffs as the said defendants, by their respective attorneys within mentioned, and the jurors of the jury between the parties aforesaid, in the plea aforesaid, being summoned also, come, who to speak the truth of the matters and things therein contained, being chosen, tried and sworn, and the evidence having been submitted on behalf of the plaintiffs and the defendants having moved for a non-suit, the Court  
20 ordered that judgment of non-suit be entered in favor of the Northern Railroad Company of New Jersey, but denied as to the Erie Railroad Company, and all the evidence having been heard, and the Court having charged and instructed the jury that in case they should find the defendant guilty of negligence they should find specially whether such negligence consisted in the negligence of the defendant company's servants in managing their trains, or in the negligence of the defendant in failing to provide a proper platform at their passenger station, or in both, the jurors  
30 say upon their oath that the said defendant, the Erie Railroad Company (a corporation), is guilty of negligence in failing to properly and carefully construct their said platform, so that the same should not be so close to the said track on which it was running its said locomotive and cars, so that no part of the said locomotive and cars would overlap said platform and strike passengers walking along the same in the place provided by said company for said passengers to walk, in manner and form as the said plaintiffs have in  
40 their said declaration alleged against it, and they

assess the damages of the said plaintiff, Mary T. Dotson, by reason of said neglect, over and above her costs and charges in her said suit expended, at the sum of twelve hundred and fifty dollars, and they assess the damages of the said plaintiff, Joseph Dotson, over and above his costs of suit by him expended, at the sum of five hundred dollars, and for those costs and charges the sum of six cents, etc. 10

JONATHAN DIXON,  
Justice Supreme Court.

(ENDORSED.)

We consent to the immediate filing hereof and the entry of judgment herein without waiting for November term and without obtaining special order of the Court, not however waiving our right to take writ of error.

CORBIN & CORBIN, 20  
Attys. for Defts.

Sept. 29, 1902.

# New Jersey Supreme Court,

## BERGEN COUNTY.

10	MARY T. DOTSON and JOSEPH DOTSON,	}	<i>In Tort.</i>
	<i>vs.</i>		
20	ERIE RAILROAD COMPANY and NORTH- ERN RAILROAD COMPANY OF NEW JERSEY.		

Stenographer's transcript of testimony taken on the trial of the above stated cause, at Hackensack, on the eleventh day of September, 1902, before His Honor  
 20 JONATHAN DIXON, Justice of the Supreme Court, and a jury.

APPEARANCES—MESSRS. JOHN P. STOCKTON and WARREN DIXON, for the plaintiffs; WILLIAM H. CORBIN, Esq., of Corbin & Corbin, for the defendants.

### PLAINTIFFS' CASE.

MARY T. DOTSON, one of the above named plaintiffs, produced as a witness in her own behalf, being duly  
 30 sworn according to law, on her oath testifies as follows:

*Direct examination by Mr. Dixon.*

Q. Where do you live? A. Highwood, N. J.

Q. How long have you lived there? A. I have lived there over a year and a half.

Q. Did you live there in September, 1901? A. Yes, sir.

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

40 Q. What is your husband's name? A. Joseph.

Q. How long have you been married? A. I am married two years and a half.

Q. Have you any children? A. Yes, sir.

Q. How many? A. One.

Q. How old are you? A. I am twenty-three.

Q. How old is your child? A. She will be just a year old the twentieth of September.

10

Q. When was she born? A. September 20th, 1901.

Q. On the third day of September do you recall where you were? A. Yes, sir.

Q. Where were you that day? A. I was on the platform—(interrupted.)

Q. Before that, where were you on that evening?  
A. I had been at my mother's.

Q. Where does she live? A. She lives at Englewood.

Q. Whereabouts? A. On Norwood avenue.

20

Q. How long had you been there? A. I had been there all day.

Q. What time did you leave there? A. It must have been about a quarter to seven o'clock.

Q. How far from the Englewood station is your mother's home? A. I could not say what the distance is.

Q. How many blocks is it? A. It is about a quarter of a mile.

30

Q. How long does it take you to walk it? A. About ten minutes.

Q. You left your mother's house to go where? A. To go to the depot; I was with my sister and we intended to do some shopping, and then on the way back I was coming to the depot to get my ticket.

Q. Where did you mean to go to? A. To go to Highwood, to my own home.

Q. Were you alone or with anybody? A. When I was coming to the ticket office I was alone; my sister 40

had left me to go to the store near by just a few minutes before.

Q. Did she go to the depot with you? A. No, sir.

Q. Did you go alone to the depot? A. Yes, sir; I went alone to the depot.

Q. How did you go to the depot? A. I walked.

10 Q. What direction did you go in? A. From the store.

Q. What store was it? A. Livingstone's paper store.

Q. Do you know where the depot is in Englewood? A. Yes, sir.

Q. Is there a station on both sides of the track or only on one side? A. On one side.

20 Q. From which direction did you come to get on the platform—from the direction on the side where the station is, or on the other side? A. On the side where the station is.

Q. Just describe how you went? A. I came down Dean street and came down that way by Livingstone's store and up the platform towards the depot to get my ticket to go to Highwood, when the down train was due, and the passengers from the down train—(interrupted.)

Q. What do you mean by the down train? A. The train going to Jersey City.

30 Q. That is from Highwood? A. Yes; we stopped at the depot, and the passengers had come off, and I was coming up on the platform and made way for the passengers to come, and with that I was carried towards the outside—(interrupted.)

Q. What do you mean by the outside? A. The outside of the platform—when I knew nothing until I was struck by the approaching train,

Q. Did a train approach and strike you? A. Yes, it did.

40 Q. From behind? A. Yes, sir.

Q. How long is that platform, about; do you know?

A. I don't know.

Q. Before you get to the station—the platform itself—how long is the platform? A. That I could not say; it is the platform that is supposed for the passengers to stand on when they are waiting for the trains.

Q. There is a platform that runs along the track 10 near the rail? A. Yes, sir.

Q. How near the station had you gotten when you were struck, if you recollect? A. I was about from here to that window(indicating.)

Q. From the station building? A. Yes, sir.

Q. Which window do you mean?

THE COURT—This one—about twelve or fifteen feet.

Q. From the station building? A. From the station 20 building.

Q. Where was the other train—the one that goes to Jersey City? A. It had stopped.

Q. Where was it when you were struck? A. It must have been at the depot.

Q. Was it standing there then; did you see the locomotive? A. No, sir; I did not.

Q. When you were struck, what happened to you? A. I must have been unconscious; I don't remember.

Q. What do you remember next? A. I was picked 30 up.

Q. Do you remember that? A. I do.

Q. And what was done with you then? A. I was brought to a carriage and taken home in a carriage.

Q. Taken where? A. Up to my mother's.

Q. You were taken to your mother's? A. Yes, sir.

Q. What was done with you there? A. They sent for a doctor.

Q. That was in Englewood? A. Yes, sir.

Q. Did a doctor come? A. The doctor came. 40

Q. Who was he? A. Dr. Bell.

Q. What was done with you? A. I was sent to bed.

Q. How long did you stay in bed? A. I staid in bed from the third of September until the twentieth of September.

10 Q. In bed at your mother's? A. Yes, sir.

*By the Court.*

Q. On that day your child was born? A. Yes, sir.

*By Mr. Dixon.*

Q. Then you were in bed after that; were you not?  
A. Yes, sir.

Q. That was the day of your child's birth? A.  
20 Yes.

Q. How long did you stay in bed after that? A.  
It must have been three weeks.

Q. Who attended you in confinement? A. Dr.  
Bell.

Q. Between the time of the injury and the time of  
confinement, did Dr. Bell continuously attend you?  
A. Yes, sir; he did.

Q. How often did he come? A. He came every  
day.

30 Q. That was about the time you were expecting  
your child to be born, was it not? A. Yes, sir.

Q. During that period, how did you feel; between  
the time of the accident and the birth of your child,  
did you have any trouble at all? A. Yes, sir; I did.

Q. What was it? A. It was in my side.

Q. Which side? A. The left side; I was struck  
on the hip on the left side, and all the way down to  
the knee.

40 Q. Was that the side that you were struck on? A.  
Yes, sir; and I am hurt internally.

Q. What trouble did you have in your side; what trouble did you feel; did it pain you? A. Yes, sir; it is a continual pain all the time.

Q. Have you had it since the birth of your child? A. Yes, sir.

Q. Up to the present time? A. Yes, sir.

Q. Is it a continuous pain or coming and going? A. A continual pain all the time. 10

Q. Just where is that pain? A. It spreads right from here (indicating.)

Q. Was your body bruised at all? A. Yes.

Q. Where? A. Right on my hip; as black as coal it was.

Q. How long did Dr. Bell attend you after confinement? A. I don't exactly remember how long it was.

Q. Has any other physician examined you? A. Dr. Currie. 20

Q. Did you call him in? A. No, sir.

Q. How did he come to examine you? A. That I cannot say.

Q. He came from the company, didn't he; did you so understand? A. That is what I understood.

Q. Did any other physician examine you? A. Yes, sir.

Q. What other? A. Dr. Lansing.

Q. How often did he examine you? A. He must have examined me about three times. 30

Q. Did any other physician examine you? A. Yes, sir; Dr. Dickinson.

Q. When did he examine you? A. He examined me yesterday.

Q. Did you ask him to examine you? A. No, sir; I did not.

Q. Do you know how he came to examine you? A. No, sir.

Q. He was sent by the company, was he not? A. I believe so. 40

Q. Where were you when you were examined by Dr. Dickinson—over here in the hotel? A. Yes, sir.

Q. Who was present? A. Dr. Lansing and my mother.

Q. What time was that yesterday—about noon? A. Yes, sir.

10 Q. You have lived with your husband since the accident? A. Yes.

Q. Do you sleep with him? A. Yes, sir.

Q. Was there any bell or whistle sounded on the train as it approached? A. No; there was no bell sounded or whistle.

Q. What was the condition of light; was it dark, or light, daylight or dusk, or what? It was dusk and the electric light was lit; it was light enough to see.

20 Q. Where was the electric light? A. It was very near.

Q. Very near where you were struck? A. Yes, sir.

Q. How large a crowd was there that got off this down train; how many passengers? A. There was quite a crowd; I had to edge like that so I could have some air; I was smothered.

Q. I mean as you walked along? A. There was quite a crowd.

30 Q. About how far did you walk along the platform before you were struck, after you got on it? A. About as far as from here to the window.

Q. Which window? A. This window (indicating about twelve or fifteen feet.)

Q. How far did you walk near the edge of the platform; before you were struck you got to the edge of the platform? A. Yes.

Q. And had to walk along there? A. Yes, sir.

40 Q. How far had you gone along the edge of that platform before you were struck? A. About from here to the window.

Q. Which window? A. This window (indicating about twelve or fifteen feet.)

Q. Just a short distance? A. Yes, sir.

Q. Do you remember where you came on the platform? A. Yes, sir; I do.

Q. What buildings, if any, did you pass? A. I came down that street from Dean street.

Q. Does that street run right to the platform? A. 10  
It runs right to the corner.

Q. To the corner of the platform? A. Yes, sir.

Q. Then you stepped on the platform? A. Then I stepped on the platform.

Q. Then you walked along the platform? A. Yes, sir.

Q. How far did you walk along the platform? A.  
Right up to the electric light there.

Q. Where did you get on the platform? A. I came off that street on to the platform. 20

Q. How far from the station did you enter on the platform? A. (No answer.)

*By the Court.*

Q. Did you get on the platform at the end of the platform? A. Yes, sir.

*By Mr. Dixon.*

Q. And you walked along towards the station? A. 30  
Yes, sir.

Q. Did you walk along the edge of the platform as far as you went, or did you walk on some other part of the platform? A. I walked on the middle of the platform until the crowd came down, and then I was carried to the edge.

Q. You had to get out of the way of the crowd?  
A. Yes.

*Cross-examination by Mr. Corbin.*

Q. You were alone at the time of the accident?

A. Yes, sir.

Q. When you say you walked down the street from Dean street to the station, you mean you walked down the sidewalk of the driveway into the station? A. On the sidewalk, yes.

10

Q. There is a driveway for carriages down to the station? A. Yes, sir.

Q. And there is a sidewalk along that, and you came down on the sidewalk to the station? A. Yes, sir.

Q. Between this sidewalk and the railroad there is a curb? A. Yes, sir.

Q. You say that when you got down on the platform you walked until you were near the station building before the accident happened? A. Yes, sir.

20

Q. You think you were not further away from the building than from you to the window—twelve or fifteen feet, you think? A. Yes, sir.

Q. When you came down there, where were you when you first saw this train coming from the north—the train that stopped there first; was it there when you got there; the train going towards Jersey City—when you got on the platform, was that train there? A. Yes, sir; it was stopped.

30

Q. And its passengers getting off? A. Yes, sir.

Q. It was a train with two cars? A. Yes, sir; it was.

Q. And some passengers got off it? A. Yes.

Q. That train stopped right opposite the station building, didn't it? A. Yes, sir.

Q. And you expected your train to go up soon after, didn't you? A. Yes, sir.

Q. The train that hit you was the train that you intended to take? A. Yes, sir.

40

Q. At the time you were hit, you were going to the station to buy your ticket; was that it? A. Yes.

Q. Had this train of two cars going to Jersey City gone out at that time? A. No, sir.

Q. Was it not started? A. It had stopped at the depot.

Q. Had it not started again and gone on? A. No; it was standing there. 10

Q. Where did you first begin to meet passengers coming from that train? A. They were not far from the depot.

Q. You were just beginning to meet them when you were hit? A. Yes, sir.

Q. Was anybody near you when you were hit? A. I had to get out of the way of the passenger; I could not say.

Q. You don't know of any? A. No, sir.

Q. There was nothing there to obstruct you, except those passengers that were getting off the train—nothing else? A. That was all. 20

Q. Did you notice what this platform is made of; what kind of material it is—whether plank, or stone, or what? A. I think it is—I could not say what it is made of; I know it is the platform.

Q. You cannot say whether it is stone or wood? A. No, sir.

Q. Did you hear any bell on the other train? A. No bell rung or whistle sounded. 30

Q. On neither train? A. No.

Q. Didn't you hear the train coming behind you? A. No, sir; I did not.

Q. You live at Highwood? A. Yes.

Q. What is your husband's occupation? A. He is a coachman.

Q. Where does he live? A. Highwood.

Q. You walked home after the accident? A. No, sir; I did not; I was taken in a carriage. 40

Q. You stood up on the platform? A. They lifted me up; I could not stand.

Q. When you got home Dr. Bell was called in? A. Yes.

Q. And you were put to bed and staid in bed until your confinement? A. Yes, sir..

Q. And until three weeks afterwards? A. Yes,  
10 sir.

Q. And the confinement came at the time it was expected? A. Yes, sir.

Q. Do you know what part of the engine it was that struck you? A. No; I do not.

Q. Where was it that it did strike you? A. It was right on the hip.

Q. Did it throw you down on the platform? A. Certainly it did.

Q. Were you bruised anywhere else? A. The hip.

20 Q. That was the only bruise? A. Yes.

*By the Court.*

Q. Do you know whether that platform is higher than the rails of the track? A. That I could not say.

*By Mr. Dixon.*

Q. Didn't you have some trouble with your knee? A. My knee is stiff and pains me all the time.

30 Q. How about walking? A. It gets stiff and troubles me in walking; the sinews contract.

Q. That is all.

ELIZA SEARING, a witness produced on behalf of the plaintiffs, being duly sworn according to law, on her oath testifies as follows:

*Direct examination by Mr. Dixon.*

Q. Where do you live? A. Englewood, N. J.

40 Q. Are you a sister of Mrs. Dotson? A. Yes, sir.

Q. Do you remember the evening of the accident to Mrs. Dotson? A. Yes, sir.

Q. Where had she been that day? A. Down town shopping with me.

Q. Where had she been during the day? A. At my mother's.

Q. Where were you at the time of the accident to her? A. I was in the stationery store. 10

Q. You didn't see the accident to her? A. No, sir.

Q. Where did you see her after the accident? A. I was coming along, and when I got up there she had been stuck.

Q. Did the train pass you? A. I don't remember.

Q. You don't remember whether it had gone by? A. Yes, it had gone by.

Q. How did you get on the platform? A. I came down off Dean street on that street by the stationery store, and so on up by the depot. 20

Q. When you saw your sister first on the platform where was she? A. She was just by the electric light.

Q. How near the station building? A. About fifteen feet or so.

Q. Was she standing up or lying down? A. She was lying down in a heap you might say.

Q. She had not been picked up? A. No.

Q. Did you get up by her before she was picked up? A. Just as they were picking her up I got there. 30

Q. What was her condition when she was picked up? A. She seemed to be unconscious.

Q. What do you mean by unconscious? A. Stunned.

Q. What did you do? A. I and another person helped me, and he got a carriage, and took her home.

Q. To your mother's? A. Yes.

Q. How long did she stay there? A. From that until after a month after the middle of the next month.

Q. Where did she stay in the house—in bed most of the time? A. Yes, sir.

Q. Were there any people around when you got there? A. Quite a number.

10 Q. How many? A. I could not say.

Q. Many or few? A. There was quite a crowd.

Q. Did you see any other train at the station? A. Yes, sir.

A. Where was the other train? A. At the depot.

Q. On the track that goes to Jersey City? A. Yes, sir.

Q. Was that train standing or moving when you got there? A. The train going to Jersey City was standing.

20 Q. Who took care of your sister while she was at your mother's? A. My mother.

Q. Have you noticed any difference in her appearance since the accident from what she was before? A. Yes, sir; quite a difference.

Q. In what way? A. She seems to be falling away altogether, and she gets so tired when she walks the least distance and stops.

Q. She is not so fleshy as she was? A. No, sir.

30 *Cross-examination by Mr. Corbin.*

Q. You say that when you got there the train had —(interrupted.) A. I mean the incoming train, the up train.

Q. Had that left the station and gone away? A. I said it was coming in past me.

Q. When you got to the station and found your sister there, lying on the ground, was the train which was going up towards Highwood there, or had it gone?

40 A. It was there.

Q. Where was it? A. After striking my sister it had stopped.

Q. When you got there where was it? A. It was by the electric light.

Q. Was it standing still? A. Yes, sir.

Q. How far had the engine got? A. I think it had got right by the electric light.

Q. Had it stopped before it got to its usual stopping place? A. Yes, sir. 10

Q. It was where she was? A. Yes.

Q. It had not got clear up to its usual stopping place; is that right? A. That is right.

Q. Did you say there was any train there headed the other way? A. Yes, sir.

Q. Where was that? A. It was at the depot.

Q. What part of the depot? A. Right opposite the depot. 20

Q. How did you come into this station—from Palisade avenue down below? A. I came off Dean street.

Q. You didn't come by way of Palisade avenue on that platform that comes in from Palisade avenue across the platform down by the express office? A. Not Palisade avenue; Railroad avenue, I think they call it.

Q. You say you saw a train headed towards Jersey City? A. I could not see that.

Q. You didn't observe? A. No, sir. 30

Q. Was it not down near Palisade avenue where the switch is; isn't that where it was? A. Yes, sir; I think it was.

Q. Near where they take the express cars? A. Yes, sir.

Q. It had pulled out from the station? A. Which train do you mean?

Q. The one going to Jersey City? A. It had stopped.

Q. Where was that train headed for Jersey City at 40

that time? A. It was a little way from the depot, I think.

Q. Was it standing still or moving? A. I think it was standing still.

Q. You say that after this happened your sister came to your mother's house and that for most of the time she was in bed; how much of the time was she  
10 in bed previous to the birth of her child? A. Most all the time.

Q. How much of the day would she be up and how much down? A. Most of the day she was in bed.

Q. Would she get up to her meals? A. Some days she would.

Q. That is all.

JOHN McNAMARA, a witness produced on behalf of the plaintiff, being duly sworn according to law, on  
20 his oath testifies as follows:

*Direct examination by Mr. Dixon.*

Q. Where do you live? A. Tenafly, N. J.

Q. What is your business? A. Plumber.

Q. Did you see anything of this accident to Mrs. Dotson, in September, 1901? A. Yes.

Q. Where were you then? A. Walking south from Englewood station; that is, in that direction.

30 Q. Where had you come from? A. I had come off the train—the down train from Tenafly.

Q. It stopped at Englewood? A. Yes.

Q. How many cars were on that train? A. I don't remember.

Q. Which car did you get off? A. The smoker.

Q. Was that in the front or rear? A. The rear.

Q. Where did you walk? A. I walked down the platform south from the Englewood station.

40 Q. Just describe what you saw? A. I was walking south from Englewood station, and I should judge,

say, about fifty feet from the station I saw a lady get struck by a train.

Q. A train coming from what direction? A. Coming up.

Q. Was there any whistle blown or bell sounded before the train struck her? A. There may have been; I don't remember.

Q. Did you hear any? A. I didn't hear any. 10

Q. How far were you from the train when she was struck? A. I should judge about seventy-five feet or so.

Q. And were you in company with any one? A. Yes, sir.

Q. Did you go to her? A. Right in that direction, yes.

Q. What was done to her when she was struck? A. She was picked up.

Q. Was she knocked down? A. Yes, sir. 20

Q. Was she thrown on the platform? Yes, sir.

Q. What struck her; do you know—what part of the engine? A. It was that round circular part that projects out from the engine.

Q. The cylinder? A. It is near the flagstaff.

Q. Is it the thing the rod runs in? A. No, sir.

Q. What is it, do you know—not the cowcatcher? A. No.

Q. How big is it? A. It is about two feet long, as far as I remember. 30

Q. Does it extend over the platform. A. I don't think so.

Q. What kind of a platform is that; have you observed it at all? A. I don't remember at the time.

Q. Have you ever observed the platform there? A. Yes, sir; it was a wooden platform, and then afterwards I think it is gravel now.

Q. How close did it run to the rail? A. I should judge about eighteen inches. 40

Q. Is it raised above the level of the tracks, or about the same level? A. I don't remember that.

*Cross-examination by Mr. Corbin.*

Q. You were walking towards this lady, and she was walking towards you, at the time this accident happened? A. Yes, sir.

10 Q. And you think you were about seventy-five feet from where the accident happened? A. Yes.

Q. Was anybody with her? A. No, sir.

Q. Was there any crowd about her? A. No, sir.

Q. Was there anything on the platform to obstruct her in the use of it at the point where the accident occurred? A. No, sir.

Q. In which direction did she seem to be walking? A. Towards Englewood station.

Q. At the very time she was hit, did you observe 20 what direction she was going—whether she veered in her direction? A. She was coming to the station.

Q. Did she walk parallel with the rail or diagonally? A. She was walking in the center at first, and she gradually came towards the track, and came so near that the—(interrupted.)

Q. The bumper, do you mean? A. Yes; she came so near that the bumper hit her.

Q. You mean a round beam about eighteen inches long that sticks out? A. Yes, sir.

30 Q. Did you observe whether she was going fast or slow? I don't remember.

Q. You had just left this train that came down from Tenafly, had you not? A. Yes; I had just got off the train and walked across the track to the station and down the platform.

Q. Was there anybody on the platform between you and her? A. No, sir; not at that time.

Q. At the moment of the accident, can you say where the train was which you had come down on; 40 had it started up? A. Yes, sir.

Q. How far had it got? A. I don't know, exactly.

Q. How near to where the accident occurred? A. It was past the point where the accident occurred—going down.

Q. How many passengers, according to your recollection, got off the train that you were on? A. I have not the slightest idea.

Q. I think you said you didn't remember how many cars there were in the train? A. No, sir; I don't remember. 10

*By Mr. Dixon.*

Q. There were a number of passengers that got off the train ahead of you, in front of you, and coming along the platform? A. I don't remember.

Q. That is all.

WILLIAM B. S. WILSON, a witness produced on behalf of the plaintiff, being duly sworn according to law, on his oath testifies as follows: 20

*Direct examination by Mr. Dixon.*

Q. Where do you live? A. Tenafly.

Q. What is your business? A. Newspaperman.

Q. What paper do you work on? A. Englewood Press.

Q. On the third of September, 1901, in the evening, were you at the Englewood station? A. I came down on the train leaving Tenafly at 7:27, getting at Englewood six minutes later. 30

Q. What time was it due at Englewood? A. That would be 7:33.

Q. Was it on time? A. I think so.

Q. Where did you ride on that train? A. In the smoking car.

Q. That was the last car? A. The last car; there were only two cars. 40

Q. Did you see Mrs. Dotson? A. I saw some one; I don't know if it was Mrs. Dotson.

Q. Where were you when you saw her? A. Walking down the platform.

Q. How far had you left the train? A. When I got to the end of the stone, probably forty or fifty feet.

Q. What did you see? A. I saw her walking up  
10 the stone walk that leads to the depot. She was coming up in a somewhat diagonal direction; she was walking near the train, and I called to her, and I think the last witness did the same thing, and the next thing I saw she was struck by the bumper of the locomotive, and she fell, and I saw some one pick her up, and then I saw her walk away with two ladies.

Q. Where were these two ladies that picked her up? A. I don't know; they rushed up.

Q. That is as you saw it? A. There was quite a  
20 number on the station; probably the most of them had got off the train, but there was nobody, as far as I remember, except herself, where she was at the time she was hit.

Q. You don't remember whether anybody passed her or not? A. I didn't see.

Q. What attracted your attention? A. Simply the fact that I saw it.

Q. You were walking towards her? A. I was, and I called to her to attract her attention to the danger  
30 she was in.

Q. Was there any whistle blown or bell sounded? A. Not as I heard.

Q. How far were you from her when she was struck? A. About as far as from here across the court room.

Q. Could you see her plainly? A. Yes; it was light; there was an electric light right there and it makes it very light.

Q. How far had she walked along the platform?  
40 A. I don't know, but I presume that she came up

from what they call Depot Place; that is the street that leads down to the platform.

Q. How far from the station is that? A. Three hundred or four hundred feet.

Q. She had walked along there, you say? A. Yes.

Q. You didn't see her coming on the platform itself? A. The first I saw her she was walking on the platform; I didn't see her at the time she entered on the platform; she was walking diagonally towards the train, and the train was behind her, coming towards her. 10

Q. What kind of a platform is that? A. Some call it gravel, and some call it crushed stone; it is really crushed stone; there were two planks running parallel with the rail, I think, about nine inches wide, making a space of eighteen inches between the crushed stone and the rail.

Q. Is the platform on the same level with the rail? 20

A. The platform is about an inch and a half or two inches higher than the rail, gradually sloping down to it.

*By the Court.*

Q. At the time that she was struck, where was she—on the plank or on the stone platform? A. She must have actually reached the plank.

*By Mr. Dixon.* 30

Q. Could you see whether she was on the planking or on the stone? A. I didn't see her feet, but I think she must have been, in order to be struck.

Q. Do you know what engine it was that struck her? A. The engine of the up train.

Q. Do you know its number? A. No, sir.

Q. They have several kinds of engines on this road?

A. Yes.

Q. Some are smaller than others; do you know what 40

kind this was? A. No; some are compound, and some have three driving wheels and some have two; I don't know what kind this was.

Q. Do you know what time that train was due there by its schedule? A. About the same time that the other train was due south; they were supposed to meet at that station.

10 Q. You don't know the schedule time? A. No.

Q. Do you know how many cars were on that train? A. I do not.

Q. Is it an express train or local? A. Local.

*Cross-examination by Mr. Corbin.*

Q. Was the train which struck Mrs. Dotson stopped?

A. It was moving very slowly, and probably ran eight or ten feet after it struck her before it was brought  
20 to a standstill.

Q. It stopped before it reached its usual stopping place? A. Yes.

Q. And did you hear the engineer give a shriek with his whistle? A. I did not.

Q. But the train was stopped? A. The train was stopped very suddenly.

Q. And the engine had not got as far as the station house when it stopped? A. No; the woman was about opposite the driving wheel when it stopped.

30 Q. About how far was that from the corner of the station building? A. I should say fifty or sixty feet south of it.

Q. Ordinarily the engine would have run beyond the station? A. It would if there was not a down train there.

Q. Where was the down train; was it standing or had it started up? A. My impression was that it was standing, but I am not positive; I only think so.

Q. When you called out to warn Mrs. Dotson, did  
40 she respond? A. She did not.

Q. Did you hear anybody else call out? A. Yes.

Q. Who? A. The gentleman who was on the stand before me.

*By Mr. Dixon.*

Q. Could you see the engineer? A. I didn't notice him.

Q. You say the train was going very slowly when it struck her? A. Yes. 10

Q. How far had it gone at that rate of speed before it struck her? A. It had been crawling up for four or five hundred feet.

Q. Slowly? A. Yes; waiting for the other train to get out of the way.

Q. Going about as fast as when it struck her, during that four hundred or five hundred feet? A. Probably a little bit slower.

Q. When it struck her? A. Yes; I think it was 20 slowing down all the way.

*By Mr. Corbin.*

Q. Did you observe how many people got off the train that you got off? A. I didn't observe, but there was quite a number—fifteen or twenty.

*By Mr. Dixon.*

Q. They got off ahead of you? A. Yes, sir. 30

*By Mr. Corbin.*

Q. Who got off first—you or they? A. I thought I was about the first on my car.

MICHAEL DOTSON, a witness produced on behalf of the plaintiffs, being duly sworn according to law, on his oath testifies as follows:

*Direct examination by Mr. Dixon.*

Q. Where do you live? A. Englewood. 40

Q. What is your business? A. Painter.

Q. Are you related to Mrs. Dotson? A. I am a brother of Mr. Dotson.

Q. Where were you on the evening of the third of September, at the time of the accident to Mrs. Dotson?

A. I was standing in front of the depot.

Q. Whereabouts? A. Right in front of the depot.

10 Q. On the platform? A. Yes.

Q. Did you see the accident or anything of it? A. No, sir.

Q. Did you see Mrs. Dotson after she was struck?

A. Yes, sir.

Q. How soon after? A. After she had been taken away from near the track I saw her and I hired a carriage and brought her home.

20 Q. What did you observe with reference to the trains just prior to the accident? A. I didn't take any heed of them at all.

Q. Did you see the train coming in from Highwood?

A. I saw it coming and I noticed it slowing up.

Q. Did you see any people get off? A. I didn't take any notice.

Q. How many people were there on the platform when you saw her after the accident? A. There was quite a bunch.

Q. How long after the accident was that? A. Two or three minutes.

30 Q. You didn't see anybody get off the trains? A. No, sir.

Q. Did you see the train that struck Mrs. Dotson?

A. I didn't notice it when it came to the station; I noticed it down at Palisade avenue.

Q. Did you notice whether any whistle was blown or bell rung as that train came to the platform? A. I didn't hear any.

Q. That is all.

40 NO CROSS-EXAMINATION.

MARY SEARING, a witness produced on behalf of the plaintiffs, being duly sworn according to law, on her oath testifies as follows:

*Direct examination by Mr. Dixon.*

Q. Where do you live? A. Englewood, N. J.

Q. You are the mother of Mrs. Dotson? A. Yes, sir.

Q. Do you remember the third of September, 1901 the night that she was hurt? A. Yes, sir.

Q. What time was she brought home; do you recollect? A. I think, as well as I can remember, eight o'clock, or a little after.

Q. How did she come home? A. In a carriage.

Q. What did you do with her? A. I put her to bed.

Q. Did you examine her? A. No, sir; I did not.

Q. You didn't examine her body? A. No; Dr. Bell did.

Q. Did you see her body after? A. Yes, sir.

Q. Did you observe anything about it? A. There was a spot as big around as that (indicating.)

Q. Where? A. On her left hip.

Q. What did you do with her when you got her home? A. The first thing I did was to send for the doctor. I did not wish to have her moved; I was afraid she was going into spasms, and I kept her as quiet as I could. The doctor came and he examined her and said to put her to bed, and she went to bed and remained there until the twentieth of September, and she remained in bed and never left the bed until she left it about the eighth of October after her child was born; that is from the third of September until the eighth of October.

Q. Who took care of her during that time? A. I did.

Q. What was her general condition during that time? A. Very poorly; from the time she was struck

she complained, but on account of the condition she was in at that time—(interrupted.)

Q. How was her condition afterwards? A. She gradually complained of this side from the time she was struck, and I thought it probably might be a little imagination on account of the condition she was in at the time.

10 Q. After she got up did you notice any difference in her walking? A. Yes; she could not stand.

Q. What did notice about her walking? A. What I noticed specially was the weakness of her knees.

Q. What did you notice about her appearance? A. She was emaciated and she walked with a halt.

Q. Then she went home in October? A. The end of October.

Q. Did you see her after that frequently? A. Yes, sir; every day.

20 Q. Where? A. Sometimes at her own home and sometimes at mine.

Q. What appears to be her condition now? A. In the first place, she is not as fleshy, and in next place she is not strong, and there is something the matter with her. It would take a doctor to tell, and of course I am not a doctor; I cannot diagnose her case.

Q. That is all.

NO CROSS-EXAMINATION.

30 JAMES LANSING, a witness produced on behalf of the plaintiffs, being duly sworn according to law, on his oath testifies as follows:

*Direct examination by Mr. Dixon.*

Q. You are a practicing physician and surgeon in this County? A. I am.

Q. Where is your office? A. Tenafly, N. J.

Q. How long have you practiced there? A. About  
40 eleven years.

Q. Do you know Dr. Bell? A. Yes; I have met Dr. Bell.

Q. Do you know where he is now? A. I do not.

Q. He is not there? A. I think he is on his vacation; I understand so.

Q. Have you examined Mrs. Dotson? A. I have.

Q. What examination have you made of her? A. I examined her three or four different times. 10

Q. When was the last time? A. The last time was yesterday.

Q. Where did you examine her yesterday? A. At her own home in Highwood.

Q. Were you present at any other examination yesterday? A. Yes.

Q. Where? A. The examination that Dr. Dickin-son made at the hotel next to the Court House.

Q. What examination of her have you made? A. I have made as thorough an examination as I could. 20

Q. Tell the general character of the examination. A. The examination was by measurement, palpitation, inspection and percussion.

Q. Where? A. In the region of the abdominal organs and of the legs.

Q. What, if anything, did you find of a pathological nature? A. Do you mean the last examination?

Q. All of them. A. The first time I examined her there was a difference in the length of the two legs. The leg on the injured side was about half an inch 30 longer than on the right side. The left leg was longer.

Q. Where was that examination and how long ago? A. I could not say exactly. It was before she left her mother's home, after her confinement, and while the bruises were still on her side. There was a large discoloration on the hip, a little to the rear of the left hip, and marked tenderness; on pressure she complained of pain. There was a limitation to the movements of the left leg, and on subsequent examination, about two months after that, there was a difference 40

in the circumference of the two legs; the left limb was about half an inch smaller, both at the knees and thigh. I tried to discover the cause of her pain and discomfort on the left side, and found that there was a displaced or prolapsed left kidney.

Q. How did you find that? A. Pressure over that side during examination caused her very intense pain, and there was certainly a marked displacement to the left kidney.

Q. Did Dr. Dickinson make the same kind of an examination yesterday? A. He was examining that region.

Q. He didn't tell you what he found? A. We had no conversation or discussion whatever.

*By the Court.*

Q. What did you find yesterday? A. The same displacement of the left kidney and the same difference in the length of the legs—half an inch, but there is no difference in the circumference of the two legs at present, but in taking hold of the calf of the left leg there is what we call a “crepitus,” a grating off; that is not present on the right side, and there is a marked degree of disability on the left side; you cannot raise the left knee as high as you can the right.

Q. The trouble being in the hip joint? A. I should judge there has been more disuse.

Q. That is the seat of the trouble? A. That is the seat of that trouble.

Q. What about the kidney? A. The kidney is what produces most of her pain, in my judgment; the reflex pains extending down the front of the leg, and her disability in arising from a sitting posture and her general feeling of pain and discomfort originate from the kidney.

Q. If she was struck by a locomotive on the third day of September, 1901, by some part of the engine

striking her on the left hip and throwing her to the platform, so that she became stunned, and was picked up and taken home, where she was put to bed and treated—would that accident be sufficient to cause this trouble as you find it? A. A blow would be sufficient to cause it.

Q. As to the kidney? A. As to the kidney.

Q. And the leg? A. And the leg also. 10

Q. What is the probability of her recovery from this condition? A. With surgical interference, her chances of recovery would be fair.

Q. What has to be done? A. The kidney has to be replaced; an incision is made and the kidney is replaced and held in position by stitches.

Q. Is that satisfactory? A. It is not regarded as a very satisfactory operation, even as to results.

Q. What is the liability of that tearing away again? 20  
A. It is possible to tear away; it has frequently done so.

Q. Does that condition which you found her in have any effect upon her sexual power or inclination?  
A. It may or may not; I could not say as to that.

Q. The pain that she suffers in the back—would that have anything to do with impairing her sexual powers? A. It would impair her health in a general way; that is all.

Q. About her hip and leg—what are the chances of 30  
her recovery from the trouble there? A. I think that the chances are fair; if the kidney trouble were removed, she would not have so much pain and she could use that leg.

Q. You think that trouble is due to the lack of use?  
A. Yes.

Q. How long do you think it would take after an operation, if the operation were successful? A. You could not say.

Q. Can you say within what period? A. I would 40

say within a year she would be using the leg probably.

*Cross-examination by Mr. Corbin.*

Q. The trouble, as you diagnose it, is that the left kidney is displaced? A. Yes.

10 Q. That is at the bottom of her trouble—this trouble that you say she has? A. I would say the whole trouble.

Q. What else is there except that displacement of the kidney? A. The inability to use her leg—(interrupted.)

Q. But we see she does walk; what do you mean? A. She has a perceptible limp in walking.

Q. When you speak of disuse of that, you mean she favors it? A. Yes.

20 Q. Does she favor it all the time or only at times? A. I have seen her several times on the road walking behind her, and I noticed that she had a perceptible limp.

Q. You say that the two legs are the same size? A. As to circumference, but I found the left a half inch longer than the right.

30 Q. Do you attribute that difference in length to this kidney trouble? A. I consider that the difference in length is the degree which she would lift the left leg in walking.

Q. Is not a difference of as much as half an inch a common thing? A. It is a frequent occurrence.

Q. If this leg had been much disused, you would find it rather wasted? A. It was wasted.

Q. The only difference you found in the two legs is that the left is about half an inch longer than the right leg? A. Longer, and less mobility to the joint.

40 Q. You never measured them before the accident? A. No; I never knew her before the accident.

Q. But in your opinion the seat of the trouble is the displacement of the left kidney? A. That is the main trouble.

Q. And that is a matter which with surgical treatment can be cured? A. She would be relieved for a time.

Q. It is curable; it is a successful operation? A. You cannot say that any particular case is curable; 10 the operation is so unsatisfactory.

Q. You mean that it is attended with uncertainty? A. Uncertainty as to result.

Q. What is that? A. The danger of the kidney tearing out again from the place where you put it.

Q. That is all.

JOSEPH DOTSON, one of the plaintiffs, being duly sworn according to law, on his oath testifies as follows:

20

*Direct examination by Mr. Dixon.*

Q. You are one of the plaintiffs in this case? A. Yes, sir.

Q. And you reside at Highwood? A. Yes, sir.

Q. Since this accident to your wife, what has been her general condition of health, as far as you have observed? A. It has been failing ever since—falling away in flesh and in movement and everything else; she is not the same person at all—sick all the time. 30

Q. Before the accident, did you board or keep house? A. Kept house.

Q. Who did the housework? A. My wife.

Q. Since the accident, who does it? A. I have done the biggest part of it.

Q. Since the accident, have you had any sexual intercourse with your wife? A. No, sir.

Q. Up to the present time? A. No, sir.

Q. Why not? A. It is too painful to her.

40

*Cross-examination by Mr. Corbin.*

Q. After she came home, after the baby was born, did she have any medical treatment? A. No, sir.

Q. That is all.

## PLAINTIFFS REST.

10 Counsel for the defendant moves for non-suit on the grounds, first, that negligence on the part of the defendants in the operation of the railroad has not been shown; second, that it does appear that the plaintiff was careless and negligent in her way of approaching the station and walking along the railroad track when she knew that a train was about due.

20 THE COURT—Is it conceded that the defendant companies are responsible for the accident?

MR. CORBIN—It is conceded that the Erie Railroad Company was operating the road.

THE COURT—Your point is that the train was not negligently managed, and that the plaintiff was guilty of negligence. What do you say was the negligence of the plaintiff?

30 MR. CORBIN—In walking along the platform towards the station, with one train there just going out and another train, to her knowledge, coming in, and walking diagonally to the rail without paying any attention to the train behind her.

40 THE COURT—I am not disposed to hold that a passenger is required to assume, in the absence of notice, that any portion of the platform is a dangerous place. The platform is provided for passengers, and I

think the evidence so far does not indicate that Mrs. Dotson knew that the train was approaching, and that she was in a position to be struck by it if she didn't change her course. I am not prepared to say that she was negligent; it is a question for the jury.

With regard to the defendants' negligence, assuming that the train was properly managed, I am inclined to think that it is evidence of negligence for the railroad company to furnish a platform for passengers so near to the rail that the engines passing along will strike passengers passing along on the platform. 10

I shall refuse to grant the motion to non-suit.

Counsel for the defendant thereupon prays an exception to the refusal of the Court to grant the motion to non-suit, which is allowed, and the same is sealed accordingly. 20

JONATHAN DIXON, [L. S.]

J. S. C.

Counsel for the defendant admits that the Erie Railroad Company is in possession of the railroad property under a lease and is responsible for the condition of the road 30 and its operation, and moves for a non-suit as to the Northern Railroad of New Jersey, which is granted.

## DEFENDANT'S CASE.

JOHN McCCLAY, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath testifies as follows:

*Direct examination by Mr. Corbin.*

- 10 Q. Where do you live? A. Tenaflly.  
Q. Were you on the train coming down from Tenaflly on the night of the accident? A. Yes, sir.  
Q. How many cars had it? A. I don't remember.  
Q. Which were you on? A. I think the smoker.  
Q. That is the rear car? A. Yes, sir.  
Q. Did you get off at Englewood? A. Yes, sir.  
Q. Whereabouts did the train stop? A. Right before the station.  
Q. How many others got off at that station? A.  
20 Mr. McNamara, Mr. Marshall and Mr. Wilson; that is all I know.  
Q. Who were with you? A. I was with myself.  
Q. After you got out of the train? A. I was all alone.  
Q. Were you ahead of Mr. McNamara? A. Yes.  
Q. Did you see the accident? A. Yes, sir.  
Q. Where were you when it happened? Well, I should think I was within about three paces of the lady that got hurt.  
30 Q. Were you walking towards her? A. Walking towards her; her and I were meeting each other.  
Q. How far was it from the corner of the station?  
A. It was about midday between the station and the Wells-Fargo office.  
Q. How was she walking? A. West of Englewood station she was in the middle of the sidewalk.  
Q. Did she continue that way? A. No, sir.  
Q. What then? A. When the engine came within  
40 a few paces of her she seemed to walk toward the engine and walk until the engine hit her.

Q. Did you call to her? A. No, sir.

Q. What did you do? A. I picked her up.

Q. Did you do that quickly? A. Yes, sir.

Q. What did you do with her? A. I left her then.

Q. What part of the engine struck her? A. The bumper above the cylinders and the cow-catcher, as far as I can recollect.

10

Q. About what part of her body was struck? A. About here on the left side, I believe; it was the left side that was next to the engine.

Q. Where was the train that you had come down on at the moment of the accident? A. The down train had moved out, and the rear of the train was about parallel with the engine coming in.

Q. It had started out from the station? A. Yes, sir.

Q. Did you hear a whistle? A. Yes, sir.

20

Q. From which train? A. From the up-going engine there was a whistle.

Q. How long was it before it struck the woman? A. It was before; the engine was within a few paces of her when it blew.

Q. What speed was it going at? A. About as fast as a man could walk; it stopped after it hit her.

Q. How quickly? A. About as far as from me to you.

Q. About ten or twelve feet? A. Yes, sir.

30

Q. Then it stopped before it reached the station? A. Yes, sir; the engineer pulled up his train.

Q. Was there anybody about her at the time that she was hit? A. When I observed the lady first, the engine was coming behind her about the Wells-Fargo Express depot, and there was another lady with her, and she left the lady and she came forward towards the station.

Q. How far was she from the other lady at the time of the accident? A. Five or six paces.

40

Q. How near was that as to feet? A. Six or eight feet.

Q. Were you the next nearest person to her? A. I was.

Q. Was there any crowd there to jostle her? A. No, sir.

Q. Was there anything to hinder her from the use  
10 of the platform? A. Nothing whatsoever.

Q. What is your occupation? A. Night watchman.

Q. Where? A. The Citizens' Bank, New York, 407 Broadway.

*Cross-examination by Mr. Dixon.*

Q. Who did you say got off the rear car with you?  
A. Mr. McNamara, Mr. Marshall and Mr. Wilson.

Q. Two of the witnesses on the stand here? A.  
20 Yes.

Q. Four got off that car? A. That I know of.

Q. How many got off the other cars? A. I don't know; I don't know of anybody except in my company on the smoking car coming down.

Q. Who got off this car first, you or Wilson? A. I did.

Q. And these three followed you? A. Yes, sir.

Q. Which one walked ahead of you? A. None of  
30 them.

Q. Didn't you say that one was ahead of you? A. No, sir.

Q. You were ahead of the others? A. Yes, sir.

Q. How far were these other three men behind you?  
A. Three or four paces.

Q. You were not walking together? A. No, sir.

Q. Were you in company together on the car? A. We were within a few seats of each other.

Q. Did you all get on together? A. We all got on  
40 at Tenafly.

Q. Was there any whistle blown within three or four feet—(interrupted)? A. Paces; it would be about twelve or fifteen feet.

Q. That is the distance the engine was from her when it blew the whistle? A. I didn't say that.

Q. You did say that? A. I said that when the engine blew the whistle she walked towards the platform. 10

Q. Didn't you say the engine blew the whistle three or four paces away from her? A. Behind her; yes, sir.

Q. When you picked her up, did any crowd gather there, at all? A. Well, there gathered a few men.

Q. How many? A. Well, I should judge, five or six.

Q. There were four of them off the smoking car; did anybody else come? A. Well, I believe, her sister came. 20

Q. How many others? A. I don't know.

Q. Were there any other people came from the train? A. No, sir.

Q. No others? A. not that I knew of.

Q. What engine was this; did you get the number of it? A. I don't know.

Q. Did you see the engineer? A. No, sir; I didn't take time to look.

Q. You didn't take time to look at all? A. No, sir; I was too glad to get the woman picked up. 30

Q. It happened so suddenly that you only saw that? A. Yes.

Q. All in an instant? A. All in a few instants; I saw the woman as she came towards me.

Q. Didn't she walk for several paces along the platform before she was struck? A. Two or three steps.

Q. Didn't you say three or four paces before? A. No, sir; you didn't ask me that question before.

Q. That is all. 40

ROBERT HOPPER, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath testifies as follows:

*Direct examination by Mr. Corbin.*

Q. Where do you live? A. Nyack, New York.

10 Q. What is your business? A. Surveyor, Erie Railroad.

Q. Have you made a survey of the Englewood station? A. Yes, sir.

Q. Are you familiar with that station? A. Yes, sir.

Q. When did you make this survey? A. Yesterday.

Q. Was it then in the same condition as it was last September? A. Yes, sir.

20 Q. I show you this map; did you make it? A. Yes sir.

Q. Is it made from actual survey? A. Yes, sir.

Q. Is it correct? A. Yes.

Q. Drawn to scale? A. Yes.

Q. I see here "Scale 1 inch to 20 feet?" A. Yes, sir; one inch means twenty feet.

Q. On what level is the platform around this station and along the west of the track? A. It is level with the top of the rail.

30 Q. Of what does it consist near the rail? A. There are two small planks near the rail, about eighteen inches wide; then there is crushed stone and around the station is flagging.

Q. How far does the flagging extend? A. (Pointing) these lines on the side of the station.

Q. Is the crushed stone on the same level? A. Yes, sir; it is all on the same level.

40 Q. To the east—the upper part of the map—beyond what is marked "platform;" what is there? A. That is the driveway for carriages.

Q. What is the level of that? A. That is four feet and six inches below the level of the platform; there is a curb stone there.

Q. Is there any obstruction between that driveway and the track? A. No, sir.

Q. How is that driveway made? A. It is macadam.

Q. Tell me the width of the platform to the south 10 of the station, at its narrow point fifty feet south of the station? A. Ten and seven-tenths feet.

Q. How wide is it about fifteen feet south of the station? A. About forty-two feet.

Q. What is there between the rails and between the tracks, which is indicated here in spotted or dotted lines? A. Crushed stone.

Q. How far does that crushed stone extend? A. To the nearest rail of the east bound track.

Q. Down from that is there anything in the way 20 of crushed stone? A. No, sir.

Q. Then both tracks are approached by passengers from the same side of the railroad? A. Yes, sir.

Q. Tell me how long this crushed stone space is between the tracks? A. About three hundred feet; that is, in between the tracks.

Q. How long is the entire platform of the west bound track between the track and the station? A. It is over seven hundred feet long; it goes all the way 30 to Palisade avenue, which is about 300 or 400 feet away.

*Cross-examination by Mr. Dixon.*

Q. How far is it from the Wells-Fargo Express office to the station, about? A. About two hundred and four feet.

Q. Where is the entrance to the station? A. Just where you have your pencil.

Q. Near the track; facing the track? A. Yes, 40

Q. (Pointing) Here are dots, three of which are marked "poles;" what are they? A. The one right opposite the Wells-Fargo office where the platform starts is a telegraph, pole and there are electric light poles, too.

Q. What are these four dots? A. Supports to the shed.

10

*By the Court.*

Q. Did you say the electric light is in front of the Wells-Fargo office? A. Right in front of the Wells-Fargo building.

*By Mr. Dixon.*

Q. How far is that from the shed—from the station building? A. About one hundred and seventy-five feet.

20 Q. Isn't this one marked "Pole" nearest the station an electric light pole? A. No, sir; that is a telegraph pole.

Q. Where is the electric light pole on the map? A. Here (indicating).

Q. You haven't any electric light poles nearer the station than that one? A. I don't think so.

Q. Were you instructed to find the poles? A. All I was instructed was to make a survey of the station.

30 Q. You cannot say whether there are any lights nearer the station? A. No, sir; I cannot.

Q. That is all.

JOHN McCLAY, a witness already sworn on the part of the defendant, recalled.

*Direct examination by Mr. Corbin.*

40 Q. When Mrs. Dotson was struck, was she upon the crushed stone walking, or was she upon the planking? A. She was upon the planking between the stone and the rail.

*Cross-examination by Mr. Dixon.*

Q. How do you know? A. I saw her.

Q. How far were you away? A. About as far as from me to you.

Q. Could you see the whole space enough to see where she was walking? A. Yes, sir.

Q. Could you see where her feet were? A. Yes.

Q. You observed her feet? A. Yes. 10

Q. Did she have a long skirt on? A. I didn't look what kind of a skirt the lady had on.

Q. How did you see where she was walking? A. I saw where she was walking.

Q. Where did her skirt go? A. I don't know.

Q. You didn't see where her skirt was? A. I don't know; I didn't pay any attention to that.

Q. That is all.

20

DANIEL CURRIE, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath testifies as follows:

*Direct examination by Mr. Corbin.*

Q. Where do you live, doctor? A. Englewood.

Q. What is your occupation? A. Physician and surgeon.

Q. How long have you been practising? A. Twenty-five years. 30

Q. How long have you been practising in Englewood? A. Twenty-five years.

Q. Did you examine Mrs. Dotson, the plaintiff, to find out her injuries? A. I did.

Q. When? A. The day after the accident.

Q. Have you examined her since? A. Yes.

Q. When? A. Monday night.

Q. Just state when and where you made the examination soon after the accident? A. I went to Highwood at eight o'clock in the evening and examined the 40

lady at Mr. Stockton's residence at Highwood. I examined her limbs—both limbs—and measured them, and found them exactly the same dimensions, same circumference, same length, except that the left limb seemed to be between an eighth and a quarter of an inch longer than the right.

10 Q. How long was this after the accident? A. That was last Monday night.

Q. You are speaking of the examination recently made? A. Yes, sir.

Q. What else did you examine; what did you see? A. I made a very careful examination; she was lying down, her clothing unloosened—her skirts unloosened—so that I could examine her carefully as to the hip joint and the knee joint.

20 Q. Did you examine the action of the limb? A. I examined the action of both limbs; I had her stand up, and I asked her to close her eyes and stand on her right foot and hold up the left, which she did, and brought it up and stood there for a matter of ten or twelve seconds; then I had her stand on the left limb, close her eyes, and raise the right limb, and had her go through several motions with it; there seemed to be no difference in the action of the joints in either limb, either the hip, or knee or ankle.

30 Q. What did you discover, if anything, the matter with her? A. Well, I didn't discover anything the matter with her limb.

Q. Do you think her limbs are all right? A. Yes.

Q. The joints? A. Yes.

40 Q. The action of the legs—how is that? A. All right; the left limb acted more freely and better than the right one when I took hold of it when she was off her guard; when she was on her guard both limbs were stiffened and almost not under control; she held them too stiff to admit of a very free and careful examination.

Q. Is there anything, in your judgment, the matter with either of her limbs? A. I think not.

Q. Did you discover anything at all? A. She had a tenderness in her left side above the hip bone.

Q. Did she complain of pain? A. That was the first thing she told me when I asked her.

Q. Did you examine to see what caused that or make up your mind about it? A. I examined it and felt around there, but I didn't notice anything special. 10

Q. Did you hear the evidence of the physician who has testified here? A. I did.

Q. What have you to say as to the suggestion of a displaced kidney? A. In reference to the movable kidney, I find the kidney where it should be at the time I made the examination; it may move; it may be in its place to-day and out of its place to-morrow; I found it in its place. 20

Q. Is that the way displaced kidneys act? A. Movable kidneys may; all kidneys move when you breathe; each kidney makes a journey of from one-eighth to one-quarter of an inch every respiration; no person's kidneys are fast, solid and tight so that they don't move every time you take a breath—an ordinary, full breath.

Q. Did you find any evidence of movability or displacement in this woman? A. I did not; I didn't ask any questions, but I found the kidney where it should be. 30

Q. In September did you find anything to induce you to believe that it was out of place then? A. I did; from the answers she gave to my first questions, "Where is your pain?" and "Where were you hurt?" she said, "I have a pain in my left side ever since the accident;" then my attention was immediately directed towards displaced kidney as being the most possible thing to occur after an accident of that kind. 40

Q. Did you find any evidence other than her statement? A. I did not.

Q. Suppose it to be misplaced, what is the prospect of recovery from that? A. There are a great many people who have misplaced kidneys and have them throughout their lives.

Q. Do they suffer from that? A. They suffer more  
10 or less inconvenience when they become so, that they move and get out of position an inch or an inch and a half, which causes a great deal of inconvenience and pain and discomfort; bloody urine and pus in the urine, showing that there is obstruction going on within the kidney due to its movableness; then an operation is resorted to to anchor the kidney; that is an operation of considerable magnitude and is not always attended with the best results as a general thing.

Q. As to the first examination, what did you then  
20 find? A. I found the woman in bed, and she said she was very near her time of confinement, and that she had been thrown down—jostled against by a man in the crowd at the station, and had come in contact with the head piece of the locomotive—the wood bumper; I think they call it the head piece; and she had fallen down on the ground; thrown down violently; and that they had picked her up and put her in a carriage and taken her to her mother's home; I was notified that she lived in Highwood and went to her residence there  
30 and found no one there; then I found her at her mother's house in Englewood.

Q. What did you do in the way of examining her? A. When I made the examination she was in bed, and I found a bruise on the hip and a bruise on the left elbow.

Q. Did you find any evidence of injury? A. No other evidence of injury; no evidence of shock; she got up and sat on the side of the bed when I called, and I told her not to get up.

Pursuant to adjournment, Court met this twelfth day of September, 1902. Appearances as heretofore.

DANIEL CURRIE on the stand.

*Direct examination by Mr. Corbin.*

Q. In your recent examination of Mrs. Dotson, did you find any evidence of emaciation or wasting away? 10

A. The last time, no, sir.

Q. How was her condition in that respect as compared with what it was when you examined her soon after the accident, as to the size of her limbs? A. Comparatively; I should say they were about the same.

Q. Did you observe Mrs. Dotson walking in the street yesterday? A. I did.

Q. Where? A. On her way from here last night to the trolley. 20

Q. For what distance did you observe her walking? A. I walked from the Court House to the trolley behind her.

Q. Where did you get the trolley. A. On Main street at the Susquehanna depot.

Q. Were you ahead of her? A. Behind her.

Q. Did you observe, in that way, how she walked?

A. Yes.

Q. Did you detect any limping or halting or favoring of the left leg? A. I did not. 30

Q. Did you watch to see? A. I watched very carefully.

Q. How was her walking? A. She walked ahead of me as fast as I walked.

Q. Was her walking normal? A. Her walking was perfectly normal and natural.

*Cross-examination by Mr. Dixon.*

Q. You examined her twice, I believe? A. Yes, sir. 40

Q. When was the first time? A. The day after the accident—the morning after the accident.

Q. And she was in bed when you saw her? A. She was in bed.

Q. How did you come to go there? A. I was notified by the company that a woman had been injured and to go and make an examination and learn the extent of her injuries.

Q. And was anybody present at the time of your examination? A. Yes, sir; some members of her family.

Q. Who were they? A. Her mother and her sister.

Q. Were they present all the time? A. There was one or the other always there—either the mother or the daughter were there; there was either one with me all the time.

20 Q. How long did that examination last? A. About ten minutes.

Q. She did not get out of bed while you were there? A. She did not.

Q. And the second time you examined her was at Mr. Stockton's house? A. Yes; in the hotel.

Q. How long ago? A. That was Monday night.

Q. Of this week? Yes, sir; Monday or Tuesday.

Q. You said something about her saying that she had been jostled against the engine, when was that?  
30 A. September 8th.

*By the Court.*

Q. You mean that your last examination was September 8th? A. Yes.

Q. And it was at the first examination she spoke to you about being jostled by somebody? A. That she did.

*By Mr. Dixon.*

Q. You didn't see her with Dr. Dickinson? A. No; I did not.

Q. Why not? A. She was pregnant, and I didn't examine her.

Q. Did you at Mr Stockton's house make any examination for that? A. I did.

Q. For her kidney? A. For her kidney.

10

Q. Was she clothed or not? A. Partly so.

Q. What examination did you make as to that? A. I felt for the kidney.

Q. Through her dress? A. No, sir.

Q. Did you take her corset off? A. No, sir.

Q. How could you make any examination of the kidney? A. There was no clothing at all over the kidney.

Q. Was that all the examination that you made? A. That is all.

20

Q. Simply by feeling? A. Simply by feeling—that is all the way we ascertain that fact—always.

Q. In the medical terms there is a well known trouble called "displacement of the kidney?" A. Yes.

Q. And also a kidney called "moveable kidney?" A. Yes.

Q. That does not refer to the movement of a normal kidney? A. Not at all.

30

Q. That is all.

GORDON K. DICKINSON, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath testifies as follows:

*Direct examination by Mr. Corbin.*

Q. Where do you live? A. Jersey City.

Q. What is your profession? A. Physician.

Q. And surgeon also? A. Yes, sir.

40

Q. How long have you been in the practice? A. Twenty-seven years.

Q. Where? A. In Jersey City.

Q. Do you practice in the hospitals there? A. Yes, sir.

Q. Did you make an examination of Mrs. Dotson?

A. I did.

10 Q. Just state what examination you made and the result of it? A. It consisted of two parts. Having heard certain stories of the case, I was on the sidewalk below and watched her as she descended the steps. She handled her feet with all precision. She had a normal, elastic step of a young person, and threw each foot equally, coming down on the heel and carrying the foot firmly; and there was absence of limp and absence of any inco-ordination and absence of any attempt at favoring. Then in a room at  
20 the hotel I had her stripped in the presence of an elderly woman and Dr. Lansing and I examined her as to the conditions complained of. I found by ordinary palpitation an equal firmness of the muscles of both thighs; I found that there was free motion at all joints without any limitation, also without any evidence of change in the joints—nothing except what we call crepitation, which would indicate a dryness—  
(interrupted.)

Q. Did you find anything the matter with her? A.  
30 Nothing the matter.

Q. Did you measure the limbs? A. I did not. There was nothing to indicate that there had been any wasting. I examined the abdomen, looking for points of tenderness. She complained of aching pains on the left side, but the point of tenderness was on the left thigh. On pulsation I found that the kidney of the left side came down somewhat further than usual, but not sufficient to be harmful and was tender. She complained of pains radiating from the  
40 region of the left kidney; all else seemed to be merely

objective; that is the nearest to a subjective symptom that could be reached, that is, to feel that the kidney was being congested or an unusual tenderness of the same.

Q. What was your conclusion about her trouble, if she has any? A. The tenderness would be wholly due to this moveable kidney, lack of support and congestion and so-called neuralgia of the same. 10

Q. Did you find anything else the matter? A. No, sir.

Q. She has a kidney that moves more than the normal kidney? A. Yes, sir; more than the normal.

Q. If she were treated, is that a sort of thing that would yield to treatment? A. There is a method of treatment that is generally termed—(interrupted.)

*By the Court.*

Q. Surgical or medical? A. Somewhat one and 20 somewhat the other.

Q. In such a case as hers? A. The general plan is to give—there is no medicine but directions—supporters and pads which immobilize and in time the kidney resumes its former position. If, inside of a proper length of time, that fails, then an operation is indicated.

*By Mr. Corbin.*

Q. You found nothing to indicate any trouble with 30 her walking? A. Absolutely none.

Q. Did you find any evidence of wasting away? A. None.

Q. Did you find any trouble except what you have indicated? A. That is all I found.

*Cross-examination by Mr. Dixon.*

Q. How extensive was the movability of the kidney, so far as you could judge? A. We speak of three de- 40

grees; every kidney moves more or less; the right somewhat more than the left; if the left kidney comes down so that the finger can apprehend it, yet it slips back, that is the first degree; if it comes down so far as to be held, and yet on release of manual pressure, it goes back, that is the second degree; the third degree is, if you can pull it down, it goes back only gradually; in this case we have movability in the first degree.

Q. Is it a fact that usually they will not yield to any treatment except surgery, and that the treatment of supporters is only a temporary one? A. The third degree calls for an operation; the second degree occasionally; in the first degree I generally expect to get relief by pads, but not always.

Q. The thing that supports the kidney is the fat? A. Yes; and the structures in the fat.

20 Q. And the thing that lets the kidney go is the disintegration of the fat? A. Either that or the breaking of the fibres which run through it.

Q. And in order to make a permanent recovery, either the fat must take hold of the kidney and reproduce itself, or you must have some kind of a supporter to keep it there, and the supporter is only temporary? A. The supporter is only temporary.

30 Q. And the cure is by permanent support? A. Permanent support, but it generally happens that if you can hold the kidney in place for a sufficient length of time, the fat will harden and you will get a permanent support.

Q. The fact that it is movable or displaced causes pain? A. It causes pain.

Q. In walking and in motion? A. Practically in recent displacements and in acute displacements.

40 Q. And that would naturally cause a person to limp when walking? A. If the pain is severe there would be some limp.

Q. It is not a constant degree of pain? A. It is not.

Q. It may be more at some times than others? A. Very extensively it is not the same; one degree movable kidney causes more distress frequently than a third degree, because there is less accommodation.

Q. If she limps at times, it is probably due to pain? A. That is what I would infer. 10

Q. That condition of the kidney is a very usual result of a severe blow to a woman in that region? A. It is not uncommon.

Q. That is all.

OSCAR BLAUVELT, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath testifies as follows:

*Direct examination by Mr. Corbin.*

20

Q. Where do you live? A. Nyack.

Q. What is your occupation? A. Trainman.

Q. Were you trainman on the train going north which struck Mrs. Dotson, September 8th, 1901? A. Yes, sir.

Q. Where were you stationed on the train? A. On the head end of the rear car.

Q. How many cars were there, if you remember? A. Four.

Q. Do you remember the train coming to a stop? 30  
A. Yes, sir.

Q. Where did it come to a stop? A. Well, the rear car that I was on stopped below the Wells-Fargo depot.

Q. That would bring the engine how near the station? A. Fifty or seventy-five feet from it.

Q. What did you observe when the train was stopped? A. I didn't observe anything.

Q. It was moving slowly, and then came the whistle for the emergency brake? 40

Q. Did you hear the whistle? A. Yes, sir.

Q. What sort of a whistle? A. Danger signal.

Q. Was the bell rung? A. Yes, sir.

Q. When it came to a stop what did you do? A. I took a flag and went back to the rear end.

Q. What was the number of your train? A. No. 239.

10 Q. Did you see the train going in the other direction? A. Yes, sir.

Q. What is the number of that train going the other way? A. No. 240.

Q. When you came to the stop where was that train? A. The train was right opposite me.

Q. Was it standing still or moving? A. It was just moving.

*By the Court.*

20 Q. What part of the train was opposite you? A. The rear car of the train; that train had two cars.

*By Mr. Corbin.*

Q. How far was that from Palisade avenue? A. 300 or 400 yards;

Q. How fast were you going when you heard the emergency whistle? A. Two or three miles an hour.

Q. Did you notice whether the bell on the down train was ringing or not? A. I did not.

30 Q. How long did you stay back protecting the rear of your train with your flags? A. Perhaps five minutes.

Q. Then were you called in? A. Yes, sir.

*Cross-examination by Mr. Dixon.*

Q. What time was your train due at the station? A. I think about 7.32.

Q. Was it 7.32 or 7.35? A. I don't remember particularly; we have changed now; I think it was  
40 7.32 then.

Q. What time was the other train due there; do you know? A. I do not.

*By the Court.*

Q. Do you usually meet at that station? A. Yes, sir.

*By Mr. Dixon.*

10

Q. If one train was due at 7.32 and one was due at 7.35, one train was late?

THE COURT—He does not say that.

Q. You don't know whether the bell on the other train was ringing or not? A. I didn't notice.

Q. How was it you heard the bell on your train? A. I know it started at that crossing; I noticed it.

Q. The other engine was by you? A. Yes, sir.

Q. Why didn't you notice whether its bell was ringing or not? A. When the engineer put the brakes on, I knew there was something wrong and I took the flag and went back. 20

Q. You were not paying any attention to the other train until that happened? A. No; not to the down train.

Q. You were waiting for that train to leave the station? A. Yes, sir.

Q. And the emergency signal was what called your attention? A. Yes, sir. 30

*By Mr. Corbin.*

Q. How far did you move after the emergency brake was put on? A. A short distance—perhaps about the length of the engine.

Q. That is all.

Mr. Corbin offers in evidence the official working time-table, showing 7.33 as the time of the down train and 7.35 for the up train. 40

FRANK MORTON, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath testifies as follows:

*Direct examination by Mr. Corbin.*

Q. What was your occupation at the time of the accident? A. I was trainmaster.

10 Q. Were you on this train, No. 239, going north at the time of the accident? A. Yes, sir.

Q. What car were you in? A. In the baggage car.

Q. What was the position of that car on the train?

A. I am not sure whether it was the first or second.

Q. Were you in the smoking compartment or in the baggage room? A. Baggage room.

Q. What were you doing? A. Reading a paper.

Q. Standing or sitting? A. Sitting in a chair.

Q. What was the first you noticed of any trouble  
20 at Englewood? A. The sudden application of the brakes.

Q. At what sort of speed was that train running when the brakes were applied? A. I could not say exactly; very slowly.

Q. Did the train stop on the application of the brakes? A. Yes, sir.

Q. How far did the train go after the brakes were applied? A. I think a car length.

Q. When it was stopped did you go out?  
30 sir. A. Yes,

Q. Where was the engine? A. I didn't look at the engine, but I should judge it was about fifty or seventy-five feet east of the depot.

Q. Did you see Mrs. Dotson, the lady who was hurt? A. I saw her, but I didn't see her face; her face was covered up.

Q. Had she then been picked up? A. Yes, sir.

Q. Did you go to where she was? A. Yes; on the platform.

40 Q. Was there a lady with her? A. Yes, sir.

Q. You didn't see her immediately after she was picked up? A. Probably a minute.

Q. Did you see the other train, No. 240? A. No, sir.

Q. You didn't observe that? A. I heard it pass, but my back was turned to it.

Q. When did you hear it passing—before or after the emergency brake was applied? A. Before. 10

*Cross-examination by Mr. Dixon.*

Q. How many cars were on that train—the one you were riding in? A. Four.

Q. What is the length of those cars? A. Between fifty and fifty-five feet.

Q. Are they not seventy feet? A. No; they were the ordinary coach.

Q. Were not those cars on that train longer than the ordinary coaches? A. No; they were the ordinary 20 coaches and the regular combination cars.

Q. That is all.

JOHN PARSELL, a witness produced on the part of the defendant, being duly sworn according to law, on his oath testifies as follows:

*Direct examination by Mr. Corbin.*

Q. Where do you live? A. Nyack.

Q. What is your occupation? A. Locomotive en- 30 gineer.

Q. How long have you been locomotive engineer? A. Twenty-four years.

Q. Were you a locomotive fireman before that? A. Yes, sir.

Q. How long? A. Ten years.

Q. Then you have been thirty-four years in the service? A. Yes, sir.

Q. What road are you working for? A. Erie.

Q. And for the Northern Railroad? A. Yes, sir. 40

Q. Your twenty-four years of service has been on the Northern? A. Yes, sir.

Q. Were you the engineer on train No. 239? A. Yes, sir.

Q. Were you in charge of it the night of this accident? A. Yes, sir.

Q. As you come up towards Englewood station, is  
10 the track straight? A. Straight for three or four miles.

Q. As you came in did you see train No. 240 ahead of you on the opposite track? A. Yes, sir.

Q. At what sort of speed were you approaching the station? A. I reduced my speed because I saw that train there.

Q. About how fast were you going at Palisade avenue? A. Ten or twelve miles an hour.

Q. When you applied the emergency brakes, how  
20 fast were you going? A. No faster than you could walk—three or four miles an hour.

Q. When you got to that point where the accident happened, where was train No. 240? A. It had passed.

Q. The entire train? A. Yes.

Q. When did you first see Mrs. Dotson? A. She was three or four feet away when I first saw her.

Q. Who was with her? A. Nobody was with her.

Q. Where was she? A. She was ahead of me, walk-  
30 ing along, and then when I got three or four feet from her, she walked right over and the bumper hit her.

Q. She changed her course? Yes, sir.

Q. How far away was she when she changed her course? A. Four or five feet.

Q. What did you do when you saw her change her course? A. I applied the brake right away—the emergency—to stop as quick as I could.

Q. You have a way to stop your train as quickly as possible? A. Yes, sir.

40 Q. What is that? A. The emergency brake.

Q. How far did your train run after you applied it?  
A. I suppose probably thirty or forty feet; maybe not as much as that.

Q. What was it that hit her? A. Just the end of the bumper glanced her.

Q. It just pushed her aside? A. Yes; if she had been further over, it would have knocked her ahead.

Q. How far from the station building was it that she fell? A. I should judge it was between one hundred and one hundred and fifty feet—further than that. 10

Q. You think it was further away? A. Yes; it was further away.

Q. Was it down where the platform is narrow or where it is wide? A. It was down near Wells-Fargo depot—more than half ways from the depot.

Q. Was there any obstruction on the platform around her at the time of the accident? A. None whatever. 20

*By the Court.*

Q. No person was near her? A. No, sir; she was alone.

Q. Any person near enough to come in contact with her? A. No, sir.

Q. At the time she was hit, just whereabout was she with reference to the rail; the platform is partly crushed stone, and then there is a planking next the rail? A. Yes, sir. 30

Q. Where was she with reference to the line between the crushed stone and the plank? A. She must have been just about on the edge of the plank furthest from the rail.

Q. Does the bumper extend beyond the planks? A. A trifle—I could not say how much.

Q. You say it just glanced her? A. It just glanced her; it just knocked her off sideways. 40

*By Mr. Corbin.*

Q. Was your bell ringing at the time of the accident? A. Yes, sir.

Q. Had you set it ringing? A. Yes, sir.

Q. Where? A. A quarter of a mile below the station.

10 Q. How is your bell rung? A. Automatically.

Q. You don't have to pull the rope? A. No, sir.

Q. Was it still ringing when the train came to a stop? A. Yes, sir.

*By the Court.*

Q. The end of the bumper that hit her, was it square or round? A. It is square, but rounded over.

*By Mr. Corbin.*

20 Q. This bumper is a timber; the cow-catcher is attached to it? A. Yes, sir.

Q. There are poles on it for a flag-staff? A. Yes, sir.

Q. Was this a compound engine? A. Yes, sir.

Q. The ordinary pattern run on that line? A. Yes, sir.

Q. Was it the one you ordinarily use on that run? A. Yes; the regular engine.

30 Q. Were there other other engines running similar to it on the passenger trains on that road? A. I don't think there was; not regularly; once in a while.

Q. I mean as to the construction of this bumper beam; do they all have that? A. Yes.

Q. Is there any difference in that respect between all engines? A. I could not say that there was; they are all about the same size. They are just about wide enough if they hit anything to clear the cylinder head.

*By the Court.*

Q. Is that the object of it—to protect the cylinder head? A. Yes, sir.

*Cross examination by Mr. Dixon.*

Q. They have several sizes of engines on that railroad—three or four—have they not? A. Yes. 10

Q. How long have they used compound engines on that road? A. I have been on that one for the last three or four years.

Q. They were new engines about three years ago? A. They were run a little before we had them.

Q. On that road they have been used for about three or four years? A. Yes, sir.

Q. And the other engines they had before that were lighter? A. Yes; and would not do the work.

Q. This is one of the largest engines they have? A. 20  
No.

Q. Do they run on passenger trains? A. They run on other trains over the main line.

Q. On this same road? A. Not here; on the Erie—on the main line.

Q. Did you see any other people on the platform? A. Yes; I saw people standing there the same as any other night.

Q. What do you mean? A. Well, waiting for the train to come. 30

Q. Right along there? A. Sometimes walking along there, just carelessly.

Q. You were looking out where? A. The front window.

Q. Did you see any person cross the track before you? A. Not that night.

Q. Did you see any people come from the train? A. No; I was not there; I was down the road; I didn't know where they came from. 40

Q. You saw people walking down the platform? A. A few.

Q. How near was the nearest one to this lady? A. Five or six feet—probably more.

Q. And there were several behind? A. That I could not say, because I had found when that woman got in the way of the bumper that I had to  
10 stop.

Q. When you put your emergency brake on a train going three miles an hour, with four cars behind the engine, how quickly should that stop it? A. It ought to stop in the length of the engine, but I had reduced my air by stopping below.

Q. How far would the length of the engine be? A. Probably twenty-five feet, but I had reduced the air stopping below, and every time you make a reduction in the air it has got to have time to get  
20 back.

Q. You didn't have air enough to stop quickly? A. I stopped as quickly as I could.

*By Mr. Corbin.*

Q. Did you put on all the air you had? A. Yes, sir.

Q. Did you stop within twenty-five feet? A. Yes; but I could not stop as quickly. She was not far away from the beam when she stepped in front of the  
30 bumper, and the bumper struck her sideways. It didn't knock her ahead at all.

Q. That is all.

FRANK DEGROAT, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath testifies as follows:

*Direct examination by Mr. Corbin.*

Q. Where do you live? A. Nyack.

40 Q. What is your business? A. Fireman.

Q. For the Erie Railroad? A. Yes, sir.

Q. Were you fireman on Train No. 239 the night of the accident? A. Yes, sir.

Q. How long have you been fireman? A. About eight or nine years.

Q. At the time of the accident where were you? A. In the tank.

Q. What were you doing? A. I don't know what I was doing at that time. 10

Q. Did you see the woman that was struck? A. I saw her afterwards.

Q. Did you observe at all what struck her? A. No, sir.

Q. Did you observe the stopping of the train? A. No, sir.

Q. What did you observe? A. The first that attracted my attention was the sharp blast of the whistle, and then I looked out. 20

Q. What did you see? A. I saw a lady along there with a couple of people.

Q. Were you working in the tender? A. I was doing something there, but I don't know what it was.

Q. Was the bell ringing on your engine? A. Yes.

Q. How was it ringing? A. By air.

Q. At the time the engine came to a stop was the bell still ringing? A. Yes, sir.

Q. At the time the train stopped how far were you from the station? A. I should judge about two car lengths. 30

Q. About how far was the lady as you saw her on the platform? A. She was just a little behind me from where I looked out.

*Cross-examination by Mr. Dixon.*

Q. How quickly after you heard the blast did you look out? A. Right away.

Q. Immediately? A. Yes, sir. 40

Q. And then you saw the lady where? A. I saw her standing on the platform on her feet.

Q. Just a little behind you? A. Just about the middle of the tank —what I call the tank—where the water is. The tank is what holds the water and coal.

Q. You were in that? A. Yes, sir.

Q. She was opposite that? A. She was just about  
10 the middle of that.

WILLIAM BLAUVELT, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath testifies as follows:

*Direct examination by Mr. Corbin.*

Q. Where do you live? A. Nyack, N. Y.

Q. What is your occupation? A. Conductor.

Q. Were you conductor on train No. 239 the time  
20 of this accident? A. Yes, sir.

Q. How many cars had you? A. Four.

Q. Where were you at the time the accident happened? A. I was on the forward platform of the third car.

Q. Do you know whether the whistle had been blown for stops before it arrived there? A. Yes.

Q. Whereabouts? A. Crossing whistle at the crossing below and the station whistle.

Q. What is the station below? A. Nordhoff.

30 Q. How far is that below Englewood? A. About a mile.

Q. I show you your time table; what do those figures there indicate? A. The distance between stations.

Q. At the time of the accident was the bell ringing on your train? A. Yes.

Q. How does it ring? A. Automatically.

Q. What was the first you knew of anything that was the matter? A. The danger signals and the sud-  
40 den application of the brakes in emergency.

Q. What did you do? A. I got on the side of the car as soon as the train stopped and looked out and looked ahead.

Q. You didn't see the accident itself? A. No, sir.

Q. Did you go up to where the lady was? A. Yes.

Q. What did you see? A. When I first looked out I saw some person lying on the gravel walk.

Q. Where was she lying; how far from the station building? A. I should judge about one hundred feet.

Q. On this map, is it up here where the platform is wide or on the narrow part? A. It was towards the Wells-Fargo express office.

Q. Was it on the broad space? A. The narrow walk.

Q. Did you go up to where she was? A. Yes, sir.

Q. Had she got up at the time that you got there? A. Somebody assisted her to her feet.

Q. When you first looked out and saw her lying on the platform was there anybody about her, or any crowd about her? A. There was somebody assisting her.

Q. How many persons? A. I don't think there was more than one.

Q. Was there any throng or crowd around there to obstruct the platform? A. No, sir; not that I could see at that time.

Q. Did you see train No. 240 going south? A. Yes, sir. 30

Q. Where did you see that? A. The other train passed our engine.

Q. When? A. When we came into the depot, just before we stopped.

Q. At the time that the brakes were suddenly applied, where was train 240? A. That is the time I

Q. The train was entirely away from the front of the station at that time? A. Yes, sir.

*Cross-examination by Mr. Dixon.*

Q. When you heard the blast and felt the emergency brake put on, you looked out which side? A. The right hand side.

Q. Immediately did you? A. Yes, sir.

Q. How could you see whether the last car of the other train was just past your engine on the left hand side? A. Because there was nothing to obstruct my view.

Q. There was a car ahead of you? A. Yes, sir.

Q. Could you see through that? A. Across that—before we stopped there.

Q. Whose duty is it to ring the bell—the engineers or the fireman's? A. The engineer has the starting of the bell; it is on his side, I believe.

Q. You are in charge of the train, are you not; whose duty is it to ring the bell? A. By the position of the apparatus, I think it is the engineer's duty; it is on his side.

Q. Who does it, as a matter of fact? A. I could not answer that.

Q. Don't you know who usually controls the bell? A. I was not on the engine.

Q. Don't you know? A. The engineer has it on his side.

Q. I ask you if you know who usually controls it? A. The engineer.

Q. He starts and stops it? A. Yes, sir.

Q. Does he do it from his seat, or does he have to get down and take his hand from the lever to do it? A. I could not answer that.

Q. Is it not a fact that the fireman is the man that controls the bell? A. No, sir.

Q. Does he have to get down from his seat to do it? A. I think he could operate it from either position.

Q. You think he can? A. Yes, sir.

Q. That is all.

JOHN PARSELL, a witness already sworn on the part of the defendant, recalled, and testifies as follows:

*Direct examination by Mr. Corbin.*

Q. On this engine that you had, when the bell is rung by air, where is the apparatus that rings the bell? A. Alongside me there is a little valve; on the side of the boiler. 10

Q. Do you have to leave your place to ring the bell? A. No, sir; I do not.

Q. How far away is it from you? A. Close to me; it is on the boiler and I sit against the boiler.

Q. What have you to do to start the bell to ring? A. Put my hand over and open a little blow valve and the air passes through.

Q. To shut it off what do you do? A. Turn it the other way. 20

*Cross-examination by Mr. Dixon.*

Q. Are you required to ring a bell as you leave a station? A. Always.

Q. As the train is about to move on leaving a station? A. Yes, sir.

Q. The same bell that is rung at other times? A. Yes, sir; there is no other bell on the engine.

Q. As a matter of fact, does not the fireman often ring the bell? A. In leaving a station sometimes he 30 does.

Q. And in approaching stations, too? A. No.

Q. That is all.

WILLIAM MEYERS, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath testifies as follows:

*Direct examination by Mr. Corbin.*

Q. Where do you live? A. Nyack. 40

Q. What is your business? A. Baggage-master on the Northern Railroad.

Q. Were you baggage-master on this train? A. Yes.

Q. What car was it? A. Second car from the engine.

Q. Did you see the woman struck? A. No, sir; I  
10 did not.

Q. What first called your attention to the occurrence? A. The sharp blast of the whistle.

Q. Did you notice the brakes being put on? A. Yes, I did.

Q. Did the train stop? A. Yes, sir.

Q. Did you look out after the woman was struck? A. I certainly did.

Q. What did you see? A. I seen the woman lying on the ground—on the platform.

Q. How far from the station building did the train  
20 stop? A. I should judge about half way from the Wells-Fargo depot to the station.

Q. Did you go out of the car? A. I did not.

Q. Was the bell rung on your engine? A. Yes, sir.

Q. Did you hear it? A. I certainly did.

Q. Did you notice anything about Train 240? A. It was passing the baggage car I was in.

Q. At what time? A. When the train stopped.

Q. At the time of this sharp blast of the whistle?  
30 A. She had gone by the baggage compartment before the train had stopped.

Q. When you first heard the whistle? A. She had gone by.

*Cross-examination by Mr. Dixon.*

Q. Were you sitting down? A. No.

Q. Standing up? A. Yes.

Q. Near the window? A. No, sir.

Q. By the door? A. No, sir.  
40

Q. Where were you? A. At the desk getting the Wells-Fargo way bills ready to put off at Englewood.

Q. You were doing that work at the time? A. Yes, sir.

Q. How far from the right hand side of the car was that desk? A. I should judge about from here to that lamp (indicating three or four feet.)

Q. Where did you go to look out? A. The right 10 hand side—the side door.

Q. That was open, was it? A. Yes, sir.

Q. Did you go as soon as you heard the whistle blast? A. I certainly did.

Q. How long did it take you to go? A. I didn't time myself.

Q. You went immediately? A. Rightaway.

Q. You saw the woman lying there on the platform? A. Yes, sir.

Q. Your attention was directed to the woman? A. 20 I saw her on the platform—on the gravel, or whatever it is called.

Q. That is all.

CHARLES F. HANDY, a witness produced on the part of the defendant, being duly sworn according to law, on his oath testifies as follows:

*Direct examination by Mr. Corbin.*

Q. Where do you live? A. Nyack. 30

Q. What is your occupation? A. Engineer.

Q. Locomotive engineer? A. Yes.

Q. How long have you been in that occupation?

A. Four years.

Q. Were you fireman before that? A. Yes, sir.

Q. How long? A. Seven years.

Q. Were you the engineer on train No. 240 on the night of the accident? A. Yes, sir.

Q. You had the train going south to Jersey City?

A. Yes. 40

Q. Where had that train started from? A. Cresskill.

*By the Court.*

Q. Do you recollect where your engine passed train 239? A. They were pulling up while I was pulling down to the switch.

Q. Can you tell whereabouts it was you passed?  
10 A. I should judge just by the Wells-Fargo office.

*By Mr. Corbin.*

Q. Both trains were moving? A. He was moving up some.

Q. Were you moving? A. Yes; I was going down to back up to the switch.

Q. Did you go down to the switch? A. Yes.

Q. Did you see the accident yourself? A. No, sir.

20 Q. Do you know anything about it yourself? A. No, sir; nothing more than the fireman said he thought somebody was hurt.

*Cross-examination by Mr. Dixon.*

Q. Was your train late that night? A. No, sir.

Q. On time? A. Yes, sir.

Q. How long had you been standing at the station?  
A. Well, I should judge probably close on a minute while we discharged passengers.

30 Q. Not over a minute you think? A. No, sir.

Q. That is all.

JOHN A. KROPF, a witness produced on the part of the defendant, being duly sworn according to law, on his oath testifies as follows:

*Direct examination by Mr. Corbin.*

Q. Where do you live? A. Nyack.

Q. What is your occupation? A. Fireman.

40 Q. Were you the fireman on Train No. 240, the

night of the accident? A. Yes, sir.

Q. Where were you at the time of the accident?

A. In the cab.

Q. Did you see the accident? A. No, sir.

Q. What is the first you knew of it? A. I heard the blast of the whistle from the train that passed us.

Q. Did you see that train, No. 239, stop? A. Yes, sir.

10

Q. Where were the two engines when they passed each other? A. Somewhere near the express office.

Q. Were they both moving? A. Yes, sir.

*By the Court.*

Q. Whereabouts do you think that train was with reference to your train when you heard the blast of the whistle? A. The engine just passed us.

Q. Do you think you had passed a car? A. No.

20

Q. You heard the blast as the engines were passing each other? A. Just about.

Q. That is all.

NO CROSS-EXAMINATION.

ROBERT MINERLY, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath testifies as follows:

*Direct examination by Mr. Corbin.*

30

Q. Where do you live? A. Nyack.

Q. What is your occupation? A. I am a train man now.

Q. Were you the conductor of Train 240 the night of this accident? A. Yes, sir.

Q. How many cars did you have? A. Two.

Q. Do you remember the accident? A. I don't know anything about the accident at all.

Q. Do you remember passing Train 239? A. Yes, sir.

40

Q. Where did you pass their engine? A. We passed their engine between the Wells-Fargo office and the station.

Q. Were both trains moving? A. They were moving as we passed and I heard their engine give the danger signal and I saw it stop.

10 *By the Court.*

Q. Do you know how many passengers you discharged at Englewood that evening? A. Between fifteen and twenty; that is generally the fact every night.

Q. That is all.

NO CROSS-EXAMINATION.

EDWARD ROBERTSON, a witness produced on the part  
20 of the defendant, being duly sworn according to law,  
on his oath testifies as follows:

*Direct examination by Mr. Corbin.*

Q. Where do you live? A. Nyack, N. J.

Q. What is your occupation? A. Trainman.

Q. Were you trainman on Train 240 on the night of this accident? A. I was.

Q. What was the first you knew about the accident?  
A. The first I knew that anything had happened, or  
30 was about to happen, was several sharp blasts of the  
whistle.

Q. Where was your train then? A. I should judge  
about opposite the Wells-Fargo express office.

Q. Was your train moving? A. Yes, sir.

Q. Was the other train moving? A. When we  
passed it, yes.

Q. At the time you heard the blasts, whereabouts  
was the engine of Train 239 as compared to where  
you were? A. I think it was—(interrupted.)

40 Q. Had you passed the engine? A. I had passed

the engine; I was stationed at a point between two cars.

Q. That is all.

NO CROSS-EXAMINATION.

SIMON MARSHALL, a witness produced on the part of the defendant, being duly sworn according to law, on his oath testifies as follows: 10

*Direct examination by Mr. Corbin.*

Q. Where do you live? A. Tenafly.

Q. What is your occupation? A. Plumber.

Q. Were you a passenger on this Train 240 the night of the accident? A. Yes, sir.

Q. Where did you get on that train? A. Tenafly.

Q. Where did you get off the train? A. Englewood. 20

Q. Were you with anybody? A. Yes, sir,

Q. Whom with? A. John McNamara.

Q. A witness who testified yesterday? A. Yes, sir; and there were other men with us.

Q. Who were they? A. John McClay and this old newspaper reporter, Wilson.

Q. Where did you go? A. On the other side of the platform.

Q. Did you see this lady when she was struck? A. Yes. 30

Q. How far were you from her? A. Twenty-five feet.

Q. Were you walking towards her? A. Yes, sir.

Q. Was anybody behind her? A. No, sir.

Q. Tell us what happened? A. I was walking along the platform and she was walking toward me about in the centre of the platform, and as she was walking she gradually walked over as if she was going to cross the track; I holloed to her three times. 40

Q. Did she pay any attention to you? A. She paid attention the last time and as she stopped the bumper hit her.

Q. Was there any obstruction around her at the time? A. No, sir.

Q. Did you observe whether the bell was ringing? A. Yes.

10 Q. Where was your train? A. Down perhaps at the switch at Wells-Fargo office.

Q. It had pulled out? A. Yes, sir.

Q. How far did the train move after striking Mrs. Dotson? A. About ten feet, I should judge; it stopped very quickly.

Q. How far was Mrs. Dotson from the station? A. About one hundred feet.

Q. Did you go down to where she was? A. Yes, sir.

20 Q. Who was there when you got to her? A. There was a man picking her up.

Q. Did you hear the whistle? A. No, sir.

Q. You don't remember that? A. No, sir.

*Cross-examination by Mr. Dixon.*

Q. Was there anybody walking ahead of you between you and her? A. There was a man.

Q. Who was it? A. I think it was John Mc Clay, the fellow that came off the train with me.

30 Q. He has been a witness here? A. Yes, sir.

Q. How far away from you was he? A. I should judge about ten feet ahead of me.

Q. That is all.

Mr. Corbin offers in evidence map and time table.

Defendant Rests.

REBUTTAL.

MARY DOTSON, the plaintiff, being recalled, testifies as follows:

*Direct examination by Mr. Dixon.*

Q. Dr. Curie stated that you told him after the accident that some man jostled you against the engine? A. No, sir; I did not. 10

Q. What did you tell him? A. I said that I was coming up on the platform towards the depot to get my ticket to go to Highwood, when the down train had stopped at the depot, and the passengers from the down train carried me towards the track.

Q. Was your mother there at the time you were talking to the doctor? A. Yes, sir.

NO CROSS-EXAMINATION. 20

MARY SEARING, a witness already sworn on the part of the plaintiff, recalled, and testifies as follows:

*Direct examination by Mr. Dixon.*

Q. Were you present when Dr. Curie asked your daughter this question as to how she was injured? A. Yes.

Q. Did she tell him that a man pushed her against the engine? A. No, sir. 30

Q. What did she tell him? A. She told him that she was going to the depot to get her ticket, as she has explained. She used the word "crowd," and she told Dr. Curie that in endeavoring to get out of the way, she was carried to one side; and he put the words in her mouth and said: "A man pushed you; who was the man? I suppose you couldn't find the man now."

Q. That is all.

NO CROSS-EXAMINATION. 40

10 Counsel for the defendant moves that a verdict be directed for the defendant, on the grounds, first, that negligence by the defendant has not been shown; and on the ground, secondly, that negligence by the plaintiff has been shown in her method of approaching the station, and in her conduct as described by herself and by the clear evidence of the case.

Motion denied.

Counsel for the defendant thereupon prays an exception to the refusal of the Court to direct a verdict for the defendant, which is allowed, and the same is sealed accordingly.

JONATHAN DIXON, [L. S.]

J. S. C.

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## CHARGE OF THE COURT.

GENTLEMEN OF THE JURY:

In suits of this character there are two prominent rules of law that you are to bear in mind during your consideration of the case. One of these rules is that in order to entitle the plaintiffs to your verdict, the evidence must be such as to satisfy you that the accident was the result of some negligence on the part of defendant or of the defendant's agents; and the other rule of law is, that even if the accident did result from some negligence on the part of the defendant, or of the defendant's agents, yet if the accident was contributed to by some negligence on the part of the plaintiff, the plaintiff cannot recover.

Now, by negligence in both of these legal rules is meant a lack of reasonable care—a lack of such care as a reasonably prudent person would be likely to exercise under the circumstances of the case.

Now, to come down to the specific facts of this case in order that you may apply these two rules. There are a few prominent features about it to which I will call your attention, and the first observation I desire to make is this: If the evidence satisfies you that at the time Mrs. Dotson was struck she was upon the planking alongside of this railroad, then the verdict should be for the defendant, because it is evident, and must have been evident, to every adult person that that planking was not intended for persons to walk upon, and even though she were jostled upon that planking, as Dr. Currie says she told him she was, (although there is not in the case any substantial evidence of that fact) and then were struck before she could recover from that jostling, there ought to be a verdict for the defendant, because her getting upon the planking was too sudden to avoid a collision, and it would indicate that the engineer was not to blame, nor would the company itself be to blame for

the accident. So, I say, that if at the time she was struck she was upon the planking that lay along the rail, then your verdict should be for the defendant.

Now, the second observation that I desire to make and that will present a question for the jury is that if she were not upon the planking but were upon the gravel walk or platform, as it is called, then the question for you to decide would be whether or not she was guilty of negligence in going so near as that to the rail under the circumstances of the case. The whole course was open to her view and she knew that a train was about expected upon that track; for she was going to the ticket office to get a ticket to take that train; she knew it was about expected. I don't mean to say that she knew it was expected at that moment, but she knew it was about due there. Now, under those circumstances, did she exercise reasonable prudence in going so near the edge of the gravel platform as to be struck by the bumper. It does not appear that she knew that the bumper would project beyond the platform, and there is no rule of law that required her to know the fact. It seems it did project beyond the edge of the gravel platform; but taking the facts that she knew or ought to have known do you say that the evidence shows that she didn't exercise reasonable prudence in putting herself in the position in which she was? If you say that, then your verdict must be for the defendant.

But if you find both of these things in favor of the plaintiff that is to say, if you find that she was not upon the planking, and if you find that the evidence does not satisfy you that she was guilty of imprudence or negligence in being where she was on the gravel platform, then you come to this question: Was it negligence in the company itself to have that gravel platform approach so near to the rail that passengers would be likely to be endangered even if they exercised reasonable care in the use of the platform, and

did this accident spring out of that kind of negligence on the part of the company? That is the first question with regard to the negligence of the defendant. Does the evidence satisfy you that the company failed to take proper care—and that means a high degree of care—for the safety of the persons who came there as passengers, when they constructed that platform so close to the rails that there would be danger that persons in the prudent use of the platform would be struck by any part of the engine? If you answer that question in the affirmative; if the evidence shows that that construction was negligent, and you have answered the other questions in favor of the plaintiffs; then the verdict ought to be for the plaintiffs; for in such a case it would be made out that the accident was the result of the negligence of the company itself, and was not contributed to by any negligence on the part of Mrs. Dotson.

Now, there is another question in the case, and that is this: If you conclude that there was no negligence on the part of Mrs. Dotson and that there was no negligence on the part of the company in the construction of its platform, then does the evidence satisfy you that there was negligence on the part of the engineer? The engineer was approaching a platform on which passengers were expected to be waiting to take his train; it was his duty to exercise reasonable care to look out so as to see where he was going. If he saw that he was likely to strike a person upon the platform—when I say platform I mean not the planking but the gravel walk—it was his duty to do what he could to avoid such a misfortune. He was bound to use the appliances that he had to give warning that he was coming, and to stop his train before a point of collision was reached. Does the evidence satisfy you that there was negligence on the part of the engineer in that respect? It is conceded that his train was moving slowly. The great weight of the

testimony seems to be that he applied his emergency brake. His own testimony is that no danger of collision was visible to him until his engine was within three or four feet of Mrs. Dotson. The contention on the part of the plaintiff is that it was not visible to him because he was not keeping the proper lookout. His own testimony is that he was looking  
10 ahead, and that he saw her approaching towards his train but did not suppose that she would come within reach of his bumper until she was within only three or four feet, and then, of course, it was too late unless she stepped out of the way. Does the evidence satisfy you that he failed to do his duty in any of these respects? If it does, and the accident is attributed to his negligence, then unless there is contributory negligence on the part of Mrs. Dotson, there should be a  
20 verdict for the plaintiff. I may say this also, with reference to these cases of negligence, that you never presume negligence without evidence, and the party who charges the other with negligence is called upon to prove it—not to prove it beyond a reasonable doubt, but to prove it by a fair preponderance of evidence, so that the jury, looking at the whole case, may say that there is more evidence tending to prove negligence in that individual than there is to the contrary, on weighing the evidence so that you must conclude  
30 that the greater weight of evidence is in favor of the proposition of negligence before you find any negligence to exist. You must find a greater preponderance of evidence in favor of negligence before you find negligence to exist in either the plaintiff or the defendant.

The rules, then, are these:

The evidence, in order to warrant a verdict for the plaintiff, must satisfy you that there was negligence, that is, a lack of proper care, on the part of the defendant, or of the defendant's agents, and that the  
40 accident sprang out of that negligence.

If that be shown, then the plaintiffs will be entitled to your verdict, unless the evidence also shows that some negligence on the part of Mrs. Dotson helped to cause the accident; if that appears, then your verdict will be for the defendant.

If your verdict be for the defendant, you have only to say so, but if you find for the plaintiff, then you have to proceed to assess the damages of the plaintiff, 10 and there will be two verdicts in that case. There will be a verdict for the wife Mrs. Dotson and one for the husband. The sum that you are to award to Mrs. Dotson, in case you find in her favor, is to be such as will compensate her for the pain that she has endured and is likely to endure in your judgment, springing out of that collision, the discomfort, the inability to enjoy life—her life as a wife and mother—her life in the relations implied by that; whatever will compensate her for the privation of the privilege of enjoying 20 life, that you are to give to her.

Then, with regard to the husband, you are to compensate him for this fact—that his wife is not so good a wife as she would have been if the accident had not happened; she is not so good in his household; her society to him as a wife is not so good as it was before; and he is to be compensated for all that. What his compensation shall be is, of course, a matter about which you must exercise your own good sense. The law cannot indicate to you any more clearly than I 30 have how it shall be measured; it is committed to your sound judgment, your common aggregate judgment—not the judgment of one particular man, but the aggregate judgment of the twelve men, and you are to exercise about that the best skill and prudence that you are possessed of.

## DEFENDANT'S EXCEPTIONS.

10 Counsel for the defendant prays an exception to so much of the charge of the Court touching the platform of the station as left it to the jury to say whether the sand part of it or the planking part was the proper place for the plaintiff to walk; which is allowed, and the same is sealed accordingly.

JONATHAN DIXON [L. s.]

J. S. C.

20 Counsel for the defendant prays an exception to so much of the charge of the Court as distinguished between those two parts of the platform on the question of negligence; which is allowed, and the same is sealed accordingly,

JONATHAN DIXON [L. s.]

J. S. C.

30 Counsel for the defendant prays an exception to that part of the charge of the Court which was to the effect that it was for the jury to say whether the construction of the platform with the gravel or other material so near to the rail as to allow a person walking upon it to be hit, was proper construction; which is allowed, and the same is sealed accordingly.

JONATHAN DIXON [L. s.]

J. S. C.

Counsel for the defendant prays an exception to so much of the charge of the Court as intimated that the evidence raises a question for the jury of improper construction of platform; which is allowed, and the same is sealed accordingly.

JONATHAN DIXON [L. s.]

J. S. C.

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Counsel for the defendant also prays an exception to so much of the charge of the Court as was to the effect that the plank- ing portion of the platform next to the rail and the making of the rest of it with stone was any indication to passengers of the proper place to walk, where the projections on the engines and cars did not extend; which is allowed, and the same is sealed accordingly.

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JONATHAN DIXON [L. s.]

J. S. C.

Counsel for the defendant also prays an exception to so much of the charge of the Court as was to the effect that there was any evidence for the consideration of the jury that the engineer did not keep the proper lookout; which was allowed, and the same is sealed accordingly.

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JONATHAN DIXON [L. s.]

J. S. C.

THE COURT—It has occurred to me whether it would not be well to ask the jury, in case they find their verdict for the plaintiffs, to say whether they base it upon the negligence of the company in the construction of the platform or on the negligence of the engineer.

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The foregoing exceptions are sealed subject to the language of the charge as set forth above, and also subject to the fact that the jury based their verdicts for the plaintiffs on their finding of negligence on the part of the Erie Railroad Company with reference to the construction of the platform, and not upon any finding of negligence on the part of the engineer.

JONATHAN DIXON, [SEAL]

J. S. C.

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1875  
The following is a list of the  
names of the persons who have  
been admitted to the  
membership of the  
Society since the  
last meeting of the  
Executive Committee  
on the 1st of January  
1875.

MR. CORBIN—Yes; it would be well if the Court would do that.

(The jury is recalled.)

10 THE COURT—Gentlemen, I have called you back into the Court room for the purpose of asking you this: If you find your verdict for the plaintiffs, of course, it may be either because of the negligence of the company in the construction of the platform, or because of the negligence of the engineer in the management of his engine; in case your verdict is for the plaintiffs, will you be kind enough to say upon whose negligence you find—whether upon the negligence of the company, or the negligence of the engineer, or the negligence of both.

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(The jury return a verdict for the plaintiffs and assess the damages of Mary T. Dotson at \$1,250, and of Joseph Dotson at \$500; and they find the negligence on the part of the railroad company with reference to the construction of the platform.)

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## ASSIGNMENT OF ERROR.

ASSIGNMENT OF ERROR OF ERIE RAILROAD COMPANY,

*Plaintiff in Error.*

Afterwards, that is to say, on the seventh day of November, nineteen hundred and two, in the Court of Errors and Appeals, in the last resort in all causes of the State of New Jersey, comes the said Erie Railroad Company, by Corbin & Corbin, its attorneys, and says:

That in the record and proceedings aforesaid, and also in the matters recited in the said Bill of Exceptions, and also in the giving of verdict and judgment aforesaid, there is manifest error, to wit:

1. Because at the trial of the cause at the Bergen Circuit of the New Jersey Supreme Court, the Justice who presided at the trial refused to non-suit the said plaintiffs, when thereunto moved, in behalf of the defendant, Erie Railroad Company; whereas, by the law of the land, a non-suit should have been ordered for one or more of the following reasons alleged in behalf of said motion, to wit:

1. Because no negligence on the part of said defendant in the operation of its railroad was shown.
2. Because the evidence showed that the plaintiff, Mary T. Dotson, was guilty of contributory negligence in her manner of approaching the station and walking along the railroad track, when she knew that a train was due.

2. Because, at the trial of the cause at the Bergen Circuit of the New Jersey Supreme Court, the Justice who presided at the trial refused to direct a verdict for the defendant, the said Erie Railroad Company,

when thereunto moved, whereas, by the law of the land, the said Justice should have directed such verdict for one or more of the following reasons alleged in behalf of said motion, to wit:

1. Because no negligence had been shown on the part of the said defendant, Erie Railroad Company.
- 10 2. Because negligence on the part of the plaintiff, Mary T. Dotson, was shown by the clear evidence of the case.
3. Because, in charging the jury at said trial, the Justice who tried the cause left it to the jury to say what part of the planking of the platform of the defendant was the proper place for the plaintiff to walk. The particular parts of said charge being in the words following:

20 "Now, the second observation that I desire to  
 " make and that will present a question for  
 " the jury is that if she were not upon the  
 " planking but were upon the gravel walk  
 " or platform, as it is called, then the  
 " question for you to decide would be  
 " wheter or not she was guilty of negligence  
 " in going so near as that to the rail under  
 " the circumstances of the case. The  
 " whole course was open to her view and  
 30 " she knew that a train was about expected  
 " upon that track; for she was going to the  
 " ticket office to get a ticket to take that  
 " train; she knew it was about expected.  
 " I don't mean to say that she knew it was  
 " expected at that moment, but he knew  
 " it was about due there. Now, under  
 " those circumstances, did she exercise  
 " reasonable prudence in going so near the  
 " edge of the gravel platform as to be  
 40 " struck by the bumper. It does not

“appear that she knew that the bumper  
“ would project beyond the platform, and  
“ there is no rule of law that required her  
“ to know that fact. It seems it did pro-  
“ ject beyond the edge of the gravel plat-  
“ form; but taking the facts that she knew,  
“ or ought to have known, do you say that  
“ the evidence shows that she didn’t ex- 10  
“ ercise reasonable prudence in putting  
“ herself in the position in which she was?  
“ If you say that, then your verdict must  
“ be for the defendant.”

4. Because in charging the jury at said trial the Justice who tried the cause left to the jury the question whether the company was negligent in constructing its gravel platform so near the rail that passengers would be likely to be endangered even if they exercised reasonable care in the use of the platform, the particular part of the charge being in the words following: 20

“ If you find that the evidence does not satisfy  
“ you that she was guilty of imprudence  
“ or negligence in being where she was on  
“ the gravel platform, then you come to  
“ this question: Was it negligence in the  
“ company itself to have that gravel plat-  
“ form approach so near to the rail that 30  
“ passengers would be likely to be endan-  
“ gered, even if they exercised reasonable  
“ care in the use of the platform, and  
“ did this accident spring out of that  
“ kind of negligence on the part of the  
“ company? That is the first question  
“ with regard to the negligence of the de-  
“ fendant. Does the evidence satisfy you  
“ that the company failed to take proper  
“ care—and that means a high degree of 40

10 “ care —for the safety of the persons who  
 “ came as passengers, when they con-  
 “ structed that platform so close to the  
 “ rails that there would be danger that  
 “ persons in the prudent use of the plat-  
 “ form would be struck by any part of the  
 “ engine? If you answer that question in  
 “ the affirmative; if the evidence shows  
 “ that that construction was negligent,  
 “ and you have answered the other ques-  
 “ tions in favor of the plaintiffs, then the  
 “ verdict ought to be for the plaintiffs;  
 “ for, in such a case, it would be made  
 “ out that the accident was the result of  
 “ the negligence of the company itself,  
 “ and was not contributed to by any neg-  
 “ ligence on the part of Mrs. Dotson.”

20 5. Because in charging the jury at the trial the said  
 Justice, after calling the attention of the jury to the  
 evidence which showed that the defendant's station  
 platform was constructed of planks on a level with  
 the rail for a width of eighteen inches outside of the  
 rail and with crushed stone on the same level for the  
 remainder of its width, in substance submitted it to  
 the jury to find whether such construction did not  
 constitute a notice by the defendant to passengers  
 30 that they might safely walk on any part of the stone  
 portion of the platform while trains were approaching  
 without giving heed thereto.

6. Because in charging the jury at said trial the  
 Justice who tried the cause submitted to the jury  
 the question whether or not the platform on which  
 the accident happened was properly constructed, al-  
 though there was no evidence of improper construc-  
 tion and defendant therefore had no opportunity to  
 meet that question by evidence.

40 7. Because the verdict of the jury in said cause

was contrary to the charge of the Justice who presided at the trial thereof.

8. Because the verdict in said cause was contrary to law.

9. Because the judgment in said cause was in favor of the plaintiffs Mary T. Dotson and Joseph Dotson and against the Erie Railroad Company; whereas by law it should have been given against the said Mary T. Dotson and Joseph Dotson in favor of the Erie Railroad Company. 10

Wherefore, the said plaintiff in error, Erie Railroad Company, prays that the judgment aforesaid by reason of the errors aforesaid may be reversed and for nothing holden, and that it may be restored to all things which it has lost by reason of such judgment.

CORBIN & CORBIN,

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Attorneys of Plaintiff in Error.

Dated October 31st, 1902.

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# ENGLEWOOD N. J.

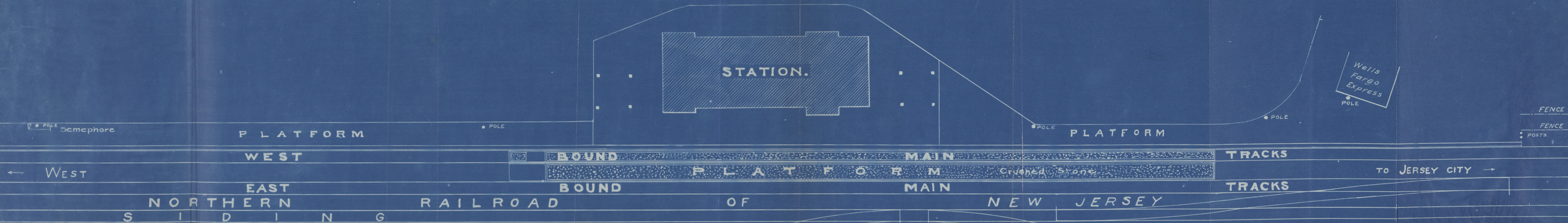
NEW YORK DIVISION

ERIE R. R.

AUGUST 1902.

SCALE 1"=20'

*Robert Hoppen Jr.*





# Northern Railroad of New Jersey

## PASSENGER TIME TABLE

*In effect September, 1901.*

WESTWARD — Train 239.	EASTWARD — Train 240.
Jersey City, . . . . . 6.59 P. M.	8.09 P. M.
Nordhoff, . . . . . 7.32	7.36
Englewood, . . . . . 7.36	7.33
Highwood, . . . . . 7.39	7.30
Tenafly, . . . . . 7.42	7.27
Creskill, . . . . . 7.45	7.24





