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New Jersey Court of Errors & Appeals

HUDSON COUNTY CIRCUIT COURT.

GEORGE ROGERS,

Plaintiff,

vs.

NEW YORK CENTRAL RAILROAD
COMPANY, a corporation,

Defendant.

*Action at Law.
Notice and
Grounds of
Appeal.*

10

NOTICE AND GROUNDS OF APPEAL.

To Wall, Haight, Carey & Hartpence, Esqs., At-
torneys for Defendant:

20

Sirs:

PLEASE TAKE NOTICE, that the plaintiff
appeals to the New Jersey Court of Errors and
Appeals from the whole of the judgment entered
in this cause, on the following grounds:

Because the trial court directed a verdict against
the plaintiff and in favor of the defendant, where-
as the Court should have submitted the issues in
the said cause to the jury for decision.

30

Dated, May 7th, 1929.

Yours, &c.,

ALEXANDER SIMPSON,
Attorney for Plaintiff.

40

Summons.

Service of the within Notice and Grounds of Appeal is hereby acknowledged this 7th day of May, 1929.

10 WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Defendant.

Filed Clerk's Office

May 8, 1929.

Hudson County, N. J.

John J. McGovern,

Clerk.

SUMMONS.

20 The State of New Jersey to New York Central
(Seal.) Railroad Company, a corporation:
YOU ARE SUMMONED to answer the annexed complaint of George Rogers in an action at law in the Circuit Court of the County of Hudson. And take notice, that unless you file your answer to said complaint with the Clerk of the said Court within 20 days after the service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment
30 may be entered against you.

Witness, Frank L. Cleary, Judge of the Hudson County Circuit Court, at Jersey City, this 19th day of April, 1927.

JOHN J. McGOVERN,
Clerk.

ALEX. SIMPSON,
Attorney.

40

COMPLAINT.

HUDSON COUNTY CIRCUIT COURT.

GEORGE ROGERS, <div style="text-align: right;"><i>Plaintiff,</i></div> <div style="text-align: center;">vs.</div> NEW YORK CENTRAL RAILROAD COMPANY, a corporation, <div style="text-align: right;"><i>Defendant.</i></div>	}	<i>Action at Law.</i> 10 <i>Complaint.</i>
--	---	---

Plaintiff residing at No. 301 Pearsall avenue, in the City of Jersey City, in the County of Hudson, State of New Jersey, says that:

1. Defendant is now and was at all times hereinafter mentioned, a corporation of the State of New York, doing business in the State of New Jersey. 20

2. Defendant is now and was at all times hereinafter mentioned, a common carrier by railroad, engaged in the operation of a steam railroad between the City of New York and the City of Albany, in the State of New York.

3. Plaintiff, on the 23rd day of January, 1927, was a passenger on a train of the defendant, at the Grand Central Depot, in the City of New York. 30

4. Plaintiff, while a passenger on said train of the defendant, at the time and place aforesaid, was injured through the negligence of the defendant.

Complaint.

5. The negligence of the defendant consisted in this: Defendant failed to use reasonable care to have the said cars, passageways, platforms and connecting plates, with the appurtenances, in proper and safe condition for the use of passengers, but on the contrary, the platform, passage-
10 way or connecting plate between said cars was in such defective and unsafe condition, so insecurely fastened and out of repair, that while plaintiff was going from one car into another, part of said platform or connecting plate gave way and plaintiff was caused to fall between said cars and was injured.

6. Plaintiff was at all times in the exercise of
20 due care for his safety.

7. By reason of said negligence, plaintiff was injured in and about the right side of his face, left elbow permanently injured, left hand injured, left leg injured and he was otherwise injured about his body and sustained severe nervous shock.

8. By reason of said injuries, plaintiff has been
30 compelled to expend money for medical attendance and has lost earnings he otherwise would have made.

Plaintiff demands \$2,999.99.

ALEX. SIMPSON,
Attorney for Plaintiff.

Answer.

I hereby deputize Eugene McDermott to serve the within writ. Witness my hand and seal this 20th day of April, 1927.

JOHN J. COPPINGER, Sheriff.
By Thomas J. Prior, Under Sheriff.

10

Served within summons and complaint April 21, 1927, on the defendant New York Central Railroad Company, (A Corporation) by delivering a true copy thereof to C. Brusle, agent of the said defendant Company.

JOHN J. COPPINGER, Sheriff.
By Eugene McDermott, S. D. S.

Filed Clerk's Office
April 26, 1927.

20

Hudson County, N. J.
John J. McGovern,
Clerk.

ANSWER.

HUDSON COUNTY CIRCUIT COURT

GEORGE ROGERS,

Plaintiff,

v.

NEW YORK CENTRAL RAILROAD
COMPANY, a corporation,

Defendant.

30

Action at Law.
Answer.

The defendant, The New York Central Railroad Company, a corporation of the State of New

40

Answer.

York, having its principal office and place of business in the City of New York, answering the complaint herein, says that:

1. It admits paragraph 1.
- 10 2. It admits paragraph 2.
3. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 3.
4. It denies paragraph 4.
5. It denies paragraph 5.
- 20 6. It denies paragraph 6.
7. It denies paragraph 7.
8. It denies paragraph 8.

SECOND DEFENSE.

The injuries sustained by the plaintiff, if any, arose out of and were due to his negligent manner of entering defendant's car at the time and
 30 place mentioned in the complaint.

WALL, HAIGHT, CAREY & HARTPENCE,
 Defendant's Attorneys.

Filed Clerk's Office

May 10, 1927,

Hudson County, N. J.

John J. McGovern,

Clerk.

NOTICE OF TRIAL.

HUDSON COUNTY CIRCUIT COURT

 GEORGE ROGERS,

Plaintiff,

vs.

 NEW YORK CENTRAL RAILROAD
 COMPANY, a corporation,

Defendant.

Action at Law. 10
Notice of Trial.

SIR:

PLEASE TO TAKE NOTICE, that the trial of the issue joined in this cause will be moved before said Court in the presence of such Judge or Justice thereof, as shall then be holding said Court, on the third Tuesday of September, A. D. 1927, at the Court House, in Jersey City in and for the County of Hudson at ten o'clock in the forenoon, or as soon thereafter as the said Court can attend to the same.

20

Dated, June 23 A. D. 1927.

Your obedient servant,

 ALEX SIMPSON,
 Attorney for Plaintiff.

30

To

 Wall, Haight, Carey & Hartpence Esqs.,
 Attorneys of Defendant.

 40

Rule for Judgment.

Service of the within Notice of Trial is hereby
acknowledged this 9th day of July, A. D. 1927.

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Defendant.

10 Filed Clerk's Office
Sept. 29, 1927,
Hudson County, N. J.
John J. McGovern,
Clerk.

RULE FOR JUDGMENT.

HUDSON COUNTY CIRCUIT COURT.

20

GEORGE ROGERS,

Plaintiff,

vs.

NEW YORK CENTRAL RAILROAD
COMPANY, a corporation,

Defendant.

*Action at Law.
Rule for
Judgment.*

30

This cause was tried before Honorable A. Day-
ton Oliphant and a jury on May 2nd, 1929.

The cause having been heard, and both parties
having rested; and counsel for the defendant hav-
ing moved for the direction of a verdict in favor
of the defendant; and the Court having heard and
considered the arguments of counsel on said mo-
tion, did direct the jury to return its verdict in
favor of the defendant and against the plaintiff.

40

Judgment.

Whereupon it is Adjudged that judgment final be and it is hereby entered in favor of the defendant and against the plaintiff with costs to be taxed.

A. DAYTON OLIPHANT,
Judge. 10

On motion of Wall, Haight, Carey & Hartpence, attorneys for defendant, Rule actually entered May 7, 1929.

JUDGMENT.

HUDSON COUNTY CIRCUIT COURT 20

GEORGE ROGERS, ad vs. NEW YORK CENTRAL RAILROAD COMPANY, a corporation,	Plaintiff, Defendant.	Judgment entered May 7, 1929. Damages Costs \$51.18 Total \$51.18 Wall, Haight, Carey & Hartpence, Attorneys for Defendant.	30
--	--------------------------------------	---	----

Judgment on verdict in the above entitled cause was entered in this Court on the 7th day of May in the year of our Lord One Thousand Nine Hundred and Twenty-nine in favor of the defendant New York Central Railroad Company, a corporation and against the plaintiff, George Rogers, 40

Testimony.

in a plea of Action at Law for the sum of fifty-one dollars eighteen cents, costs of suit;

Judgment entered and signed this 7th day of May, 1929.

10

.....
Clerk.

TESTIMONY.

HUDSON COUNTY CIRCUIT COURT.

20

GEORGE ROGERS,

Plaintiff,

vs.

NEW YORK CENTRAL RAILROAD
COMPANY, a corporation,

Defendant.

Before: Hon. A. Dayton Oliphant, Judge, and
a jury.

Jersey City, N. J., May 2, 1929.

30 Appearances:

Alexander Simpson, Esq., (By John J. Cuneo),
for the plaintiff.

Wall, Haight, Carey & Hartpence, Esqs., (By
Edward J. O'Mara), for the defendant.

A jury empanelled, accepted and sworn.

Mr. Cuneo opens to the jury.

Mr. O'Mara: If the Court please, I assume

40

G. Rogers, for Pltf., Direct.

counsel will want to amend his complaint if he intends to proceed on the facts he opens to the jury on.

The Court: I should think so. The complaint says, "while plaintiff was going from one car into another."

10

Mr. Cuneo: I move then, your Honor, to have the complaint amended to read, "while the plaintiff was going from the platform into the car."

Mr. O'Mara: I have no objection to the amendment.

The Court: Very well, the complaint will be so amended by consent of counsel.

Mr. O'Mara opens to the jury.

GEORGE ROGERS, the plaintiff, sworn:

20

Direct Examination by Mr. Cuneo:

Q. Where do you reside, Mr. Rogers? A. 301 Pearsall avenue, Jersey City.

Q. Can you tell the court and jury what happened on January 23rd, 1927? A. I was working up in Albany at the corner of State and Eagle street, I believe. I am not sure whether it was Eagle, but I know it was State street,—putting up a hotel there, and it was about three hundred feet away from the capitol; and on Sunday morning I was coming home on an excursion train with the intention of seeing my family, and we left Albany, I believe at about 8:05 or 8:10, I am not sure which, and after being home all day with the family I went up on the same excursion train to Albany; and one of my friends was with me. He

30

40

G. Rogers, for Pltf., Direct.

stepped on the car ahead of me. As he was walking in I stepped on the trap door and the trap door went down and I went down with it.

Q. That was about what time, Mr. Rogers?

A. Between 8 and 8:15.

10 Q. In the evening? A. Yes.

Q. On January 23, 1927? A. Yes.

Q. And where was it? A. At the Grand Central Depot.

Q. As I understand it, you purchased your excursion ticket up at Albany, and had your return ticket to come back up there again? A. Correct.

Q. You say you stepped on the trap door, it is an iron sheet, isn't it? A. Yes.

Q. It went down? A. Yes.

20 Q. Where were you thrown? A. I was thrown on the steps, in between the platform.

Q. What injuries did you receive? A. I bruised my left shinbone and my left elbow.

Q. After you were injured where did you go?

A. The fellows that were with me took me inside the car, and there was one guard came around and I asked him for some iodine, and he said he didn't have any, that he would have to see the conductor, and one of the lads went out trying to find him, and I don't know whether they found him or not, but there was another lad came down through the car with a bandage, and I said, "Have you got any iodine?" and he said "No," and I had a handkerchief, and I said "Well, this will answer the same purpose as that bandage."

30

Q. When you proceeded to get in the vestibule of that train did you look where you were going?

A. Beg pardon?

40

G. Rogers, for Pltf., Direct.

Q. When you proceeded to get in the vestibule of that train did you look where you were going?

A. Positively. Well, the platform is level with the trapdoor of the train, something like this desk. This would be the trapdoor over here, and this would be the platform. I would walk right from the platform into the car. 10

Q. And there was nothing there to attract your attention? A. No, nothing whatsoever.

Q. Who got in the car before you? A. A fellow by the name of Frank Cornese.

Q. Is he here? A. Yes, sir.

Q. What other injuries did you suffer, Mr. Rogers, with the exception of this left shinbone and left elbow? A. Nothing whatever, just the left elbow and left shinbone. 20

Q. Do you know if there are any permanent scars on your body? A. Well, the scar on the left shinbone and the scar I have had on the left elbow.

Q. Has that healed yet? A. Well, there is a little bit of a scab on it. You can notice it.

Q. How long were you out of work after the accident, if you were?

Mr. O'Mara: I object to that question, unless it is shown that he was out of work as the result of the injury. 30

The Court: Objection sustained.

Q. Will you tell us when you went back to work?

Mr. O'Mara: Objected to.

The Court: Objection sustained.

Q. Tell us, Mr. Rogers, after this accident

G. Rogers, for Plff., Direct.

where did you go? A. After the accident I went up to Albany on the same train and reported the accident in the Albany office of the New York Central Railroad.

10 Q. What did they tell you? A. The two lads who went up with me, they went outside, and I told them to wait until I go up and make a report of this case, of this accident, and I went up in the office and made a report, and some of the officials in the office there sent a railroad policeman to a doctor with me, and I told this railroad policeman to wait a couple of minutes until I tell my friends where I am going, and he didn't wait for me. I said, "Wait a minute, until I go out and
20 tell my friends where I am going," and I went out to my friends, but I didn't see them, and when I came back the policeman was gone.

Q. Then did you come back to Jersey City?
A. No, I went back to the room where I lived.

Q. You went up to the room where you lived, but after that did you come back to Jersey City?

A. No, I went on the job, I came back the third day.

30 Q. Did you go to see any doctor? A. Not in Albany, no, sir.

Q. Where did you see the doctor? A. Jersey City, Dr. Froundt.

Q. And when did you first see him? A. I believe it was on a Thursday or a Friday.

Q. How many days after this accident? A. Four or five days after the accident.

Q. Four or five days after the accident? A. Yes.

G. Rogers, for Pltf., Cross.

Q. How many treatments has this doctor given you for these injuries? A. I should say about between eight and ten.

Q. Do you still go to the doctor? A. No, not just now.

The Court: Eight or ten treatments for a bruised shin and elbow? 10

The Witness: Yes, sir.

CROSS EXAMINATION by Mr. O'Mara:

Q. What time in the evening was it that you went to board that train? A. Between eight and eight fifteen.

Q. What time did the train leave? A. She left, I suppose, around the same time. Around 8 or 8:15; I can't tell you exactly. 20

Q. Do you know how long it was before the train went out, that you boarded it? A. About five minutes after I went on she went out.

Q. When you were going on this trapdoor did you look at the platform of the door? A. No, sir, I did not.

Q. You did not. Did you know whether it was in position or not when you stepped on it? A. There was a man walking in front of me and I followed him. 30

Q. He went on to the trapdoor all right? A. I guess so.

Q. He got into the car, didn't he? A. He was in the car, yes.

Q. Did you have both feet on the trapdoor when this accident happened, or only one? A. That I couldn't say. I couldn't say whether it was one or both.

G. Rogers, for Pltf., Cross.

Q. And the trapdoor went down? A. Yes.

Q. You are sure it didn't go up? A. Posi-
tively not.

Q. It went down? A. It went down.

Q. Did you see it go down? A. I didn't see
10 it, but I felt it going down.

Q. Do you remember a man named Mr. Man-
isky coming to interview you about this accident?

A. I don't know his name, but I recall that there
were two gentlemen up at my home interviewing
me with regard to that accident.

Q. Two gentlemen, representatives of the rail-
road company came to ask you how this accident
happened? A. Yes.

Q. And while one man asked you questions the
20 other man took down the questions and answers
stenographically, isn't that right? A. That I
don't know; I didn't see him writing anything.

Q. Do you remember this gentleman asking
you this question: "Did you see this thing fly
up, Mr. Rogers?" And your answer, "Did I see
it fly up?" And the next question, "Yes," and
your answer, "No, it happened so suddenly I
don't know whether it flew up or down." Did
30 you make that answer? A. I haven't the least
idea whether I did or not.

Q. But you say now that it went down? A.
Yes, sir.

Q. Now, did this gentleman interview you
about the 23rd of March, 1927? A. I don't know
what day it was. It was quite some time after the
accident happened.

Q. Well, it wasn't more than two months after

G. Rogers, for Pltf., Cross.

the accident happened, was it? A. I don't know.

Q. Well, was it about two months? Give us your best recollection how long after the accident it was? A. It might have been two months or it might have been three or four months after the accident happened.

10

Q. It was more than two years ago, wasn't it?

A. It is more than two years ago.

Q. I mean that this man came to see you? A. Well, it is around two years now.

Q. Now, what time did you leave your home on this evening, the day of the accident? A. About 6 P. M.

Q. And what time did you arrive at the Grand Central? Just in time to board the train? A. Yes, sir.

20

Q. That was about 8 o'clock. Did you stop to call for your friends? A. Called for one, yes.

Q. Who was that? A. He was a man by the name of Nick Hansher.

Q. You called for him at his house? A. Yes, sir.

Q. How long did you stay at his house? A. Between thirty and forty-five minutes.

Q. Did you have some wine there? A. I had two glasses of wine, yes.

30

Q. And then Mr. Hansher and yourself, and Conese went to board the train? A. Right.

Q. Did you ever have any trouble with the New York Central Railroad? A. Never.

Q. Weren't you arrested by a special officer of the New York Central Railroad up in Albany in December of 1926? A. I was arrested for being intoxicated and smoking in a sleeper.

40

G. Rogers, for Pltf., Re-direct, Re-cross.
F. J. Conese, for Pltf., Direct.

Q. By a special officer of the New York Central Railroad? A. Yes.

RE-DIRECT EXAMINATION by Mr. Cuneo:

10 Q. Mr. Rogers, when these gentlemen came from the New York Central Railroad Company to interview you did they read that statement to you after it was finished? A. No, sir.

Q. Could you see what the man was writing? How was he writing, in longhand or shorthand? A. I couldn't see him doing any writing.

Q. You couldn't tell whether he took down what you told him or not? A. No, sir.

20 Q. Did you sign anything? A. No, sir.

RE-CROSS EXAMINATION by Mr. O'Mara:

Q. Will you say now that you didn't say to that gentleman that you did not know whether that platform flew up or down? A. I don't know what I said to him.

(Witness excused.)

30 FRANK JOSEPH CONESE, sworn.

Direct Examination by Mr. Cuneo:

Q. Where do you reside, Mr. Conese? A. 2143 Ninth avenue, Astoria, Long Island.

Q. Were you with Mr. Rogers on January 23rd, 1927, about eight o'clock that evening? A. I was.

40

F. J. Conese, for Pltf., Direct.

Q. And whereabouts were you at that time, about eight o'clock? A. We were up in Mr. Nick Hansher's house about eight o'clock.

Q. From there where did you go? A. Boarded a New York Central train.

Q. Where was that, at the Grand Central? A. 10
At the Grand Central station.

Q. What happened up there? A. As we were walking down and went to board the train I walked over the trapdoor first.

Q. What car did you get in? A. About the sixth car from that end of the platform.

Q. Will you tell the Court and jury just what happened? A. As I was stepping on the train or the trapdoor I walked ahead, and suddenly I heard a noise and glanced around and I see Mr. Rogers on the floor, and naturally I helped pick him up and put him in his seat, and later on I went to see if I could find the conductor, and I couldn't find no conductor, but I knew a man to be an inspector, but in civilian clothes, so I asked him if there was any first-aid pack on the train, that there was a man hurt, and so he said, "You will have to see the conductor about that"; and he didn't recognize me at all, and with the understanding that I knew he was an inspector, because I rode that excursion train many times from Albany, and I knew this man was on the train at all times, and with looking for the conductor I couldn't very well find the conductor, and I came back to Mr. Rogers, and Mr. Rogers had a handkerchief on his knee, which was bleeding. Later I finally succeeded in finding the conductor and I

F. J. Conese, for Pltf., Direct.

asked him if there was any first-aid pack on the train, and he said, "I will see," and he came back in about five or ten minutes, and he said there wasn't, but, "We are making a stop at Harmon in order to change engines, and we will see if
10 there is any pack there"; and in the meantime the train had already boarded for Albany, and I am waiting for the conductor to come back. After we left Harmon I waited for him to come back with the first-aid pack, and he came back and told me that there was no first-aid pack, that we would have to go to the Albany office and go to the doctor. And when we got to Albany he reported the case, and we waited for him, and he came back and told us that he was going to go, and then this
20 Nick Hansher and I took the suitcase to our room; and that is all I know about it.

Q. You said Mr. Rogers fell on the floor. What do you mean? A. He said on a trapdoor there. When I went to pick him up he was on a left slant.

Q. Where was he when you went to pick him up in relation to this vestibule and the platform of this car? A. Here is the trapdoor, for instance, and he was lying—his feet both were down this
30 way, and his arm was down this way (indicating).

Q. Where was his shin bone— A. Naturally the platform fell down. It must have been on the step, but I didn't notice it.

The Court: Strike that out, where it must have been.

Q. Did you see where it was? A. Not exactly, no.

F. J. Conese, for Pltf., Direct.

Q. But you know this trapdoor was down?

A. Yes, sir.

Q. All the ways? A. I couldn't say all the ways, in the haste of picking him up.

By the Court:

10

Q. How did you pick him up? A. With his left elbow I picked him up.

Q. Where did you stand to pick him up? A. Right on the opposite side of the platform.

Q. You were on the platform itself? A. Not the trapdoor, the platform.

Q. The station platform? A. The train platform.

By Mr. Cuneo:

20

Q. Mr. Conese, where did you take him? A. Took him to a seat down in the train.

Q. How soon after did the train leave? A. About ten minutes afterwards.

Q. You were ahead of Mr. Rogers, I understand it, is that so? A. I was.

Q. And did you step on the trapdoor? A. I did.

Q. And Mr. Rogers was behind you? A. Mr. Rogers was behind me. 30

Q. Was there anybody behind Mr. Rogers, do you know? A. There was another man by the name of Nick Hansher.

Q. How soon after you stepped on this trapdoor did this accident occur? A. A few seconds.

Q. And the noise of that made you turn around? A. It did.

40

F. J. Conese, for Pltf., Cross.

CROSS EXAMINATION by Mr. O'Mara:

Q. It was the noise of Rogers' falling that made you turn around, wasn't it? A. It did, yes, sir.

Q. Were you in the car when that happened?

10 A. I was just about going into the coach.

Q. You were just about going into the coach from the rear platform? A. Yes.

Q. You were just about going into the coach from the vestibule platform? A. Yes, sir.

Q. And then you heard the noise of Mr. Rogers falling? A. I never heard the noise—down by the trapdoor—

By the Court:

20 Q. Tell us what you heard? A. It was a noise; I don't know whether it was Mr. Rogers or the trap door.

Q. Now, you have answered one counsel saying it was the noise of the trapdoor falling, and the other that it was the noise of Mr. Rogers falling. Do you know what it was? A. I heard a noise; that is all I can say.

30 Q. You heard a noise and then you turned around and you saw that Rogers had fallen, and Rogers was on this trapdoor, you say? A. Yes.

By Mr. O'Mara:

Q. Was any part of Rogers on the vestibule?

A. You mean the platform?

Q. The platform? A. Not at all that I noticed.

Q. His whole body was on this trapdoor? A. He may have threw his arms over.

40

F. J. Conese, for Pltf., Cross.

The Court: Don't give us what you think happened, or what you suppose happened. Only tell us what you know, and if you don't know, say so.

The Witness: I don't quite remember whether part of his body was on the platform or altogether on the trapdoor. 10

Q. Do you know whether any part of his body was still out on the station platform? A. Not that I know, because Nick Hansher was in back of him.

Q. As far as you know his entire body was in the train? A. In the train?

Q. In the vestibule of the train, off the station platform? A. Yes, sir.

Q. And how big is this trapdoor, by the way? 20
A. I should judge about three foot.

Q. You picked him up? A. I did.

Q. Did he remain down until you picked him up? A. No, Mr. Hansher was in back of him, which picked him up at the same time I did.

Q. The two of you started to pick him up? A. We did.

Q. Did you make an examination of the trapdoor after the accident? A. No, sir. 30

Q. You don't know whether it was down or not, do you? A. No, sir. Either Mr. Rogers was on the trapdoor or it was down.

Q. Mr. Rogers was down on the trapdoor?
A. Yes.

Q. But do you know whether the trapdoor was down from its normal position or not? A. I couldn't see.

F. J. Conese, for Pltf., Re-direct.

Q. When you went to look for this first-aid kit, did you see the conductor of the train? A. Not at first. I seen an inspector.

Q. After you saw the inspector did you see the conductor? A. Later on I did.

10 Q. Did you tell the conductor how the accident happened? A. I did.

Q. You did? A. Not how it happened, I said a man got hurt.

Q. You didn't tell him how it happened? A. Not at all.

Q. He came with a first-aid kit, didn't he? A. No, he didn't. I asked him for a little iodine, and he didn't have any.

20 Q. He had some bandages, though, didn't he? A. While I was looking for the conductor in the meantime he came back, which Mr. Rogers already had a handkerchief on.

Q. But the conductor came with this gauze, or a sterilized bandage, didn't he? A. I didn't see him.

Q. Who was it that offered this bandage to Mr. Rogers? Who offered to bandage Mr. Rogers' leg? A. I didn't see nobody offer any bandage.

30 Q. You didn't see that? A. I was out looking for the conductor.

RE-DIRECT EXAMINATION by Mr. Cuneo:

Q. Mr. Conese, did you see this trapdoor on January 23rd, 1927, prior to the accident, when you stepped over? A. Yes.

Q. It was all right, wasn't it? A. When I stepped on it it must have been.

F. J. Conese, for Pltf., Re-direct.

Q. Was it flush with the platform? A. Flush to the train platform?

Q. I mean, flat, so as to make a smooth passageway between the vestibule and the platform?

A. It was, yes.

Q. You said that you heard a noise? A. Yes, 10
sir.

Q. A few seconds after you had stepped on the platform of the train. And when you turned around to pick Mr. Rogers up, in what position was that trapdoor?

Mr. O'Mara: I object to that, if the Court please. He has answered that he didn't know.

The Court: Objection sustained.

Q. Was this trapdoor flush with the platform, 20
or was it down?

Mr. O'Mara: Same objection.

The Court: Objection sustained.

Mr. Cuneo: Your Honor, I think he testified before that Rogers was laying over this trapdoor and the trapdoor was down.

The Court: He said several times that he didn't notice the trapdoor.

Mr. Cuneo: On direct examination he 30
testified that it was down.

By the Court:

Q. Did you notice the trapdoor itself? A. Itself?

Q. Yes. A. Not itself. Mr. Rogers was on top of the trapdoor, and naturally the trapdoor had to be down.

F. J. Conese, for Pltf., Re-direct.

The Court: Strike out that last statement. I told you several times not to say what naturally would have happened. Did you see the trapdoor itself?

A. Itself? No.

10

By Mr. Cuneo:

Q. Why couldn't you see the trapdoor? A. Because Mr. Rogers was covering the trapdoor.

Q. Where was Mr. Rogers with relation to this trapdoor? On top of it? A. On top of it.

Q. Will you show me how he was lying? The Court and jury want to know? A. He was laying on his face this way.

20 Q. On top of the trapdoor? A. On top of the trapdoor.

Q. That trapdoor is over some steps, and it isn't suspended in the air by itself. Now, was Mr. Rogers laying in a vertical position, or a horizontal position, or how was he lying? A. In a vertical position.

Q. How? A. With his left leg this way.

30 Q. Where was his left leg? A. I didn't quite notice where his leg was, but it must have been on the steps—

Mr. O'Mara: I object to that.

The Court: No, not what it must have been on. If you didn't see it, say so.

The Witness: I didn't notice it.

Q. You know that Mr. Rogers wasn't lying horizontal on that platform, don't you?

Mr. O'Mara: Object to that as leading.

The Court: Objection sustained.

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F. J. Conese, for Pltf., Re-cross.

RE-CROSS EXAMINATION by Mr. O'Mara:

Q. On the car you turned around and Rogers was down on the vestibule of the car, part of him on the platform and part of him on the vestibule, is that right? A. Yes.

10

By the Court:

Q. Let me ask you. It seems to be rather difficult. Suppose this is the trapdoor and toward the jury box is the vestibule of the train. This is the station platform. You had gotten over the trapdoor and had about turned into the aisle of the train, as I understand it? A. Yes.

Q. When you heard a noise? A. Yes.

Q. You came out and found Mr. Rogers lying on this trapdoor, is that true? A. Yes, sir.

20

Q. You started to pick him up and a man who was following Mr. Rogers also started to pick him up. Is that true? A. Yes, sir.

Q. Then did the two of you help him into the car? A. Yes, sir.

Q. Did the man who was in the rear of Mr. Rogers have any difficulty in going into the car? A. He stepped right over.

Q. Over what? A. From the platform of the station to the platform of the car, of the train.

30

Q. You don't mean to tell us he stepped over the trapdoor? A. He did.

Q. Helping Mr. Rogers all the time? A. He was.

By Mr. O'Mara:

Q. Did he jump over the trapdoor? A. He just stepped over as you jump from beam to beam. I was holding Mr. Rogers up as he came over.

40

Dr. A. Froundt, for Pltf., Direct.

Q. He wasn't holding Mr. Rogers? A. Hansher picked Mr. Rogers up first until I got hold of him.

Q. Hansher picked Mr. Rogers up first and handed him to you? A. Until I got hold of him.
10 (Witness excused.)

DR. ARTHUR FROUNDT, sworn for the plaintiff:

Mr. Cuneo: I assume Mr. O'Mara will admit the doctor's qualifications?

20 Mr. O'Mara: Gladly.

Direct Examination by Mr. Cuneo:

Q. Doctor, where do you practice? A. Out in Greenville.

Q. What address? A. 92 Bartholdi avenue.

Q. Did you have occasion any time after January 23, 1927, to see Mr. Rogers? A. Yes, sir.

30 Q. Will you tell the court and jury what examination you made of Mr. Rogers, and what treatment you gave him? A. Mr. Rogers came to my office and said that four or five days ago he had had an accident, and he came into my office with a contused wound of his left shin, and an osteomyelitis of his left elbow.

The Court: What is that in plain English?

Dr. A. Froundt, for Pltf., Cross.

The Witness: An infection of the bone, with pus coming out of it.

A. Any other injuries, Doctor? A. That is all.

Q. Did he have any scar on his leg? A. Just got a small scar now on his leg. 10

Q. When was the last time you saw Mr. Rogers? A. Friday or Saturday.

Q. Friday or Saturday when? A. Friday or Saturday of last week.

Q. Last week? A. Yes.

Q. Did you notice that scar on his left arm? A. No.

Q. He has a scar on his left hand, as I understand it? A. Yes. 20

Q. Is that scar still opened, or is it healed? A. He has a small opening that is there that is scabbed.

Q. How many times did Mr. Rogers visit you, Doctor? A. I should judge Mr. Rogers came about fifteen times.

Q. And you treated him mainly for what? A. For the wound of his shin and the infection of his arm.

Q. Did you render a bill to Mr. Rogers? A. Yes. 30

Q. In what amount? A. Sixty dollars.

Q. Is that a reasonable charge, Doctor? A. I think so.

CROSS EXAMINATION by Mr. O'Mara:

Q. Doctor, when you saw him last Saturday it wasn't for the purpose of treating him for these old injuries? A. No, sir. 40

Dr. A. Froundt, for Pltf., Re-direct, Re-cross.

Q. Merely for the purpose of making an examination? A. Yes, sir.

Q. This man had an old condition of this left elbow, didn't he? A. Yes, sir.

10 Q. This condition was there prior to this accident? A. He had an infection of the bone prior to the accident, yes.

Q. This condition that he had on his shin, was that a cut, would you say? A. Yes.

Q. And how long a cut was it? A. About half an inch.

Q. And that healed up promptly? A. Yes.

20 Q. Most of the visits that were made by him to your office were for the purpose of treating this infection of the elbow? A. Yes, sir.

RE-DIRECT EXAMINATION by Mr. Cuneo:

Q. Well, Doctor, if he had a prior injury to that arm, would it be possible—if he had a fall of any kind—that that arm would open or cause any kind of scar or running sore?

Mr. O'Mara: Objection.

The Court: Objection sustained.

30 Q. Well, Doctor, assuming that this man had an accident on January 23, 1927, and had been walking from a platform onto a trapdoor and fell, striking that arm, do you then say, assuming that he did have this prior injury, do you then say that that would aggravate that injury? A. Yes.

RE-CROSS EXAMINATION by Mr. O'Mara:

Q. To what extent, Doctor? A. Causing this infection to start in again.

*Dr. A. Froundt, for Pltf., Re-direct.
Motion for Nonsuit.*

Q. And would keep the cut open for some little time? A. Yes, sir.

Q. But even if he didn't have that fall it would have taken some time for that infection to heal up? A. That was all healed up while he was in service during the war, and it just took a little injury to start that old condition going again. 10

RE-DIRECT EXAMINATION by Mr. Cuneo:

Q. Then, in your opinion, Doctor, will that clear up, or— A. That will clear up.

Mr. O'Mara: And all that remains there now is a little bit of a scab?

A. Yes, sir.

(Witness excused.) 20

Plaintiff rests.

Mr. O'Mara: If the Court please, I move for a non-suit on behalf of the defendant, on the ground that there is no negligence shown at all in this case. The testimony of the witness Conese can be entirely disregarded as to whether or not this trap door went down or not. Now all we have left is the testimony of the plaintiff himself, who says that the trap door went down. He hasn't been clear or explicit on the subject, and even assuming that that was true it doesn't seem to me that that is sufficient to establish negligence on the part of the railroad company, and for that reason I ask for a non-suit. 30.

The Court: I think I will hear your defense. I will hold your motion. 40

P. J. Conlon, for Deft., Direct.

DEFENDANT'S CASE.

PETER J. CONLON, sworn for the defendant.

Direct Examination by Mr. O'Mara:

10

Q. Mr. Conlon, you are employed by the New York Central Railroad Company? A. Yes, sir.

Q. As a car inspector? A. Yes, sir.

Q. And you were so employed on January 23rd, 1927? A. Yes, sir.

Q. On January 23, 1927, did you make an inspection of car No. 983? A. Yes, sir.

20

Mr. O'Mara: It is stipulated on the record that car No. 983 is the car involved in this accident?

Mr. Cuneo: I don't know whether it is or not.

Q. Did you make an examination of all of the equipment of the excursion train that had come down from Albany on that day? A. Yes, sir.

Q. What time was that inspection made? A. Twelve o'clock, noon.

Q. Where? A. Grand Central Terminal.

30

Q. Will you tell us what this inspection consisted of? A. This train consisted of—

Q. No, the inspection. What did you do when you made your inspection? A. I went through the train and inspected the trap doors and vestibule doors, and end doors, and they had quite a number of seats out, and I had to put the seats back. They were ripped up and torn; and we fixed up the train and put in glass, and it took

40

P. J. Conlon, for Deft., Cross.

from twelve o'clock until three that afternoon to put the train back in shape.

Q. Why was it necessary to put in glass? A. It was broken.

Q. Did you make an inspection of the trap doors? A. Yes. 10

Q. What condition did you find the trap doors in? A. O. K.

Q. All trap doors? A. All trap doors.

CROSS EXAMINATION by Mr. Cuneo:

Q. On what day did you make this examination, Mr. Conlon? A. On the day this excursion came in.

Q. What date was that, do you know? A. 20
Whatever it is. You have got it there. You have got my statement.

Q. Do you know what day it was? A. My statement is there.

Q. All right. It was January 23, 1927. Do you remember making an examination that day?
A. Yes, sir, I do.

Q. At what time? A. Twelve o'clock.

Q. In the afternoon? A. Yes, sir.

Q. What did you examine? A. I had charge 30
of the train. I was told to make an inspection and make repairs, and I went through the train, tried the trap doors, vestibule doors, and end doors, and then there was glass broken and seats broken.

Q. How did you test these trap doors? A. As I go along I close the door behind me, the end door; I open up each vestibule door, and try each trap door.

P. J. Conlon, for Deft., Cross.

Q. How are these trap doors held in place? A. There is a lock there, and—

Q. What do you mean, there is a lock there?

A. On the end of the step, that holds the trap door down.

10 Q. Is there anything there to hold it in position besides this latch? A. There is an edge along there that holds the trap door in its place when it goes down. The lock is over the trap door.

Q. Would it be possible in the event that this latch was open for that trap door to move any way, down or up?

20 Mr. O'Mara: I object to that, if the Court please. The complaint is based on the fact that this trap door went down.

Q. Well, down. Could it go down? A. No, it couldn't go down.

Q. There is no way of it going down? A. No, sir, there isn't no way of it going down.

By the Court:

30 Q. Why do you say there is no way of it going down? A. There is a bracket on the end of the car, which is made of cast iron, and then there is three strings in through the trap door that is wound up, and a trap door will always come up and never go down unless the bracket breaks, and then the trap door will go down on the tracks.

Q. You don't know whether the trap door was broken that day? A. She wasn't broken when I made the inspection; otherwise if it was broken

P. J. Conlon, for Deft., Cross.

the trap door wouldn't stay where it was. It would have went down on the ground.

Q. You mean it would have fallen out altogether? A. Yes.

By Mr. Cuneo:

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Q. That trap door is on hinges, isn't it? A. It is on a bracket.

Q. And you are certain that on that day that bracket was in good condition? A. Yes, it was.

By the Court:

Q. This is the trap door? A. Yes, sir.

Q. And presume that it opens toward me? A. Yes, sir.

20

Q. Where is the bracket? A. The bracket is right here. It is right on the edge here, and there is a notch that goes in through the bracket and connects with a couple of springs.

Q. If the bracket is broken it will fall down from the end from which it is fastened to the car?

A. Yes, sir.

Q. And the whole thing will fall down? A. Yes, sir.

30

Q. Take the far end, does that overlap the floor of the car? A. Yes, sir, it is just like the jamb of the door, where the jamb sets in.

(Witness excused.)

40

L. Wilkes, for Deft., Direct.

LEONARD WILKES, sworn.

Direct Examination by Mr. O'Mara:

10 Q. You are employed by the New York Central Railroad? A. Yes.

Q. In what capacity? A. Train conductor.

Q. Were you the conductor of this special excursion train running from New York to Albany on the evening of March 23, 1927? A. Yes, sir.

Q. Did you see the alleged occurrence of this plaintiff falling through the trap door? A. No, sir.

20 Q. Did you see Mr. Rogers, the plaintiff here, at any time on that night? A. Yes, sir.

Q. When did you first see him? A. I was standing on the end of the ramp, and Mr. Rogers and two other gents linked arm in arm were coming up the platform together—

Q. Yes. A. As they went by me they didn't pay much attention to me, but I noticed those three gentlemen together.

Q. Did you see them get on the train? A. No, sir, they went on by me.

30 Q. When did you next see Mr. Rogers? A. As I was picking up transportation about fifteen minutes after we had left 125th street.

Q. Did Mr. Rogers say anything to you? A. Yes, sir, he pulled up his trousers and I noticed blood on his underwear, and he told me that he hurt his leg getting on the train, and he asked me for iodine, and I told him I didn't have any iodine.

L. Wilkes, for Deft., Cross.

but I would dress his wound with our emergency kit, which we carry in every car, five compresses with sterilized gauze.

Q. Yes. A. He says, "That won't do." He said, "I want iodine." And I said, "All right, when we get to Harmon I'll see if we can get some iodine from the emergency kit there." But a little prior to that they had used all that they had in a little accident, and I came to him and asked if he would care to have me bandage his leg with this gauze, and wash it out for him, and he said, "No," and I said "When we get to Albany I will try to get you a doctor." And when we got to Albany we had arranged for Dr. Van Deusen at Albany to treat this Mr. Rogers, and they called on the New York Central patrolman and he came up and brought Mr. Rogers down, and told Mr. Rogers to wait and we would get the company's car, the inspection car that they used around there, and when he went to get the car and came back for Mr. Rogers, why Mr. Rogers was among the missing, and he came back and reported it, came to us in the office.

Q. When you saw Rogers on the train did he say anything to you about this trap door going down? A. No, sir, not a word.

Q. Did he say anything about the trap door at all? A. Not a word.

CROSS EXAMINATION by Mr. Cuneo:

Q. Did he say he had an accident? A. Yes.

Q. Did he tell you where? A. He told me at Grand Central.

L. Wilkes, for Deft., Cross.

Q. Anything else that he told you? A. That is all.

Q. You didn't see any of this accident? A. No, sir.

10 Q. You don't know anything except when you were in the train they asked you— A. Picking up the transportation.

Q. You have nothing to do with these trap doors, have you? A. I am supposed to see that those trap doors are in proper position and safe for passengers to board the train. That is my job.

Q. Did you make an inspection that day? A. Yes, sir.

20 Q. About what time? A. About forty minutes before we left I walked through the train and saw that the—

Q. What did your examination consist of? A. Examining the whole train.

Q. In what manner did you examine these trap doors? A. Stepping over them.

Q. How was that, by putting your foot on them? A. No, sir, walking on them.

30 Q. And you did that in every car in the train? A. Yes, sir.

Q. And you didn't notice anything wrong with this trap door? A. Nothing wrong.

Q. And that was forty minutes before the train left? A. Yes, sir. These doors have platform lights—they are sixty-four candle power lights in each vestibule of these cars.

Q. That has nothing to do with the trap door? A. The lights reflect on the trap doors.

H. A. Doan, for Deft., Direct.

Q. That wouldn't stop it from either falling or going up, would it? A. Why, no.

By the Court:

Q. Let me ask you: Where was the first stop you made after leaving the Grand Central Station? 10

A. 125th street.

Q. What kind of station platform has 125th street? A. It is a—

Q. Is the platform flush with the cars? A. No, sir, we have to lift the traps.

Q. You have to go down the steps to leave the platform? A. Yes.

Q. Were the traps of all the cars lifted at that station? A. No, sir, we pull about eight cars by, because we load all our Grand Central passengers in those first eight cars, and we reserve the three last cars for 125th street. 20

Q. Was there any place along the route that you opened all the trap doors? A. Only at Albany when we arrived there.

Q. Did you open them all there? A. Yes, sir.

Q. Did they all work properly? A. Yes, sir.

Q. Did you see that yourself? A. Yes, sir; saw that every passenger was off the train. 30

(Witness excused.)

HARRY A. DOAN, sworn:

Direct Examination by Mr. O'Mara:

Q. You are employed by the New York Central Railroad? A. Yes, sir.

Q. And were on January 23rd, 1927? A. Yes, sir. 40

H. A. Doan, for Deft., Direct.

Q. And what were your duties? A. Police officer.

Q. Where? A. In Albany.

Q. At the Albany station? A. Yes, sir.

10 Q. Do you remember on the evening of January 23rd, 1927, Mr. Rogers coming to the Albany station? A. I didn't know his name then.

Q. Well, this gentleman here, who is the plaintiff? A. Yes, sir.

Q. Tell us the circumstances, will you, please?

20 A. I was working from four until 11:59, and I report off duty at 11:59, or 12 o'clock; we call it 11:59 because it constitutes a day of eight hours, and I generally go out through the station subway by the platform in order to go into the restaurant to eat, at twelve o'clock, and as I went through the door into the waiting room the usher, or caller—the train announcer, he said to me, "Do you know somebody has got hurt on this excursion train?" And he said, "They are up in the stationmaster's office." And I went right up and met Conductor Wickes, and a man I now know as Mr. Rogers, and also assistant stationmaster Reedy; and Mr. Wickes was talking to Mr. 30 Rogers, and when I came in they said "You are just the man we want. Will you take this man to the Doctor's;" And I said, "I will go down and get the police car;" and I said we would have to hurry down in order to get the car, and I started down with Mr. Rogers, and when we got to the foot of the platform track, one that is right opposite the waiting room door, Mr. Rogers said he wanted to go and see some friends, and I said to him, "Make it snappy, because the police car is

*H. A. Doan, for Deft., Cross.
Motion for Direction of Verdict.*

going right out:" and he said, "Now wait a minute; the Central is going to settle with me for this;" and I said, "Come on; make it snappy;" and I said after he saw his friends to come right down to the police department office, which you could see the sign on the door from the foot of the platform or track one; and I went right down and told Lieutenant Markley, and I stood outside the door a couple of minutes, and Mr. Rogers and another gentleman came down through the subway, and I thought they were probably going to stop in, but they walked right by, and when I seen they were going to walk by I said, "Hey Jack!" and Rogers said, "Oh, to Hell with it!" and went over towards Heuerstein's, toward Broadway.

Q. Where is Heuerstein's? A. It is on the southeast corner.

Q. What is it, a store? A. Yes, a cigar store.

Q. Outside of the station altogether? A. Yes.

Q. And they went on out? A. Yes, sir.

CROSS EXAMINATION by Mr. Cuneo:

Q. You don't know anything about this accident, do you, except from the time you met Mr. Rogers up in Albany? A. No, sir.

Q. And you are stationed up in Albany? A. Yes, sir.

(Witness excused.)

Defendant rests.

Mr. Cuneo: No rebuttal.

Mr. O'Mara: I now move for a direction of a verdict in favor of the defendant on the ground that no negligence has been shown.

Clerk's Certificate.

The Court: Grant the motion.
 Mr. Cuneo: Exception.

CLERK'S CERTIFICATE.

10

STATE OF NEW JERSEY

Hudson County, ss.:

I, JOHN J. McGOVERN, Clerk of the County of Hudson aforesaid and also Clerk of the Circuit Court and Court of Common Pleas, holden therein

20

DO HEREBY CERTIFY, That the foregoing is a true and correct copy of Summons and Complaint, Answer, Notice of Trial, Rule for Judgment, Judgment, Record, Notice and Grounds of Appeal in the case of George Rogers vs. New York Central Railroad Company, a corporation, as the same is taken from and compared with the original as filed and recorded in my office. This certificate is issued so that the said cause may be removed to the Court of Errors and Appeals of the last resort of all causes at Trenton, N. J., for

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IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Courts and County, at Jersey City this twenty-eighth day of May, 1929.

JOHN J. McGOVERN,
 Clerk.

(Seal)

40

New Jersey Court of Errors and Appeals

GEORGE ROGERS, <i>Plaintiff-Appellant.</i> vs. NEW YORK CENTRAL RAILROAD COMPANY, a corporation, <i>Defendant-Respondent.</i>	} On Appeal.	10
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BRIEF OF PLAINTIFF-APPELLANT. 20

This is an appeal from a direction of verdict. The plaintiff, George Rogers, was a passenger of the New York Central Railroad Company on January 23rd, 1927. He left Albany on a train of the defendant at about 8 o'clock in the morning, and while walking through the train fell through an unsecured trap-door on the platform of a car in the train.

See testimony on bottom of page 11 of the state of the case, beginning with the last word "He" up to page 13, line 20: 30

"He stepped on the car ahead of me. As he was walking in I stepped on the trap-door and the trap-door went down and I went down with it.

Q. That was about what time, Mr. Rogers?

A. Between 8 and 8:15. 40

Q. In the evening? A. Yes.

Q. On January 23, 1927? A. Yes.

Q. And where was it? A. At the Grand Central Depot.

10 Q. As I understand it, you purchased your excursion ticket up at Albany, and had your return ticket to come back up there again? A. Correct.

Q. You say you stepped on the trap-door, it is an iron sheet, isn't it? A. Yes.

Q. It went down? A. Yes.

Q. Where were you thrown? A. I was thrown on the steps, in between the platform.

Q. What injuries did you receive? A. I bruised my left shinbone and my left elbow.

20 Q. After you were injured where did you go? A. The fellows that were with me took me inside the car, and there was one guard came around and I asked him for some iodine, and he said he didn't have any, that he would have to see the conductor, and one of the lads went out trying to find him, and I don't know whether they found him or not, but there was another lad came down through the car with a bandage, and I said, 'Have you got any iodine?' and he said 'No,' and I had a handkerchief, and I said, 'Well, this will answer the same purpose as that bandage.'

30

Q. When you proceeded to get in the vestibule of that train did you look where you were going? A. Beg pardon?

40 Q. When you proceeded to get in the vestibule of that train did you look where you were going? A. Positively. Well, the platform is level with the trap-door of the train, something like this desk. This would be the

trap-door over here, and this would be the platform. I would walk right from the platform into the car.

Q. And there was nothing there to attract your attention? A. No, nothing whatsoever.

Q. Who got in the car before you? A. A fellow by the name of Frank Cornese.

Q. Is he here? A. Yes, sir. 10

Q. What other injuries did you suffer, Mr. Rogers, with the exception of this left shinbone and left elbow? A. Nothing whatever, just the left elbow and left shinbone."

Page 15 of state of case, lines 20 to 40, and page 16, from line 1 to line 30:

"Q. Do you know how long it was before the train went out, that you boarded it? A. About five minutes after I went on she went out. 20

Q. When you were going on this trap-door did you look at the platform of the door? A. No, sir, I did not.

Q. You did not. Did you know whether it was in position or not when you stepped on it. A. There was a man walking in front of me and I followed him.

Q. He went on to the trap-door all right? A. I guess so. 30

Q. He got into the car, didn't he? A. He was in the car, yes.

Q. Did you have both feet on the trap-door when this accident happened, or only one? A. That I couldn't say. I couldn't say whether it was one or both.

Q. And the trap-door went down? A. Yes.

Q. You are sure it didn't go up? A. Positively not. 40

Q. It went down? A. It went down.

Q. Did you see it go down? A. I didn't see it, but I felt it going down.

10 Q. Do you remember a man named Mr. Manisky coming to interview you about this accident? A. I don't know his name, but I recall that there were two gentlemen up at my home interviewing me with regard to that accident.

Q. Two gentlemen, representatives of the railroad company came to ask you how this accident happened? A. Yes.

20 Q. And while one man asked you questions the other man took down the questions and answers stenographically, isn't that right? A. That I don't know; I didn't see him writing anything.

Q. Do you remember this gentleman asking you this question: 'Did you see this thing fly up, Mr. Rogers?' And your answer, 'Did I see it fly up?' And the next question, 'Yes,' and your answer, 'No, it happened so suddenly I don't know whether it flew up or down.' Did you make that answer? A. I haven't the least idea whether I did or not."

30 See testimony of Frank J. Conese on page 19 of the state of case from line 4:

"Q. From where did you go? A. Boarded a New York Central train.

Q. Where was that, at the Grand Central? A. At the Grand Central station.

40 Q. What happened up there? A. As we were walking down and went to board the train, I walked over the trap-door first.

Q. What car did you get in? A. About the sixth car from that end of the platform.

Q. Will you tell the Court and jury just what happened? A. As I was stepping on the train or the trap-door I walked ahead, and suddenly I heard a noise and I see Mr. Rogers on the floor, and naturally I helped pick him up and put him in his seat, and later on I went to see if I could find the conductor, and I couldn't find no conductor, but I knew a man to be an inspector, but in civilian clothes, so I asked him if there was any first-aid pack on the train, that there was a man hurt, and so he said, 'You will have to see the conductor about that'; and he didn't recognize me at all, and with the understanding that I knew he was an inspector, because I rode that excursion train many times from Albany, and I knew this man was on the train at all times, and was looking for the conductor I couldn't very well find the conductor, and I came back to Mr. Rogers. and Mr. Rogers had a handkerchief on his knee, which was bleeding." 10 20

See also page 21 of state of case, from lines 30 to 40:

"Q. And Mr. Rogers was behind you? A. Mr. Rogers was behind me. 30

Q. Was there anybody behind Mr. Rogers, do you know? A. There was another man by the name of Nick Hansher.

Q. How soon after you stepped on this trap-door did this accident occur? A. A few seconds.

Q. And the noise of that made you turn around? A. It did." 40

From this evidence the jury would have the right to find that a passenger of the defendant while walking through the train in a way provided by the defendant, was injured by the collapse of a trap-door. The judge entirely disregarded this and decided it as a matter of fact that the weight of the evidence was with the defendant and directed a verdict for the defendant. This was error. The facts in this case were identical with the facts in the case of McBride vs. P. R. R., 99 New Jersey Law, 464. In the McBride case, plaintiff fell through a trap-door in a train. There was proof that the trap-door was in good condition. This Court held an action would lie. See also for same facts, case of Rivers vs. P. R. R., 83 New Jersey Law, 513.

20 Under the testimony hereinbefore cited, it was clearly a jury question whether the carrier had used reasonable care to furnish proper cars in proper condition.

The Court of Errors and Appeals in the McBride case, 99 New Jersey Law, 464, says it was for the jury to say whether a high degree of care had been used by the carrier to see that a trap-door such as figured in the instant case had been properly fastened. To practically the same effect is Rivers vs. P. R. R., 83 New Jersey Law, 513.

30 It is respectfully submitted that the judgment below should be reversed.

ALEXANDER SIMPSON,
Attorney for and of Counsel with
Plaintiff-Appellant.

New Jersey Court of Errors and Appeals

<p style="text-align: center;">GEORGE ROGERS, <i>Plaintiff-Appellant,</i></p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">NEW YORK CENTRAL RAILROAD COMPANY, a corporation, <i>Defendant-Respondent.</i></p>	}	On Appeal.
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BRIEF ON BEHALF OF DEFENDANT-RESPONDENT.

Statement of the Case.

This is an appeal from a directed verdict in favor of the defendant.

The action was instituted in the Hudson County Circuit Court to recover damages for personal injuries which it is claimed resulted because a trap door on one of the defendant's cars gave way as the plaintiff attempted to step from the station platform into the vestibule of the car.

At the close of the case the Court directed a verdict in favor of defendant, on the ground that plaintiff had failed to establish negligence (Case, p. 41, line 37).

Argument.

I.

The evidence is insufficient to sustain the charge of negligence set out in the complaint.

The negligence complained of is set forth in paragraph 5 of the complaint as amended (Case, p. 4):

“Defendant failed to use reasonable care to have said cars, passageways, platforms, and connecting plates, with the appurtenances in proper and safe condition for the use of passengers, but on the contrary, the platform, passageway or connecting plate between said cars was in such defective and unsafe condition, so insecurely fastened and out of repair, that while the plaintiff was going from the platform into the car part of said platform or connecting plate gave way and plaintiff was caused to fall between said cars and was injured.”

In support of his case plaintiff produced two witnesses,—himself and his friend, Conese. Their testimony fails to establish the negligence complained of.

Plaintiff's testimony as to how the accident happened is self-contradictory and inherently improbable.

He was returning to Albany from New York City by an excursion train. He, with two companions Conese and one Nick Hansher (who was not produced as a witness) arrived at the station shortly before the train was due to leave. This was on January 23, 1927, between 8 and 8:15 P. M. The vestibule of the car which they were about to board was lighted with a 64 candle power electric light (p. 38, line 34). Plaintiff testifies that Conese

entered the vestibule ahead of him, walking over the trap door and plaintiff followed him immediately. As plaintiff stepped on the trap door he says it "went down and I went down with it," * * * and was thrown on the steps in between the platform (p. 11, line 35 to p. 12, line 20). He looked where he was going and there was nothing to attract his attention (p. 13, line 1).

Plaintiff did not look at the platform as he entered the vestibule and could not say whether it was in position when he stepped on it. Conese was walking in front of him and he followed. Conese went over the trap door all right (p. 15, line 25). He did not see it, *but felt it go down* (p. 16, line 9).

With the vestibule lighted with a 64 candle power electric light, it is inconceivable that the trap door would have gone down and plaintiff have failed to see it, particularly as he was helped up from his fallen position by his friends, Conese and Hansher.

Plaintiff does not pretend he reported to any of the train crew that the trap door had given way under him. He does not have the least idea whether he told the railroad company's investigator that the accident "happened so suddenly I don't know whether it" (referring to the trap door) "flew up or down" (p. 16, line 24). He does not know what he said to the investigator (p. 18, line 24).

Before going to the station he had called on his friend, Nick Hansher, and had two glasses of wine (p. 17, line 20). As these three men came down the platform they were linked arm in arm, evidently in need of mutual support (p. 36, line 20).

Conese testifies that as he was stepping on the train or the trap door, he walked ahead and suddenly as he was entering the car he heard a noise,

and glancing back saw plaintiff on the floor, and he helped pick him up and put him on his seat. The witness then went to look for the conductor and did not find him. Seeing a man whom he called an inspector in civilian clothes, he asked for a first-aid pack, *and stated a man was hurt*. He then went back to plaintiff and later he found the conductor and asked again for a first-aid pack. The conductor told him he had none and would try to get one at Harmon. After arriving at Harmon, the conductor reported that there was no first-aid pack and they would go to the Albany office and get a doctor. In all these conversations with the inspector and the conductor, nothing was said, so far as the evidence shows, about the trap door giving way under plaintiff (p. 19, line 15).

This witness was asked where plaintiff's shin bone was after he had fallen down, and his reply was—"Naturally, the platform fell down. It must have been on the step, but I didn't notice it" (p. 20, line 32).

It will be observed that witness does not directly state that the platform *fell down*, but "naturally the platform fell down." This is merely a statement of a conclusion, not of a fact. His statement that plaintiff's shin bone must have been on the step was stricken out.

This witness was asked the leading question:

"Q. But you know this trap door was down?

A. Yes, sir.

"Q. All the ways? A. I couldn't say all the ways in the haste of picking him up" (p. 21, line 1).

This was not a statement that the trap door had fallen down, but that it was down. So far as the evidence discloses, this testimony may mean that the trap door was *down in proper position* for passengers to board the train. This witness

stepped on the trap door and Rogers followed behind him. Nick Hansher followed behind plaintiff (p. 21, line 25). It was the noise of plaintiff's falling that made witness turn around (p. 22, line 1). He corrects this statement and says he does not know whether the noise he heard was the noise of Rogers falling or the trap door. He heard a noise, that's all he could say. When he looked around Rogers was on the trap door (p. 22, line 20).

Hansher was back of plaintiff and picked him up at the same time Conese did. Conese did not make any examination of the trap door after the accident.

"Q. You don't know whether it was down or not? A. No, sir, either Mr. Rogers was on the trap door or it was down.

"Q. Mr. Rogers was down on the trap door? A. Yes.

"Q. But do you know whether the trap door was down from its normal position or not?

A. I couldn't see" (p. 23, line 20).

Asked if he told the conductor how the accident happened, he at first says he did. When the question was repeated he said:

"A. Not how it happened, I said a man got hurt.

"Q. You didn't tell how how it happened?

A. Not at all" (p. 24, line 10).

Conese saw the trap door when he stepped on it.

"Q. It was all right, wasn't it? A. When I stepped on it, it must have been.

"Q. It was flush with the platform? A. Flush with the train platform" (p. 24, line 38).

"By the Court:

"Q. Did you notice the trap door itself? A. Itself?

"Q. Yes. A. Not itself. Mr. Rogers was on the top of the trap door and naturally the trap door had to be down" (p. 25, line 35).

The last sentence of the answer was stricken out, and again the witness says, in answer to the Court, that he did not see the trap door itself (p. 26, line 1).

We submit that this evidence is wholly insufficient to raise a jury question with respect to the alleged giving way of the trap door. In view of the light in the vestibule, had the trap door fallen below its normal position, the plaintiff would have been able to say something more than merely *that he felt the trap door go down*. Neither he, nor the witness, Conese, *could have failed to see* the trap door was out of its normal position if it had actually given way. If the trap door had fallen, Hansher, who followed immediately behind the plaintiff, most surely would have seen it fall and would have seen its position after it had fallen. But he, a most important witness in the case, was not called nor was his absence accounted for.

II.

By its inspection of the trap door, the defendant performed its full duty to the plaintiff and it was not guilty of the negligence complained of, even if the trap door gave way when plaintiff stepped on it.

A common carrier of passengers does not insure the condition of its cars and their appurtenances. It is obligated to use reasonable care to keep them in proper condition and that is all.

The obligation of the defendant with respect to the vestibule and trap door is stated in *Rivers v. P. R. R. Co.*, 83 N. J. L. 513, in the following language:

"Now, a railroad company is under no legal obligation to provide vestibuled trains for its passengers, but having done so, it is its duty to use reasonable care to maintain them in a safe condition."

That this is the extent of defendant's obligation is recognized by this Court in *McBride v. P. R. R. Co.*, 99 N. J. L. at page 467, where the above language in the *Rivers* case is quoted with approval.

The evidence shows inspection and care to the full extent required by this rule.

Conlon, defendant's car inspector, testifies that he spent from 12 o'clock until 3 o'clock of the afternoon of the day of the accident in repairing the cars and inspecting the vestibule, trap doors and end doors of all the cars in the train. He found all the trap doors in good condition. He opened each vestibule door and tried each trap door (pp. 32-33).

The outer end of the trap door is supported by an edge or shoulder on which it rests. The end next to the car is supported by an iron bracket. There are three springs (misprinted as *strings*) attached to the trap door and when the latch of the trap door is released the door will always come up and never go down, unless the bracket is broken. *In that event, the trap door will go down to the tracks.* The trap door was not broken when Conlon inspected it on the day of the accident. If it had been, it would have been down on the ground. If the bracket were broken, the door would fall down at the end where it was fastened to the car (pp. 34-35).

Wilkes, the conductor of the train, first saw plaintiff and his friends as they were walking along the platform of the station. He next saw Rogers about 15 minutes after the train had left

125th Street, when he was taking up transportation. Plaintiff told him that he had hurt his leg getting on the train and asked for iodine (p. 36, line 20). Plaintiff said not a word to Wilkes about the trap door going down. He simply said he had an accident at the Grand Central, nothing more (p. 37, line 29).

It was Wilkes' duty to see that the trap doors were in proper position and safe for passengers to board the train. He made an inspection of all the trap doors throughout the train about 40 minutes before the train left. He walked on the trap doors in every car in the train. There was nothing wrong with any of them (p. 38, line 12).

The first stop of the train, after leaving Grand Central Station, was at 125th Street and the next stop was at Albany. There, all the trap doors were opened and he personally knew that all worked properly (p. 39, line 10).

Plaintiff testifies that he boarded the train about five minutes before it left (p. 15, line 20). Conese says the train left about ten minutes after the accident (p. 21, line 20). It is thus clear that a large number of passengers had boarded this excursion train prior to the time of the accident and that a large number boarded it after the accident. Had the trap door of the car boarded by plaintiff fallen down it would necessarily have been brought to the attention not only of the train crew, but of passengers desiring to board the train at that door. Nothing of the kind appears in the testimony. It did not exist.

Plaintiff relies upon *McBride v. Pennsylvania Railroad Co.*, 99 N. J. L., page 464, and *Rivers v. Pennsylvania Railroad Co.*, 83 N. J. L., page 513. Neither case is in point.

In the *McBride* case it was conceded that the trap door was in perfect condition, and the sole

question was whether the servants of the Railroad Company had properly latched the door.

The Court said (p. 467, bottom) :

“The issue presented by the pleadings was the position of the door *and not its condition*. We think from the evidence presented that the jury were entitled to draw the inference, which they evidently did, that the employees of the railroad company were negligent in not properly fastening the door before permitting it to be used as a means of exit.”

In the *Rivers* case, the negligence found against the Railroad Company was the opening of the trap door of the vestibule at a distance of about $\frac{4}{5}$ ths of a mile from the next station stop.

The negligence charged in the present case is failure to keep the trap door in proper condition, but as to this charge the defendant has exculpated itself by showing due and careful inspection of the trap door, and even if the evidence had shown that the door went down under the weight of the plaintiff, by such careful inspection it had performed the full measure of its duty to the plaintiff.

In *Bliewise v. P. R. R.*, 81 N. J. L. 160, the proof showed that the window of a passenger train had been inspected at ten o'clock in the morning, and that at four-thirty o'clock in the afternoon it fell, injuring the plaintiff's hand. It was held reversible error to refuse to charge that if the defendant inspected the window device the day of the accident in the only way practical and it was then in order as far as could be discovered the defendant was not liable. The Supreme Court said :

“To hold otherwise under such circumstances as these, would be equivalent to leaving it to a jury in each case to fix according to various minds and temperaments a standard of inspection; and such a policy would, in its

practical results, serve to illustrate the truth of the remark of Chief Justice TINDAL, 'that that liability for negligence would be only co-extensive with the judgment of the individual, and would be as variable as the foot of each individual.'"

In *Conover v. D. L. & W.*, 92 N. J. L. 602, a directed verdict was sustained on appeal in this Court.

There the plaintiff fell while alighting from a train. Her testimony was to the effect that her heel caught in something protruding from the platform of the car. She testified: "I know something stuck up, was there that caught my heel." She said *she did not see what it was, but "felt" something hold her heel and throw her forward.* The undisputed testimony was that an examination of the platform immediately after the accident revealed no obstruction or defect. Justice KALISCH, speaking for this Court, said:

"Moreover, the statement of the plaintiff that there was something sticking up from the platform which caught her heel is based upon pure conjecture and clearly of no probative force. Without any proof that 'the something stuck up' was visible to the ordinary prudent person and was a part of the platform and in the exercise of ordinary care could have been discovered by the defendant company * * * there were no facts from which negligence of the company could be reasonably inferred."

The doctrine of *res ipsa loquitur* has no application to the case at bar,

"Although it is sometimes said that a presumption of negligence arises, by virtue of the rule of *res ipsa loquitur* from the mere proof of the injury or accident, the prevailing view is that it is not the naked injury, but the nature

and character of the accident together with the circumstances attending the occurrence, that justify the application of the doctrine and the inference of negligence, and that before the doctrine may be invoked and the presumption drawn, something more must be shown than the mere happening of the accident or injury."

45 Corpus Juris 1210, Sec. 778;

Conover v. D. L. & W., 92 N. J. L. 602.

CONCLUSION.

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

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and Counsel
Attorneys for Defendant-Respondent.

