

DECLARATION

Filed June 1st, 1909.

(Seal) New Jersey Supreme Court of the third day of June, in the year nineteen hundred and nine.

CAMDEN COUNTY, ss:

The Atlantic City Railroad Company, the defendant, 10 was summoned to answer unto Amanda Corson, the plaintiff, in an action of tort, and thereupon the said plaintiff, by Bleakly & Stockwell, her attorneys, complains for that whereas heretofore, to wit: on the twentieth day of April, in the year one thousand nine hundred and eight, the said defendant was operating a steam railroad, extending from Kaighn's Point, in the City and County of Camden, State aforesaid, by way of Winslow Junction and Tuckahoe to Ocean City and Cape May, in the County of Cape May; that at Tuckahoe, in the County of Cape May, 20 to wit: in the County of Camden and within the jurisdiction of this court, the defendant on the day aforesaid, maintained a station for the accommodation of its passengers traveling over its said railroad; that along the westerly side of defendant's station and platform extended and still extends a track of said railroad leading from said Tuckahoe to the City of Cape May, and immediately along the easterly side of said station and platform extended and still extends a line of tracks of said railroad leading from said Tuckahoe to the City of Ocean City, which 30 lines or tracks extend on either side of said station as aforesaid, from the northerly end thereof to and beyond the southerly end of said station and platform; that on the day aforesaid, the defendant was operating its said

trains over the said lines of railroad to Ocean City and to Cape May, and the plaintiff then and there approached the said station of the defendant upon a public highway leading from the town of Tuckahoe to the said station in order to board one of defendant's trains for the purpose of being carried by the defendant from Tuckahoe to Middletown on the Ocean City branch of said defendant's road; that instead of providing a safe approach to the said station from said public highway across its said

10 property the said defendant then and there suffered to be and remain upon said line of track leading to Ocean City a train consisting of engine and cars directly across another public highway to the southward of said station leading across said track to said station, and also then and there suffered to be and remain upon a switch immediately to the eastward of said Ocean City track another train, consisting of engine and cars, thus making it impossible for plaintiff to reach said station by going across the public highway leading across the said track to the

20 southward of said station; that the plaintiff in order to reach said station from the first above-mentioned highway, on which she was passing from the town of Tuckahoe, was then and there obliged to cross the said intervening switch and also said line of track leading to Ocean City; that the plaintiff while then and there lawfully approaching the defendant's station across its said property from said public highway and along a way provided by the defendant as an approach to its said station and at the invitation of defendant and for the purpose of be-

30 coming a passenger on one of defendant's trains then about to leave said station and without any fault on her part, but owing to the gross carelessness and negligence of the defendant was tripped up and was thrown violently to the ground by an unguarded and obscure wire which

was then and there maintained by defendant and which extended parallel with said station platform and across said approach from said public highway to said station: that no warning of any kind was given to plaintiff of the presence of such wire, which was not visible to the plaintiff; or to any other person using reasonable care in going to said station along the approach so provided by the defendant and was then and there a menace to the life and limb of the plaintiff and other patrons of the defendant at the station aforesaid; that by reason thereof the plaintiff was then and there seriously and permanently injured to her damage fifteen thousand dollars, and thereupon she brings her suit. 10

BLEAKLY and STOCKWELL,  
Attorneys for Plaintiff.

PLEA.

Filed June 14th, 1909.

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NEW JERSEY SUPREME COURT.

AMANDA CORSON	}	In Tort.
Plaintiff		
vs.		
ATLANTIC CITY RAILROAD	}	
COMPANY		
Defendant		

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And the said defendant, by J. Willard Morgan, its attorney, comes and defends the wrong and injury, when, etc., and says that it is not guilty of the said supposed grievances above laid to its charge, or any or either of

them, or any part thereof in manner and form as the said plaintiff hath above thereof complained against it. And of this it puts itself upon the country, etc.

J. WILLARD MORGAN,

Attorney for Defendant.

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REPLICATION.

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Filed June 25th, 1909.

NEW JERSEY SUPREME COURT.

AMANDA CORSON

Plaintiff

vs.

ATLANTIC CITY RAILROAD  
COMPANY

Defendant

In Tort.

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And the said plaintiff, as to the plea of the said defendant, by it above pleaded, and whereof it hath put itself upon the country, doth the like.

BLEAKLY & STOCKWELL,

Attorneys for Plaintiff.

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MINUTES OF TRIAL.

No. 66.

September Term, 1910.

Before ENDICOTT, J., and a Jury.

Appearances:

For the Plaintiff, Bleakly & Stockwell.

For the Defendant, J. Willard Morgan.

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THE CASE FOR THE PLAINTIFF.

(Mr. Stockwell opens the case for the plaintiff to the jury. Mr. Morgan thereupon moved to non-suit the plaintiff on his opening on the ground that the opening showed no negligence on the part of the defendant company, which motion was over-ruled and an exception allowed the defendant.)

R. FENDALL SMITH, Sworn.

By MR. STOCKWELL.

20

Q. Are you a Civil Engineer?

A. Yes, sir.

Q. And Surveyor?

A. Yes, sir.

(Counsel for the defendant admits that this railroad in question is operated by the Atlantic City Railroad Company and the train in question is one of the Atlantic City Railroad Company's trains.)

Q. Where do you live?

A. At Marmora, Cape May County, New Jersey.

30

Q. Is that near Tuckahoe?

A. Yes, sir; about eight miles distant by road.

Q. How long have you been an engineer, a civil engineer?

A. Made it wholly a business for nearly eight years.

Q. Are you familiar with Tuckahoe station?

A. Yes, sir.

Q. In the years 1908 and 1909?

A. Yes.

Q. At the present time?

A. Yes, sir.

Q. Have you at my request made a map or plan of the station and tracks and public road surrounding that station?  
10

A. I have, yes, sir.

Q. Produce it, please?

(Witness produces a tracing which he hands to examining counsel.)

Q. Is this a blue print of the same map (showing witness paper)? You made it?

A. Yes, sir.

Q. Just come down this way, Mr. Smith, please; I wish you would take your pencil and mark some of these  
20 places as I indicate them. Is that a water tank at the junction of the Ocean City track and the public road?

A. That represents the location of a tank at that point.

Q. What is the distance between the tank and the public road?

A. I will have to refer to my notes for that.

THE COURT: Use your notes.

Q. Can you do it approximately?

A. The scale—

Q. Is that drawn to a scale?

30 A. Yes, sir; forty feet to an inch. Approximately from the centre of the track to the centre of the tank would be about forty feet.

Q. No: I said from the edge of the tank to the edge of the road, not the railroad, the public road, the distance

intervening between the edge of the public road and the near side of the tank?

A. That is about ten feet, according to the scale of that map.

Q. What is the width of this public road?

A. Thirty-three feet at this point.

Q. What is the width of the Marshallville road you have indicated on this plan?

A. Thirty-three feet.

Q. Is the line between the public road and the railroad as well defined on the ground as it is on your map? <sup>10</sup>

A. No, sir; there is nothing to indicate where the line goes.

Q. Is there any fence dividing the two?

A. No, sir.

Q. Any other sign or mark showing where one ends or the other begins?

A. No, sir.

Q. Coming up toward the north end of the station—

A. I would like to qualify that. There is nothing visible to the naked eye. <sup>20</sup>

Q. Well, is that true of the years 1908 and 1909 and the present time?

A. The conditions have been practically the same there for some time.

Q. You say practically the same?

A. Yes.

Q. What if any change has been made?

A. The only change I know since the making of this map was some different arrangement of the flower beds <sup>30</sup> and the erection of a small pump house below this tank.

Q. But this shows the conditions as they existed in 1908 and 1909, as I understand it?

A. Yes.

Q. Now, going north along the Marshallville road, state what these black lines indicate here along the railroad right of way?

A. They are signal rods or rods; they are virtually gas pipe, I think, painted black.

Q. They are painted black, are they?

A. Yes.

Q. They are dark?

A. Yes, painted dark, to take the place of rods for  
10 operating the various signals of the railroad company.

Q. Well, just to the east of those toward the bottom of the map I notice two black lines; are they also signal rods?

A. They are signal wires, small wires to operate the signals.

Q. Are they outside of the public road or do they encroach upon the public road?

A. The indications are that they encroach upon the public road.

20 Q. Well, this is a well defined road, isn't it, this Marshallville road?

A. It is not defined on the ground to the eye, but there are points located in it which locates the road.

Q. No, but it has a definite width?

A. Yes.

Q. Representing it as a certain width?

A. This portion of it is, and I think up to a certain distance it has been regularly laid out thirty-three feet wide.

Q. How far do the rods extend down toward the sta-  
30 tion here, these signal rods?

A. More than a hundred feet.

Q. Where do they stop on the map? Just show where they stop. Indicate with your pencil.

A. Right about here.

Q. And what extends below the rods?

A. A few wires.

Q. How many?

A. I can't say.

Q. Well, a great many or—

A. Well, I should say about four.

Q. How far are they from the ground?

A. Three or four inches, possibly.

Q. What is their color?

A. Dark, originally galvanized wire. I don't think <sup>10</sup> they have been painted, possibly darkened with age.

Q. How does their color correspond with the color of the cinders underneath them?

A. Corresponds closely.

Q. Are they easily distinguishable from the cinders forming that path along there?

A. That would depend altogether whether you were looking for them or not.

Q. Well, if you were not looking for them?

A. No, you would possibly trip over them.

20

Q. That is what I want to find out. What do you find at the end of the wires?

A. There is a semaphore pole there, and I think possibly a switch light.

Q. Tell me what these tracks are east of the station—that is east, isn't it?

A. Yes, sir; this is the main line running to Ocean City and Sea Isle. These other tracks are sidings. This is a siding, has a connection with this siding, that is, runs back along the siding, and also across to the scales, a sid- <sup>30</sup> ing running back here to the can house.

Q. What is the condition of the road bed between this signal pole at the end of the signal wires and this point where the rods begin up here—what is the condition of

the road bed? Is it uneven, broken, or is it graded?

A. It is graded, practically level with the roadway.

Q. That is, level with the ties?

A. Level with the ties, yes, the base of the rail.

Q. Loose cinders, or were they packed down when you were there?

A. I can't answer that; they were all over the ground.

Q. This is the canning house, is it (indicating on map)?

A. It is.

10 Q. Are these private dwellings along here?

A. They represent the location of the dwellings, yes.

Q. What is the distance from the middle of this public road leading into Tuckahoe here to the station, the middle of the station house?

A. I can't tell you exactly.

Q. Well, this is forty feet to the inch, you have told us?

A. I haven't any scale.

Q. That is, along the line of this driveway marked on the plan?

20 A. I could tell by scale, but approximately 320 feet, somewhere about eight inches, I should think.

MR. STOCKWELL: I wish to offer this map in evidence,

(Said map is marked Exhibit P 1.)

CROSS-EXAMINATION by Mr. Morgan:

Q. Now, Mr. Smith, just come around here again, won't you, please. Where is the station?

A. This represents the location of the station.

Q. Exactly, that is what I want. Where is the freight  
30 house?

A. This represents the location.

Q. What is this (indicating on map)?

A. That represents the flower beds in the enclosure around there as they existed at that time.

Q. Where is the driveway to the station?

(The witness indicates point on the map.)

Q. That is the way all teams go?

A. That is the usual way of approach.

Q. I say, is that the way all teams go?

A. I couldn't answer that.

Q. Did you see any other way by which they could go?

A. The teams travel this road——

Q. I am not asking you about that road; I asked you crossing the tracks to the station or any other way—is it there any other way that you know of that the teams get to the station except that road?

A. That is the usual way the teams drive, that the teams use in going to the station.

Q. Could they get there in any other way?

A. They could drive along the tracks, that would be the only way.

Q. Drive over the tracks, you mean?

A. Yes, that is they could drive alongside of the tracks.

Q. To the station?

20

A. No, not without driving over the tracks.

Q. Well, I mean to the station?

A. No, not without driving over the tracks.

Q. Over tracks?

A. Over the tracks.

Q. Now, how far is it from the road to the station?

A. Which road?

Q. That main road?

A. I am approximating all the time without the scales; I said 320 feet.

30

Q. How far is it from the road, the main road to the signal wires where it is claimed that Mrs. Corson fell over? You had better get your scale, I think, for that.

A. I haven't any with me.

Q. Haven't you notes that show?

A. Yes.

Q. Very well, refer to your notes then, that will answer.

(A scale was produced by plaintiff's counsel and handed to the witness.)

(Question repeated.)

A. From the center of the road to the beginning of the wires is about 400 feet.

A. Well, she fell over the wires at a point north of this  
10 distance you are speaking of?

A. I couldn't answer that.

Q. Well, she fell over the signal wires and it must have been to the north of it, mustn't it?

A. I don't know about that; I don't know where she fell.

Q. Now, you went all over this, didn't you, this ground and the railroad tracks?

A. Yes.

Q. Were the ties there?

20 A. Yes.

Q. And rails on the ties?

A. Yes.

Q. Was there any space between the railroad tracks, the main track and the siding?

A. Yes, sir.

Q. Was that lower than the road bed?

A. There might possibly have been a slight depression.

Q. How much, do you think?

A. But a casual observer would say it was practically  
30 level.

Q. Then there is no chance for drainage, for the water to go off?

A. I didn't try——

Q. You didn't look at that?

A. I didn't try to determine the drainage.

Q. Don't you know usually between railroad tracks there is a drainage at the side?

A. I presume they provide for the drainage.

Q. Then isn't it a little more than comparatively level?

A. There might possibly be a slight depression.

Q. Now, did you notice around there where there was any path across at this point over the signal wires?

A. At the time of the survey I did not notice any well defined path, but it is all travelled across—

10

Q. Never mind; I asked you if you noticed it?

A. I didn't notice any well defined path.

Q. All right, I won't ask you to testify to something you don't know. Now, isn't there between the rails on the track that goes to Tuckahoe, isn't that ballasted, stone ballast or is it cinders?

A. I can't answer; it is either stone or cinders.

By MR. STOCKWELL.

Q. Mr. Smith, asking you about the condition of the road bed between these tracks and between the rails, did I understand you to say that it was all tramped down here?

A. The conditions are such that you can pass across there at most any point.

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AMANDA CORSON, Sworn.

By MR. STOCKWELL:

Q. Where do you live, Mrs. Corson?

A. 2992 Tilton Street, Philadelphia.

Q. What was the date that you were injured down at Tuckahoe, if you were injured there?

A. It was on Easter Monday, April 20, 1908.

Q. Where were you then living?

A. Middletown.

Q. Is that near Tuckahoe?

A. Yes sir, about a mile and a quarter, or a mile and a half, I don't know exactly.

Q. Is it on any railroad?

A. Yes, sir.

Q. Is it on the Atlantic City Railroad?

A. Yes, sir.

Q. When did you leave Middletown to live in Philadelphia?

10 A. On the 26th of March, 1909.

Q. You have been living in Philadelphia since, have you?

A. Yes, sir, at the same residence.

Q. What is your husband's name?

A. William B. Corson.

Q. Is he in Court?

A. Yes, sir.

Q. What is his business?

A. Engine watchman.

20 Q. Where?

A. For the Atlantic City Railroad.

Q. Where?

A. At Tuckahoe.

Q. Was he a watchman for this railroad company in 1908?

A. Yes, sir.

Q. On the morning that you were injured how did you get from Middletown to Tuckahoe?

A. Came from Middletown to Tuckahoe?

30 Q. Yes, the morning that you were injured?

A. I went in a buggy.

Q. You were driven over then?

A. Yes, sir.

Q. Where did you go in Tuckahoe?

A. I stopped at several places.

Q. Well, what was the last place you visited?

A. Mrs. Bailey's.

Q. What is her first name?

A. Mrs. Jonathan Bailey.

Q. Where is her home located?

A. On the Marshallville road.

Q. How far from Tuckahoe station?

A. Well, it is not so far.

Q. By the Marshallville road you mean the road which leads along the tracks of the station, along the tracks by the station toward Marshallville, is that it?

A. It is on the road toward Marshallville but not above the railroad, you know.

Q. Just hold on to that, won't you please, (handing witness plan)?

A. Yes, sir.

Q. What time did you go to Mrs. Bailey's house?

A. It was shortly after the noon hour, I don't know exactly the particular hour, but shortly after noon. 20

Q. How did you return from Tuckahoe to Middletown?

A. I went by train.

Q. Over the Atlantic City Railroad.

A. Yes, sir.

Q. What time was that scheduled at, that train scheduled to depart from Tuckahoe?

A. About 2:45.

Q. How did you get from Mrs. Bailey's home to the Tuckahoe station that day?

A. Will I show the road that I walked? 30

Q. Yes. Let me turn this map around this way.

A. Now, you know that thing is up side down to me.

Q. This is toward Philadelphia, this is toward Ocean City (indicating on plan.) Which way do you want it,

want it around the other way?

A. Yes, sir.

Q. I will put it the other way then. Now, tell us how you reached the station from Mrs. Bailey's home.

A. I came along this Marshallville road and Mrs. Bailey was with me and she told me to take—she told me she would take a short road, so she took me along.

THE COURT: Now, one minute; the jury can't see that. Now the easel has come I think we had better have the map on the easel so we  
10 can all see.

Q. Can you turn around so as to use that map, Mrs. Corson, instead of this one?

A. Yes, sir.

Q. I understand you came along the Marshallville road toward the station, is that correct?

A. Yes.

Q. And Mrs. Jonathan Bailey was with you?

A. Yes.

20 Q. How far did Mrs. Bailey come with you?

A. She came as far as the bridge.

Q. That being the place (indicating on map)?

A. Yes, sir.

Q. Marked "The bridge"?

A. Marked "The bridge."

Q. Did she then stop?

A. Yes.

Q. Did she go back home from that point?

A. Yes, sir.

30 Q. And you went alone from that point on?

A. I went alone from there.

Q. As you approached the station did you see any trains or engines down toward this other public road?

A. Yes, sir, I saw one across, standing across the cross-

ing taking water.

Q. Just the engine alone?

A. No, sir, it was a train; there were two or three cars; I can't recall exactly, but there was an engine and two or three cars standing there taking water.

Q. Well, was the engine pointed toward Ocean City or pointed toward Philadelphia?

A. Toward Ocean City.

Q. Then the cars were to the north of the engine?

A. Yes, sir.

10

Q. Were they across the public road?

A. Yes, sir.

Q. Did you notice that fact as you approached the station?

A. I did.

Q. Were there any other cars or trains in that neighborhood at that time?

A. Yes, sir.

Q. Tell us where. You may use this if you wish to.

A. There was one on the siding, this one, somewhere 20 along here on the siding.

Q. How many cars if you know, or don't you know?

A. I don't know exactly whether there was one more or two, but I know there was one beside the engine.

Q. Was the engine attached to the cars?

A. There was an engine attached to it.

Q. Did they extend up toward the station from the public road?

A. Yes, sir.

Q. Up this way?

30

A. Yes, sir.

Q. Now, coming back to the point when you left Mrs. Bailey, tell me exactly what you did, how you arrived on the station platform?

A. The way I took, the road?

Q. Yes.

A. I went along this road and came along here just above—There was a well defined path, trodden down by people's feet, very plainly to be seen, and Mrs. Bailey told me to take this road; she told me this was the shortest road, to go that way, that it was well trodden, and I would see the road as I went, and so I went that way, and she told me to go right on over and across to the station  
10 from this road. I could see the marks where it had been tramped until it was just as smooth as any path could be, and I came along that road along here and came across this road, came along by these signal rods.

Q. Did you see those signal rods?

A. I saw the signal rods.

Q. You refer to the iron pipes which Mr. Smith spoke about?

A. Yes, they are round, they are black, they are about that large as near as I can describe them (indicating.)

20 Q. You saw those, did you?

A. Yes, I saw them, and then I crossed—

Q. Wait a minute. Did you walk along the signal rods?

A. Walked along at the side of the signal rods that well defined path.

Q. Yes, how far did you walk?

A. I walked until I came—I went along above these rods.

Q. Until you got beyond the ends of the rods?

A. I got beyond the ends of the rods, where I thought  
30 there was no obstruction whatever, and then I crossed and crossed over these fine wires—I didn't know they were there; I had never went that road before, and I didn't know they were there. Then I crossed over them and caught my foot and fell face downward and struck

this part of my jaw on the tie and also I had broken a limb, I don't know, broken just above the ankle, and I tried to rise and it seemed I couldn't rise. I made three attempts to rise and I asked the Lord to give me extra strength that I could rise, and I did, and how I got across to the station platform I couldn't tell you, for I was so dazed with pain that I couldn't tell you how I got across, but I know I got there.

Q. Well, when you got there what did you do?

A. Then I got across on the platform and I hopped on one foot, because I couldn't put the other one down. I attempted—I did put the other one down and the pain was so great I couldn't stand it, so I hopped on one foot across and one of the employees was sitting there on a box or I don't know whether it is a box or seat or what, near the station, right up against the station building.

Q. Who was it, do you know?

A. Yes, it was the car inspector, Mr. Arlington Steelman.

Q. Go ahead.

A. And he says, "You had quite a heavy fall, didn't you?" I said, "I certainly had." He says, "Are you injured much?" or, "Are you hurt?" instead of "injured"—"Are you hurt much?" I says, "Yes, sir, my ankle is hurt" and he says, "Are you going on the train?" I says, "Yes, sir." He says, "Have you your ticket?" I says, "No, sir." He said, "Are you going to take the train?" or "Are you going to Ocean City?" "Yes," I said, "I want to take the train to Ocean City." So he then beckoned to the trainmen and the train came back after he beckoned.

Q. Where was the train standing at the time he beckoned?

A. It was standing across the crossing taking water.

Q. To whom did he beckon?

A. Well, I expect the conductor?

Q. Was the conductor in sight?

A. Yes, sir, he was standing on the back, at the rear, don't you know, of the last car; he was standing where they always stand when they go to pull the rope.

Q. Did the train then come back?

A. Yes, sir.

Q. Come all the way back to where you were sitting or  
10 standing?

A. It came back just about where I was standing, where I was, so I didn't have to walk, you know, on the platform far to get across, right straight across to the——

Q. Well, it stopped immediately?

A. Yes, sir.

Q. At the platform, immediately opposite where you were, the station platform?

A. Yes, sir.

Q. Did you notice whether any other people took the  
20 train?

A. Yes, I noticed, but there was no one but myself got on after I did or as I saw them. I didn't see any one get on the train, no one but myself, only Rodney Bailey, which was an employee; I saw him get on the train.

Q. Did you notice whether there were any passengers in the train after you got there?

A. Yes, sir, there was two ladies sitting in the front of the car that I was in.

Q. Why did you cross along, go across the tracks to-  
30 ward the station along this path as you have told us instead of going down along this public road around this point, up around here and up to the station to get your ticket?

A. Because Mrs. Bailey told me that is the way they

all go from the Marshallville road, and I took her advice was the reason why I went.

Q. As a matter of fact I understand the train was lying across that road at that time?

A. Yes, sir.

Q. You don't know, do you, how long the train was lying across the road after you started to cross the tracks? Have you any idea? - If you haven't, say so.

A. No, sir, I haven't.

Q. Had you ever had occasion to take a train from Tuckahoe station coming from the Marshallville road before? 10

A. No, sir.

Q. Had you ever gotten off from a train at the station and gone out the Marshallville road?

A. No, sir.

Q. Had you taken the train from Tuckahoe station coming in by this other Tuckahoe road?

A. Yes, sir.

Q. Had you ever driven across the tracks? 20

A. Yes.

Q. By this public road?

A. Yes, sir.

Q. In a team?

A. Yes, sir.

Q. Do you know whether that road is blocked frequently or at any time by the trains of this railroad company?

A. Yes, sir.

Q. Well, what has your experience been?

A. Well, it was blocked often since I have been injured, just in the same manner as it was the day that I fell. 30

Q. Well I want to know what you knew about the operation of that train to Ocean City, that particular train, before you took it that day?

A. Before I took it?

Q. Yes, about its blocking the crossing, if you did know anything about it?

A. Yes, sir, I was told and never knew any different, always, that she always blocked that road to take water, and she stopped—she would go for the water just a very short time before it was time for the train to leave the station and she would stand there quite a while. Well, I don't know exactly; I know it was over an hour from the  
10 time of the other train, from when she was to go, she would stand, then toward the very last she would go and take water.

Q. You mean just before it was time for the train to leave?

A. Just before, yes, sir.

Q. Do you know whether or not she—I mean the train; you were using that term—do you know whether or not this train frequently blocked that road just before the time of departure of the train?

20 A. Yes, sir.

Q. You say you have noticed that very thing since the accident?

A. Yes, sir.

Q. And you had been told that same thing before the accident?

A. Yes, sir.

Q. And you knew that when you approached the station the day you were injured?

A. Yes, sir.

30 Q. Tell me, will you please, where the ticket office is in that station, at which end of it?

A. That is, where the passengers go in for the tickets is in the middle on either side, that is toward the Ocean City tracks and toward the Cape May tracks.

Q. There is a waiting-room right in the middle that you go in?

A. And where the agent's office is, that is, where he is himself, is on this end toward Philadelphia.

Q. This is the freight house, is it, here (indicating on plan)?

A. Yes, sir.

Q. Does the cinder platform extend down here any considerable distance beyond the station?

A. Yes.

10

Q. As it is indicated here on the plan?

A. Yes, sir.

Q. Have you ever known of passengers boarding this train as it stood at the tank from the platform here?

A. Yes, sir.

Q. That is, of your own knowledge? Do you know it yourself? Have you seen them?

A. Yes.

Q. Have you ever seen that particular train pull away from the tank to Ocean City without coming back to the station?

A. Yes, sir.

Q. Do you know what the custom—Well, leave that out. Had you any knowledge that there were wires there that might cause you to trip and fall?

A. No, sir.

Q. Was there any sign of any kind indicating that there was any danger of any kind around there?

A. No, sir.

Q. Was there any fence or other obstruction preventing you from crossing from the public road to the station by that short cut?

A. No, sir, nothing at all.

Q. You understood that it was perfectly safe to go

30

there?

A. Yes, sir.

Q. As you started across the tracks do you know whether or not that car inspector was on the platform?

A. Yes, sir.

Q. Did he see you coming over?

A. Yes, sir.

Q. Are you sure of that?

A. Well, I can't say positive I am sure, for I didn't  
10 have his eyes.

Q. Was anything said to you by the car inspector or any other employee around there warning you not to cross at that point, that it was dangerous?

A. No, sir, no one ever told me to not go.

Q. As a matter of fact, have you since the accident seen people crossing at that point, passengers?

A. Yes, sir.

Q. Using this same path?

A. Yes, sir.

20 Q. Could you have gone very much further down this path, down this way and crossed over here on that particular day?

A. No, sir.

Q. Why not?

A. Because there was a train there.

Q. On this switch lying along here?

A. On that switch there, yes, sir.

Q. So that this was the only place where you could cross here?

30 A. It was the only place that I saw that I could cross at that time positively.

Q. Did you believe that you could go from this point around and wait for the train to leave the crossing and then get your ticket and catch that train?

A. No, sir, because I knew that she pulled out all times there from the tank, I knew she pulled out and in order, while she stood there, not knowing how soon she would pull out and not come back was the reason why I know I couldn't go around there and have time to get my ticket, knowing the circumstances.

Q. Well, tell us what happened after you were injured? How did you get on the train?

A. Why, the conductor took a hold of me like from the arm and shoulder and I would hop on one foot, and then he asked me could I help myself any to get on the train, and I told him I guessed so, and I took hold of the railing like this and used one foot, and he helped me up then on the back of the car, and then the supervisor took me and by putting his hands under my arms helped me and put me in the back seat in the car.

Q. Well, what happened when you got to Middletown?

A. And when I got to Middletown they helped me off, the conductor and one of the trainmen helped me off, the two of them together, and they put me down into a ditch right up with my body leaning against the embankment, an embankment about between seven or eight feet, I can't tell exactly, but it was above my head I know over a foot, but I can't tell exactly.

Q. How did you get out of the ditch? Tell us what happened after that.

A. While in the ditch I cried like a baby.

Q. Well, did you get out alone or did somebody help you?

A. No, sir, I got out alone. I asked the Lord to give me strength and not let me die.

Q. Well, tell us who helped you if anybody?

A. And I crawled on my hands and knees and crawled up that embankment and went along the plowed—There

was plowed ground there, they had plowed the ground for corn, and I went along that plowed ground on my hands and knees, and then it seemed as if the ankle hurt so when I was on my hands I tried to raise my body up and stood a while on one foot, and tried to hop, and I had to get down again on my hands and knees, and I tried to holler and I couldn't—I didn't know my own voice. So then I laid over on my side and I waved my hand and I thought "Well, I will wave as long as there is breath in  
10 my body," and then my neighbor, Mrs. Jennie Ward, she saw me from the back window she said, and she came out to me and she says to me, "Mrs. Corson, you are hurt, aren't you?" and I said, "I certainly am hurt." She said, "Do you think that you can get over to my house by me and my daughter helping you?" I said, "I don't know, perhaps I can." She took hold of me; she says, "Perhaps you can step," and so I made a step, and as I stepped she said, "Oh, no, you can't, for your limb is broke." She said, "You sit here with the daughter, and  
20 I will go back to the house." So she went back to the house and brought out two chairs, and she put those two chairs side by side and I sat down in one chair, sat down and held on this way, you know, and raised my body up and moved to the other chair. Then the chair I just got out of, she moved then aside of that one, and that is the way I reached her house. I wasn't at home yet.

Q. Where, as a matter of fact, were you injured?

A. Where was I injured?

Q. Yes; I understood you to say that your limb was in-  
30 jured?

A. My limb was injured and so was my hip.

Q. Was it broken?

A. Yes, sir.

Q. What happened to your face?

A. Then I struck, as I fell I struck my jaw right about there on the tie, and from that formed abscesses.

Q. Were any teeth broken?

A. My teeth were mashed in my mouth, and I spit great mouthfuls of blood; even in the train I had my handkerchief full of blood.

Q. You say abscesses developed on that jaw?

A. Yes, sir.

Q. Right over the place where you were injured?

A. Yes, sir, there was abscesses on the lower jaw and I 10 afterward had abscesses on the upper one.

Q. Had you had anything of that kind before the accident?

A. No, sir.

Q. Any trouble with that side of your face at all before, before the accident?

A. Never, never before.

Q. Were you confined to your bed?

A. Yes, sir.

Q. How long? 20

A. I was confined—I was in my bed from the 20th of April until August, and down I took in bed again in the winter, in February.

Q. What was the cause of your being in bed?

A. Why, on account of the injury to the jaw and to my ankle.

Q. Was your limb put in splints?

A. Yes, sir.

Q. Do you know whether you had delirious spells during that time? 30

A. Yes, sir, I was delirious and didn't know day from night.

Q. Was there any pain accompanying this confinement to your bed?

A. Pain? No end of pain. I will never forget it.

Q. How long did the pain continue?

A. Oh, for months and months.

Q. Where were these pains?

A. I had pains in the limb and pains in my head and have the same in my head today.

Q. Had you had similar pains to these in your head before the accident?

A. Never like these, no, sir.

10 Q. You say you still have them?

A. Yes, sir.

Q. Are they frequent or otherwise?

A. Yes, sir.

Q. Have them during the day or at night?

A. I have them at both times, but at night it comes so bad I can't sleep, and I get out and walk the floor.

Q. How has it affected you in any other way, Mrs. Corson, than the injury to the limb and these pains in the head?

20 A. It has made me a nervous wreck.

Q. Does the injury to the limb affect your walking?

A. It does in going up and down stairs, the steps, at the present time, and it does in walking, too; it seems to be stifflike there under the knee as if the cords were drawn or something and it does annoy me.

Q. Did you have any trouble with your limb before the accident?

A. Never, never had anything the matter with my limbs.

Q. Are there any pains in the limb now?

30 A. Yes, sir.

Q. Did it affect you in any other way than you have told us?

A. Yes, sir.

Q. Tell us about the abscesses? How soon did they de-

velop after the accident?

A. They didn't develop—I know when I called the doctor it was in the month of the following February, and my jaw was out like this; I was the awfulest sight that ever could be seen, and intense suffering. The doctor knows well the condition of my face and of my head, and I was delirious, and I didn't know day from night; I knowed nothing but intense pain.

Q. Do I understand that those abscesses were over the place on your face where you struck the tie? 10

A. Yes, sir.

Q. Over the point where the teeth were crushed in your head?

A. Yes, sir, they were right where they were crushed, right here, and then there was one formed above afterward, after I had moved back to the city.

Q. Were the teeth simply knocked out of your head or was the jaw injured?

A. The jaw seemed to be injured; they were crushed and mashed like, they didn't seem—They wasn't knock- 20 ed out completely; it wasn't like that; but they were mashed in the mouth.

Q. Did you have any physician attend you or consult any physician soon after this accident, Mrs. Corson?

A. Yes, sir.

Q. What physician?

A. Dr. John Douglass.

Q. Was he a physician of Tuckahoe?

A. At that time he was.

Q. Well, where does he practice now? 30

A. Cape May Court House.

Q. What did he treat you for?

A. He treated me for the limb, for the broken bone, for to set it.

Q. Did you consult any other physician?

A. At that time, right then? I have since.

Q. Well, how long did he attend you? Then tell us if you consulted any other physician?

A. He set the limb and he told me that I had a nervous shock from it.

Q. How soon after the accident did he remove from Tuckahoe?

A. Well, I don't know exactly.

10 Q. Was it while you were sick?

A. Yes, sir, while I was sick in bed.

Q. Well, after he left did you have any other doctor?

A. Yes, sir.

Q. What doctor?

A. I had Dr. Marshall.

Q. Is Dr. Marshall here in court?

A. Yes.

Q. How many times did you visit him or did he visit you?

20 A. I don't know exactly the number of visits.

Q. Did he treat you at the time you had the abscesses on your face?

A. Yes, sir.

Q. Did he lance the abscesses?

A. He lanced it on the inside of my mouth; he made like one long stroke in one place and two across this way on another.

Q. On the inside of the mouth?

A. On the inside of the mouth. He——

30 Q. What were you going to say?

A. Why, I was going to say——

Q. Never mind. How long did he treat you, do you suppose?

A. Dr. Marshall?

Q. Yes.

A. He treated me from the 17th of February until the 25th day of March.

Q. When did you come from Tuckahoe to Philadelphia?

A. The 26th day of March, 1909. This was 1909.

Q. Did you have a trained nurse when you were sick in bed at Tuckahoe?

A. No, sir.

Q. Who nursed you?

A. My sister and my neighbor.

10

Q. Who are they?

A. Mrs. Jennie Ward and my sister was Mrs. Reba Bailey.

Q. Did you tell us how long you were confined to your bed as a result of these injuries? I don't think you did.

A. I was first from April—In fact, I was in bed or sitting up in the chair for a whole year, from April until the following March, for I was in bed continually from April until August, and never moved out of my bed, not even to sit up, and then I was to my bed again in February, 20 and they moved me from by bed to the City of Philadelphia: they took me right out of my bed, for I had to sit in a big chair, and wait until they moved me out.

Q. Who looked after you when you arrived in Philadelphia?

A. Dr. Scull.

Q. And who nursed you?

A. My neighbor.

Q. Who was that?

A. And so did my cousin. Why, Mrs. Levy.

30

Q. Did you do your own house work before this accident?

A. Yes, sir, did more than my housework, for I done other work.

Q. Have you been able to do work since that time?

A. No, sir.

Q. Are you able to work at the present time?

A. I am not able to do what I really have to do; I am not able to do it.

Q. Do you live alone or with others?

A. I live with my father and my husband.

CROSS-EXAMINATION by Mr. Morgan:

10 Q. Mrs. Corson, you stated I think that you moved from Middletown in March of this year to Philadelphia, is that it, March, 1909?

A. 1909; this is 1910.

Q. You had lived previously to that time at Middletown?

A. Yes, sir.

Q. Where is Middletown?

A. It is about a mile and a quarter or a mile and a half, I don't know exactly, below Tuckahoe.

Q. Below Tuckahoe?

20 A. Below Tuckahoe.

Q. You mean by that toward Sea Isle or toward Ocean City?

A. Toward Ocean City.

Q. How long had you lived there?

A. To Middletown?

Q. Yes.

A. I had lived there from 1897 at Middletown.

Q. Up to the time you went to Philadelphia?

A. Yes, sir.

30 Q. And your husband is engaged as what?

A. Engine watchman.

Q. As what?

A. Engine watchman.

Q. Oh, engine watchman?

A. Yes, sir.

Q. Did he live at Middletown?

A. Yes, sir, when I did.

Q. Do you live with him now or does he live with you in Philadelphia?

A. He lives with me in Philadelphia, but he is employed at Tuckahoe.

Q. Now, you told me I think that you had been to Tuckahoe Junction on numerous occasions before this, didn't you?

10

A. Oh, yes.

Q. Before this accident?

A. Yes, sir.

Q. How often did you go there?

A. Well, that I never took account of, I don't know.

Q. Did you go there once a week?

A. No, sir, for I was no great traveller.

Q. This was before the accident, I mean now?

A. Yes, before the accident.

Q. You had been there numerous times?

20

A. Yes, sir.

Q. And seen this crossing blocked by trains?

A. Yes.

Q. You have seen that lots of times, haven't you?

A. Yes, sir.

Q. Did it happen every time you went there to the Junction?

A. What is the question?

(Question repeated.)

Q. That this road would be blocked by a train?

30

A. No, sir, not every time.

Q. Once in a while?

A. Yes, sir.

Q. Now, the day that you called on Mrs. Bailey and

before you started to cross over the tracks did you notice whether a train was standing on the crossing?

A. Yes, sir.

Q. Did it cover the whole crossing?

A. Yes, sir.

Q. There wasn't any way for anybody to cross the railroad tracks at the public road crossing, is that correct?

A. That is correct; you couldn't cross there.

Q. Now, do you recall how many railroad tracks you  
10 had to cross to reach the station platform?

A. Where I was?

Q. The way you went?

A. Two.

Q. Two railroad tracks?

A. Yes.

Q. That is, the main line track that goes to Ocean City and a switch?

A. And a side track.

Q. A siding?

20 A. Yes.

Q. After you fell over the signal wires, did you notice Mr. Steelman?

A. After I fell over them, I did while I laid on the ground.

Q. What did you do then?

A. What did I do?

Q. Yes.

A. Why, when I saw no one was coming to help me I asked the Lord to give me strength to raise myself.

30 Q. Never mind about that; what did you do?

A. Why, I got up; I made three attempts to get up and at last I did get up.

Q. You did get up?

A. I did.

Q. Where did you go then?

A. Why, I went to the platform, but I don't know how I got there.

Q. You got there—you got to the platform?

A. I got there all right.

Q. Then you met Mr. Steelman and he helped you, did he, down at the station?

A. Did he help me to the station?

Q. Yes.

A. No, sir.

10

Q. How did you get to the station?

A. I hopped on one foot.

Q. All the way down?

A. Yes; I put my foot down and tried it first and the pain was so great that I was compelled to hop on one foot.

Q. Did you go in and get your ticket?

A. No, sir.

Q. You didn't get one?

A. Didn't buy any. I didn't buy no ticket.

20

Q. Can you tell me about where those cars were on the siding, pointing on the map? Can you tell me about on what siding and where the cars stood?

A. They were standing partly along here by the rear end here, somewhere by the station.

Q. On the main line?

A. On the siding, you were asking me.

Q. I know. Well, that is the main line you have got there, the main tracks.

A. I meant the siding, along partly here and a little 30 along here.

Q. Nearly out to the station?

A. There was one end of the station that was above it, you know,

Q. But somewhere along here, right along here?

A. As near as I can tell you it was right along about along there (indicating on map.)

Q. Opposite the freight station?

A. It was partly to the freight station and one end of it was to the other station.

Q. And how many cars?

A. The one on the siding?

Q. Yes.

10 A. Well, I am not sure whether it was one or two.

Q. There wasn't any engine there, was there?

A. Yes, sir, there was an engine.

Q. An engine and one or two cars?

A. Yes.

Q. And another engine down at the crossing?

A. The road crossing, yes, sir.

Q. Had you ever crossed over these railroad tracks before to get to the station?

A. In the same place? No, sir.

20 Q. You went over there because Mrs. Bailey told you to go, did you?

A. Yes, sir, she said everybody from Marshallville went that way and she always goes that way and she told me to go.

Q. Did Mrs. Marshall tell you to go over a well defined path?

A. Yes.

Q. Was that the first time you ever heard those words "well defined path"?

30 A. Yes, sir.

Q. Now, you got on the train?

A. Yes, sir.

Q. You said the conductor backed the train back to get you on?

A. Yes, sir.

Q. Do you know what was the time for the train to leave?

A. I do.

Q. What time?

A. 2:45.

Q. And what time was this?

A. Why, it was just shortly before she left.

Q. I know; could you tell exactly what time it was the train left?

A. What time the train left—2:45.

Q. Did the train leave at 2:45 on that day?

A. It certainly did.

Q. Well, you went to Middletown?

A. Yes, sir.

Q. You went home to Middletown?

A. Yes.

Q. And you say you got off there and then went to your home?

A. No, I didn't go direct to my home; they took me <sup>20</sup> to my neighbor's home. I was there two days and two nights before they took me home.

Q. At whose house did you stop?

A. Mrs. Jonathan Bailey's.

Q. No, no, I mean when you got off the train that day that you were hurt, going home to Middletown?

A. Oh, Mrs. Jennie Ward.

Q. Did you call a doctor?

A. Yes, sir.

Q. What doctor?

A. Dr. John Douglass.

Q. Where is he now?

A. He is here.

Q. He is here in court?

10

30

A. Yes, sir.

Q. Where does he practice medicine?

A. He practices now at Cape May Court House at present.

Q. How long did he attend you?

A. He attended me from April until August.

Q. April until August?

A. Yes, sir.

Q. What for?

10 A. He attended me for nervousness and for my limb.

Q. Did you have tooth trouble at that time?

A. My face, yes, sir, for they were mashed in the mouth, and I had spit some of them out, and my face and jaw had always ached and bothered me.

Q. Did you call the doctor's attention to that?

A. I did at the time.

Q. Did Dr. Douglass attend to that?

A. Well, Dr. Douglass, he just looked at it and that is about all, I guess.

20 Q. Now, after Dr. Douglass attended to you, I think you say he attended you up until June?

A. August.

Q. Until August?

A. Yes, sir.

Q. Then did you have any other doctor?

A. Yes, sir.

Q. To attend to your feet and teeth—I mean your jaw?

A. To attend to my jaw.

30 Q. Your tooth?

A. Yes.

Q. When was that?

A. In February.

Q. In February following?

A. Yes.

Q. February, 1909?

A. Yes, sir.

Q. Who was the doctor you called in then?

A. Dr. Randolph Marshall.

Q. And where does he hold forth? Where does he practice medicine?

A. Tuckahoe.

Q. How long did he attend you?

A. He attended me from the 17th of February until the 25th of March.

Q. For the tooth?

A. For the abscesses, and I was delirious at the time.

Q. Was that the first you noticed that delirium?

A. That was the first that I had noticed I was delirious.

Q. That is in February?

A. In February I had it some, and went back——

MR. STOCKWELL: Had you completed your answer, Mrs. Corson?

THE WITNESS: No. 20

MR. STOCKWELL: You had better complete the answer. She wasn't through when you stopped her.

MR. MORGAN: Oh, I beg pardon.

A. I say, when I laid in bed with my limb, my head, it bothered me, that I felt as if I was delirious for the time being, but a very short time indeed.

Q. Yes. Now, then, Dr. Marshall left you the 17th of March?

A. The 25th of March. 30

Q. Cured?

A. No, sir, not by any means.

Q. Did he say so?

A. Yes, sir.

Q. He said you were cured?

A. No, sir, he didn't say I was cured nor he didn't say I was not cured, but I was in my bed when he left me.

Q. Why didn't he continue with you, to attend you?

A. Why, we moved away on the 26th. He told me to go to the city; if I didn't, in the condition I was in I would lose my mind.

Q. Well, what other doctor did you have?

A. Dr. Scull, of Philadelphia.

10 Q. Where?

A. Philadelphia.

Q. When did you first have him treat you?

A. I had him that very week, the same week in March.

Q. That is, March, 1909?

A. 1909, yes, sir.

Q. Right after Dr. Douglass?

A. Yes, sir.

Q. Or Dr. Marshall?

A. Yes, right after Dr. Marshall.

20 Q. How long did he continue to treat you?

A. He has continued even up to pretty near the present day.

Q. Did you have any other doctors attend you?

A. Yes, I had Dr. Boltz; he was the first doctor I called before Scull. That was only a few days, after I came up to the city.

Q. Now, then, on the day of the accident which I think you said was April 20th, 1908, did you notice Mr. Snyder?

A. I did while I laid on the ground.

30 Q. That is all, you didn't see him on the car?

A. I saw him, too, while I was walking along this path; before I ever began to cross I saw Mr. Snyder, and I saw him also while I laid on the ground.

Q. Where was he when you saw him?

A. Standing on the back at the rear of the car, the same place where the conductor stands.

Q. That is, down at the road crossing, do I understand?

A. On this same train that blocked the road.

Q. Down here standing across that road?

A. Yes, sir.

Q. He was on the rear car platform?

A. He was on the rear platform.

Q. Could he see you from where he stood?

A. He certainly could.

Q. Did you notice anybody else around there, Mr. Mc-<sup>10</sup>  
Keague, for instance?

A. No, sir.

Q. Didn't see him?

A. I didn't see McKeague.

By MR. STOCKWELL:

Q. Did you consult Dr. Benjamin in Camden?

A. Yes, sir.

Q. How long ago did you first consult him?

A. It was October. No, it was before; it was in May, I<sup>20</sup>  
think.

Q. This year or last year?

A. Last year; it has been over a year that I had Dr.  
Benjamin.

Q. Did you consult him since?

A. Yes, sir.

Q. Within the last few days?

A. Yes, sir.

Q. These other doctors that you referred to aside from  
Dr. Douglass and Dr. Marshall live in Philadelphia, don't  
they?<sup>30</sup>

A. Yes, sir.

Q. Do you know whether Dr. Marshall is in any way  
connected with this railroad company?

A. I have heard he was.

Q. You mean as physician—you mean that he is the railroad company's physician?

A. Yes, sir.

MR. MORGAN: I object; I don't think she can testify to that.

THE COURT: I suppose she does not know that.

10 MR. STOCKWELL: She said she had so understood it.

Q. Mrs. Corson, did you have a ticket when you boarded the train?

A. No, sir.

Q. Had you intended to buy a ticket when you started for the station?

A. Yes, sir.

Q. And why didn't you get a ticket.

A. Because I was not able to. The agent was not in the office at the time; I knew he wasn't there.

20 Q. Well, the employees of the railroad put you on the car, did they?

A. Yes, sir, and another thing——

Q. That is all.

By MR. MORGAN.

Q. One matter I forgot to speak of. When did you first apply to the railroad company for damages? Did you ever.

MR. STOCKWELL: We applied for her.

A. No, sir.

30 By MR. STOCKWELL.

Q. Did you ever apply except through your attorneys?

A. No, sir, only through the attorney.

Q. They never came to you and asked you to accept any damages, did they?

A. No, sir, they did not.

MR. MORGAN: I would like to submit to her a photograph and see if she would know what it was, see if she would recognize the location.

By MR. MORGAN.

Q. Mrs. Corson, will you please examine this photograph and tell us whether you recognize the place?

A. Yes, sir.

MR. BLEAKLY: You can call that D. 1 for Identification, Mr. Morgan.

10

MR. MORGAN: Yes, very well.

Q. Can you point out on that photograph just about where you attempted to cross from the road over to the station? Do you know where the station is?

A. No, sir I don't know where the station is on that.

MR. STOCKWELL: Wait one minute; we object because this is not pretended to have been taken showing that point where she crossed; it is in the far distance.

THE COURT: If they object to its use it cannot be done at this time.

20

MR. MORGAN: Well, if they object it cannot be offered; I thought I would get the whole thing in at this time.

By THE COURT:

Q. Mrs. Corson, won't you make it a little more plain to me where the path was and where you crossed? I am not quite sure that I understood it. Here is the road, here is the Marshallville road—you came down here?

A. Yes, and went along this Marshallville road; I came along this road, along here and I came along like this way<sup>30</sup> (indicating on plan) and there was a well defined path, understand—

Q. Where was that path?

A. That path was about here, somewhere (indicating on plan) just after you pass around this place along here, somewhere, and I crossed over this way (indicating.)

Q. Where did that path go to, go across the tracks or come down here aside of them?

A. It came across here, to right along here, then it went right along here, went right along the signal rods, this path right aside of the signal rods and right across the wires the fine wires here was the path.

10 Q. And where was it you tripped?

A. I tripped on these wires, fine wires.

Q. The path went right across those wires?

A. Yes, sir, right directly across those wires.

By MR. STOCKWELL:

Q. I just want to ask a question relating to the Judge's examination: Was this path of gravel or was it simply the cinders between the rails and the tracks packed down?

A. It was cinders packed down?

20 Q. Well, were those cinders all around through here packed down?

A. Yes, sir, all packed down, all solid around there.

By THE COURT:

Q. When you came to these wires where you tripped, had you then passed all the tracks, all the rails, or was that between some of them?

A. I had passed all these rods.

Q. No, but the railroad tracks, when you fell were you over all the tracks?

A. No sir.

30 Q. You were between tracks?

A. Yes, sir, there was the main track, the Ocean City track yet to go across.

MRS. MARTHA BAILEY, Sworn.

By MR. STOCKWELL:

Q. Mrs. Bailey, do you live in Tuckahoe?

A. I do.

Q. Did you live there in 1908?

A. Yes, sir.

Q. Do you know Mrs. Corson, the plaintiff?

A. I do.

Q. Is she related to you in any way?

A. Her husband and my husband are related. 10

Q. Do you recall her visiting your home in April I think it was, 1908?

A. Yes, I recall her coming there; I don't know when it was.

Q. Well, the day she fell over the wires,—do you remember the fact that she did fall over the wires or you were told that she fell over the wires?

A. Yes.

Q. On that day did you accompany her to the station?

A. No. 20

Q. Did you go part way with her toward the station?

A. I did.

Q. Where is your home with reference to the Marshallville road?

A. Well, it is on the Marshallville road near the village.

Q. Shown on the plan just back of you?

A. No.

Q. I say, it is shown on the plan just back of you there?

A. No, it isn't there.

Q. It turns off to the east from this road, does it? 30

A. It is out here (indicating.)

Q. How far did you go with Mrs. Corson toward the station?

A. I went over to the bridge opposite to the tower.

Q. The signal tower?

A. Yes.

Q. Then did you turn around and come away?

A. I went right back home.

Q. Did you tell her of a path she could take across the tracks to the station?

A. I didn't say anything about a path; I told her she could cross the track anywhere down there.

Q. She could cross it anywhere?

10 A. Anywhere.

Q. Did you tell her where?

A. No.

Q. Didn't indicate any place where she could go?

A. No, just cross over anywhere.

Q. What were the words which you addressed to Mrs. Corson just before you left her?

A. I told her to go down there, and she thought she was late——

Q. What did you think?

20 A. I told her she had plenty of time, that I thought she had plenty of time, and I would show her a shorter way.

Q. You looked at your clock before you started, didn't you?

A. Yes.

Q. She told you, didn't she, that she wanted plenty of time to catch the train?

A. Yes, she couldn't walk very fast.

Q. And you told her she had plenty of time?

A. Yes.

30 Q. Didn't you tell her——

THE COURT: No, that is too leading.

MR. STOCKWELL: I know, but there are extenuating circumstances in this particular case,

as your Honor may see by the examination so far.

I do not wish to lead.

Q. Did you tell her that she had plenty of time?

A. Yes.

Q. And you believed that she had plenty of time?

A. Yes.

Q. Did you tell her there was a short cut across the tracks?

A. Yes.

Q. Which you people from Marshallville took? 10

A. Yes, sir.

Q. Did you tell her that you yourself took that same way?

A. Yes.

Q. When you went to the station?

A. Yes.

Q. Did you tell her that other people from Marshallville took that same way when they were going to the station?

A. Yes, sir.

Q. What way did you refer to, the short cut—where 20 was it? Indicate on the plan where it was, please?

A. Anywhere across the track from the station to the signal tower; I crossed anywhere.

Q. Where is the signal tower here? Is this the signal tower out here?

A. What does that say?

Q. That says "signal tower."

A. That is the signal tower.

Q. Then you cut across here, did you, across these rods and— 30

A. I crossed anywhere; came up here and crossed right in front of the station house anywhere.

Q. Crossed here, have you? (Indicating on plan.)

A. Yes.

Q. Well, where is the point that the people from the Marshallville road usually cross at?

A. I guess they do just about the same as I do, cross anywhere.

Q. Is your son employed by this Atlantic City Railroad Company?

A. Yes, sir.

Q. I understand after Mrs. Corson left you you turned around and went immediately home?

10 A. Yes, sir.

Q. You didn't see her fall, then?

A. No.

Q. You don't know where she crossed?

A. No.

Q. When did you learn that she had fallen?

A. The next day.

CROSS-EXAMINATION By Mr. Morgan:

Q. When was it you told Mrs. Corson that she had plenty of time to reach the station, when you were at your  
20 home?

A. Yes.

Q. You walked down with her to the bridge; did you stop there and talk?

A. No.

Q. Came right home? You told her the short way to go would be right across the railroad tracks?

A. Yes.

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WILLIAM BAILEY, Sworn.

30 By MR. STOCKWELL:

Q. Where do you live, Mr. Bailey?

A. A little louder please.

Q. You want me to speak louder?

A. Yes.

Q. Now, you speak louder, too; they can hear me, but they can't hear you the way you are speaking. Do you live in Tuckahoe?

A. Yes, sir.

Q. What part of Tuckahoe?

A. Near by the depot.

Q. Speak as loudly as you can, Mr. Bailey.

A. Near by the depot.

Q. The Reading Railroad station?

A. Yes, sir. 10

Q. What is your business?

A. Butcher.

Q. Butcher?

A. Yes, sir.

Q. Does your business take you in the vicinity of this station very often?

A. Yes, quite frequently.

Q. You are familiar with the lay-out of the tracks, are you, and roads?

A. Yes. 20

Q. Familiar with this Marshallville road, that leads out toward Marshallville?

A. Yes, all of it.

Q. Do you know of a train that leaves Ocean City, or did in 1908, leave Tuckahoe for Ocean City at about 2:45 in the afternoon?

A. Yes, sir.

Q. That train has been running at that hour for some time, hasn't it?

A. Yes. 30

Q. Does it still maintain that same schedule?

A. Yes.

Q. Please tell me how the people from the Marshallville road get to the station. How did they in 1908 and how do

they now?

A. They are obliged to cross over here or otherwise you walk around, up around that way, out of the way. Most of the people cross over here (indicating on map).

Q. Well, look where you are pointing; you are looking at me when you are pointing. They cross the tracks, do they?

A. Yes.

Q. In the vicinity of the rods and wires? You know to where these rods and wires are, do you?

A. Yes, sir.

Q. Do many people take that path?

A. Most all that go that way.

Q. What have you to say about the trains blocking the crossing here of this public road?

A. It is a frequent thing for it to be blocked, especially in the summer time. Sometimes it is blocked fully one-fourth of the time, and I have waited as long as twelve minutes to get across.

20 Q. As far as you know, does that have anything to do with the people crossing up here?

A. Well, if the crossing is blocked they are obliged to cross up here; there is no other way for them.

Q. They can't get into the station any other way unless they get across the tracks.

A. They are obliged to go across there if the crossing is blocked.

Q. Which way do you live from the station, out the Marshallville road or down this way (indicating on plan)?

30 A. Down this way, further down.

Q. Have you ever had occasion to come up the Marshallville road toward the station?

A. No, I never came as I know of particularly that way. I have crossed it lots of times.

Q. When you say that other people coming from the Marshallville road cross the tracks across here, you say that of your own knowledge, do you—you have seen them do it?

A. Yes, with my own sight, with my own eyes.

Q. What is the condition of the roadbed between the tracks and rails along in here where these wires and these rods are, along in here between the public road and the station platform?

A. It is in a flattened condition the same as it would be 10 where it was used in any respect; it is not round.

Q. You mean flattened by people walking over it?

A. Yes, not like the laborers would leave it, not in a round condition.

Q. That is true between the public road and the platform at that point, is it?

A. Yes, sir.

Q. That condition existed in 1908, in 1909, and exists so at the present time,—is that true?

A. Yes; it was a worse condition one time, it used to 20 be than it is now; that is, before they changed the siding. They took one siding down there and put it down the track; that makes them drill further down the track, and they don't block it as much as they did then.

Q. When did they do that? When did they change the siding?

A. I couldn't say positive about that.

(CROSS-EXAMINATION by Mr. Morgan:

Q. The people walking over there haven't flattened the 30 ties any, have they?

A. They have another track beside.

Q. How?

A. I don't understand.

Q. You say the people going over there have flattened

everything?

A. I suppose made a path along there, didn't they?

Q. I want to know if the people walking over there have flattened the ties, the railroad ties?

A. I can't understand what you say.

(Question repeated.)

MR. STOCKWELL: You want to take time to answer that, because it is a deep question.

A. I think any one that asks that question would have to answer it.

Q. Sir?

A. I think if you ask that question you will have to answer it.

Q. No, you said people walking over there had flattened things down. I want to know if the ties are flattened?

MR. STOCKWELL: He wants to know whether the ties are flat.

MR. MORGAN: Yes, if the people have flattened them down in walking over them.

20 A. I think you will have to answer that yourself.

Q. You don't want to answer that question? All right, take your time. Now, is there any place for drainage between the tracks?

A. Kindly repeat that?

(Question repeated.)

Q. In other words, is it lower between the tracks—not between the rails, but between the tracks—than between the rails?

A. There is some, but not a fair drainage. It can't be 30 where people are using it all the time it is bound to get tracked up.

Q. Now, do you know where these signal wires are?

A. Yes.

Q. How high are they?

A. About ten inches to a foot; some are higher than others are.

Q. Well, those that are there I mean?

A. How?

Q. These I refer to; how high are they above the ground?

A. About ten inches.

Q. Ten inches?

A. Yes.

Q. And are they between the rails or between the tracks?

A. Between the tracks.

Q. And is the top of them level with the rails or higher?

A. I should judge it was higher than the rails.

Q. Put your finger down, please, a little bit.

A. I should judge they were higher than the rails.

Q. Can you tell about how much higher?

A. Three inches.

Q. You often cross over at that point, don't you?

A. I have crossed over there hundreds of times.

20

Q. Is it rather a dangerous place?

A. How is that?

Q. Is it a dangerous place to cross?

A. Well, it is if people don't pick their feet up, if they catch them under those wires.

Q. A little dangerous for the trains, too, isn't it?

A. How is that?

Q. A little dangerous, for the trains may come?

A. Well, if a person is on the lookout for them. Not many trains run fast past there. It is right at the depot<sup>30</sup> where all trains, pretty near, stop at the depot.

Q. How many tracks do you have to cross to reach the station at this point that you speak of?

A. There is a track and siding.

Q. And signal wires?

A. Yes, that is there. Now, I don't know at this time—there used to be an extra track there before they took it down the track.

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At this point a recess was taken until 1:30 o'clock P. M.

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Trial of the cause resumed after recess in the presence of Counsel for the respective parties.

10

RICHARD TOWNSEND, Sworn.

By MR. STOCKWELL:

Q. Where do you live, Mr. Townsend?

A. Tuckahoe.

Q. How long have you lived there?

A. My life time.

Q. Where do you work?

A. Ocean City.

Q. How long have you worked in Ocean City?

A. I worked there two years and one month.

20

Q. How did you go back and forth from Tuckahoe to Ocean City?

A. On the train, the Reading.

Q. Where do you live in Tuckahoe?

A. I live above the railroad on the Marshallville road.

Q. How do you get from your home to the station of the Reading Railroad, the Atlantic City Railroad?

A. Well, I go down the Marshallville road and cross the railroad at the crossing and take the drive road that goes down.

30

Q. Use the map there.

A. I come down this road heer and cross here and down this road here (indicating.)

Q. This is toward Philadelphia; that is toward Ocean City, and that is toward Cape May (indicating on map.)

A. And I cross this track somewhere around here. That is the tower there, isn't it?

Q. Here is the tower, here is the signal tower up here. This is the water column here; that switch is here (indicating on map.)

A. I cross this track somewhere in here, but it all depends if there are any cars on the track. If there is any car standing on that track, I have got to cross there (indicating.) I cross there every morning in the week.

Q. Where do the other people cross that come from your direction to take the train?

A. Well, they come across there, the most of them.

Q. Did you ever see anybody come from that direction all the way down on the Tuckahoe road, down here to the station?

A. I never seen anybody walk there; seen wagons drive there but never seen anybody walk there.

Q. Have you seen conveyances come up and unload their people there to take the train?

A. Yes, I have seen wagons unload on this side of the track to cross the track to the cars. 20

Q. Is that a frequent occurrence?

A. Well, what time I have been there I have seen several. I couldn't say how many or anything of that kind.

Q. What is the condition of the roadbed between the public road and the platform along in this neighborhood where the signal wires are, the signal rods?

A. I don't know as I have ever taken particular notice to it, but it is not a rough road at all; it is a level road.

Q. Level? 30

A. It is level across there.

Q. Cinders, isn't it?

A. Yes, cinders.

Q. Level with the top of the ties?

A. Well, there might be a half inch or something like that or an inch between that gravel and the top of the ties; I don't know that exactly.

Q. When you go across there do you go around the wires?

A. Well, that all depends what kind of a place I will go through the cars that stand there.

Q. You say that other people from Marshallville take the same road?

10 A. Yes.

Q. Do you mean that once in a while somebody does it or that the people uniformly go that way?

A. Well, as a general thing the people that lives there cross that track there.

Q. Do you know anything about the blocking of the Tuckahoe road below the station by standing trains?

A. Yes, sir, I have seen the road blocked there.

Q. Is that a frequent occurrence?

20 A. Well, I judge it is from what I have seen, because they can't do anything unless they do block it. They can't water, they can't water the northbound trains unless they block it.

Q. In other words, the water tower is in such a position that they can't take water without blocking the road?

A. No, sir; if the engine goes far enough ahead to take water from the tank she blocks the road.

CROSS EXAMINATION, By Mr. Morgan:

Q. Whom did you ever see cross over at that point?

30 A. Well, I have seen Mr. Nathaniel Campion and his whole family cross over.

Q. A whole car load?

A. His whole family, that is, four.

Q. That is, the family carriage would stop and the family would get out and walk over?

A. No, they would come afoot.

Q. How?

A. Come there, walk there.

Q. Walk over?

A. Yes.

Q. Now, would they walk over the signal wires?

A. Yes, sir, I think they do.

Q. Was there any particular place or space the people use to walk over?

A. Well, I don't know so well about that. I had a particular place if I could always cross there. It kind of goes up a little bit, the grade, where I cross, say about six inches, and I walk up a sort of path there.

Q. Did you ever come down here toward the canning factory and cross over?

A. Yes, sir, I have crossed over by the scales there.

Q. And you crossed over further up?

A. Yes.

Q. Crossed over pretty near everywhere you wanted to to get on that platform?

A. Well, that would depend if there was anything in the way there.

Q. There wasn't any path there, was there?

A. Well, there was sort of a path which I always tried to catch because there ain't no light, because I go there before daylight in the morning.

Q. Where would that path run?

A. That would run right across.

Q. Well, point here.

A. Runs somewhere or other right across here (indicating on map.)

Q. And did it go over the signal wires?

A. Yes, sir, it went over the signal wires.

Q. Then it went over here?

A. Yes; these are the signal wires away down here.

Q. The path, you say was used to go over the signal wires?

A. Yes, and also go around that end. Sometimes I went down. There was only one that I knew of.

Q. You didn't follow the path then, did you?

A. No, sir, to get around the signal wires. I tried to get around them; if there was a car standing in the way I couldn't do it.

10 Q. But the regular path is right here, right over the signal wires, is it, to the platform?

A. Yes. There isn't very much of a path when you start in but it is there.

By MR. STOCKWELL:

Q. Talking about the path, Mr. Townsend, does this beaten path follow alongside the signal wires and rods?

A. I didn't notice that; I didn't notice there was a beaten path on this side.

By MR. MORGAN.

20 Q. Is it a pretty dangerous thing to cross over there?

A. Well, I judge it is, but I always look out where I go and the trains—look out for trains myself, do that myself all the time, know about where I am all the time.

Q. The cars are coming and going a good deal of the time aren't they?

A. No, not when I cross there.

Q. In the summer time aren't there a good many trains going to Ocean City?

A. Yes, sir, a good many trains going to Ocean City in  
30 the summer time.

By MR. STOCKWELL:

Q. Mr. Townsend, when a train is standing on the Ocean City track taking on water, would you say it was dangerous for you to cross over at this place? In other

words, are the trains going to come down the same track from Philadelphia and run over you?

A. No, sir; the trains I am going on or coming on, when they are taking water they are below that altogether. There is no danger in crossing there.

WALTER BURLEIGH, Sworn.

By MR. STOCKWELL:

Q. Where do you live?

A. Marshallville.

10

Q. On the Marshallville road?

A. Yes.

Q. Where do you work?

A. Ocean City.

Q. You take the train over the Reading Railroad or the Atlantic City Railroad from Ocean City to Tuckahoe?

A. Yes.

Q. Every day?

A. Most every day.

Q. How long have you been working in Ocean City?

02

A. About six years.

Q. How long have you been living in Tuckahoe?

A. Well, I was born in Tuckahoe.

Q. You ought to know about this station then.

A. Some little, yes.

Q. What do they call this station, Tuckahoe station or Tuckahoe junction?

A. Tuckahoe junction.

Q. Well, how do you get from your home along the Marshallville road to the station, and how have you observed other people living on the Marshallville road going to the station?

A. Well, some of them walks down the railroad; some of them walks down that lane that runs down to the station

from the main road and crosses over, crosses over the track. I don't remember ever seeing anyone go around by the tank.

Q. You mean you never saw anyone go all the way down by the canning factory, come around in here and all the way back to the station at this point?

A. No I never did.

THE COURT. That is, to the main road, the highway?

10 MR. STOCKWELL. Yes, all the way down here (indicating on the map).

Q. How long have people been accustomed to go across the tracks to the station at that point, as you remember?

A. Ever since the road has been built as far as I remember, as far as I know.

Q. They have always done it?

A. Ever since the road has been built as far as I can remember, as far as I know.

20 Q. Did you ever hear any objection made to people crossing there?

A. No, sir.

Q. Any warning of any kind given to the people that they should not pass there?

A. No, sir.

Q. There is no fence between the public road and the tracks at this point, is there?

A. No, sir.

Q. Is there any way to get to that station without crossing tracks?

30 A. No, sir.

Q. From any direction?

A. No, sir.

Q. Is there any way to get to that station from Tuckahoe except this road down here unless you do cross the

tracks?

A. No, sir.

Q. Up around here somewhere?

A. No, sir.

Q. Let me ask you this: Where is Tuckahoe with reference to the station?

A. Tuckahoe lies off here to the east.

Q. Any dwellings off to the west?

A. Not—well, there is one house been built there lately.

10

Q. Well, that was built within the last year, wasn't it?

A. Yes.

Q. A sort of shack? Oh, no, I beg your pardon—there is a bungalow wbuilt there. Well, Tuckahoe proper is off in this direction, isn't it?

A. East of the station.

Q. So that everybody from Tuckahoe who goes to that station must go across the tracks of that Ocean City line, is that correct?

A. Yes, sir.

20

Q. Can't get around it any other way?

A. No, sir.

Q. Do you know about the trains blocking that crossing?

A. I have seen the crossing blocked.

Q. Frequently?

A. Yes, sir.

Q. Do they stay there long, or just a minute or two?

A. I couldn't tell how long they stayed, not such a great while.

30

Q. Trains that are made up there, have you seen them standing across the crossing? I don't mean the through trains from Philadelphia, but trains which are local, between Tuckahoe and Ocean City—have you seen them

standing across the crossing?

A. Yes, sir; I have seen them.

Q. I understand that that tower is so located that when they take on water they are obliged to block the crossing—is that correct—if they are going down?

MR. MORGAN: It depends entirely upon which end of the train the locomotive is on.

Q. I mean trains which are going toward Ocean City?

A. They can't take any water without lying across the  
10 the road.

Q. Unless, of course, they have the cars toward Ocean City from the engine?

A. Then I guess their engine would hit the road.

Q. It would?

A. Yes.

Q. Have you noticed a well beaten path leading from the Marshallville road across those tracks where the people walk to get to the station?

A. I never looked for a path; I never hunted for one.

20 Q. Well, you didn't have to hunt for one,—is that it?

A. No; I never had to hunt; I never looked.

Q. Did you go by instinct? Well, you sought out a smooth place to walk, is that it?

A. Yes, the best place I could find.

By THE COURT:

Q. Was there a path across near those wires and signal rods, crossing the track, a pathway? Do you know where I mean?

A. A built pathway?

30 Q. Yes; or any kind of pathway?

A. Not a pathway that was built.

Q. Well, what was there? Just tell us in your own way what it looked like.

A. Well, just tramped down by people walking across,

that is all. There is no built cross-road there.

By MR. STOCKWELL:

Q: Were the cinders up even with the tops of the ties?

A. No; I don't think they was.

Q. Well, was the roadbed in the same shape as it was further up the line beyond the tower where people didn't walk?

A. No, sir.

Q. Well, it was smooth across? That is what I want to find out, whether it was smooth or whether it was humpy? 10

A. Well, it was generally smooth.

Q. People who know about the presence of those wires, did they cross the wires or go around the wires?

A. Crossed them, I guess.

Q. You crossed them, did you?

A. Yes, sir.

By THE COURT:

Q. You mean you used to walk on these wires?

A. Sir?

Q. Did you walk on these wires? 20

A. Walk on the wires?

Q. Yes; step on them?

A. No; I didn't step on the wires. I fell over them once or twice.

By MR. BLEAKLY.

Q. You fell over them once or twice?

A. Yes.

By MR. STOCKWELL.

Q. When you didn't fall you stepped over them?

NO CROSS-EXAMINATION. 30

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EDGAR ROSS, Sworn.

By MR. STOCKWELL.

Q. Where do you live, Mr. Ross?

A. Tuckahoe.

Q. How long have you lived there?

A. Fifteen years.

Q. Fifteen years?

A. Yes.

Q. What is your business?

A. Clerk in a grocery store.

Q. Where is your grocery store in Tuckahoe?

A. Second door from the hotel.

10 Q. Where is your home in Tuckahoe?

A. Why, near the store on what we term the Dennisville road.

Q. Did you ever live near the station?

A. Yes, sir.

Q. When was that?

A. I left there last Thanksgiving day.

Q. Well, how long had you lived there before you moved away?

A. Oh, I don't know, two or three years.

20 Q. You were there in 1908, were you?

A. Yes, sir.

Q. Are you familiar with the layout of the station there, Tuckahoe Junction, they call it?

A. I guess so.

Q. Please tell me how the people living on the Marshallville road and coming toward Tuckahoe over the Marshallville road get to the station from that public road?

A. Well, they generally cross over the track.

Q. Is that uniformly the case?

30 A. Yes, sir.

Q. You have seen them do that yourself?

A. I have.

Q. You and your family crossed at that point?

A. Yes, sir.

Q. Any objection from the railroad company or any of its employees or officials to your crossing there?

A. Any objection?

Q. Yes.

A. I never heard anyone enter any.

Q. Was there any fence or other obstruction preventing your crossing there?

A. No sir.

Q. Was there any warning of any kind posted there by the railroad company saying that you had no right to cross there?

A. No sir.

Q. Was it the usual thing for people coming from the Marshallville road to cross below the point where these signal rods make an angle here and go across to the platform? Is it a common thing for them to follow the line of this Marshallville road right across to the station platform?

A. Well, a number of them do it.

Q. Is that the usual thing for people coming from that direction?

A. Well, I couldn't say about the usual thing, but some of them do it.

Q. You do it?

A. I have done it, yes.

Q. What can you say about the blocking of the Tuckahoe road below the station by standing trains?

A. Well, it has been done.

Q. Done frequently?

A. Oh, not so often?

30

Q. What do you mean by "not so often"—once every week or two or several times a day?

A. Oh, I don't know; they block it occasionally.

Q. You don't know?

A. No.

Q. Does your business take you out in the other end of the town mostly?

A. Mostly.

CROSS EXAMINATION, By Mr. Morgan:

Q. The railroad company has provided a means to get to the station, haven't they?

A. Down at the water tank they have, yes, sir.

Q. Down at the water tank?

10 A. Just this side of the water tank.

Q. Off of the main road here?

A. Yes.

Q. Between this Marshallville road and the platform is full of tracks, isn't it?

A. Yes.

Q. Dangerous to cross over?

MR. STOCKWELL: Did you give an answer to that?

A. Did I? No.

20 The plaintiff announced that his proof as to liability is in; whereupon Counsel for the defendant renewed his motion for a non-suit as follows:

MR. MORGAN: If your honor please, my motion is for a non-suit because, first, the plaintiff was a trespasser and the company was under no legal duty to her; second, because the plaintiff has not proven negligence on the part of the defendant or its employees; and third, because the plaintiff was guilty of contributory negligence.

30 THE COURT (After argument): I think the case is very doubtful and it may be that when your testimony is in I will direct a verdict in your favor; but with some question now as to whether there was not a path there where you permitted, if you did not invite people to travel, that is a question I do not want to pass upon at

this stage of the case. If your proof shows there was no path there you may renew your motion with some confidence. The only reason I have let the case go this far is because of the plaintiff's declaration that there was a well beaten path there. That has been weakened now by the testimony of some of her own witnesses; still that testimony is in and I want to hear more on it. I will refuse your motion and grant you an exception.

(Exception noted for the defendant.)

MRS. AMANDA CORSON, Recalled.

10

By MR. STOCKWELL:

Q. How much do you weigh, Mrs. Corson?

A. I don't know exactly what I weigh at present.

Q. Well, about how much?

A. Why, I know I must weigh 160, somewhere along there, 150 to 160.

Q. Give us some idea of the amount of matter that came out of those abscesses on your face, will you?

A. Why, there was a cupful came out very soon after they had lanced it, you know, and ran itself out, but it had run for four days straight ahead.

CROSS EXAMINATION, By Mr. Morgan:

Q. About how old are you, Mrs. Corson?

A. About forty-three.

Q. Forty-three?

A. Yes, sir.

MRS. JENNIE WARD, Sworn.

By MR. STOCKWELL:

Q. Where do you live, Mrs. Ward?

30

A. Middletown.

Q. Are you related to Mrs. Corson?

A. No, sir.

Q. Speak a little louder; we can't hear you. Are you

related to Mrs. Corson?

A. No, sir.

Q. Did you help nurse Mrs. Corson after she was injured at the Tuckahoe station?

A. Yes, sir.

Q. Was she brought to your house or did she go elsewhere?

A. She came to my house.

Q. How long did she stay at your house?

10 A. Two days and two nights.

Q. Then where was she taken?

A. Home.

Q. Where was her home?

A. Next door to mine.

Q. In Middletown?

A. Yes, sir.

Q. What was her condition while she was there in your house? Was she in pain?

A. Yes, sir.

20 Q. Do you know whether or not her limb was broken?

A. Well, it looked as if it was broken.

Q. It looked as though it was broken?

A. It looked that way.

Q. Do you know what injuries she received on her cheek or on her jaw?

A. Yes.

Q. What were they?

A. Abscesses.

Q. What?

30 A. Abscesses.

Q. Well, what injuries immediately after the accident? Were her teeth injured?

A. I believe they was.

Q. Well, do you know? Did she show them to you?

A. Yes, I seen them.

Q. Was her jaw injured?

A. Yes, sir.

Q. Do you know whether she had false teeth at that time?

A. Why, I think she had two or three.

Q. How was the jaw injured?

A. That I can't tell.

MR. MORGAN: How would she know?

MR. STOCKWELL: If she doesn't know she will say. I do not know whether she does or not.

THE WITNESS: I do not.

Q. You don't know?

A. I do not.

Q. Did you help nurse Mrs. Corson after she left your house?

A. Yes, sir.

Q. While she was at her own home in Middletown?

A. Yes, sir.

Q. Were you with her when she had these abscesses? 20

A. Part of the time.

Q. Were they of any considerable size?

A. Yes.

Q. How much?

A. Stuck away out, a good ways from the face.

Q. Were they painful?

A. Yes, sir.

Q. Was she in her mind at all times when she had those abscesses?

A. No, sir. 30

Q. How much of the time was she delirious?

A. Well, quite a while.

Q. What do you mean an hour or two or several days?

A. Several days.

Q. Do you know how long she was confined to her bed?

A. I couldn't say that.

Q. Do you know how long she was confined to her bed?  
were you?

A. Part of the time.

Q. Do you remember the fact that she was taken away  
from Middletown to Philadelphia?

A. I just can't remember that.

Q. She doesn't live there now, does she?

10 A. No, sir.

Q. You don't remember just when she left Middletown?

A. No.

NO CROSS-EXAMINATION.

DR. JOHN DOUGLASS, Sworn.

By MR. STOCKWELL:

Q. You are a practicing physician, are you, Doctor?

A. Yes, sir.

Q. Where do you live?

20 A. I live at Cape May Court House.

Q. Did you live at Tuckahoe in 1908?

A. Yes, sir.

Q. Did you then attend Mrs. Amanda Corson, this  
plaintiff?

A. Yes, sir.

Q. Can you say whether or not her leg was broken  
when you attended her?

A. Yes, sir.

Q. Did you set the limb?

30 A. Yes, sir.

Q. Put it in splints?

A. Yes, sir.

Q. What leg was it, the right or left?

A. Well, I really don't know.

Q. Have you your notes covering this case?

A. I haven't the notes, I regret to say, and I will explain the reason for that if it is of any importance.

Q. Never mind.

THE COURT: I don't think it is strange he don't remember. That will be admitted, I suppose.

Q. You haven't your notes?

A. I was leaving Tuckahoe about that time and made no note of the case.

Q. Were you called in immediately upon her being injured?

A. That day.

Q. That same day?

A. Yes, sir.

Q. And was it that same day you set her limb?

A. Yes.

Q. Was it the ankle?

A. Yes, sir; what is known as Potts' fracture.

Q. How many times did you attend her?

A. I couldn't tell you that. 20

Q. Did you until you left Tuckahoe for Cape May Court House?

A. Yes, I left Tuckahoe only a few days after I treated her. Then I called on her at visits back to the town to see other cases.

CROSS-EXAMINATION By Mr. Morgan:

Q. Doctor, after you left her and went somewhere else did you consider she was cured?

A. Why, yes, practically speaking.

Q. How long did you attend her? 30

A. There again my memory won't carry me back, not having the record. I usually—It is my custom to make a record of every call but that particular time under those conditions I didn't do it.

Q. You say she had a Potts' fracture; what is a Potts' fracture?

A. A Potts' fracture is a fracture of the lower end of the fibula at the outer side of the ankle, just above the ankle.

Q. Can you say just where it was?

A. Located near about the lower fifth of the fibula.

Q. That small bone?

A. The small bone, yes, sir.

10 Q. That was the matter then, that small bone?

A. The small bone, yes, sir.

Q. And you treated her for that only?

A. Only, that is all I have any knowledge of.

Q. You didn't treat her for any toothache or abscesses in the mouth, anything of that sort?

A. No, sir.

Q. And when you left, moved away, you thought she was in good condition, did you?

A. I thought she was in condition for recovery, yes,  
20 sir; there was perfect apposition.

By MR. STOCKWELL:

Q. You treated her after you went away?

A. Yes, I called on her occasionally after I made the Court House my home. In other words, I had a few other cases that I perhaps called on for two or three weeks, I couldn't just say, after I made that my headquarters, going back and forth on the train, the same period or interval, possible two or three weeks or three or four, but no set time.

30 Q. Two or three weeks that you treated her then?

A. Yes.

Q. You don't know anything about her case after that?

A. No, not after I—

Q. That is all.

DR. DOWLING BENJAMIN, Sworn.

By MR. STOCKWELL:

Q. How old are you, Doctor?

A. Sixty.

Q. You live in Camden?

A. Yes.

Q. A practicing physician, are you?

A. Yes, sir.

10

Q. How long have you practiced in Camden?

A. Since 1877.

Q. During the course of your practice have you been connected with any hospitals?

A. Yes, sir.

Q. What hospitals?

A. I taught at the Medico-Chirurgical College and Hospital, and was chief visiting surgeon at the Cooper Hospital.

Q. And you have been connected with the Cooper Hospital at Camden for how long?

A. Fifteen years.

Q. And have you private practice beside, have you?

A. Yes.

Q. Did you examine the plaintiff, Mrs. Corson, in this case some time last year?

A. Yes, sir.

Q. Do you know about when you were first called in to see her?

A. She came to my office for examination.

30

Q. When was that, last May?

A. Yes; I don't exactly remember the date, I have it in my book.

Q. Did you examine her limb or her ankle?

A. Yes.

Q. What did you find or what condition did you find there?

A. There was swelling, edema.

Q. Was there any evidence of fracture?

A. There were symptoms of fracture.

Q. Have you examined her mouth or jaw?

A. Yes.

Q. Did you examine her teeth?

10 A. Yes.

Q. What did you find to be the condition of her teeth?

A. Some are broken off and some are partly broken off, split, a piece off.

Q. You have heard her testify here to-day, have you, Doctor?

A. Yes.

Q. Heard her tell about this accident and how it happened?

A. Yes.

20 Q. Now, from that accident which she described as occurring in April, 1908, in your opinion could an abscess have been formed in her jaw in February or March of 1909?

A. You mean, is it possible to have an abscess develop so late as that after an accident, the primary—

Q. Yes.

A. Yes, that is possible.

Q. What is the cause of abscesses?

A. Microbes.

30 Q. Germs?

A. Germs, yes, sir.

Q. What is necessary, Doctor, in order to have an abscess form, what condition, or what must happen first?

A. There are two essential conditions; one is a lesion,

that is, there must be a breaking, cutting or tearing of the surface, the soft parts, then there must be germs present to get in. A lesion without germs, you would have no abscess, and germs cannot get in without a lesion, so the two essential conditions are a cutting or tearing—like when you vaccinate a child the poison won't take, you cannot vaccinate her unless you scratch, make a lesion in the skin, then the germs can get in and after a while they develop.

Q. Are there germs in the mouths of people? 10

A. Yes, the microscope shows them invariably present, enormous quantities.

Q. Now, you heard her testify as to her mouth being cut by her teeth and spitting blood; now, assuming such a condition at the time of the accident, would it be possible for an abscess to form some months later from such a cutting or such a lesion on the inside of the mouth?

A. I never knew an abscess to form where there is sound tissue or a sound condition. If teeth are broken there is then an opening more or less permanent, and the 02  
hard tissue of the mouth does not grow, and germs may get down through a tooth that has been partly broken, or if a tooth is not lost germs may get in a dense tissue between the socket and the root and their development may be retarded by the dense tissue, but they live for years and under favorable conditions they will develop, gradually perhaps, work toward some point of least resistance; it may be near the root of the tooth where, when they find sufficient room to develop, they will develop indefinitely and produce an enormous amount of pus—that is simply 30  
a culture of microbes—until it bursts out or is lanced or kills the patient from absorption of poison.

Q. Then, Doctor, do I understand that it would have been possible in a case of this kind for germs in the mouth

to have been taken into this cut through this lesion and then an apparent healing to take place and the mouth apparently be in a fairly good condition for months before an abscess would show itself?

A. Yes.

Q. Is that possible, in your opinion?

MR. MORGAN: Isn't there some way that you can confine this examination right to the case at issue?

MR. BLEAKLY: I am speaking of this case.

10 MR. MORGAN: Then ask him directly if he examined her.

A. Yes, the germs of lock-jaw—some germs don't develop in fact unless it heals over. That is why we put drainage tubes in so they can get out and heal up from the bottom. When it heals over they develop and make an abscess.

Q. What kind of germs or microbes generally form abscesses of this kind?

A. Staphylococcus and streptococcus, and tubercular  
20 bacilli and pneumonic bacilli. There are probably a dozen different species of microbes that can form abscesses, but usually the vast preponderance of species is the staphylococcus.

Q. Well, taking that class, are they present in the mouths of people?

A. The staphylococcus is not always present in the mouths of people but is very frequently, and is in the food; a great deal of food contains staphylococcus.

Q. Now, would it have been possible for that kind or  
30 class of germ to have been taken into this cut, through this lesion in her mouth and have remained there dormant for several months or until the time she said it formed an abscess?

A. That is possible, yes sir; most probable.

Q. Most probable?

A. The most probable explanation of those abscesses; in feet, it is very difficult to account for them otherwise; they are very rare.

Q. Now, what condition of her physical health, if any, would later on tend to develop in your opinion an abscess after a lesion of this kind had occurred?

A. Any depression of the vitality which would lower the natural resistance to disease would enable microbes to develop in a system that otherwise might be inhibitory. 10

Q. Doctor, tell us what are the effects of abscesses such as you have heard her tell the court and jury that she had, effects on a person's system?

A. They increase and distend, the tissues swell up forming a cavity filled with a liquid, which liquid is composed of these microbes, innumerable microbes, billions of them; twenty thousand of them could be put on a pin head, and she said it ran for several days and a cupful. These microbes produce swelling and pain and they produce certain substances called toxins which, being absorbed into the system, act as poisons, causing mental and physical symptoms delirium and pain and other morbid manifestations of blood poisoning. 20

Q. Is there any danger from abscesses of that kind?

A. Yes.

Q. Any danger of absorption into the system?

A. Most all cases of blood poisoning—Sixty per cent, of deaths in the Union army was due to septicemia or blood poisoning. Sixty per cent. of the deaths was due to the absorption of microbes in wounds. 30

Q. Can you say whether or not those effects are lasting or likely to be lasting or permanent or continue for any length of time?

A. Where inflammation is produced in any part of the

body, whether it be in the brain, the meninges, the gray matter or white matter of the brain, where inflammation is produced there is an exudation of lymph which does not disappear; usually it attracts and forms adventitious tissues, the products of inflammation and exudation into tissues, so that the results of inflammation, especially in the internal portions of the body, are usually permanent, and if they are sufficient in amount and in a very important locality their effects may be marked many years.

10 Q. Have you examined Mrs. Corson recently?

A. Yes.

Q. And as I understand it you examined her first, did you, in May of last year, is that right?

A. Yes.

and if they are sufficient in amount and in a very important from the time you first examined her and when you last examined her here within a few days?

A. Her hearing is worse, and she is more nervous and hysterical.

20 Q. Could that have been caused from the accident or from these abscesses which she told about?

A. Well, a shock, breaking a leg and jarring the brain and nervous system would be a factor, and also the abscesses and suffering which she described as having been unconscious for months.

CROSS-EXAMINATION By Mr. Morgan:

Q. Doctor, did you examine Mrs. Corson's teeth?

A. Yes.

30 Q. In what condition did you find them, a good condition or decayed?

A. On the right side of the jaw, one of them is broken, partly gone, and on the left side there is a stump or root of one tooth.

Q. And on which side was the abscess?

A. On the right side.

Q. That is where the tooth was broken? Can you tell anything about whether that tooth was broken at the time of the accident?

A. I don't know when it was broken.

Q. Can't tell whether it was done before or after?

A. No.

Q. You have been asked here as to Mrs. Corson's nervous condition. Doesn't her age have something to do with that? <sup>10</sup>

A. Yes, any neurasthenic condition is usually aggravated by the climacteric; the change of life will usually aggravate the nervous symptoms.

Q. Don't you consider Mrs. Corson's age or condition at the present time about that result?

A. The change of life, I haven't found produces conditions that are present in her case.

Q. But it is possible, isn't it?

A. They will make a depressed nervous system; hysteria and neurasthenia probably would be harder to cure and more persistent at the change of life than they would when a woman is younger and more vigorous and recuperative. <sup>20</sup>

Q. You mentioned, too, about the possibility of an abscess nearly a year after an accident. Do you consider that in the present case?

A. What was that?

Q. Do you consider that the accident which befell Mrs. Corson—that the abscess which formed itself nearly a year afterward could be produced by that accident? <sup>30</sup>

A. It could be, yes.

Q. It could be?

A. Yes, sir.

Q. Do you think it did occur in her case?

A. I think that is the primary cause of that abscess.

Q. What evidence of fracture did she show when you made the examination?

A. The pieces of the broken bone.

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AMANDA CORSON, Recalled.

By MR. STOCKWELL:

10 Q. I wish to ask you one more question: What was your condition prior to the accident, Mrs. Corson?

MR. MORGAN: Well, if the Court please, it seems to me she has gone all through that.

THE COURT: Well, if that is a question that has been overlooked, I will allow it to be asked now.

THE WITNESS: Shall I answer it?

THE COURT: Yes.

A. I was in a good healthy condition, as far as I know; a good healthy condition as far as I know.

20 Q. Did you ever have these hysterical spells before you were injured?

A. Not that I ever knowed of.

Q. Did you have any abscesses around your face or any other parts of your body?

A. No, sir.

Q. Did you suffer from insomnia?

A. I have since I was injured.

Q. I say, before you were injured?

A. Never; no indeed; I could sleep good.

30 Q. Did you have these pains in your head before you were injured?

A. No, sir.

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PLAINTIFF RESTS.

## THE CASE FOR THE DEFENDANT.

DANIEL McKEAGUE, Sworn.

By MR. MORGAN:

Q. Mr. McKeague, where do you live?

A. Tuckahoe.

Q. What is your business?

A. At the present time?

Q. Yes. Put your hand down, won't you, so the jury  
can hear you? Speak out loud. 10

A. I am road supervisor and I am in the wood business.

Q. Road supervisor of what?

A. Of the township roads.

Q. Of the township?

A. Yes, No. 4 and 5 districts.

Q. Were you at Tuckahoe Junction on the afternoon of  
April 20th, 1908?A. Well, I can't remember the date. I was there on the  
afternoon this occurred; I can't tell you the date of it.

Q. Did you see Mrs. Corson? 20

A. I did.

Q. See her come over toward the station?

A. I did.

Q. Where were you standing with reference to the  
map? Just take this and point on the map where you  
were standing?A. I came out of the road here to go to the station  
where it intersects with the road that goes to Marshall-  
ville.Q. Wait; turn around so the jury can hear you. Talk 30  
so everybody can hear you; talk out loud.A. I came up from down this station road, as they call  
it, and had turned in here to look at a couple of box cars  
that stood on the can-house siding about there, empty

cars; I was looking for a car to load wood on. They were on the can-house siding right along by the building; it comes in here (indicating on map.) As I left these cars there and started on up this road, I saw a lady coming up here—I didn't know that it was Mrs. Corson at the time I first noticed her coming. She came along up here abreast of the wires that leads from the signal post and then went across to the platform, wanted to go across. She stumbled over the wires that runs between the two  
10 tracks. She crossed three tracks, crossed the can-house siding and the main siding and the main line to get to the siding here or to the platform; as she went across the signal wires she stumbled.

Q. Did she walk from the signal wires, after getting up, to the platform?

A. She did.

Q. And did you notice anybody go toward her and help her?

A. Mr. Steelman, the car inspector, came from some-  
20 where and met her and went along with her on the platform. I crossed back of her and went into the depot into the office, and Mr. Steelman and her walked on toward the train which was down here.

Q. Did you notice whether the train backed back to her?

A. Yes, it was backing back for her when I went in.

Q. Now, do you know anything about these tracks in between the Marshallville road and the station?

A. Well, now, I don't understand you—you mean are  
30 they level between?

Q. Yes.

A. Nearly so; the road is along here, I should judge, about ten or twelve inches higher, the roadbed is, than the driveway, the public road,

Q. Well, is there any path over those wires?

A. None that ever I seen, no, sir, no path.

Q. Well, you have been over there numerous times?

A. No, sir, not in that direction. I never go up that way; I cross here opposite, right abreast of the depot, cross the tracks of the road going right in here, but I have no cause to go in that way.

Q. You have never seen any?

A. No, sir, never saw no path.

Q. Didn't you make a measurement of that place a few 10 days ago?

A. Yes, sir.

Q. Did you notice any path then?

A. No, sir, I noticed no path.

Q. If there had been one, wouldn't you have noticed it?

A. Yes, sir; there isn't any that ever I noticed.

Q. Now, then, how far is it from the road, the main road where they enter the station——

A. Here (indicating on map)?

Q. Yes, to the signal tower, the tall signal box? 20

A. You mean the signal pole?

Q. The signal pole, yes?

A. I should judge about 425 feet.

Q. You measured it, didn't you, the other day?

A. Well, up to where, about where she went across it was 436 feet. She went somewhere, oh, ten or twelve feet, probably north of the pole where she crossed.

By MR. STOCKWELL:

Q. North of the signal pole?

A. North of the pole, yes. 30

By MR. MORGAN:

Q. Did you notice how far the signal pole was above the station?

A. No, sir, I don't know.

Q. You didn't see it measured the other day?

A. No, sir, I didn't notice it measured.

Q. Is there any means provided for the people to reach the station except from the main road, the main Tuckahoe road, provided by the railroad?

A. There is only this one way down here by the road coming from the town.

Q. That is what I mean; the Tuckahoe road?

A. Yes.

10 Q. That is the only one?

A. That is the only one.

Q. The means of crossing over the yard there is dangerous, isn't it?

A. Yes, sir. There is two tracks abreast of the station and this here can-house puts in where those wires are; that makes three there but abreast of the station is two tracks.

CROSS EXAMINATION, By Mr. Stockwell:

20 Q. You say it is dangerous to cross the tracks here because of passing trains, Mr. McKeague?

A. Well, there is more or less trains passing there, yes, sir.

Q. At that season of the year, in April, and around about noon, from noon until three or four o'clock how many trains pass along that station toward Ocean City?

A. There is one train that leaves at 2.45.

Q. That is the one we are talking about?

A. Yes.

Q. What other train?

30 A. There is a work train, what they call a work train; I can't tell you what time that comes there.

Q. They are the only trains, aren't they?

A. I think at that time, yes.

Q. There are several hours during the day when there

are no trains passing at all down there, aren't there, down the Ocean City track?

A. The train that leaves there at 2.45 comes up at 1.25 or thirty; then she drills around and goes back.

Q. Yes, but that is a train that goes from Tuckahoe to Ocean City; it doesn't come from Philadelphia down across that point, does it?

A. No, sir. She has to come up there, if I understand it right and turn and drill and come back to go to Ocean City.

10

Q. You don't know of any other trains?

A. Not at that time, no, sir; I don't think there is any.

Q. When you saw Mrs. Corson crossing the tracks, where was this 2.45 train?

A. She laid down by the pump house; she was drilling there.

Q. What part of her?

A. I couldn't tell you.

Q. The whole or—

A. The lorry was headed toward Ocean City.

20

Q. Well, how far up the tracks did the cars reach?

A. Well, if I remember right they were moving around there right by where the road crosses the tracks there and by the pump house when I went by them.

Q. Who were moving around?

A. The train; I don't think it was lying still when I went by them; I think they were drilling or moving there as I went by them.

Q. Do you know how many cars it had on?

A. No, sir, I do not.

30

Q. You have seen people come from Marshallville to the station, haven't you, very frequently?

A. Yes.

Q. Do they come all the way around this road around

here to the station?

A. No, sir.

Q. Go straight across, don't they?

A. No.

Q. Where do they go?

A. Nine out of ten of them come straight down the track.

Q. Nine out of ten?

10 A. Nine out of ten; I should judge nine out of ten of them comes down the track.

Q. Where does the other, the tenth go?

A. Anywhere where they happen to be across.

Q. Then there isn't a single one of these folks that comes around this regular way?

A. No, sir, they generally cross the track.

Q. And that is the only access to the station along this public road, is it?

A. Yes, sir.

20 Q. How do the people who live out toward Tuckahoe along this Marshallville road, how do they get there?

A. They generally come right up abreast of the station and come right cross the tracks.

Q. Do they consist of the one man that goes across or a part of the ninety and nine that come down the track?

A. I am speaking about the ones that live up on the Marshallville road from the tracks.

Q. That is this way, west of the tracks?

A. Yes.

30 Q. You are not referring to the people down this way as Marshallville road people?

A. No, there is only just a few people lives there. Marshallville is above.

Q. How do they get down?

A. They come down as I told you before, down to the

station and walk across the track.

Q. That is down the Marshallville road, isn't it?

A. Where is that?

Q. Here, where these people go?

A. The people living below, toward the town, go that road.

Q. Well, that road is the Marshallville road?

A. I understand this to be road leading from the Marshallville road.

Q. Very well; we will identify it so we won't be confused.

A. The people living below that generally come up and take this road and go across to the village. As I said before, nine out of ten of the Marshallville people follow the railroad right down.

By THE COURT:

Q. This Marshallville road further on crosses the tracks, does it?

A. Yes, sir, goes right cross the tracks.

By MR. MORGAN:

20

Q. Were there any cars, after this train was made up down at the pumping station, any cars on the siding that day?

A. No, sir, not at all; not at that time.

By MR. STOCKWELL:

Q. You say the cars were not on the siding or on the main track?

A. They were not on the siding.

By MR. MORGAN:

Q. On the main track?

30

A. On the main track by the pump house.

By MR. STOCKWELL:

Q. Was there any other train around there but the 2.45?

A. No, sir, none whatever.

Q. No standing cars?

A. Only the two I told you, two empty box cars on the track by the can-house.

EDWARD F. HARRISON, Sworn.

By MR. MORGAN:

Q. Mr. Harrison, what is your business?

10 A. Photographer for the Philadelphia and Reading Railway.

Q. Did you make photographs of Tuckahoe Junction?

A. I did.

Q. When?

A. I verified the photographs of the Tuckahoe Junction. These photographs were made by Mr. William R. Hellerman, assistant photographer, November 1, 1909, and he has since then left the employ of the company and I am photographer of the Philadelphia & Reading Railway, and they asked me to take these photographs to Tuckahoe and  
20 verify them, which I did on May 26, 1910, and I found the photographs to be the same as they were on November 1, 1909; that is, the signal poles and telegraph poles.

Q. And these photographs represent the true condition of affairs November 1, 1909?

A. Yes, sir.

Q. Or November 11, whatever it is?

A. Yes.

Q. Now, just refer to the backs of them and tell us at what points they were taken?

30 MR. STOCKWELL: Are you reading from your own memoranda?

THE WITNESS: Yes, sir.

MR. BLEAKLY: We object to him reading from anything on the back of these photographs.

He did not make it and he didn't make the photographs.

THE WITNESS: I took the photograph No. 10,001 which my assistant made, and prints of which I have made and mounted, and I took it to Tuckahoe Junction on May 26, 1910, and found photograph No. 10,001 to be looking south from a point 139 feet north of the north end of the station platform to the station platform.

BY MR. BLEAKLY:

10

Q. Well, but what I want to know is, you are reading from something on the back of these photographs are you?

A. Yes, sir, and I made this.

Q. You made that in May of this year?

A. May 26, 1910.

Q. And where did you get your information?

A. From Tuckahoe Junction; I took the photographs there.

Q. No, but you didn't take these photographs yourself?

A. No, I didn't take the photographs, but I took these pictures there and I stood about where the camera stood in making these photographs, and then I looked to see from the experience I had in taking pictures what the camera would take, and then from where I stood I took the measurement and the measurement is on the back of these photographs.

By MR. STOCKWELL:

Q. You yourself don't know where the man stood who took that photograph, do you?

A. Yes, sir.

30

BY MR. BLEAKLY:

Q. Well, you weren't there, were you?

A. No, but I know the camera he had and I am familiar with the lenses of that camera and I knew just exactly

where he stood.

MR. STOCKWELL: Go ahead.

MR. BLEAKLY: Let him state where he stood.

MR. STOCKWELL: Go ahead with your examination.

THE WITNESS: Is there any question?

By MR. MORGAN:

Q. Designate the four of them.

10 A. Photograph 10,002, looking north from 35 feet south of the center of pump house road crossing. Photograph No. 10,003 looking south from center of State road from 179 feet north of the north end of station. Photograph No. 10,004 is looking north on station platform from 9 feet north of north end of station.

MR. MORGAN: Now, if the Court please, I offer them in evidence. You will bear in mind one thing, if you Honor please, that the first intimation that we ever had that there was any  
20 trouble here was May 27, 1909, one year after the accident, and the photographs were taken afterward as soon as possible.

MR. BLEAKLY: In November, 1909.

MR. MORGAN: Exactly.

THE COURT: Well, you may show by some witness whether there has been any change in conditions in the meantime. If not, I will admit them.

MR. MORGAN: We have proof of that, that  
30 the conditions are the same.

THE COURT: Suppose you do that before you offer them.

MR. MORGAN: Can't they be offered in evidence?

THE COURT: Of course, if there is no objection they may go in now, but if objected to you should supply that proof, that the conditions were generally the same at the time of the taking of the photographs that they were at the time of the accident.

MR. STOCKWELL: They may go in; we have no objection.

MR. MORGAN: Then I offer them, if your Honor please. 10

MR. BLEAKLY: They only go in for the purpose of illustration, of course.

MR. MORGAN: Yes, that is all.

THE COURT: They are admitted.

CROSS EXAMINATION, By Mr. Bleakly:

Q. You didn't take the photographs yourself?

A. No, sir.

Q. How do you know when they were taken?

A. Why, from our records, an index system which we have. 02

Q. And what you were told by your company?

A. No, sir, the records that are in the office.

Q. Well, of course, you didn't make the records?

A. Yes, sir, I have charge of the records, the index system.

THE COURT: His assistant took them.

Q. Then you knew from what your assistant told you?

A. I knew he was in Tuckahoe on November 1st and made these pictures.

Q. That was reported to you and you made the record 30 at the time?

A. Yes, sir.

Q. They were made then in November, 1909?

A. Yes, sir.

HARRY N. DICKINSON, Sworn.

By MR. MORGAN :

Q. Mr. Dickinson, did you make a plan of the Tuckahoe Junction station ?

A. I did, yes, sir.

Q. And grounds ?

A. Yes, sir.

Q. Is that it (showing witness plan) ?

A. That is it, yes, sir.

10 Q. When did you make it ?

A. November 1, 1907.

Q. What ?

A. November 1, 1909.

Q. That is better. Now, this indicates what ?

A. This indicates the tracks of the Atlantic City railroad at Tuckahoe, shows the station buildings, the freight house and all other buildings that are in the immediate vicinity, and also shows the roads adjacent to the station, that is, the driving roads.

20 Q. Now, you have marked here a telegraph pole ?

A. I have marked a telegraph pole right here, and also in between the tracks.

Q. How far is that from the road crossing ?

A. 424 feet.

Q. What is the distance from the main road to the Hall signal box ?

A. The Hall signal pole, you mean ?

Q. The Hall signal pole, yes.

A. 398 feet. Wait a minute; I am wrong there, I gave  
30 you the telegraph pole—388 feet.

Q. 488 feet ?

A. 388.

Q. 388 feet ?

A. Yes, sir.

Q. How many tracks would a person have to cross to reach the station, going from a point just north of the telegraph pole on the Marshallville road?

A. Why, at the telegraph pole they must cross three tracks to get to the platform.

Q. Are there any signal wires?

A. There are, yes, sir.

Q. Did you make a measurement of this whole ground?

A. I did, yes, sir.

Q. Did you notice whether there was a path across these 10 tracks to the platform?

A. There is not.

Q. You are sure about that?

A. Yes, sir.

Q. And was there such November 1, 1909?

A. That was the time I am speaking of, November 1, 1909.

Q. There wasn't at that time?

A. No, sir.

Q. Have you knowledge of the place prior to that date? 20

A. Well, I haven't been there for several years before that time, Mr. Morgan.

CROSS EXAMINATION, By Mr. Stockwell:

Q. What in your judgment constitutes a path?

A. A path is something, an indication that people have been walking at a certain point, something wearing it down, as shown by indications on the ground where people have been walking.

Q. You weren't looking for a gravel walk there, were you? 30

A. I was looking to see whether there was any path across there and I didn't see any.

Q. You didn't see any evidence of people having walked along there, did you?

A. Not at a certain point, no, sir.

Q. Not where?

A. Not at a point to make a path, no, sir.

Q. The cinders were all loose, were they?

A. They were loose cinders, yes, sir.

Q. Not packed down at all?

A. Not in the ordinary manner, no, sir.

Q. Where were you when you made this observation?

A. I was all along here making these measurements, all  
10 around the station.

Q. The same all over, was it, the cinders in exactly the same condition all over here?

A. Approximately so, yes, sir.

Q. Did you make any measurements up here beyond where the tracks join together?

A. I did, yes, sir.

Q. Did you find the cinders in the same condition here that they were down there?

A. Well, as to the elevation there may have been a little  
20 difference in regard to the height of the cinders with relation to the tops of the ties.

Q. Was the roadbed levelled off between the tracks and between the rails down here beyond the junction of the tracks, that is, toward Philadelphia?

A. What is that question?

Q. Were the cinders or roadbed between the tracks and rails levelled off smooth north of this point you have marked the water column, that is, north of the station platform?

30 A. Well, they were levelled off in the ordinary condition which you find on the railroad, of course.

Q. Did you find the cinders down here in the ordinary condition you find them in the roadbed?

A. Yes, sir.

Q. No difference from what they were up here?

A. Not much, no, sir.

Q. Not much?

A. No.

Q. In what respect were they different?

A. Well, as I said, **they may have been a little lower in** relation to the tops of the ties.

Q. These were packed down just as hard here as those down here, were they?

A. Well, I haven't a very accurate knowledge in relation to that.

Q. But you didn't see any evidence of anybody having walked along here and pressed those cinders down?

A. There was no evidence of any path there.

Q. I asked you if there was any evidence of people having walked along there and pressed down the cinders?

A. I didn't see any marks of a path to **show that people** had walked along.

Q. I don't mean footprints in the cinders; I mean the cinders flattened down here, that is what I mean? 20

A. If I had seen footprints I would know whether people walked along there or not.

Q. Then you don't know?

A. People may have walked along there for all I know.

Q. I notice you have a beautiful picture here of this Marshallville road, marking the limits of the road in black and red—it is in water colors?

A. Yes.

Q. Or gray?

A. Yes. 30

Q. It is a very well defined line, isn't it?

A. It is defined.

Q. Between the Marshallville road and the railroad property?

A. It is defined, yes, sir, by the travel.

Q. How is it defined?

A. By the travel of the road.

Q. By the travel of the road?

A. Yes, by the travel of the road.

Q. You mean the wheel tracks of the conveyances that go over?

A. The wheel tracks of conveyances and walking, of course, wear down——

10 Q. Do you know how wide the road is as it actually is on the ground?

A. Know how wide the road is? Yes, sir, here it is.

Q. Over how much of this space have the people the right to go without encroaching on the railroad property?

A. I don't know how much they have the right to go on; I know how much they actually do occupy.

Q. What I want to know is whether there is any well defined line there marking the edge of the railroad  
20 property?

A. There is no well defined line there marking the edge of the railroad property; there is a well defined line marking the limitations or the bounds at which the people use the road.

Q. Where the conveyances actually run, the wagons?

A. And the people use it, yes, sir.

By MR. MORGAN:

Q. Which is the actual right of way of the railroad?

A. It is not indicated on the map.

30

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DANIEL McKEAGUE, recalled.

By MR. MORGAN:

Q. Was the condition of affairs at the junction the same November 1, 1909, as they were April 20, 1908?

A. I can't tell you.

THE COURT. As to tracks, station and roads?

THE WITNESS. You mean the tracks or wagon road?

Q. The tracks?

A. No, I think there has been a change there of one track, but I can't answer what one.

Q. Was that change made before or after November 1, 1909?

A. I can't answer, can't remember that. There was a change there, but I don't know when it was. 10

---

DR. RANDOLPH MARSHALL, Sworn.

By MR. MORGAN:

Q. Doctor, what is your occupation?

A. Physician.

Q. Practicing where?

A. Tuckahoe.

Q. A graduate of what college?

A. Jefferson Medical College.

Q. How long have you been practicing medicine? 20

A. Thirty-three years.

Q. How many?

A. Thirty-three.

Q. In the neighborhood of Tuckahoe?

A. Yes, sir, always at Tuckahoe?

Q. Do you recall the condition of affairs around the station at the junction as of April 20, 1908, and November 11, 1909?

A. No sir.

Q. Were you called upon to treat Mrs. Corson? 30

A. I was.

Q. When?

A. I could not tell you.

Q. What for?

A. An abscess of the face, of the jaw.

Q. Can't you tell about when that was?

A. No, sir, I could not. I have no record and I can't remember.

Q. You heard her testify that it was in February, didn't you?

A. Possibly; yes, I think so.

Q. Well, is that about right?

A. It was in cold weather, but in what month, I don't  
10 know; I never kept a record.

Q. What was the condition of her teeth?

A. They were ulcerated; she had an ulcerated tooth.

Q. What caused that?

A. I don't know, I should presume cold.

Q. What was the condition of them, rather? Were they  
in good condition or were they decayed?

A. No, they were decayed, in poor condition.

Q. Could an abscess be formed from a decayed tooth?

A. Yes, sir.

20 Q. What in your opinion was the cause of her condition when you were called to attend her?

A. Well, now, really I didn't form any conclusion as to the cause. I presumed it was from a cold, I believe it was. She was a very nervous, hysterical patient, and at the onset it could have been easily avoided, that is, the amount of trouble but she wouldn't allow me to open the abscesses and I had to persuade her for a number of days and eventually when I fairly opened the abscess she made a rapid recovery. It was only a few days; I think I  
30 made five or six visits.

Q. And you supposed her condition was good when you left?

A. Her condition as regards the jaw and abscess was all right. She was a nervous, hysterical patient, neuras-

thenic, and her trouble that she had been passing through possibly caused some of this neurasthenia.

Q. What in your opinion is the cause of her hysterical and nervous condition?

A. I couldn't tell you that. Some people are born that way.

Q. When did you last treat her or attend her?

A. I couldn't tell you that; it was during this trouble. I was first called to attend her husband who had measles and later on, in a few days or a week or a month I was called to treat this case, and those few calls I made were the only times I treated her.

Q. In your opinion was the abscess in the face which you lanced caused by an injury received the April preceding?

A. No sir.

Q. What in your opinion was the cause?

A. I thought it was due to a cold.

Q. Do you know anything about the yard, about the tracks on the east side at Tuckahoe Junction station—do you ever cross over there?

A. No, sir.

CROSS EXAMINATION, By Mr. Stockwell:

Q. What is a cold, Doctor?

A. A cold is an inflammation of the sub cutaneous tissues.

Q. Is that the definition?

A. Well, that would be my definition for a cold.

Q. What causes the inflammation?

A. Well, I don't know as I could tell you; I am not an expert on a cold.

Q. Well, there is some cause for the inflammation, isn't there?

A. A depressed condition of the nervous system might

produce it, you would go out and take cold. I can't give you the reason why you would take cold. I can't tell you what a cold is; it is like light, it is a hard matter to explain what a cold is, it is like light.

Q. It just comes?

A. Yes, it comes.

Q. And goes?

A. And goes, usually without our knowledge.

Q. I won't repeat the rest of it. What causes an abscess?

A. Well, the doctors think it is due to a germ.

Q. What do you think?

A. Well, that is the theory at the present time.

Q. Is that your theory?

A. Yes.

Q. To a germ—what kind of germ?

A. Well, there are a number of germs.

Q. What kind of germ?

A. I couldn't tell you what kind of a germ; I said  
20 germs.

Q. You mean a microbe?

A. Yes, a microbe.

Q. A germ?

A. Yes, sir.

Q. That is the thing which produces an abscess, is it?

A. Yes, according to the latest theory.

Q. What is the nature of the fluid that is in that abscess?

A. Well, it is pus, the degenerated tissue we call pus.

30 Q. What is the character of it? Is it poisonous, is it harmless or—

A. It is poisonous.

Q. It is?

A. Yes,

Q. And that is the stuff that is produced by a germ, isn't it?

A. Yes.

ARLINTON STEELMAN, sworn.

By MR. MORGAN:

Q. Where do you live, Mr. Steelman?

A. Tuckahoe.

Q. How long have you lived there?

A. Thirty-four years. 10

Q. Are you supervisor for the railroad company?

A. No, sir.

Q. What is your position?

A. Car inspector.

Q. Car inspector?

A. Yes.

Q. And located at Tuckahoe?

A. Yes, sir.

Q. Do you know the condition of the tracks about Tuckahoe Junction station? 20

A. Yes, sir.

Q. And you have known them for how long?

A. Well, I have been working there about nine years.

Q. Were the tracks about practically the same on April 20, 1908, as they were on November 11, 1909?

A. Practically the same, yes sir.

Q. Were you at the station on April 20, 1908, when Mrs. Corson fell over the signal wires?

A. Yes, sir.

Q. Where were you? 30

A. Well, I was down by the freight house when she fell.

Q. And did you see her come down the road?

A. I saw her come down the road, yes, sir.

Q. Just tell us what you did see, please? Just refer to the map, take this (handing witness pointer) and point out what you saw.

A. Well, when she was coming down the road here along here I was over on the opposite side of the Cape May track, and I crossed over here and that made me facing her, very near, when she was coming down here. Then I turned and went that way and that put my back to her and when I got down to the freight house I  
10 stopped and was doing something there and looked around and she was on the ground here (indicating.)

Q. About where?

A. About—she was on the ground there (indicating on map.)

Q. Would you know it any better if you would see this plan, just where she was?

THE COURT. Well, there is not anything that shows on the record. Let him tell where she was with reference to the tracks.

20 MR. MORGAN. Yes; now, then, point out—

THE COURT: I don't mean by the map so the record will show where she was.

THE WITNESS. Why, she was just south of the rods, of the signal rods, where the wires are.

Q. Do you call that south or east?

A. Well, we call this north and this south on the tracks. (Indicating.)

Q. That is it; she was then at a point north of this Hall pole?

30 A. Yes, north of the pole and south of the rods.

Q. And what did you see then? You saw her on the ground; what happened after that?

A. Why, she got up and walked across to the platform, cross the Ocean City track on to the platform. When I saw

that she was down I started toward her, and before I got to her she was up and across on the platform coming toward me.

Q. And what did you do?

A. I took hold of her arm and walked down to the freight house, down there; I asked her if she was hurt and she said her foot hurt her.

Q. Did she then get aboard the train?

A. Yes, sir.

Q. Where does she live?

10

A. Middletown.

Q. At that time were there any other cars in the yard or anything on those tracks between the main road and the junction of the Cape May tracks?

A. No, sir, there was no cars anywhere along here.

Q. Clear?

A. All clear track.

Q. I want to ask you if there is any path over these tracks?

A. No, sir, there is no path whatever.

20

Q. How recently and how long have you known the condition of the tracks to the east of the station?

A. Why, ever since I have been working for the company, eight or nine years.

Q. And you say there is no path across?

A. No path at all.

#### CROSS EXAMINATION.

By MR. STOCKWELL:

Q. You also say that the people who live along the Marshallville road do not cross the tracks where Mrs. 30 Corson crossed?

A. The people that live on the Marshallville road come down the railroad mostly.

Q. The people that live on the road that leads to the

Marshallville road, how do they cross? How do they get to the station?

A. Sometimes they come across the track and go on down, whichever they choose.

Q. Have you seen people do that?

A. Yes, sir.

Q. Frequently?

A. Yes, sir, I have seen them come down and go across the main crossing.

10 Q. What in your judgment constitutes a path?

A. Why, where several people have travelled in one place continually.

Q. Now, you said you had seen several people travel there?

A. But not in one place; I didn't say in one place.

Q. Well, what is the particular place you are referring to now?

A. I am referring to the whole grounds there.

20 Q. Are the cinders depressed between the tracks, or are they practically level between the tracks and rails, that is, south of the junction of the Cape May and Ocean City tracks?

A. Why, I don't understand that.

Q. South of this point marked on the plan "water column" is the roadbed between the rails and between the tracks uneven or is it level?

A. It is very near level in there.

Q. Level in there, is it?

A. Yes.

30 Q. Made up of cinders?

A. Cinders and gravel.

HENRY J. MORGAN, sworn.

By MR. MORGAN:

Q. You are station agent at Tuckahoe Junction?

A. I am, sir.

Q. How long have you been there?

A. Eleven years next January.

Q. Do you know the condition of the tracks around the station?

A. I do, sir.

Q. Do you know whether the condition is the same, <sup>10</sup> was the same on April 20th, 1908, as it was on November 11, 1909?

A. With one slight exception.

Q. Give it to us?

A. There has been a small track called a freight spur built near the pump house.

Q. When was that put in?

A. I couldn't give the date, but it was after this accident occurred.

Q. Put in when, a year ago?

o2

A. I say, it has been quite a while ago; I don't know just when.

Q. Now, then, you recollect the date the accident happened to Mrs. Corson?

A. Well, only from what I have heard.

Q. You recollect hearing of it?

A. Only from what I have heard.

Q. Now, do you know on that day whether there were any cars standing on any of the tracks east of the platform just before or after the Tuckahoe train went away? <sup>30</sup>

A. I think there were two coaches right inside of the switch, on the outside track immediately above the power house.

Q. Weren't they taken by this same locomotive on the

train away?

A. They were, sir.

Q. Now, after the train was made up and had gone down to the pump were there any cars on the sidings?

A. No, sir.

CROSS EXAMINATION.

By MR. STOCKWELL:

Q. How long did those cars stay there on the siding?

A. Well, we had a train due there at that time about  
10 1.25, and it was their duty to go to the gravel pit and do the shifting. They brought several loaded cars from the pit and took them to the south end of the long siding below the pump house, put them away, backed in on the opposite track and picked two coaches up that they had set there before they went to the pit, picked those cars up, went down to the tank and took water and then backed up to the station.

Q. Did you see this woman fall?

A. I did not, sir.

20 Q. Those cars were on the siding just before the train took water, were they?

A. Just immediately before.

Q. And the train was at the tank just before it backed up to the station to get Mrs. Corson?

A. Yes, sir.

Q. How many coaches did it have on?

A. Two, one coach and a combined car.

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At this point a recess was taken until Tuesday morn-  
30 ing, November 22, 1910, at 9.40 o'clock A. M.

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Camden, New Jersey, November 22, 1910.

Trial of this matter resumed on the above date at 9.40

o'clock A. M., pursuant to adjournment, in the presence of Counsel for the respective parties.

HENRY J. MORGAN, recalled.

By MR. MORGAN.

Q. Mr. Morgan, you testified yesterday that you were the agent at the station at Tuckahoe Junction. Can you tell me whether that train that is scheduled to leave that place at 2.45 in the afternoon was on time?

A. It was not; it was ten minutes late.

Q. How?

10

A. It was ten minutes late leaving.

Q. Have you a record to show that?

A. I Have, sir.

Q. Well, why didn't you bring it with you? Get your record.

A. Here it is, sir.

Q. Just read your record, will you?

A. "Bound south, train 429, engine 10, left at 2.55 P. M."

Q. 2:55?

20

A. 2:55.

Q. And the schedule time is 2.45?

A. 2:45.

Q. That is the train?

A. That is the train, yes, sir.

CROSS-EXAMINATION.

By MR. STOCKWELL:

Q. Was it ever late before to your knowledge?

A. Yes, that train was quite frequently late, almost a daily occurrence.

30

CHRISTOPHER HAND, sworn.

By MR. MORGAN.

Q. Mr. Hand, where do you live?

A. Tuckahoe.

Q. How long have you lived there?

A. Seven years this last time; I was born there.

Q. Are you in the employ of the Atlantic Railroad Company?

A. I am.

Q. As what?

A. Passenger train conductor.

Q. Do you recall the 20th day of April, 1908, the day  
10 that Mrs. Corson claimed to have been injured?

A. I do.

Q. Did you have charge of a train that day?

A. I did.

Q. What do you know about it?

A. The day in question we had placed our cars on the run-around track, that is, the track opposite the station, and had gone to Buck Hill gravelpits to move gravel to Tuckahoe Junction. We were late getting back, placed the cars on the long siding about a quarter of a mile  
20 south of the track, returned with our engine and picked up the two coaches lying on the siding. I went to the waiting room and the platform and learned that there was no passengers. That was after our regular schedule time, 2:45. We pulled down to the water plug, to take water, and as we were leaving the siding, pulled out and closed the switch, some one called my attention to the fact that a woman was approaching who had fell in making her way to the station; so as a matter of accommodation I backed up to the station and loaded the lady  
30 on and carried the lady to Middletown.

Q. When you attached the engine to these two cars on the siding and moved away, did that take away all the cars from the siding?

A. Yes, sir, that was the only cars on the siding at

that time.

Q. There were no other cars?

A. No sir.

Q. How far did you back the train?

A. I should judge three hundred feet.

Q. Where?

A. I backed up until I came abreast of the lady or opposite the lady and stopped the train in order——

Q. Did you know who it was?

A. No not until the train had been backed. 10

Q. You knew her then?

A. I knew her then, yes, sir.

Q. Did you assist her aboard the train?

A. I think the baggage master assisted her on the train; I don't think I left the platform. The baggage master was right on the rear step of the train as it backed up; I think he was the one that assisted her on.

Q. Did you see whether she walked from the point where she got on the platform to the train?

A. Yes, sir, she walked part way down toward the train 20 so that we were not——

Q. Did she receive any help?

A. The car inspector was walking by her side and I think had hold of her arm.

Q. And then he assisted her on the train?

A. She was loaded in the usual manner.

Q. And after she got aboard the train, where did you take her?

A. To Middletown.

Q. What assistance did she require then? 30

A. None other than the usual manner; the brakeman assisted her as usual off from the steps.

Q. Did you let her off at the platform?

A. Yes, sir.

Q. Was there any ditch there she was put into?

A. No. The platform there is a small platform; it is a non-ticket office, not a station of any size or importance, and it has a cinder platform there along the right of way.

Q. And she was put off on the platform?

A. Yes, sir.

Q. Did she require any assistance to get off?

A. None more than usual, no, sir. The brakeman always  
10 assists them as they get off the step anywhere, assisted her to the platform. She walked out to the platform alone.

Q. Are you acquainted with the tracks and yards around the Tuckahoe Junction station?

A. I am, yes, sir.

Q. Have you been acquainted with them pretty well for the last seven years you have been there?

A. Yes, sir.

Q. Were the conditions about the same in November,  
20 1909, as they were April, 1908?

A. Yes, sir.

Q. Did you see this woman fall over the signal wires?

A. No, I did not; she was on the platform when my attention was called to her.

Q. Where is the regular entrance to the station?

A. That is at the regular main railroad crossing leading to the village of Tuckahoe.

Q. How far above the station was it that she crossed over these tracks?

30 A. 436 feet from the regular road crossing.

Q. Did you measure it?

A. I have measured it since, yes, sir.

Q. You are a member of the Legislature, now, aren't you?

A. Yes, sir.

CROSS-EXAMINATION.

By MR. STOCKWELL.

Q. And still in the employ of the railroad company?

A. Yes sir.

Q. Had you backed up to the station on the regular Ocean City track before you backed up for Mrs. Corson?

A. No.

Q. Your train had not been up to the station platform until you backed up for her? 10

A. Been opposite the platform, on the siding.

Q. Oh, it was in what you call the yard of the railroad company?

A. Yes.

Q. What Mr. Morgan calls the yard?

A. Yes.

Q. On the siding?

A. Yes sir.

Q. And it was kept there until time for the train to go?

A. Yes, on this occasion. 20

Q. Were there any passengers in the train other than Mrs. Corson when it pulled out for Ocean City?

A. Yes, there was several had gotten on.

Q. How did they get in?

A. They got on the train while it was standing on the siding.

Q. From what point did they get on?

A. Got on from the road crossing. There was quite a few of the high school scholars that use that train regularly; they always go back to the train when it is on <sup>30</sup> that siding instead of coming to the station.

Q. Oh, the cars were on the siding when they got in the cars?

A. Yes.

Q. Then the cars were not at the crossing when they boarded the cars?

A. No sir.

Q. They were in the siding, in the yard?

A. They were not compelled to cross any tracks to get in the cars.

Q. I didn't ask you that; if they had got on at the station they would have been compelled to cross the tracks to get into the cars, wouldn't they?

<sup>10</sup> A. If they had got on while the cars were on the siding, yes.

Q. What did you move away from this siding for when you first moved?

A. We were preparing to leave for Ocean City.

Q. Well, what did you do to prepare to get ready to move to Ocean City?

A. We connected the engine with the coaches, and pulled down to the water station to take water.

<sup>20</sup> Q. Was it before or after time for departure that you pulled down to the water tank?

A. This was after the time of departure.

Q. Then your train remained on the siding in the yard until after the time for departure?

A. Yes sir.

Q. Your cars were pointed toward Philadelphia from the crossing as the engine stood at the water tank, weren't they?

A. Yes.

<sup>30</sup> Q. And the engine was toward Ocean City from the crossing?

A. Yes sir.

Q. Why didn't you take the water for this engine before you got ready to leave for Ocean City?

A. That was the first we had an opportunity. We had

been busy all during the time we were lying at Tuckahoe, during the freight shifting.

Q. You came in at 1:25, didn't you?

A. That is our regular schedule arriving time; we are usually from twenty to thirty minutes late arriving on that trip on account of the freight work.

Q. How late are you usually in leaving for Ocean City?

A. We are usually on time, but when we have to go to the pits occasionally we are compelled to leave late.

Q. You disagree with the agent then when he said the <sup>10</sup> train scarcely ever left on time?

A. Oh, no, I disagree with that part of it.

By MR. MORGAN.

Q. Mr. Hand, is there any path across the yard from the Marshallville road?

A. None at all.

Q. You know the condition of the place pretty well?

A. Yes, sir, it is a point where brakemen are at work continually in the yard.

Q. Sir?

02

A. I say, it is a place where brakemen are at work continually in the yard, and there are employees on the ground fifty times where there is one trespasser. At that point the brakemen work in and about the cars.

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HARVEY SNYDER, sworn.

By MR. MORGAN.

Q. Mr. Snyder, where do you live?

A. Tuckahoe.

Q. Where?

30

A. Tuckahoe.

Q. How long have you lived there?

A. Ten years.

Q. Are you in the employ of the railroad company?

A. I am.

Q. As what?

A. I have charge of the tracks south of Winslow Junction on the Atlantic City Railroad.

Q. Have you been employed as that officer for a long time?

A. For the last ten years, since I have been on the road.

Q. Are you pretty well acquainted with the tracks and yard and signals around the station at Tuckahoe Junction?

A. I am.

Q. Is there more than one actual way of entering the station?

A. That is all.

Q. Where is that from?

A. That is from the road that comes from the village, crosses that near the water tank south of the station.

Q. How many tracks are there east of the station?

A. East of the station? Well, we call that the south on our schedule.

Q. The south, you call it?

A. Yes. That is the Ocean City and Cape May double track.

Q. Well, whatever you call it the south then—how many tracks?

A. There is the Cape May double track and the Ocean City is a single track with the siding abreast of the station.

Q. Is there a signal wire on the south or east of the station?

A. No, sir.

Q. Well, was there a signal wire there?

A. It is north of the station.

Q. I meant the whole platform then; I didn't mean to

say the house exactly; I meant the whole platform, the station platform. Is there a signal wire? ,

A. There is a signal wire between the siding and the Ocean City track the main track of the Ocean City. ,

Q. Is that necessary for the safe operation of the road?

A. It is.

Q. Is there any path across the tracks, any of the tracks east of the station platform?

A. There is no path across the track anywhere; it is all practically the same from the public road crossing to the tower. 10

Q. Has there ever been a path there?

A. Not since I have been there, no, sir.

Q. Do you recall the day when Mrs. Corson claims she fell over the signal wires?

A. I do.

Q. Where were you at the time?

A. I was standing on the rear of the coaches of the train that was leaving for Ocean City.

Q. Just take a pointer, won't you, to that map and show the jury just where you were? 20

A. This is the siding leading from the Ocean City branch and was covered up with coaches that were standing on this siding. They pulled down to the water tank, and I was on the rear end of the train, standing here (indicating).

Q. Over the road?

A. Over the crossing, yes, sir.

Q. And were there any other cars on any of the tracks north of the main road? 30

A. There was two cars standing on this can-house siding somewhere abreast of the can-house here, somewhere here, but there was no cars on any of the tracks along here.

Q. And the siding was on the east side of the Marshall-

ville road, wasn't it?

A. The siding—This road, I have never heard it called the Marshallville road until I came here yesterday. The Marshallville road proper is the main road from Marshallville; that crosses the track as much as a fourth of a mile above the station into the village. This I have heard called the station road; that is all I ever heard it called.

Q. Well we have been calling it the Marshallville road here. Now, then, do you see the road there?

10 A. Yes.

Q. And you see the siding?

A. Yes sir.

Q. Where were these cars, on which side of the Marshallville road?

A. The cars were on this siding. This is the can house, and the cars were on this siding here.

Q. Right at the canning factory?

A. Right at the canning factory.

20 Q. There were no cars west of the Marshallville road except those on the train?

A. There were no cars— That is all, the two coaches they had on the train.

Q. Now, then, did you see Mrs. Corson fall?

A. Yes, sir; I saw her from the rear of the coach.

Q. Where, at what point did she cross over the tracks?

A. She crossed over the tracks—this is the signal pole and she crossed above the signal pole, between that and the rods connected to the wires.

By THE COURT:

30 Q. Crossing the wires?

A. Sir?

Q. Then she was crossing where the wires are?

A. She crossed where the wires stood, yes, sir; between the connection with the wires— The pipe line connects

with the wires from the tower, and these wires lead from the pipe line to the signals.

Q. How high are they above the ground?

A. They are from eight to ten inches.

Q. Is that the usual construction?

A. Yes sir.

Q. Are they between the tracks, those wires between the tracks?

A. They are between the main Ocean City track and the siding. The signal pole is located between the siding to and the main track.

By MR. MORGAN:

Q. You saw her fall?

A. I did, yes, sir.

Q. How far were you away from her? Oh, you have said 436 feet?

A. Well, it is 436 feet from the centre of the crossing to where she fell, and the coaches, the train reached over the crossing probably the length of a coach.

Q. Well, after she fell did she get up herself? 20

A. Yes sir.

Q. What did she do then?

A. Walked across to the station platform and came down to the south end of the freight platform, where the train backed up and loaded her.

Q. Did you see Mr. Steelman help her?

A. Yes, sir.

Q. Where did he load her?

A. On the station platform.

Q. How far above the station house? 30

A. It was not above the station, it was abreast of the station.

Q. About abreast of the station?

A. Yes.

Q. Now, how far is that from the point where she fell?

A. It is a hundred feet from the north end of the station to where she fell.

Q. Who called the attention of the conductor to the fact that there was probably a passenger at the station?

A. I did.

Q. Did you know who it was at the time?

A. No, sir; I didn't know who it was until the train backed up to her.

10 Q. What made you call the attention of the conductor to the fact?

A. I noticed her coming down the road in a hurry, and as she crossed over I supposed that she wanted to take the train, whoever it might be, and I says, "Chris, there is a lady crossed the track up there and fell and probably she wants the train; better back up and see." He backed up and loaded her on.

Q. Did the lady require any assistance to get aboard the train?

20 A. Steelman, the car inspector, and the baggage master assisted her on.

Q. Did they lift her on?

A. No, they didn't lift her; they just helped her by the arm.

Q. Did you go with the train to Middletown?

A. I went with the train to Ocean City.

Q. Did you see her get off the train at Middletown?

A. I did.

Q. Did she require any help there?

30 A. No more than common. Of course, the trainmen always assist the ladies off.

Q. Was she let off at the platform?

A. Yes, sir.

CROSS EXAMINATION by Mr. Bleakly:

Q. She went off the train as frisky as a young kitten, didn't she, Mr. Snyder?

A. No, I didn't say that.

Q. Did you know she had a broken ankle?

A. No, sir; I didn't know she had a broken ankle.

Q. Now, these wires that you have mentioned up here, you say there were pipes ran down to a certain point; what are the pipes for?

A. To work the switches and the signals. 10

Q. Why do the pipes stop at that particular point? Why don't they go further?

A. Because I suppose they won't work as well as they do with the wires.

Q. Couldn't there be a box put over those wires, from where the pipes end down to the poles?

A. There could, yes.

Q. And a box could be put there covering all of those wires, couldn't it?

A. It could, yes. 20

Q. So the people could step on that box if they walked across there, couldn't they?

A. It could be boxed if it was a public crossing.

Q. Well, isn't it often boxed anyhow? Aren't wires of that kind often boxed in anyhow?

A. Well, I don't know as ever I seen them boxed only at a public crossing.

Q. Aren't they sometimes boxed along by station platforms?

A. Well, if it is a station platform along the main track 30 and there is a wire it is boxed, but this is not along the main track.

Q. Oh, well, that is your opinion, of course. It is along a station platform just the same.

A. No, it is not.

Q. It is near it, isn't it?

A. It is across the main track from the platform.

Q. Well, it is abreast of the platform, isn't that right?

A. It is across the main track from the platform.

Q. Well, Mr. Snyder, isn't it abreast of the platform?

A. Well, it is across the main track.

Q. Right in front of the platform, isn't it? Aren't those wires right across from the station platform?

A. Now, I told you it was across the Ocean City branch from the platform.

Q. That is right then?

A. Yes.

Q. Now, you were on the end car, the engine was pointed toward Ocean City and the engine was about opposite this water tank below the Tuckahoe road—is that right?

A. Yes, taking water.

Q. And there were two coaches and a baggage car back of that engine?

A. One coach and a baggage car.

Q. One coach and a baggage car?

A. A combined car.

Q. Did the coach, the end coach, extend up on the siding or up on the main track?

A. The end coach was on the siding.

Q. So that the engine was at this point here by the water tower, and the tender of the engine and the combination coach right across the road, and the passenger coach that you were on up here extending into the siding—isn't that right?

A. Yes, sir. The tender was not across the road, though, because the tender was up at the tank.

Q. Now, will you explain to the Court and jury, Mr.

Snyder, how any passenger intending to get to this station to buy a ticket, without using a flying-machine or without crawling under these cars or over them would get to that station without crossing the tracks at some point?

A. Well, in this case—

Q. In the condition that existed on that day?

A. In this case the train left late.

Q. That is not what I asked you. Now, what was—

A. Now, just wait.

10

Q. I am not asking you for that; just answer this question that I have asked you: How could a passenger get to that station to purchase a ticket on that particular day at that particular time with that crossing blocked without using a flying machine or without crossing the tracks?

A. It was no time to purchase a ticket for that train.

Q. That is not answering the question?

A. That is the best I can answer it.

Q. Do you admit that they could not do it?

02

A. They could not at that time.

Q. No?

A. Because it was after time for that train. If that train had been on time it would have been down the road six miles.

Q. Well, that is another story.

A. Well, nobody would want to buy a ticket after a train had gone for that train.

Q. You need not make any argument; I simply want you to answer the question.

30

A. Well, that is the best I can answer it.

Q. Now, there were two cars on this branch siding over here by the canning factory?

A. Yes, sir.

EVERETT BAKER, Sworn.

By MR. MORGAN:

Q. Mr. Baker, where do you live?

A. Tuckahoe.

Q. How long have you lived there?

A. Six years.

Q. Do you recall the 20th day of April, the day when Mrs. Corson claims to have been injured at Tuckahoe Junction?

10 A. Yes, sir.

Q. Where were you on that day?

A. Standing by the pump house.

Q. On the train?

A. No, sir.

Q. What were you doing there?

A. I just happened to be standing there.

Q. You are acquainted with Mrs. Corson, aren't you?

A. Yes, sir.

Q. Had she been to your house that day?

20 A. Yes.

Q. What time had she been there?

A. I couldn't answer that.

Q. Did you see her come down what is called the Marshallville road?

A. Yes, sir.

Q. Did you see her attempt to cross over the tracks?

A. Yes, sir.

Q. Did you see her fall over the signal wires?

A. Yes, sir.

30 Q. What did she do after she fell?

A. Why, I couldn't answer that because I went in to attend to my boiler.

Q. You didn't see whether she got up or not herself?

A. No, sir: I had to attend to my steam boiler.

Q. Do you know the tracks and grounds around the station pretty well?

A. Yes, sir.

Q. Is there any path there

A. No, sir.

Q. Is the condition of the tracks and grounds and signal wires about the same as it was in April, 1908?

A. Yes, sir; as far as I know.

Q. What is your business?

A. Pumping station.

10

CROSS-EXAMINATION by Mr. Bleakly:

Q. Then you are employed by the railroad company?

A. Yes, sir.

Q. In between the tracks in front or abreast of the station there are cinders, aren't there, all the way from the junction of the Cape May line and all over and across here between the siding and the main track, isn't that right?

A. That is right, yes, sir.

Q. The cinders run all the way up, well up toward the road, the cross road to Marshallville, don't they, between the tracks? <sup>20</sup>

A. Between the tracks, yes, sir.

Q. What have you got to say about people coming to the station from the north? Do they sometimes come from the Marshallville road down this way?

A. Well, is that the track (referring to map)?

Q. Yes, this is the track.

A. Yes, sir.

Q. They sometimes come from this cross road right down the track? <sup>30</sup>

A. Yes.

Q. Right down between the tracks?

A. Yes, sir.

Q. Over the cinders?

A. Well, they come right down the middle of the track, you know.

Q. Then they go off here between the tracks and the Ocean City division and walk along there, do they?

A. Well, I couldn't answer that.

Q. They walk over the cinders?

A. I couldn't say about that. They walk in the middle of the track, you know.

10 Q. Did you ever see any of the people walk down this way, and come across this way to the station, down what is known, marked here "Road to Marshallville"?

A. That must be the station road, as we call it.

Q. Well, did you ever see people come down that way?

A. Yes, sir.

Q. Many of them?

A. Quite a few, yes sir.

Q. And walk across here to the platform or station to get tickets or to get on trains?

20 A. I don't know about the tickets; I have saw them come across there.

Q. Passengers and people going to the station for business with the railroad company, is that right?

A. Yes, sir.

Q. And they walk right across the cinders here between the railroad track, the main track and the siding, don't they?

A. How is that?

30 Q. They walk right across the cinders between the railroad track, that is, the main track and the siding don't they, that is, abreast of the station?

A. Yes, sir, they have to walk over it.

Q. The cinders are all beaten down there, aren't they?

A. I couldn't say about that.

Q. You didn't take any particular notice to it?

A. No.

Q. Never looked to see whether they were?

A. No, sir.

FLOYD W. YOUNG, Sworn.

By MR. MORGAN:

Q. Mr. Young, where do you live?

A. Camden.

Q. What is your business?

10

A. Freight conductor.

Q. What?

A. Freight conductor.

Q. Can't you speak a little louder? Are you employed by the Atlantic City Railroad?

A. Yes, sir.

Q. Were you working for the company on April 20, 1908?

A. Yes.

Q. Do you recall an accident happening on that day 20 at Tuckahoe Junction?

A. Yes, sir.

Q. What do you know about it? Where were you when it occurred? Did you see it?

A. I didn't see her fall no, sir: I was on the train and when the train started to move back then I walked out to the rear end and I saw Mr. Steelman leading some lady down the platform.

Q. You say you are a freight brakeman?

A. Freight conductor.

30

Q. Was this a freight train?

A. No, sir, a passenger train.

Q. Well were you a freight brakeman on that occasion?

A. I was baggage master at that time.

Q. Baggage master?

A. Yes, sir.

Q. What do you mean by Mr. Steelman leading a lady down—how was he leading her?

A. Had hold of her arm walking down the platform alongside of her.

Q. And she walked down, did she, all right?

A. Yes, sir.

Q. Did she need any help to get aboard the train?

10 A. Why, Mr. Snyder and Mr. Steelman, and I was standing up on the platform; I reached down and took hold of her arm and assisted her on with the others.

Q. Did she get off at Middletown?

A. Yes, sir.

Q. Did she need any help there?

A. Why, the brakeman.

Q. The brakeman helped her off?

A. Assisted her off there, yes, sir, on the platform.

Q. Was it any more help than is usually accorded a  
20 person a passenger getting off of a train?

A. No sir.

Q. Was she let off at a platform?

A. Yes, sir.

Q. On the platform?

A. Yes, sir.

Q. Are you acquainted with the tracks and grounds around the Junction?

A. Yes, sir.

Q. How long have you been acquainted with it?

30 A. About fifteen years.

Q. Are the conditions practically the same now as they were in 1908?

A. Yes, sir.

Q. Is there any path across the tracks from the Mar-

shallville road to the station?

A. No sir.

CROSS-EXAMINATION.

BY MR. BLEAKLY:

Q. When you come to the station you come from Tuckahoe, up the Tuckahoe road, don't you—that is, when you used to live down there?

A. Yes, sir.

Q. You don't live up this Marshallville road or up toward Marshallville? 10

A. Oh I lived up there three years.

Q. What, three years?

A. I couldn't say now.

Q. Well, how long ago?

A. It must have been about eight years ago.

Q. Within the past eight years then before you lived in Camden, you lived down here in Tuckahoe and used this road going to the station?

A. Yes.

Q. Known as the Tuckahoe road? 20

A. Yes, sir.

Q. Now, did you ever see people come down from this cross road or Marshallville road up here, down the tracks, down this way (indicating on map)?

A. Yes, sir.

Q. Are there cinders all around here just to the north of the station platform and abreast of the station platform, between the main track and the siding?

A. It is all cinder ballast between the Marshallville hoad crossing and the pump house. 30

Q. Now, did you ever see people walking down this road which is marked "To Marshallville" and which some of the witnesses have called the station road?

A. Yes, sir.

Q. Come down this way and cross the tracks and go to the station platform?

A. Well, they cross the tracks anywhere between the tower and station.

Q. Near the end of this road, the end of this station road?

A. Wherever they happen to cross over, anywhere.

Q. Well, it must be near the end of that road if they come down that road, isn't that right?

10 A. Not always at the end of the road; the road follows the railroad.

Q. The road runs right alongside of the railroad?

A. The road runs right alongside of the railroad, and they cross over at any point.

Q. They could cross at any point?

A. They do.

Q. Lots of them?

A. No, not lots of them; there ain't so many that live out that way.

20 Q. Well, all that live out that way that want to go over there to the station?

A. The most of them do.

Q. And this Marshallville road after it turns this angle near the end of the station runs right along the railroad track clear down to the Tuckahoe road, don't it?

A. Follows right down the siding.

Q. The railroad right of way is right up adjoining this road?

A. I couldn't answer that.

30 Q. Well, apparently on the ground it is, is that right?

A. It is very near there; it is close to the siding.

Q. Now, the cinders are all beaten down here opposite to this platform and abreast of the platform, tramped down?

A. No more so than anywhere else, between the tower and the crossing.

Q. Well, they are all beaten down in that particular spot then, between the tower and the crossing?

A. Well, it is a yard, you know, and the trainmen use it during the day.

Q. Passengers use it, too, don't they?

A. They cross over there anywhere, yes. It is not beaten down but it is level, perfectly level.

Q. Well, of course, people walking over it don't beat <sup>10</sup> it down any at all?

A. I suppose there is more trainmen use it—

Q. That is not what I asked you; of course, people, whether they are trainmen or passengers or anything else, don't beat it down any?

A. Oh, they keep it level.

Q. And keep it tramped down here, don't they?

A. No, not here, no, sir.

Q. Would you say it was nice and soft, the condition it was left in originally? <sup>02</sup>

A. Well it is level. Of course, the cinders, they won't pack so hard.

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JOSEPH SUTTON, Sworn.

By MR. MORGAN.

Q. Mr. Sutton, where do you live?

A. Tuckahoe.

Q. How long have you lived there?

A. Thirty-five years.

Q. Pretty well acquainted with the station at Tuckahoe <sup>30</sup> Junction?

A. Yes, sir.

Q. And also with the tracks in the yard at a point east of the station?

A. Yes, sir.

Q. Is there any track or any path across there that the people use in going to and from the station?

A. No, sir, there is no path from the tower down to the road crossing; that is the regular crossing into the station.

Q. Is the condition of affairs there now about the same as it was in April, 1908?

A. Yes, sir.

10 Q. The signal wires were there at the time?

A. Yes, sir.

Q. At the same place they are now?

A. Yes, sir.

Q. The main track, the Tuckahoe and Ocean City, and the siding alongside of that track?

A. Just the same.

CROSS-EXAMINATION by Mr. Bleakly:

Q. Your idea of a path is a place all laid out nicely for people to walk on, I suppose?

20 A. No, that is a sidewalk.

Q. Oh, yes, you make a distinction between a path and sidewalk?

A. Yes, sir.

Q. Down in the country it is a path?

A. Yes, sir.

Q. Up in the city it is a sidewalk?

A. In the city it is a street.

30 Q. Did you ever see anybody walk down this station road marked here "To Marshallville," come down here, passengers and others, and walk across here to the station platform?

A. Well, I have saw persons walk down this road, yes, sir.

Q. And go across the tracks, right across here?

A. If they saw fit to do it, they did.

Q. I want to know whether you saw people do that?

A. Yes, sir.

Q. Frequently or otherwise?

A. Well, I don't know as very frequently; it is a common occurrence when anybody comes, if they want to go that way, if they see fit to do it, for a short cut.

Q. It is the usual way?

A. No, sir.

Q. You say it is a common occurrence? **10**

A. Because people want to cut off, don't want to walk to the crossing.

Q. The most of the people do, don't they?

A. I don't know about that.

Q. It is four hundred feet to this crossing, isn't it?

A. Four hundred feet, yes, sir.

Q. And most people naturally come this way, don't they?

A. Well, when I lived—

Q. Never mind what you did; I am asking you most **20** people.

A. I want to tell you the way I went.

Q. No, I don't want to know that?

A. Well, I am not supposed to know so much about the other people.

Q. You don't know anything about them at all, do you?

A. Well, people that sees fit to go across the tracks, of course, for a near cut, they could do it.

Q. Not what they could do what they did do. Don't you know of your own knowledge what they did do? **30**  
Did you ever notice at all to see whether they did it or didn't do it?

A. Yes, I have saw people cross the tracks there.

Q. A number of them or not?

A. Well, a few.

Q. Well, what do you mean by a few? In the last seven or eight years one or two a day?

A. I can't call that to memory, you know, what has happened in the last seven or eight years.

Q. You mean a few every day, do you?

A. Probably there are days that there is no one crosses; I dare say there are plenty of days that no one crosses the tracks there. That road that you are speaking of is not  
10 used so very much.

Q. I know that, I am not asking you about that; I am asking you when they do use it and come down here; you have seen them quite frequently come right down here; and cross right over to that station platform?

A. Yes.

Q. Right over the tracks?

A. It is a near cut for them.

Q. And have you seen them do it?

A. Yes.

20 Q. And of course they don't beat down the cinders at all when they are doing it, do they? They don't tread down the cinders at all, do they, when they are doing it?

A. Well, the cinders is pretty loose.

Q. They just take a hop, skip and jump, and say "We mustn't tread down any cinders"—is that the way they go over?

A. I have never seen this hop, skip and jump.

Q. All right, that is all.

By MR. MORGAN:

30 Q. Just one moment; do people crossing over ground usually beat it down and make it solid or does the rain do it?

A. The rain as a rule and the elements will pack the ground more than people walking over it.

Q. Any number of people?

A. Yes, sir. Well, I will tell you, the train crews use this piece of ground that you are speaking about more than all the other people put together. Now, they would naturally pack that ground if it is packed more than all the passengers that would go on there for twenty years, because they use it every day.

JOHN C. DIAMOND, Sworn.

By MR. MORGAN:

10

Q. Mr. Diamond, where do you live?

A. Tuckahoe.

Q. Speak a little louder, please?

A. Tuckahoe.

Q. How long have you lived there?

A. About three years, done business there about seven.

Q. Are you pretty well acquainted with the station and surroundings at Tuckahoe Junction?

A. I am.

Q. Are the conditions of the tracks, signals and station house about the same as they were three years ago?

A. They are.

Q. Is there any path for people to use crossing the tracks from the Marshallville road to the station?

A. There is not.

CROSS EXAMINATION, By Mr. Stockwell:

Q. What is your business?

A. I am in the canning business.

Q. Is there any path for people to use crossing the siding, any well defined path leading from this public road over to this siding?

A. Over the siding or over to the siding?

Q. Over to the siding?

A. No,

30

Q. Is there any well defined path from the station platform across the tracks to the siding?

A. No.

Q. So that when people have to board the cars on the siding they can go across this path?

A. No.

Q. You never saw any such path?

A. No.

Q. I suppose the cinders along in here from the north  
10 end of the platform down to the crossing are humpy, uneven?

A. I don't think so, not on the Ocean City track. The Ocean City track is mostly gravel ballast, that is my impression.

Q. As a matter of fact they are levelled off, aren't they?

A. I never took particular notice to that.

Q. You don't know whether they are or not?

A. I don't know.

Q. You don't know what the condition of this ground is  
20 between the north end of the station—

A. I know the condition of the main track, because the cinders are rough on it, on the main Cape May division of the track.

Q. How about the cinders on the Ocean City side?

A. On the Ocean City branch it is my impression that it is mostly a gravel ballast rather than cinders.

Q. Where does the gravel begin and where do the cinders end?

A. I should say about at the water, where they take in  
30 water.

Q. Here is where the gravel begins?

A. No, about up here where they take on water, up here at the point of the platform.

Q. Here is where they take in water?

Q. When did they begin to take in water up here at the north end of the platform?

A. Oh, there has always been a standpipe there ever since I have been in Tuckahoe.

Q. I see; do trains going to Ocean City take in water at the north end of the platform?

A. No, going to Philadelphia.

Q. Now, tell me where the gravel begins.

A. About there.

Q. Then which way does it extend on the Ocean City <sup>10</sup> track?

A. Extends toward Ocean City.

Q. How far?

A. I don't know; I am not acquainted with the railroad business.

Q. Are there any cinders at all in here between the station platform and this public road called the Marshallville road?

A. I think there is a mixture of cinders and gravel, but the cinders are not as distinct as they are on the Cape <sup>20</sup> May division. They are entirely cinders on the Cape May division and on the Ocean City division I think they are cinders and gravel mixed.

Q. But you don't remember seeing any well defined path leading from this public road here, this Marshallville road, over to the siding where people take the cars?

A. No, I do not.

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GEORGE DUKES, Sworn.

By MR. MORGAN:

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Q. Where do you live?

A. Tuckahoe.

Q. How long have you lived there?

A. All my life.

Q. Speak out a little?

A. All my life.

Q. How long is that?

A. Thirty-eight years.

Q. Are you pretty well acquainted with the condition of affairs around the station at Tuckahoe Junction?

A. Yes, sir.

Q. Been acquainted all that time?

10 A. No, the railroad has not been there all that time.

Q. Is the condition of affairs around the station about the same now as it was in April, 1908?

A. Yes, sir.

Q. The same tracks?

A. Yes.

Q. And signal wires at that time?

A. As far as I remember, yes, sir.

Q. When was the canning factory built?

20 A. I don't remember, now how long that has been; I remember working there when it was built, grading the track for them, but I don't remember how long it has been.

Q. Well, five years ago?

A. Yes, been that long, I should think.

Q. Is there any path leading from the Marshallville road over and across the tracks to the station platform?

A. No, sir.

Q. You are positive about that?

A. I never saw any.

CROSS EXAMINATION, By Mr. Bleakly:

30 Q. Mr. Dukes, what is there up here in front of the platform between this road to Marshallville and between the main track and the siding there?

A. What do you mean, what kind of soil or what?

Q. Yes.

A. Cinders.

Q. Isn't there gravel all around from the north end of the platform between the siding and the main track down here to this Tuckahoe road crossing?

A. Well, there is cinders on top of the gravel. The gravel was there first.

Q. The gravel was there first, but what appears now are cinders, is that what you mean?

A. Cinders on top, yes.

Q. So it is all cinders on top, is that right?

10

A. Yes.

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JEPHTHA P. CLARK, Sworn.

By MR. MORGAN:

Q. Mr. Clark, what is your business?

A. Supervisor of signals.

Q. Railroad signals?

A. Yes, sir.

Q. Are you employed by the Atlantic City Railroad Company?

20

A. I am, yes, sir.

Q. How long have you been employed by that company?

A. On my 22nd year.

Q. And where were you employed prior to that time?

A. On the Philadelphia & Reading, on the New York division.

Q. And you have had charge of these signals wires since your first connection with the roads?

A. Yes, sir.

Q. Are there signal wires at Tuckahoe Junction?

30

A. Yes, sir.

Q. Are they the standard wires adopted by the different railroad companies of the United States?

A. Yes, sir.

Q. Are they in perfect order?

A. Yes, sir.

Q. Are they necessary for the safe operation of the railroad?

A. Yes, sir.

Q. Are they placed upon the grounds and lands of the railroad company?

A. Yes, sir.

10 Q. Do you know the grounds, tracks, and wires around the station at Tuckahoe Junction?

A. Well, practically so, yes.

Q. Is there any path leading from the Marshallville road over and across these tracks to the platform of the station?

A. I would say no; I don't remember ever seeing one.

Q. Would you have seen it if there had been one?

A. Most assuredly.

Q. Is the condition of affairs around there about the same as it was in April, 1908?

20 A. Yes, sir.

CROSS EXAMINATION, By Mr. Bleakly:

Q. Mr. Clark, do you know how these wires are constructed down there opposite the platform at Tuckahoe?

A. Yes, sir.

Q. The wires extend north and south in this direction, don't they?

A. Yes, sir, from the tower here.

Q. From the tower away to the north of the station?

A. Yes.

30 Q. And for a long distance they run through iron pipes upon the ground, is that right?

A. No sir.

MR. MORGAN: If your Honor please, this map is in evidence with the other map. I have

no objection to it, but this shows a little plainer than the one there, so I would ask to put it up.

THE COURT: Put it above this other.

Q. What are the pipes used for, Mr. Clark?

A. Pulling the switches and locking the switches.

Q. Then from where the pipes end the wires continue?

A. Down to the signal, yes, sir.

Q. Now, did you know those wires were several inches above the ground as they are now constructed and held in position? 10

A. Yes, sir.

Q. Wouldn't it be possible, Mr. Clark, to sink those wires in a box underneath the surface of the ground?

A. It would be possible; it would not be practicable.

Q. Wouldn't it be possible to box them in above the ground?

A. Yes, sir.

Q. That would be practicable, too, wouldn't it?

A. No sir; we have tried it for years and find it is not practicable because a foreign element seeps in there and freezes up and makes trouble. 20

Q. Couldn't you make it air tight?

A. Not practical, no, sir.

Q. You couldn't make an air tight box?

A. You could make it air tight, make an air tight box over anything.

Q. Could you make a concrete box?

A. Yes.

Q. Couldn't you make a concrete box so the elements could not get into it? 30

A. Yes.

Q. Or so outside or foreign substances could not get into it?

A. Yes, sir.

Q. But that would cost a little more money, wouldn't it?

A. That is not the idea; the idea is to keep it open for frequent inspection for safety.

Q. Well, couldn't you have a cover to it? Couldn't you have a covering there, a cover that you could open?

A. We would only see the top.

Q. Couldn't you have one at the side, too?

A. Possibly we could.

10 Q. These are simply wires that run down, plain, ordinary wires, aren't they, that run from the end of these pipes to the signal?

A. Yes, sir, run backward and forward.

Q. And a box could be built to give them plenty of leeway and working room, couldn't it?

A. Oh, yes.

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MR. MORGAN: These photographs are not marked; they were offered in evidence yesterday.

20 MR. BLEAKLY: Yes, for illustration purposes, of course.

MR. MORGAN: And this plan here we have proven.

(Said plan is marked Exhibit D. 1 and the photographs are marked respectively Exhibits D. 2, D. 3, D. 4 and D. 5.)

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#### DEFENDANT RESTS.

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#### PLAINTIFF'S REBUTTAL.

30 DR. DOWLING BENJAMIN, Recalled.

MR. MORGAN: If the Court please, I would like to know what is intended to be proved by Dr. Benjamin.

MR. STOCKWELL: To explain some of the

testimony which you put in yesterday by your own doctors.

MR. MORGAN: If it is to rebut any of the defendant's case it is proper, otherwise it is not.

MR. STOCKWELL: You brought out by Dr. Douglass that this woman had a certain kind of fracture of the ankle. We want the Doctor to explain to the jury just what that fracture is, as it is known to the medical fraternity.

MR. MORGAN: I will be very glad to listen <sup>10</sup> to the Doctor, so the jury will understand what it is like.

THE COURT: I do not think it is competent for that purpose; you cannot enlarge the plaintiff's case. If you want to contradict the defendant's witnesses in any particular of course I will allow it.

MR. BLEAKLY: He did not explain what the fracture was, that is the only thing.

THE COURT: Well, if there is no objection <sup>20</sup> you may go on.

MR. MORGAN: I shall object to anything on that; I don't see how it is good for anything to go into any essay on that.

MR. STOCKWELL: They named the kind of fracture; I think it ought to be explained to the jury.

THE COURT: Very well I will take the testimony.

By MR. STOCKWELL.

<sup>30</sup>

Q. What is a Potts' fracture, Doctor? By the way, is that the correct name?

A. We ought to have a big black-board to make a drawing or we should have a part of a skeleton here.

Q. Can't you explain it briefly?

A. Yes, I will make a drawing here for the jury. The leg below the knee has two bones; one is larger than the other, and going down to the ankle—

Q. Doctor, what we want is a brief explanation, if you can do it without diagrams or spending much time.

A. Two bones that go down the leg the outer one is not as large as the inner one. The inner one is called a fibula and the larger one is the tibia. When the ankle  
 10 turns by a severe strain, the outer one breaks about an inch, anywhere from a half an inch to two inches above the end. The end of that bone holds the foot in position and the end of the other bone has a like projection to clamp the foot and hold it. A fracture—

MR. STOCKWELL: I think that is sufficient  
 Doctor.

THE WITNESS: Means a fracture, an entire break, not a crack or a part break.

Q. All right.

20 BY MR. BLEAKLY:

Q. It is one of those bones near the ankle, is it?

A. Yes, sir.

CROSS EXAMINATION, By Mr. Morgan:

Q. Just one moment, Doctor. Now, is there any evidence in Mrs. Corson at the present time of a fracture?

A. The—

Q. Just answer the question, please, if you can?

A. Yes.

Q. There is evidence of it?

30 A. Yes.

By MR. STOCKWELL.

Q. Now, what is the evidence, Doctor? You had better go back to the witness stand I think.

A. The tenderness and pain and the slight edema; when

you press with your fingers there is a little depression there.

Q. Such as might naturally result from that kind of fracture?

A. Yes, sir.

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BOTH SIDES REST.

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MR. MORGAN: Now if the Court please, I ask the Court to direct the jury to render a ver-<sup>10</sup>dict in favor of the defendant.

THE COURT: Now, you need not take time to argue this unless you want to call my attention to something which I did not hear yesterday.

MR. MORGAN: In addition to the other things we have now proven that the signal wires were a proper and necessary operation of the railroad, and by a decision of the Court in the case of Reach, I think, it is held in that case that where a person's horse got a hoof caught in a frog and it was proven to the satisfaction of the Court that the frog was a standard article in use by other railroads that there was no negligence on the part of the railroad company, and the plaintiff cannot recover. That is an additional point now that we have, but it seems to me, if the Court please, that we have rebutted everything that has been said here. The declaration comes in and alleges negligence on the part of the railroad company in having two trains of cars so fixed that passengers could not reach the station except by going over dangerous ground. We have rebutted that and shown that there was not any except one train that stood on one crossing<sup>30</sup>

for a short time, and that was at a time when the plaintiff was quite a distance away. A few witnesses came forward and said there was a well beaten path; we have brought forward a number of witnesses who testify that there was no beaten path there, that it was simply a short cut taken by the different people from the road to the station, and that a person travelling over there did it at their peril in falling over the tracks which were there and elevated and falling over signal wires which were there for the operation of the road, or being run over by a train; it was a risk they took in getting there. Now, we will come down then to that point which your Honor thought was important about the well beaten path; the railroad permitted it to be done. Now, this plaintiff was either a trespasser or a licensee; if a trespasser she certainly has no right to recover; if she was a licensee she has no right to recover; so place it in any position you want the railroad company was under no greater duty to her as a licensee than it would be to an ordinary pedestrian and in case the signal wires were there, it is the duty of a passenger going anywhere to look and see where they are going and not heedlessly fall into some hole or fall over some obstacle. Now, if she went over there, even supposing there was a path, she was a licensee and she must look where she was going, and if she fell she contributed to her injury. Now, I claim, if your Honor please, it is a clear case on all points where the Court should direct a verdict in favor of the defendant.

MR. BLEAKLY: If you Honor please, in ref-

erence to the point concerning signal wires, of course we recognize the fact that signal wires are necessary and proper in the operation of the road, but two of the witnesses produced by the defendant admitted that these wires could be put in a box, be boxed over, put in different condition than what they are now, which of course is a question at all events for the jury to decide. Now, in reference to the question of being a trespasser or licensee I think that is just where Mr. Morgan <sup>10</sup> misconceives this case. This woman was not a trespasser and not a licensee; she was a passenger, an intended passenger. She had business with this railroad company for their profit; she was going there on business to become a passenger on their train, and under those circumstances she comes clearly out of the class of cases where a mere trespasser or a licensee goes on the tracks of a railroad company. If I go on the tracks of a railroad company out of curiosity or <sup>20</sup> for some business of my own, I am taking chances, but if I go there for some business of the railroad company, to even meet a friend coming on the train, the Courts have held I am not a trespasser, I am there on business connected with the road. Now, what are the facts? Down at the crossing which this woman could have taken was a train, down at the Tuckahoe road, completely blocking it for one hundred feet below and a hundred or two hundred feet above. Now, <sup>30</sup> that train had been there for some time; that train, as the facts show in this case, never in fact pulled up to this station but stood on the siding, and never came up until Mrs. Corson came there

and they pulled up for her; it stood down there for some time blocking this crossing down below when she came there. That is clear, anyhow; she could not get to that station where she had a right to go to get a ticket for that train which she had a right to do, and which they were in business to induce her to do, without taking a flying-machine and going over these tracks. That station was completely surrounded by tracks.

10 Now, they could have built a way over as is sometimes done or tunnel underneath as is sometimes done just for such occasions as this, when they had the road blocked. It seems on the contrary—though I am perfectly willing to leave it to the jury—it seems to us that the Court could fairly well in this case charge the jury and say that they are in duty bound to find a verdict for this plaintiff, leaving the amount of course to them, under the circumstances of this case proved by the defendants themselves.

20 Now, there was a slight issue here at first with reference to a beaten path or a beaten track across this road. They have wiped that question of a beaten path out by conclusively proving our case, that this road was blocked and conclusively proving by their own witnesses that people frequently, invariably, some of them said, but certainly often and frequently used that road down there crossing over to this station, passengers and others coming down there, without notice from the company not to do it, without protest, without warning not to do it; it was acquiesced in.

30 Now, the cases hold that even a trespasser after a long number of years—well, we won't say a trespasser a licensee after a

long number of years, after a passageway of that kind has been used for ten, fifteen or twenty years or sometimes less than ten years, where a person not a passenger, not intended to be a passenger uses that way for a number of years, they are excused (citing cases.) Now, we are not asking your Honor to go as far as that. One witness said as long as the road had been built there it was used, and under such circumstances it is not only an invitation implied but almost expressed. They must furnish a safe and convenient passage and a convenient passage in my opinion even if this road had not been blocked down there would have been right across there where they usually take a short cut. If she had been the first woman that ever did it ~~it~~ would have been different; if she had been the second passenger that ever did it, it would have been different, but here is a course of procedure, a custom established by the acquiescence of the railroad company and its employees and agents over a long course of years, so I say even if that road had not been blocked the most convenient way for her would have been right across that road instead of going four hundred feet away. Mark you they have proven in this case clearly that it was 436 feet, a big city block, for this woman to walk to get to this station. Now, that, in the first place, is not a convenient passageway, not convenient at all, and in view of the fact that the road was blocked at this particular time there was no safe passageway if we say the the short cut cross those tracks was not safe; if that was not safe then there was no safe pas-

sageway provided. That is an admitted fact in this case proved conclusively by them and their witnesses that there was no safe way, if the way she did go was unsafe. Under such circumstances, the Courts have always held that she is to use the way most convenient to get there, to go across, and she did use the way that was used by scores of other people in years gone by. I don't care anything about whether there was a beaten path there or not; the witnesses say that the place was walked over all around there; these cinders were all tramped down. If that is so, then of course the whole place is tramped down, but this fact is clear, that the witnesses did use it repeatedly and whether they left a beaten path or whether they beat it down all around there does not make any difference at all. The beaten path would only be an incident to help our case; it is not necessary to our case at all; but what is most helpful to our case is that fact that scores of people for years past, as I have said—one of them saying ever since the road was built—have used this path that this woman did, whether it is marked out or not, this line of walking to get to this station; and she used it the same as others have used it, without notice, without protest, without warning, with these employees all around there watching her, three or four of them seeing her do it and never stopped her or attempted to stop her. That is in the case; they let her do it. Now, it seems to me, as I have said your Honor, instead of even considering Mr. Morgan's motion to direct a verdict for the defendant would be fully warranted in directing a verdict

for the plaintiff under the circumstances of this case but clearly it is a question for the jury.

THE COURT: The Court is of the opinion that the defendant company had provided a safe passageway from this station by way of the highway which led from near the platform to the village of Tuckahoe. It is true that people coming from the direction of Marshallville often crossed the tracks as a short cut to the station, but it does not appear that there was any way <sup>10</sup> or path provided there by the railroad company. The allegation in the declaration is that the defendant was negligent in having wires and pipes which were not protected across which this plaintiff fell, but it now appears from the testimony that those wires and pipes were a part of the regular system of the railroad, that they were standard wires and pipes in use in this country, and that it is not customary to conceal them. The plaintiff therefore fails, the Court thinks, in <sup>20</sup> showing any negligence on the part of the company in that respect. It also appears that the highway leading to this station was temporarily blocked, and that this plaintiff rather than go down to the highway and cross if the train had then passed, or waiting for it to pass, chose rather to cross the tracks where these wires and pipes were. Now, certainly, if she placed herself in such a well known place of danger she must observe her surroundings. The Court feels that no <sup>30</sup> verdict based on this testimony can stand and it is his duty therefore to direct you to find a verdict for the defendant.

Whereupon the plaintiff, by her Counsel, prays

a bill of exceptions which is signed and sealed accordingly.

THOMAS W. TRENCHARD, (Seal) J. S. C.

For Circuit Court Judge.

MR. BLEAKLY. We also take an exception to the refusal of the Court to charge as requested; and a bill of exceptions is allowed and sealed accordingly.

10 THOMAS W. TRENCHARD, (Seal) J. S. C.

For Circuit Court Judge.

Also an exception to the charge that it does not appear that there was any negligence on the part of the company, that the allegation in the declaration is that the defendant was negligent in having wires and pipes which were not protected but that it appears from the testimony that these wires and pipes were part of the regular system of the railroad, that they were standard wires and pipes in use in this country and that it is not customary to con-  
20 ceal them. And a bill of exceptions is allowed and sealed accordingly.

THOMAS W. TRENCHARD, (Seal) J. S. C.

For Circuit Court Judge.

Also the charge that as the highway was temporarily blocked the plaintiff placed herself in such a well known place of danger that she must observe her surroundings; and a bill of exceptions is allowed and sealed accordingly.

30 THOMAS W. TRENCHARD, (Seal) J. S. C.

For Circuit Court Judge.

## NEW JERSEY SUPREME COURT.

AMANDA CORSON	}	In Tort.
Plaintiff		
vs.		
ATLANTIC CITY RAILROAD COMPANY		
Defendant		

## REQUESTS TO CHARGE.

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1. That one who is in the act of going to a train or passenger station where there is an express or an implied invitation for her to do so, may assume that the Railroad Company will not put her in any peril.—6 Cyc, 643.

2. A person intending to take a train is not a trespasser in going upon the accustomed approaches to the station, even in going on or across the railroad tracks where the other approaches are impossible.—33 Cyc, 763. 20

3. The Railroad Company must provide safe and convenient means of approach to its stations.

4. If the approach which was provided was blocked or the passenger in any way prevented from using it at or near train time, use may be made of the next best and convenient approach, even if that should lead the passenger to cross railroad tracks. 30

5. Mrs. Corson was going to secure a ticket. She was intending to become a passenger. She was not a trespasser nor a mere licensee. She had business with the railroad company at that station and had the right to get to the

company's station, and get there in time to transact that business.

6. If a person intending to become a passenger cross the railway company's tracks where they have been habitually used by the public in approaching the depot or station, with the knowledge and consent of the railroad company, such person is not a trespasser.—33 Cyc, 763, Note 36.

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7. If on the afternoon in question, the plaintiff upon approaching along the public highway the defendant's station found the approach by the Tuckahoe road near the water tank blocked by an engine and cars of the defendant taking water at the tank, plaintiff was entitled to use the next best approach known to her across the company's property, though this lead her across the tracks.

20

30

## JUDGMENT.

Signed, February 21st 1911.

Afterwards that is to say, on the twenty-second day of November, nineteen hundred and ten, at a Circuit Court held at Camden in and for the County of Camden by his Honor Allen B. Endicott, Judge of the Circuit Court of Camden County, of the State of New Jersey, according to the form of the statute in such case made and provided, comes as well the within named plaintiff, as the within named defendant by their respective attorneys within mentioned; and the jurors of the jury, whereof mention is within made, being summoned, also come who to speak the truth of the matters within contained, being chosen, tried and sworn, upon their respective oaths say that the defendant is not guilty in manner and form as the plaintiff hath within complained against it. <sup>10</sup>

Therefore it is considered that the said plaintiff, Amanda Corson, take nothing by her said writ and that the said defendant, Atlantic City Railroad Company, do go thereof without day. <sup>20</sup>

And it is further considered that the said defendant, Atlantic City Railroad Company, do recover against the said Plaintiff, Amanda Corson, the sum of eighty-four dollars and thirty-two cents, for its costs and charges by it about its defence in this behalf laid out and expended by the Court now here adjudged to the said defendant and with its assent according to the form of the statute in such case made and provided, and that the said defendant have execution thereof, etc. <sup>30</sup>

Judgment signed this twenty-first day of February, A. D., nineteen hundred and eleven.

WM. S. GUMMERE C. J.

## WRIT OF ERROR.

Filed November 9th, 1911.

NEW JERSEY ss:

THE STATE OF NEW JERSEY, to the Chief  
(Seal) Justice and other Justices of our Supreme Court  
of Judicature, Greeting:

10 Forasmuch as in the record and proceedings, and also  
in the giving of judgment in a certian plaint, which was in  
our said Supreme Court of Judicature, before you, be-  
tween Amanda Corson, plaintiff, and Atlantic City Rail-  
road Company, defendant, in an action in tort manifest  
error hath intervened, to the great damage of the said  
plaintiff, 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, then you distinctly and openly send,  
20 under your seal the record 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 twenty-seventh of March next,  
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 th law, and custom of the State of New  
Jersey, ought to be done.

30 Witness our Chancellor, and President Judge of our  
said Court of Errors and Appeals at Trenton aforesaid, the  
seventh day of March, in the year of our Lord one thou-  
sand nine hundred and——

S. D. DICKINSON, Clerk.

BLEAKLY &amp; STOCKWELL, Attorneys.

The answer of the Justice of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

WM. S. GUMMERE (Seal),  
C. J.

10

ASSIGNMENT OF ERRORS.  
Filed December 6th, 1911.

NEW JERSEY COURT OF ERRORS AND APPEALS.

AMANDA CORSON	}	In Error.
Plaintiff in Error		
vs.		
ATLANTIC CITY RAILROAD COMPANY		
Defendant in Error		

20

And now, on this day, in the year of our Lord one thousand nine hundred and eleven, in the Court of Errors and Appeals, in the last resort in all causes of the State of New Jersey, comes the said Amanda Corson, by Bleakly and Stockwell, her attorneys, and says that in the record<sup>30</sup> and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in giving the verdict and judgment, there is manifest error, to wit:

1. Because the trial judge before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid erroneously and unlawfully charged the jury as follows:

10 "The allegation in the declaration is that the defendant was negligent in having wires and pipes which were not protected across which this plaintiff fell, but it now appears from the testimony that those wires and pipes were a part of the regular system of the railroad, that they were standard wires and pipes in use in this Country and that it is not customary to conceal them. The plaintiff therefore fails, the court thinks, in showing any negligence on the part of the company in that respect."

2. Because the trial judge before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid erroneously and unlawfully charged the jury as follows:

20 "It also appears that the highway leading to this station was temporarily blocked, and that this plaintiff, rather than go down to the highway and cross if the train had then passed, or waiting for it to pass, chose rather to cross the tracks where these wires and pipes were. Now, certainly, if she placed herself in such a well-known place of danger she must observe her surroundings."

3. Because the trial judge before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, erroneously and unlawfully  
30 directed the jury to find a verdict for the defendant, the Atlantic City Railroad Company.

4. Because the trial judge before whom, etc., at and upon the aforesaid trial of the issue so joined between the

parties aforesaid, erroneously and unlawfully refused to comply with the plaintiff's requests to charge the jury as follows:

"1. That one who is in the act of going to a train or passenger station where there is an express or implied invitation for her to do so, may assume that the Railroad Company will not put her in any peril."

"2. A person intending to take a train is not a trespasser in going upon the accustomed approaches to the station, even in going on or across the railroad tracks where the other approaches are impossible."

"3. The Railroad Company must provide safe and convenient means of approach to its stations."

"4. If the approach which was provided was blocked, or the passenger in any way prevented from using it at or near train time, use may be made of the next best and convenient approach, even if that should lead the passenger to cross railroad tracks."

"5. Mrs. Corson was going to secure a ticket. She was intending to become a passenger. She was not a trespasser nor a mere licensee. She had business with the railroad company at that station, and had the right to get to the company's station, and get there in time to transact that business."

"6. If a person intending to become a passenger cross the railway company's tracks where they have been habitually used by the public in approaching the depot or station, with the knowledge and consent of the railroad company, such person is not a trespasser."

“7. If on the afternoon in question, the plaintiff, upon approaching along the public highway the defendant’s station, found the approach by the Tuckahoe road near the water tank blocked by an engine and cars of the defendant taking water at the tank, plaintiff was entitled to use the next best approach known to her across the company’s property, though this led her across the tracks.”

10 Therefore, the said Amanda Corson prays that the judgment aforesaid, by reason of the aforesaid errors, and of other errors appearing in the record and proceedings aforesaid, be reversed, annulled and held for nothing and that she may be restored to all things which she hath lost by occasion of the said judgment, etc.

BLEAKLY & STOCKWELL,

Attorneys for and of Counsel with the  
Plaintiff in Error.

Dated December 5th 1911.

20

30

## JOINDER IN ERROR.

Filed February 3, 1912.

## NEW JERSEY COURT OF ERRORS AND APPEALS

AMANDA CORSON	}	In Error	10
Plaintiff in Error			
vs.			
ATLANTIC CITY RAILROAD COMPANY			
Defendant in Error			

And now comes into Court the said Atlantic City Railroad Company, defendant in error, by J. Willard Morgan, its attorney, and says that there is no error either in the record and proceedings aforesaid, or in giving judgment aforesaid, and prays here that the Court here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that the judgment aforesaid in manner aforesaid given, may in all things be affirmed, etc.

J. WILLARD MORGAN,  
Attorney for Defendant in Error.

## NOTICE OF ARGUMENT

## NEW JERSEY COURT OF ERRORS AND APPEALS

	AMANDA CORSON	}	In Error
	Plaintiff in Error		
	vs.		
	ATLANTIC CITY RAILROAD	}	
	COMPANY		
10	Defendant in Error		

To J. Willard Morgan, Esquire, attorney for the defendant in error:

Dear Sir:

Please take notice of argument in the above entitled cause, before the Court of Errors and Appeals, at the State House, in the City of Trenton, New Jersey, on Tuesday, the fifth day of March, nineteen hundred and twelve, at the hour of eleven o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard.

Respectfully yours,

BLEAKLY & STOCKWELL,

Attorneys for Plaintiff in Error.

Dated February 6, 1912.

30 STATE OF NEW JERSEY,  
COUNTY OF CAMDEN—ss:

George J. Gladney, being duly sworn, according to law, on his oath says that on Tuesday, the sixth day of

February, nineteen hundred and twelve, he served upon J. Williard Morgan, Esquire, attorney for the within named defendant in error, a true and correct copy of the within Notice of Argument by leaving the same with Lawrence B. Reader, in charge of his office.

(Signed) GEORGE J. GLADNEY,

Sworn and subscribed to before me this sixth of February,  
1912,

10

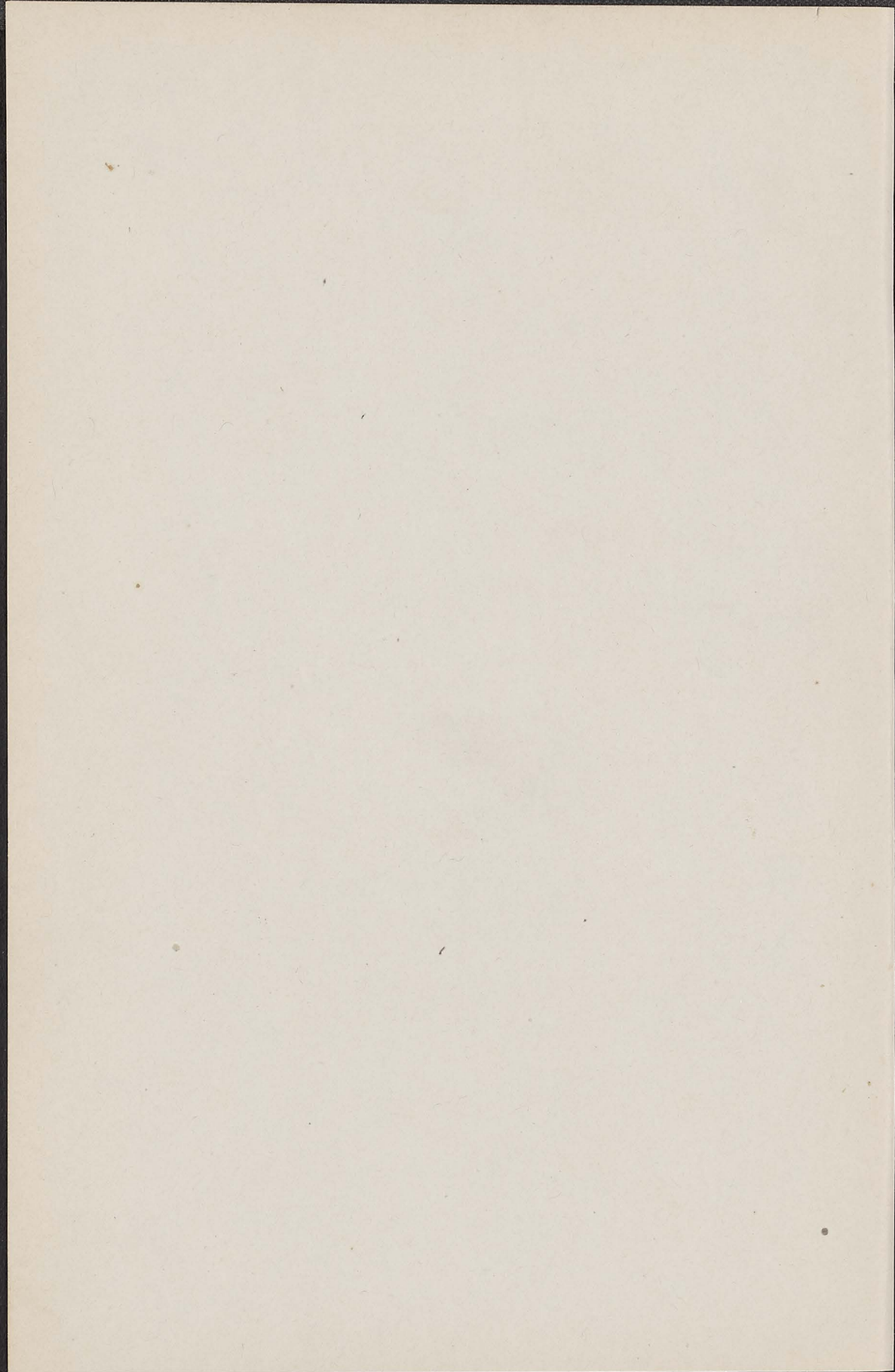
CHARLES BRIDGE,

Notary Public of New Jersey.

My Commission Expires December 14, 1913.

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# New Jersey Court of Errors and Appeals

AMANDA CORSON,

Plaintiff in Error;

vs.

ATLANTIC CITY RAILROAD  
COMPANY,

Defendant in Error.

Brief for Plaintiff in  
Error.

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## Statement of Case.

This cause was tried before a jury at the Camden Circuit. At the conclusion of the taking of testimony, the trial Judge, on motion of the defendant's counsel, instructed the jury to bring in a verdict for the defendant. The plaintiff assigns error on this direction of the verdict.

The accident occurred in front of the station of the Railroad Company at Tuckahoe, Cape May County, New Jersey. This is not only the station for Tuckahoe but is the junction where the Cape May branch of this railroad and the Ocean City branch of the same road merge. From Tuckahoe to Philadelphia it is a double track line. This station is at the western extremity of the Town of Tuckahoe. To the west of the station and of the tracks of the railroad, at the time of the accident to plaintiff, the land was undeveloped. The passenger station is in the angle made by these converging branches of the defendant's railroad.

A public road (hereinafter called Road No. 1) approached and crossed the east or Ocean City branch,

approximately three hundred feet south of this station. Before crossing the railroad tracks this public road joins another public road (hereinafter called Road No. 2) styled in the testimony, the Marshalville Road, which latter road immediately adjoins the property of the Railroad Company and extends along and parallel with that property northward from the first named public road for about 600 feet, and to a point where the Ocean City and Cape May branches of the railroad converge. From that point the said Marshalville Road (Road No. 2) makes an angle to the east and leads to the Town of Tuckahoe.

Public road No. 1 also leads into the Town of Tuckahoe but to a different part thereof. The angle between the Ocean City branch and the Cape May branch constitutes the station platform and extends from the said angle southward approximately 480 feet.

Road No. 1, after crossing the Ocean City branch, proceeds across the Cape May branch and into the country beyond. Immediately south of Road No. 1 and along the west side of the Ocean City branch was located the company's water tank. The distance between said tank and said Road No. 1 is 10 feet (Fendall Smith, page 6). The Ocean City branch after leaving the main line is made up of but a single track and sidings. This main track parallels to the company's platform its full length. Just east of said main track was a siding connecting with the main track northward of the junction between the Ocean City branch and the Cape May branch, and also connecting with the said main track just northward of the public road herein called No. 1.

Plaintiff approached said station from the Town of Tuckahoe along public road No. 2, and when she came to a point just north of the passenger station and in front of said station platform, she crossed from said public road to the station platform, and in so doing tripped over some uncovered and obscure signal wires and was severely injured. She approached the station as a pas-

senger intending to take the local train running from Tuckahoe Junction to Ocean City. The plaintiff resided on the Ocean City branch at Middletown, being the first or second station on said Ocean City branch from Tuckahoe.

This case involves two points. First, was the plaintiff upon the company's property by invitation of the Railroad Company expressed or implied? Second, if so, was the company negligent in failing to make this place of approach reasonably safe? The trial Court said in effect that plaintiff was a trespasser and could not therefore recover.

We submit that testimony was introduced by the plaintiff and by the defendant showing facts which the jury was entitled to consider in determining the question of invitation and the question of want of care of the Railroad Company in providing a reasonably safe means of approach to its station.

#### Argument.

#### I. WAS PLAINTIFF UPON THE COMPANY'S PROPERTY BY ITS INVITATION?

(a) Public road No. 2, over which Mrs. Corson approached the Railroad Company's property, not only immediately adjoins the company's property the full length of the station platform, but is practically on a level with that property.

(Fendall Smith, page 7, lines 10 to 20).

(b) There was no fence or other structure separating the public road from the Railroad Company's property. The one merges into the other.

(Fendall Smith, page 7);  
(Edgar Ross, page 65).

Nor was there any sign or other warning to passengers not to approach the station at that point.

Amanda Corson, page 23 (lines 28 to 32);  
Fendall Smith, page 7.

(c) Practically all passengers approaching the station along public road No. 2 and passengers leaving the company's property to go to points in Tuckahoe over said public road No. 2, crossed the company's property a little north of the passenger station but opposite the company's platform and at a place where the cinder road bed was levelled off and packed down smoothly. (William Bailey, page 50; Richard Townsend, pages 55 and 58; Walter Burleigh, page 60; Edgar Ross, page 64.) All the space between the passenger platform and public road No. 2 was filled in with cinders. At the point where plaintiff crossed to the platform these cinders were packed smooth and solid. (Amanda Corson, page 44, lines 15, etc.) Plaintiff left the public road and crossed where she said there was a defined path leading to the platform. By this she did not mean, nor did she say, that there was a gravelled path upon the cinders, but that a well beaten path had been evidently made by people travelling the same way to and from the station.

Mrs. Corson (page 18):

"There was a well defined path, trodden down by people's feet, very plainly to be seen, and Mrs. Bailey told me to take this road," etc.

William Bailey (page 51):

Q. What is the condition of the roadbed between the tracks and rails along in here where these wires and these

rods are, along in here between the public road and the station platform?

A. It is in a flattened condition the same as it would be where it was used in any respect; it is not round.

Q. You mean flattened by people walking over it?

A. Yes, not like the laborers would leave it, not in a round condition.

Richard Townsend (page 56):

Q. Do you mean that once in awhile somebody does it or that the people uniformly go that way?

A. Well, as a general thing the people that live there cross that track there.

(Page 57) Cross-examination:

Q. There wasn't any path there, was there?

A. Well, there was sort of a path which I always tried to catch because there ain't no light, because I go there before daylight in the morning," etc.

(d) The water tower in the angle between the Ocean City branch and public road No. 1 is so located as to make an engine with or without cars attached, block that public road whenever that engine takes on water. If the engine is approaching the station from Ocean City then the tender would be opposite the tank and the engine would be over the public road. If the train is heading towards Ocean City and the engine is taking on water, the engine and the cars attached are across the public road. In other words, the company deliberately placed its water tank so that it would be necessary for any train using that tank to block the public road. That public road being the only one which crossed the Ocean City track was the only one that permitted a conveyance or a

passenger to get to the station without crossing through the company's yard.

(Walter Burleigh, page 62, line 10);  
(Richard Townsend, page 56, line 25).

(e) The trains on the Ocean City branch and the train taken by plaintiff in particular, were in the habit of blocking this road just before the departure of said train for Ocean City. When the trains were thus blocking the road the station could not be reached except by going through the company's yard, and this was the customary thing for passengers to do.

(William Bailey, page 50, lines 15 to 30).

(f) Although public road No. 2 is practically on a level with the company's property and immediately adjoins it all the way from the point of convergence between the two Cape May and Ocean City branches clear down to the place where public road No. 2 crosses both branches (approximately 600 feet), the company provided no entrance to its station for passengers excepting by this public road No. 1, which crossed both branches some 300 feet south of the station. In other words, the plaintiff, in approaching the station along public road No. 2, as she had a right to do, and desiring to reach the company's station, must, after coming immediately opposite the company's platform, proceed 600 feet or more southward along the company's property; thence proceed by the public road No. 2 across the Ocean City track; thence return northward fully 350 feet to the north end of the station where the ticket office was located. Not only is the station thus completely hemmed in by the company's tracks, but the company has seen to it that its station was placed at the north end of this intervening space and at a point affording the greatest possible inconvenience

to passengers. After coming abreast of the station platform and only 30 feet therefrom, the passenger is compelled to go approximately 1,000 feet to reach the ticket office, and then also have the public road crossing blocked to cut her off entirely from that station.

We are to remember also that the property of the Railroad Company was separated from road No. 2 only by an imaginary line so far as appearances go. On the ground there is nothing to separate the two properties; but they merge together and practically on the same level. A glance at the map will show that opposite the north end of the station platform the company's signal wires, etc., actually encroach upon the public road.

(g) The particular train which plaintiff took was accustomed to lie on the siding in the company's "yard" (so called), just east of the main Ocean City track and opposite to or a little southward of the station, but opposite the company's platform. It was accustomed to lie in that position until just before time for departure. (Christopher Hand, post.) Sometimes it did not even go out onto the main track and back up to the station for passengers. In short, the company deliberately permitted and invited the passengers for this train to go through its "yard" (so called) to board this train.

(See cross-examination of Christopher Hand, pages 111 and 112).

(h) On the date of the accident the cars of this train were lying on the siding as above mentioned until about the time for departure of the train for Ocean City. The engine which had been engaged elsewhere, then backed down on the main track onto the siding and hooked up to the cars and then moved out onto that main track so that the engine was opposite the water tank. This left at least one of the cars of the train north of the pub-

lic road No. 1 and on the siding. (Christopher Hand, supra, and H. Snyder, page 120.) It was lying in this position when plaintiff approached the station for the purpose of boarding the train. The train was not at the station at the time scheduled for its departure as it should have been. In fact, the passengers other than Mrs. Corson who were on that train had boarded the train while it was lying on the siding. Those passengers had thus been compelled to board the train by crossing the Railroad Company's yard, either from the station platform itself or from either or both of the public roads No. 1 and No. 2.

The testimony given by Christopher Hand, conductor of this train under cross-examination by plaintiff's counsel, is most convincing and of itself, in our judgment, was sufficient to send the case to the jury.

Christopher Hand (pages 111, etc.):

By Mr. Stockwell.

Q. And still in the employ of the Railroad Company?

A. Yes, sir.

Q. Had you backed up to the station on the regular Ocean City track before you backed up for Mrs. Corson?

A. No.

Q. Your train had not been up to the station platform until you backed up for her?

A. Been opposite the platform on the siding.

Q. Oh, it was in what you call the yard of the Railroad Company?

A. Yes.

Q. What Mr. Morgan calls the yard?

A. Yes.

Q. On the siding?

A. Yes, sir.

Q. And it was kept there until time for the train to go?

A. Yes, on this occasion.

Q. Were there any passengers in the train other than Mrs. Corson when it pulled out for Ocean City?

A. Yes, there was several had gotten on.

Q. How did they get in?

A. They got on the train while it was standing on the siding.

Q. From what point did they get on?

A. Got on from the road crossing. There was quite a few of the high school scholars that use that train regularly; they always go back to the train when it is on that siding instead of coming to the station.

Q. Oh, the cars were on the siding when they got in the cars?

A. Yes.

Q. Then the cars were not at the crossing when they boarded the cars?

A. No, sir.

Q. They were in the siding, in the yard?

A. They were not compelled to cross any tracks to get in the cars.

Q. I didn't ask you that; if they had got on at the station they would have been compelled to cross the tracks to get into the cars, wouldn't they?

A. If they had got on while the cars were on the siding, yes.

Q. What did you move away from this siding for when you first moved?

A. We were preparing to leave for Ocean City.

Q. Well, what did you do to prepare to get ready to move to Ocean City?

A. We connected the engine with the coaches, and pulled down to the water station to take water.

Q. Was it before or after time for departure that you pulled down to the water tank?

A. This was after the time for departure.

Q. Then your train remained on the siding in the yard until after the time for departure?

A. Yes, sir.

Q. Your cars were pointed toward Philadelphia from the crossing as the engine stood at the water tank, weren't they?

A. Yes.

Q. And the engine was toward Ocean City from the crossing?

A. Yes, sir.

Q. Why didn't you take the water for this engine before you got ready to leave for Ocean City?

A. That was the first we had an opportunity. We had been busy all during the time we were lying at Tuckahoe, during the freight shifting.

(i) Not only were passengers for this train and other trains in the habit of crossing the company's property where the plaintiff crossed, but on the very day in question the company had invited passengers for that train to cross its yard and enter its cars. Those passengers could not have reached the train except by crossing the yard.

(Cross-examination of Conductor Hand, *supra*.)

(Amanda Corson, page 20, line 20.)

(j) Furthermore, as Mrs. Corson approached the company's property to take the train she saw this train which she desired to take, lying across the public road No. 1 and lying partly on the siding. She knew, as she stated, that that train frequently left for Ocean City without even backing up to the passenger station. She knew that that and other trains were accustomed to block

this public road and not only delay traffic but also prevent passengers from reaching the passenger station. With that knowledge and making reasonable use of her eyes she saw that she could not hope to get to the company's station by public road No. 1 and she therefore took the path across the yard which had been pointed out to her and which, according to the testimony, was invariably used by the company's patrons coming along public road No. 2. She was perfectly justified, in our judgment, in pursuing that course. She was entitled to board that train even though it lay in the company's yard, if we are to regard the admitted facts. This company was bound to provide not only a safe but a reasonably convenient approach to its station. If it deliberately cut off the only approach by a public road, the passenger was entitled to reach that station in the most convenient and what she considered the safest way.

The Railroad Company attempted to off-set this clear invitation to cross its property by testimony to the effect that when Mrs. Corson fell it was after the time scheduled for the departure of the train. In the first place this fact is contradicted by Mrs. Corson, who said that she was on time, and Mrs. Bailey, who accompanied her, said she was on time. Furthermore, even if Mrs. Corson was a little late and the train had not yet been to the station platform to receive passengers she was entitled to have that train come to the platform to receive her before it started.

Still further the fact that this train was invariably late in leaving the station (Station Agent Morgan, page 107, line 30,) would entitle the public, in using that train, to take cognizance of that fact. The fact remains that Mrs. Corson was within reaching distance of that train before it had departed. It had not started for Ocean City when she fell.

II. DID DEFENDANT MAINTAIN THIS PORTION  
OF ITS PROPERTY IN A REASONABLY  
SAFE CONDITION?

We contend that it did not.

The wires over which plaintiff fell were about midway between the main track and the siding track, extended for a distance of about 60 feet, entirely uncovered and about 4 inches from the ground. (Fendall Smith, page 9.) Since they were extended over cinders which were about the same color, and inasmuch as the wires were fine, they were not easily detected, except to persons approaching at that point daily and who knew of their presence. (Fendall Smith, page 9.) Mrs. Corson had not approached the station from public road No. 2 before this particular occasion. She did not know of the presence of the wires. She used her eyes as best she could, saw the black signal rods which connected with the wires and avoided the rods and followed the beaten path. She crossed the wires and fell, striking her head.

If Mrs. Corson was entitled to approach the station platform across the company's yard, then the company was negligent in permitting these wires to remain uncovered or unprotected, as they were there they amounted to a trap.

We therefore submit that under the facts testified to by plaintiff's witnesses and under the admissions of the company's employees, it was a fair question for the jury to determine whether the company was negligent.

**Law.**

The leading cases in this State, involving conditions somewhat similar are:

D. L. & W. Railroad vs. Trautwein, 52 N. J. Law, 175;

Devoe vs. New York O. & W. Railway Company, 63 N. J. Law, 276;

Dieckman vs. D. L. & W. Railroad Company (Errors and Appeals, March 8, 1911), 79 Atlantic Reporter, 310.

The case of Hoffman vs. New York Central Railroad Company, 13 Hunn, 589 (New York Supreme Court), presents facts very much like those involved in the present suit.

1. **D. L. and W. Railroad vs. Trautwein, 52 N. J. Law, 175.** The court lays down the rule with reference to the maintenance of safe approaches. The rule is stated as follows:

"The duty of a Railroad Company as a carrier of passengers does not end when the passenger is safely carried to the place of his destination. The company must also provide safe means for access to and from its station for the use of passengers, and passengers have a right to assume that the means of access provided are reasonably safe. If there be two ways, one of which is faulty in construction or repair, a passenger using it and injured by its faulty condition will not be debarred by his action, although the other way he might have used was safer. The company having provided one safe way of ingress and egress to and from the station, may suffer private persons for their own convenience to have and use another

way of access that cross the depot grounds, and it may be that those who use such a way will do so at their peril, if they had notice of the private character of the way."

**II. Hoffman vs. New York Central Railroad. 13 Hunn. 589. .**

This accident occurred on the New York Central Railroad where the roadbed was made up of four tracks. We will consider the tracks as Nos. 1, 2, 3 and 4. The company's station was located outside of all the tracks and along track No. 1 and some distance from a public road which crossed all four tracks. From the station to the public road was a plank walk provided by the company as an approach from the public road to its station. There were cattle guards on all the tracks adjoining the public road. The cattle guard on the track next to the station was planked over. The cattle guard on track No. 3 was not planked over. Plaintiff was a passenger on a train arriving on track No. 2. In order to get from the company's platform to the public road plaintiff had either to cross over to the plank walk leading from the station to the public road or go across the other tracks to that public road. It had been snowing and snow had collected on the plank walk and also been thrown there by the workmen clearing the tracks so that the plank walk was in a measure, at least, impassable. Plaintiff therefore took a short cut across track No. 3 and fell into the cattle guard on that track which was covered up by the snow.

The Lower Court directed a non-suit. This was set aside by the Supreme Court, which held as follows:

(a) It was a question for the jury whether the intestate was guilty of negligence.

(b) It was the duty of the Railroad Company to provide a safe and easy mode of egress from the station to the nearest highway.

(c) That the way provided by the company was in some sense impassable and no other mode of egress from the defendant's station was provided, except across its tracks.

(d) That while intestate after falling into the cattle guard was killed by a gravel train which she saw approaching, yet she would have had time to get over the track had she not fallen into the trap.

(e) That under the circumstances the concealed cattle guard operated as a mere trap.

The case of Mrs. Corson is much stronger than this New York case. It was impossible for Mrs. Corson to reach the station and board the train without crossing the company's yard.

### III. Hulbert vs. New York Central Railroad, 40 New York, 145.

Plaintiff arrived at what he supposed to be the station. The train had stopped, however, some distance from the station and at a water tank. Plaintiff got out and walked toward the connecting train standing at the station, and in walking along side the tracks fell into an excavation.

The Court held:

(a) Whether the plaintiff was prudent in leaving the train at that point was doubtful, but it was a question for the jury.

(b) The Railroad was bound to see that the space within a reasonable distance in the vicinity of the station house was safe for the transit of passengers.

(c) Take any place where the cars are accustomed to stop, passengers have a right to suppose that adjacent to the cars the ground admits of their getting safely out and in; within the limits which persons necessarily and ordinarily go to and from the trains, it is necessary that the company keep the ground safe.

It was argued that the company was not liable where it had provided a place for landing and receiving passengers. With reference to this contention the Court said as follows:

"If company's servants and agents were accustomed to land and receive passengers at the tank, while taking in wood and water voluntarily and intentionally, then that was the place provided by the defendant. The mental operations of directors, officers and superintendent of the road fixing, or their words declaring another place in front of the station, cannot affect the passenger, if it is practically disregarded by agents running the trains or if the usage and custom of receiving passengers below, is acquiesced in."

To the same effect is *Fetter on Passengers*, Sections 51, 49, 46, etc.

IV. *Dieckman vs. D. L. & W. Railroad Company* (79 Atlantic Reporter, page 311).

This is a recent case before this Court. The plaintiff was nonsuited at the Circuit and that judgment was affirmed. The Court, however, was careful to say that:

"The insistence is that there was evidence from which a jury might have drawn the conclusion that the deceased was crossing the tracks by the invitation of the defendant and while so crossing was negligently run down by one of defendant's trains. If it be true that there was a question whether the railroad had invited the deceased to use its tracks as a crossing, there was clearly a case for the jury. The nonsuit must rest upon the proposition that there were no facts which could be construed as an invitation to the deceased to use the company's tracks for the purpose for which he was using them."

Under the rule thus enunciated by this Court and by the Courts of other States, we submit that there was a jury question involved and that the trial Court erred in taking the case from the jury.

Respectfully submitted.

BLEAKLY & STOCKWELL,  
Attorneys for Plaintiff in Error.

## New Jersey Court of Errors and Appeals

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No. 71. MARCH TERM, 1912.

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AMANDA CORSON,

Plaintiff in Error,

vs.

ATLANTIC CITY RAILROAD  
COMPANY,

Defendant in Error.

IN ERROR.

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### BRIEF IN BEHALF OF THE DEFENDANT IN ERROR

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This suit was brought to recover for injuries to the plaintiff, occasioned by her stumbling over signal wires as she was passing through the yard of the defendant company at Tuckahoe Junction, in order to reach the station platform from a road which ran parallel to the tracks on the Ocean City branch.

The declaration alleged that the plaintiff was "approaching the defendant's station across its said property from said public highway and along a way provided by the defendant as an approach to its said station, and at the invitation of the defendant and for the purpose of becoming a passenger." (C. p. 2, l. 27.)

The case was heard before his Honor Judge Endicott and a jury. A motion for non-suit was denied. After all the testimony on both sides was in, the learned trial Judge directed a verdict for the defendant, upon the ground that the defendant had provided a safe passage to and from the station, by way of a public highway, and that the method used by the plaintiff to reach the station was not one provided by the company. Furthermore the wires over which the plaintiff fell were part of the signal system of the defendant company, standard in character and it was not usual to conceal them. (C. p. 149.)

The maps and photographs introduced in evidence and exhibited in court, at the time of the oral argument, show that the station and platform of the defendant is located in a triangle formed by the junction of a branch running to Ocean City with the main road running to Cape May. An adequate and proper means of entrance and exit was provided by the company, on the south of its station, extending to a public road which crossed the Ocean City branch practically at right angles. This road is designated Road No. 1 in the plaintiff's brief. Another road, which is spoken of by the witnesses as the Marshallville Road and the station road, and called Road No. 2 in the plaintiff's brief, runs north from Road No. 1 parallel with the Ocean City Branch for a short distance, and then curves in a northeasterly direction away from the tracks.

The accident happened shortly before three o'clock in the afternoon of April 20, 1908. The plaintiff resided at

Middletown, which is a small village located on the Ocean City branch, between Tuckahoe and Ocean City. She came to Tuckahoe in the morning and spent a portion of the day visiting Mrs. Bailey. The latter resides some distance to the northeast of the station on Road No. 2.

The maps and pictures show that on the east side of the platform are three sets of tracks, one the Ocean City branch immediately adjoining the platform, next a siding in the yard of the defendant, and the third a switch crossing Road No. 2 and extending to a canning factory, which is located on the other side of this highway. The train on which the plaintiff intended to return home, consisting of an engine and two coaches, was standing upon the siding on the east of the station in the defendant's yard. The engine had been employed in hauling gravel and did not return to the junction until it was too late to leave the station at 2.45 P. M., the scheduled time. The engine was backed on the siding, coupled to the two cars standing thereon, and as it was then after leaving time, the conductor went into the station and around the platform to ascertain if there were any passengers to take the train, and when he discovered none, the train started from the siding toward the main track and stopped to take water at the water tank, immediately south of where Road No. 1 crosses the Ocean City branch. It was the intention of the conductor to start for Ocean City immediately after the tender was filled. (See testimony of Hand, C. pp. 107, &c.)

While water was being taken the plaintiff reached a point in Road No. 2, about opposite the end of the platform at the apex of the triangle caused by the junction of the two tracks. She says she saw the train at the water tank, and in her anxiety to reach the station, in-

stead of continuing south on Road No. 2 to the crossing at Road No. 1 and thence back to the station on the west side of the Ocean City tracks, she left Road No. 2 and started to cross the yard of the defendant over these tracks. She crossed the first set of tracks. This was a siding. She came to some signal rods, which were galvanized iron pipe suspended on stakes about ten inches above the ground and operated from the signal tower located at the north end of the platform. She followed the rods toward the south until she came to the end of them and started at right angles over the tracks of the Ocean City branch to the station platform and in doing so stumbled over the signal wires which extended from the end of the rods, for a distance of about fifty feet, to a signal pole. (C. p. 83, l. 26. C. p. 102, l. 20. C. p. 116, l. 26.) These wires were part of the signal system of the defendant, and of a standard universally in use. After falling she arose, and continued across the other tracks to the station platform. When the conductor of the Ocean City train learned that the plaintiff desired to go to Middletown, the train was backed and took her aboard.

Upon these facts, which were not seriously controverted, the following questions arise:

1. Did the defendant provide as a means of entrance to its station, a passageway, as used by the plaintiff?
2. Was the plaintiff, by invitation of the defendant, warranted in crossing its tracks?
3. Admitting the plaintiff had a legal right to pass over the defendant's premises, did the latter fail to perform its duty to exercise ordinary care to render the

premises reasonably safe, or to abstain from doing any act to make such use dangerous?

4. Was the plaintiff guilty of contributory negligence?

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FIRST:

It was conceded that no passage or pathway had ever been built, constructed or maintained, by the defendant through its yard and over the tracks at the point where the plaintiff was injured. The surface of the ground was ballasted with cinders or gravel usual in roadbeds of that character, and while the surface between the tracks and immediately outside thereof was substantially level, it was slightly below the tops of the ties and somewhat higher than the surface of Road No. 2. (C. p. 82, l. 30.)

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SECOND:

The plaintiff says that she followed a well-defined path along the side of the signal rods to the end thereof, and then proceeded along the same over the wires toward the station. Such path was the result, only, of the impress of footsteps of persons using the yard of the defendant as a means of passage over the tracks, and not caused by the affirmative act of the defendant. Neither was such spot considered by the defendant as a means of entrance or exit to its station. The photographs show that the surface of the roadbed in the proximity of the signal wires did not indicate any fact to differentiate it from

any other place in the yard. The testimony shows that there was no more of a well-defined path along the portion of the yard over which the plaintiff walked than any other part.

To support her contention that she entered the premises by invitation, the plaintiff attempted to prove that the company permitted other persons to reach the station by a short cut from Road No. 2 and cross its tracks at the same point.

The plaintiff, however, had never crossed before the day of the accident. (C. p. 18, l. 32.)

Martha Bailey, plaintiff's witness, testified as follows:

"Q. Did you tell her of a path she could take  
"across the tracks to the station?"

"A. I did not say anything about a path. I told  
"her she could cross the tracks anywhere down  
"there." (C. p. 46, l. 5.)

This witness also said that she and other persons were in the habit of crossing the tracks to take a short cut to the station anywhere from the station to the signal tower and no particular passageway was used. (C. p. 47, l. 22, &c.)

William Bailey, her husband, said that persons desiring to take a short cut to the station crossed tracks in the vicinity of the rods and wires. (C. p. 50, l. 9.) These extend a long distance on both sides of where the plaintiff was injured.

Richard Townsend crossed the tracks nearly everywhere he wanted to, to get on to the platform. (C. p. 57, l. 19.)

Walter Burleigh never noticed any beaten path across the tracks. When he crossed, he selected the best place he could find. (C. p. 62, l. 18.)

Edgar Ross, while admitting that he had used the yard and crossed the tracks for the purpose of getting from the highway to the station, was unable to locate any particular spot which he had used for that purpose.

From this testimony produced by the plaintiff, it is apparent that the use of the yard, by persons desiring to take a short cut to the station, was not limited to the place where the plaintiff was injured.

The witnesses for defendant deny the existence of any path, but some say that the yard of the defendant, from the north end of the platform to a point opposite the station was used by persons in making a quick trip from the road, but such use was not limited to any particular path or passageway.

Under this evidence, is it possible to support the claim of implied invitation as against this defendant? Does the fact that persons were permitted to take a short cut to the station impose upon the defendant any duty whatever, except to refrain from wanton acts, gross negligence or knowingly creating hidden dangers? In this area, thus used, were three sets of tracks, none of the rails of which were protected. The roadbed was below the top of the ties. The rods and wires, all exposed in plain view, were used in the operation of its signal system. The photographs show that the wagon or driveway of Road No. 2 was a considerable distance from the exterior line of the defendant's right of way. A space, covered with grass, lay between the wagon track and the siding along most of this distance.

The exact location of the accident is not accurately stated in the plaintiff's testimony.

McKenna, sworn for the defendant, an eye witness, states that the plaintiff fell ten or twelve feet north of

the signal pole, which point is about 436 feet from the crossing of the Ocean City branch at Road No. 1. (C. p. 83, l. 26.)

There is no testimony whatever to show that any person except the plaintiff used this precise spot as a means of getting to the station. Therefore, how can it be successfully argued that the doctrine of implied invitation must be invoked, from the company permitting others to use, not the precise spot where the accident occurred, but other places within an area of several hundred feet?

There is a substantial difference between invitation and acquiescence. The latter might have existed to some extent, but there was not sufficient to establish invitation, either expressed or implied.

The leading cases in this State, defining the duty imposed upon an owner of real estate, who, by invitation, expressly or impliedly, induces another to come thereon, is *Phillips vs. The Library Co.*, 55 L. 307. The Court of Errors there states the rule as follows:

“The gist of the liability consists in the fact that  
“the person injured did not act merely on motives  
“of his own, to which no act or sign of the owner  
“or occupier contributed, but that he entered the  
“premises because he was led by the acts or con-  
“duct of the owner or occupier to believe that the  
“premises were intended to be used in the manner  
“in which he used them, and that such use was not  
“only acquiesced in, but was in accordance with  
“the intention or design for which the way or  
“place was adapted and prepared or allowed to be  
“used.”

Mr. Justice Garrison in *Furey vs. The Railroad Co.*, 67

L. 271, applied this rule, so far as it affects the law of negligence, by the following language (p. 275) :

“Implied invitation, therefore, is part of the law  
 “of negligence by which an obligation to use rea-  
 “sonable care arises from the conduct of the par-  
 “ties; its essence is that the defendant knew, or  
 “ought to have known, that something that he was  
 “doing or permitting to be done might give rise  
 “in an ordinarily discerning mind to a natural be-  
 “lief that he intended that to be done which his  
 “conduct had led the plaintiff to believe that he  
 “intended. It is not enough that the user believed  
 “that the use was intended; he must bring his be-  
 “lief home to the owner by pointing to some act  
 “or conduct of his that afforded a reasonable basis  
 “for such a belief.”

In the case last above mentioned, the plaintiff, while attempting to cross a portion of a river pier, which was occupied by longitudinal lines of railroad tracks, was crushed by two freight cars, between which he was about to pass, located on one of said tracks.

It has also been held in this court, that the open and notorious use, for a number of years of a railroad crossing reached by a stile over a fence not maintained by the defendant, and from thence to the railroad property, did not impose upon the occupier of the land any other duty than that which arose from a permissive use.

*Devoe vs. Railroad Co.*, 63 L. 276.

It would seem that the rule stated in the last mentioned authority, is dispositive of the questions arising here. A path, well defined or otherwise, used in crossing rail-

road tracks, without any constructed passageway, would be infinitely less of an invitation than the existence of the stile as described in the Devoe case. Is it not much more reasonable to impose upon a railroad company the duty, arising from the natural belief, that an invitation exists in permitting such a stile to be used, than from mere acquiescence in the use of an unprotected pathway, on the surface of its roadbed over open tracks? There is nothing in the case under consideration to establish any such accustomed use of the particular way, used by the plaintiff, to create a belief, that any person would or could, reasonably or otherwise, suppose that the defendant had expressly or impliedly invited the use thereof.

The case of *Railroad Co. vs. Trautwine*, 62 L. 169, is plainly distinguishable. The stairway, in the use of which the plaintiff was injured, while built and kept in repair by private persons for their own convenience, was used by passengers generally, and appeared to have been provided as a means of access to and from the station. The Court therefore held, that such stairway, existing by the recognition and assent of the company and held out by it, as one of the passageways for entrance and exit to the public street, the plaintiff was justified in using.

The general doctrine of invitation is further considered in the following cases:

*Turrress vs. Railroad Co.*, 61 L. 314.

*Railroad Co. vs. Reich*, 61 L. 635.

In the case of *Buchanan vs. Railroad Co.*, 79 L. 586, the plaintiff was injured while proceeding along a cement walk or passageway built by the defendant between its ticket and baggage offices, and it was held, by a divided Court, that it was a question for the jury to determine if the defendant had failed to keep and maintain its prem-

ises with that degree of care, protection and vigilance which, under the circumstances, was demanded in order to render them reasonably safe for use by the plaintiff. Here the plaintiff was walking upon the passageway for the purpose of obtaining a time table for use on the defendant's road.

The latest case upon this subject is Dieckman vs. The Railroad, 79 Atl. Rep. 310, in which this Court held upon the facts there presented, that there was nothing to indicate an invitation to the plaintiff to cross the tracks of the defendant.

Furthermore, upon the authority of the cases above mentioned, it is the established law of this State, that mere passive acquiescence by an owner or occupier in certain use of his land by others, involves no liability. Also permission to pass over dangerous lands, or acquiescence in such passage, for the benefit or convenience of another, creates no duty on the part of the owner, except to refrain from acts wilfully injurious.

It is claimed by plaintiff's counsel that invitation is proved by the fact that the defendant, on the day of the accident permitted its train to take on passengers while standing on the siding. We insist that this situation would not give rise to any justifiable belief in the mind of the plaintiff that she was expected to cross the defendant's tracks to reach the platform.

The fact that a conductor on some occasions held his train for persons coming up a path along an embankment, was no more than a permissive recognition of the use of the path by persons wishing to take trains.

Dieckman vs. Railroad, *supra*.

Therefore, it follows, the plaintiff was not justified in assuming the defendant had provided, for use as a pas-

sageway that portion of its yard over which the plaintiff traveled, when she was injured, and furthermore the defendant had not done any act, nor permitted its yard to be so used as to induce a belief, on the part of the plaintiff, that by invitation, either expressed or implied, she could safely enter the premises at that place.

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THIRD:

Conceding, merely by way of argument, that the plaintiff had a legal right to pass over the defendant's premises, it is manifest that the latter did perform its entire duty to exercise ordinary care to render the premises reasonably safe. This Court, on the testimony presented, will not reject or in any way question the methods pursued by the defendant in the conduct of its business. It was absolutely necessary to use switches and signals, and the operation thereof required the presence of pipes and wires along the surface of the ground.

The testimony in this case stands uncontradicted that the wires over which the plaintiff stumbled were those universally used by railroad companies for signal purposes and they were constructed by standard methods.

The surveyor of plaintiff testified that the wires were possibly three or four inches above the surface of the ground. (C. p. 9, l. 10.)

The defendant's superintendent of signals said the wires were necessary for the safe operation of the railroad. The pipes were used for pulling and locking switches and the wires for the operation of signals. (C. p. 139, l. 4.)

It is not true that the wires were run through the rods. (C. p. 138, l. 30.) They were entirely separate and dis-

tinct from the rods, and where the rods end, the pipes continued. (C. p. 139, l. 5.)

Furthermore it would not be practicable to box them above the ground. (C. p. 139, l. 15. C. p. 119, l. 13.)

The case of *Bobbink vs. Erie Co.*, 75 L. 913, is pertinent to this question.

It was there held that where, in passing on a frog or device, used to permit the tracks of one railroad to cross those of another, the foot of plaintiff's horse was caught in the appliance, thrown and injured, and the only ground of negligence attributable to the defendant, was the use of a crossing frog of a standard pattern, in general use in the United States by like companies for a similar purpose, no liability is established.

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#### FOURTH:

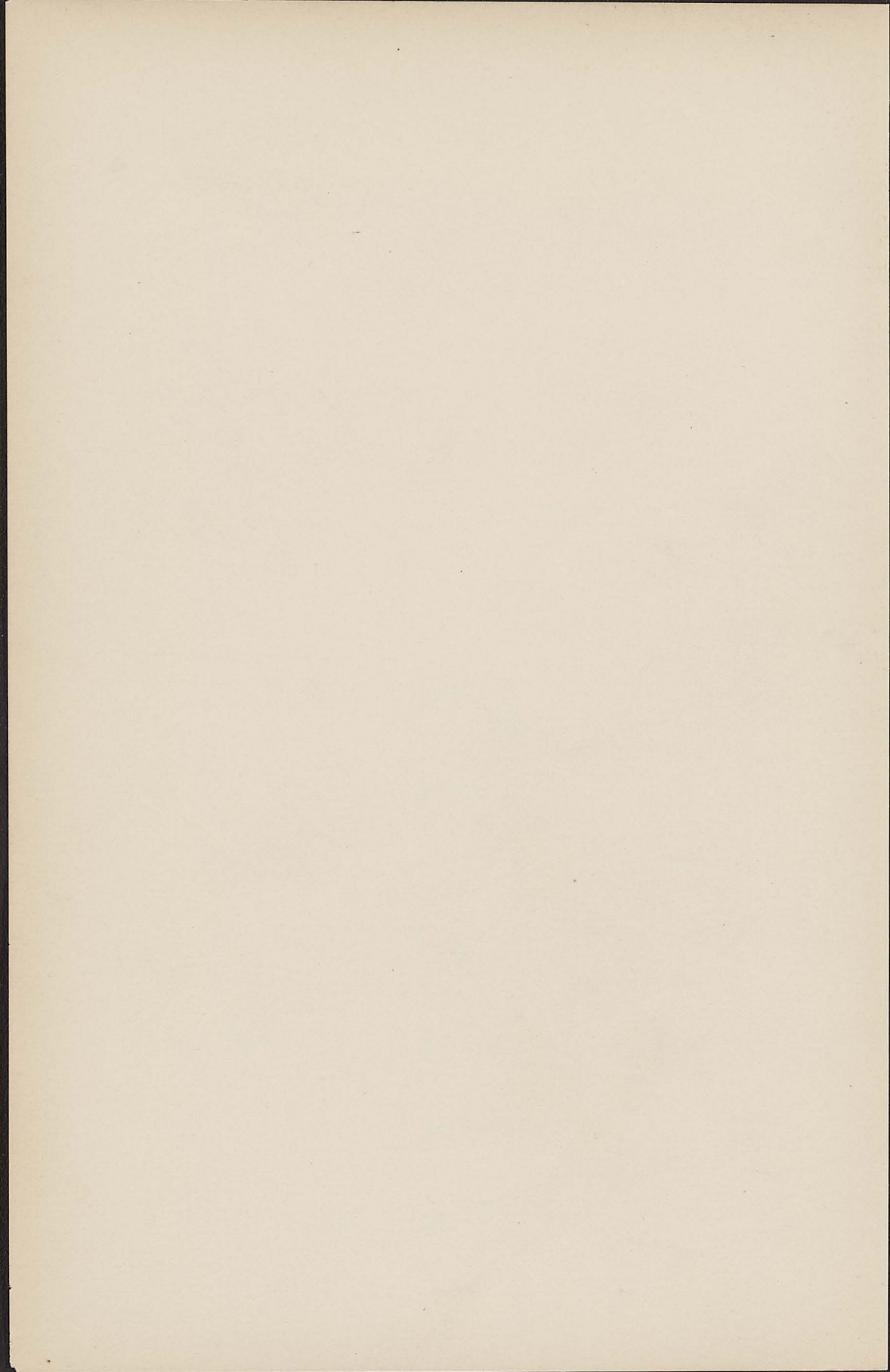
The conduct of the plaintiff contributed to her injury. In the absence of any constructed walk or passageway it must have been apparent to the plaintiff, as she crossed through the defendant's yard and observed the rods, tracks, etc., that she should exercise care in not falling over any of these obstacles. It is a matter of common knowledge that wires are employed by a railroad company to operate switches and signals and that these wires are maintained close to the surface of the ground. If the plaintiff had carefully observed her surroundings she would have noticed that there were wires extending along the rods and continued after the latter ended. Furthermore, at a distance of forty or fifty feet from the end of the rods there was a signal post several feet in height, beyond which no wires extended.

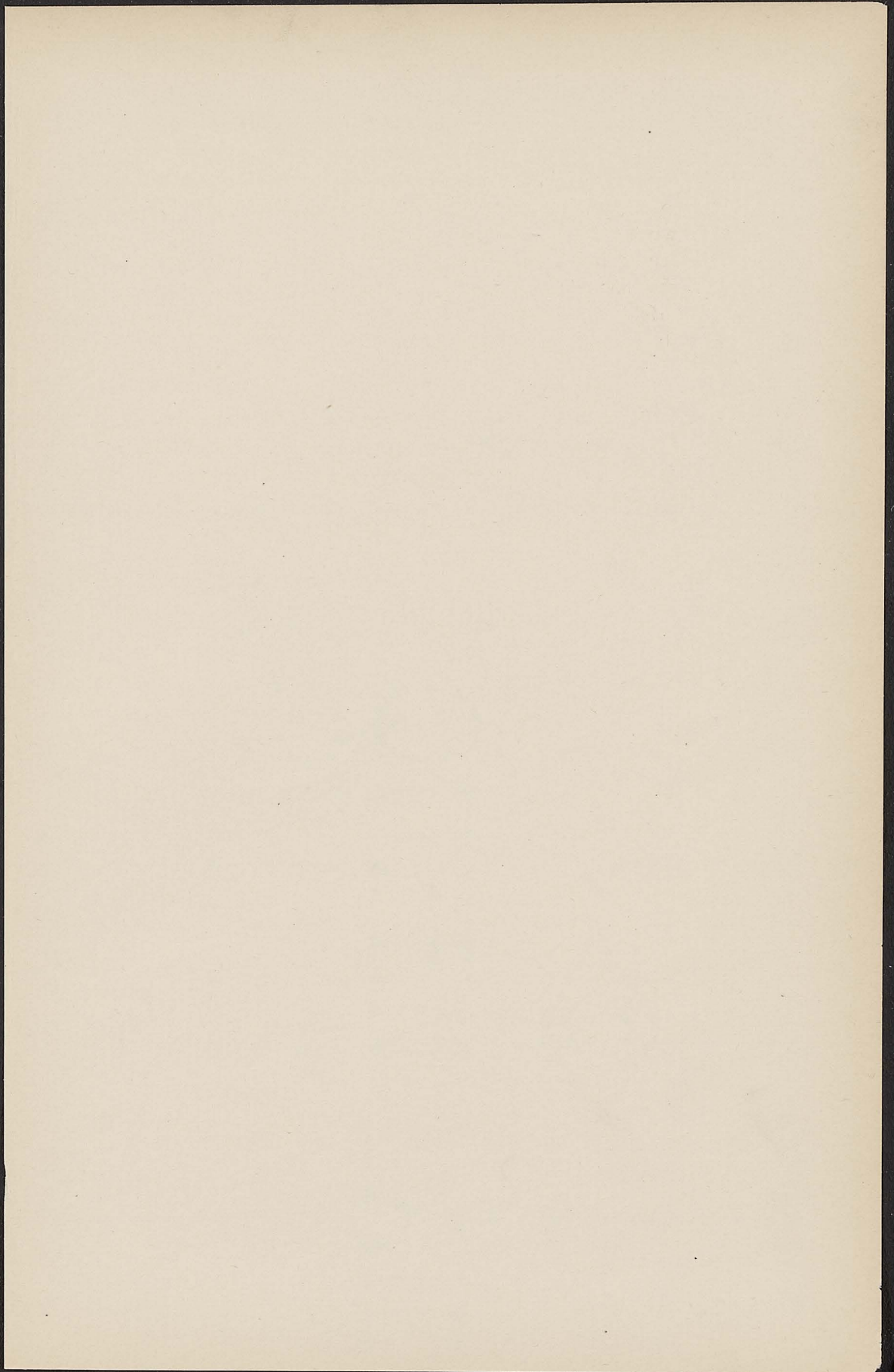
In view of the fact that these wires were only about three or four inches above the ground, it is inconceivable how the plaintiff could have fallen over them, if she had exercised any care whatever in crossing the tracks. The wires were not elevated any more than the tracks themselves, and if she passed two sets of tracks or four rails, she undoubtedly raised her feet high enough to pass safely over the wires, had she used her eyes in observing the presence of the latter.

The photographs and defendant's maps, which were exhibited at the oral argument, are in the possession of Mr. Biddle, to be examined by the Court, when this case is considered.

We respectfully submit that the judgment below should be affirmed.

LEWIS STARR,  
Of Counsel with Defendant  
in Error.





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