

New Jersey Court of Errors and Appeals.

HELEN HOFF, <i>Plaintiff-Appellee,</i>	}	Action at Law. On Appeal from New Jer- sey Supreme Court.
VS.		
PUBLIC SERVICE RAILWAY COMPANY, <i>Defendant-Appellant.</i>		

DEFENDANT'S BRIEF

Statement of the Case

This is a cause in which it is claimed by the plaintiff that on March 20, 1915, while a passenger on a street car of the defendant, at Bayonne, Hudson County, New Jersey, she was assaulted by a fellow-passenger, and that the defendant failed to use reasonable care to protect her from such assault.

This is the second trial of the cause. It was first tried on May 18, 1916, before Hon. Luther A. Campbell and a jury at the Hudson Circuit, and a verdict was rendered in favor of the plaintiff. A rule to show cause was allowed defendant by the trial judge, which he subsequently made absolute.

At the second trial there was also a verdict for the plaintiff, upon which judgment was entered, which judgment was affirmed on appeal to the Supreme Court. From the judgment entered in the Supreme Court this appeal is now taken.

The opinion of the Supreme Court will be found on pages 133 et seq. of the printed book.

Reasons Upon Which Defendant Will Rely in Support of This Appeal

The reasons relied upon in support of the appeal to the Supreme Court will be found on pages 131 and 132 of the printed book, and the reasons relied upon in support of this appeal to this court will be found on pages 140 and 141 of the printed book, and are as follows:

1. Because the New Jersey Supreme Court, on appeal to that court from the Hudson County Circuit Court, refused to reverse, but on the contrary affirmed, a judgment entered in favor of the plaintiff-appellee in the said Hudson County Circuit Court, despite the fact that the said Hudson County Circuit Court, although requested so to do by the attorney of the defendant-appellant, such request being based on the ground that no negligence on the part of the defendant below had been shown by the plaintiff below, refused to nonsuit the plaintiff below;

2. Because the New Jersey Supreme Court, on appeal to that court from the Hudson County Circuit Court, refused to reverse, but on the contrary affirmed, a judgment entered in favor of the plaintiff-appellee in the said Hudson County Circuit Court, despite the fact that the said Hudson County Circuit Court, although requested so to do by the attorney of the defendant-appellant, such request being based on the ground that the whole case disclosed no negligence on the part of the defendant below, refused, at the close of the whole case, to direct a verdict in favor of the defendant below.

ARGUMENT

1. The defendant was entitled to a non-suit.

In her complaint the plaintiff alleged (p. 3) that while she was a passenger on the defendant's car "she was assaulted by a passenger, Albert Whitman, because of the failure of the said defendant to use reasonable care to protect her from the assault." The plaintiff also alleged that she herself was at all times in the exercise of due care for her safety.

The plaintiff testified (p. 6) that she was a married woman, living in Bayonne, and on March 20, 1915, she boarded a closed car of the defendant at First street, Bergen Point, at twenty minutes past eleven o'clock at night; that when she got on the car there were several men on it; that (p. 7) as she was going in the car one of the men, who sat near the rear of the car, made some such remark to her as "Ah, look who's coming," or "Ah, look who's here," which made her feel bad. On account of this remark she claims that she neglected to pay her fare so that after she got seated she got up again, walked to the rear of the car, paid her fare and again took her seat, a little forward of the middle of the car, during which time (p. 8) the same man was making remarks to her; that she wished to get off at 16th Street, at which place the car stopped, and as she was going toward the rear of the car the same man who had before spoken again spoke to her (p. 8, l. 29) "Q. What happened then? A. Why, going past him, he says, "Hey, chicken, take us along." so I walked back to him and I says, "You insulted me since I got on this car," and I said, "If you insult me again I will smack you in the face." and he said, "Will you," and he went like that at me

and like that. (Illustrating). Q. Where did he strike you? A. In the mouth. Q. Where the second time? A. In here (indicating). (P. 9) "Q. When you sat in the car were you sitting away from him? Did you have to pass him to get out of the rear door? A. Yes. Q. What do you mean by saying you walked back to him. A. I was only about a foot past him when he said this to me, and I just turned like that and I just got— Q. You turned around to him and said, "If you insult me again I will slap your face?" A. Yes. Q. Then what did he do? A. And he said, "Will you," and he stood up and punched me. Q. Up to the time you said, "If you insult me again I will slap your face," had the conductor done anything to the man or said anything? A. Not a word"; that after the assault took place (p. 10) the man who committed the assault was taken into custody by some policemen who were on the car.

On cross-examination the plaintiff testified (p. 20, l. 34) that the conductor smiled at her by which she understood that he wanted her to pay her fare, whereupon she got up from her seat, went to the rear of the car and paid it; that when she got on the car (p. 26, l. 35) there were seven men in the car, three on either side near the rear and one sitting at the forward end; that (p. 29) after paying her fare she sat about three feet from the front door of the car on the left-hand side, and that across the aisle were seated two policemen who were there when she went back and paid her fare, at which time (p. 29, l. 35) the man who assaulted her said, "Hello, chicken" and all such stuff as that. Later, however, (p. 31) she testifies that she made a mistake about the policemen being in the car when she paid her fare, for the policemen did not get on the car until it reached Fifth or Sixth Street (p. 32) five blocks from the ferry;

that (p. 33, l. 28) the policemen were in uniform; that she made no complaint to them; that (p. 34) when the car stopped for her to alight at *Sixteenth Street* she left by the rear door, although she knew she could have left by the front door, two or three feet from which she was sitting; that (p. 35) the remarks which the men in the rear of the car were making to or about the plaintiff continued from the ferry at Bergen Point until the car reached Fifth Street, where the policemen got on. She testifies (l. 10) "Q. They were talking to you all the time? A. No, only up to Fifth Street when these policemen got on; I never heard any more. Q. Oh, they were talking to you all the time until the policemen got on? A. Yes. Q. Incessantly? A. They were saying to themselves and hollering up to me. Q. All that happened between First Street and Fifth Street? A. Yes. Q. Don't you know that only takes you about two minutes to run? A. Yes, sir. When I got on the car there was rowdyism right on the car when I got on. Q. You testified when you got on the car that the car started right away? A. Yes, sir. Q. Is that correct? A. Yes, sir. Q. Did the policemen get on at Fifth Street. A. Yes, sir."

As to any complaints made by the plaintiff while on the car, she testifies (p. 36) as follows: "Q. You say you were quite mad because they had been talking to you up until the time the officers got on? A. Yes. Q. Why didn't you talk to the officers and complain about it? A. I didn't think it was up to him; I thought it was up to the conductor to have it stopped. Q. There were two policemen on the car in uniform? A. The conductor I always thought was supposed to protect me on the car. *They didn't say anything to me when the policemen got on; I didn't have any reason to say anything, because I thought it had*

stopped. Q. They had been talking to you right up to the time the policemen got on? A. I didn't want to raise any trouble; I went out. Q. You were getting out at— A. *I had forgot about it and walked down when he stopped me again; and I couldn't help but get mad.* Q. You forgot about it by the time the car stopped and the policemen got on? A. I didn't want to raise any trouble. I wanted to let it go as it was. I didn't want to have any show. Q. Didn't want to have any trouble about it? A. I didn't want to have any show made of myself. (P. 37) "Q. Then why didn't you go out to the front door when the car stopped? A. I couldn't help it. He said so much to me I had to do something."

As to why she didn't speak to the conductor, she testified (p. 38) "Q. You didn't talk to the conductor and didn't tell him to stop it? A. If I say something to the conductor they would have made a row and then the conductor would have had a fight and everything"; that as she got up to go out of the car nothing was said to her *until* (p. 39) *she was past Whitman*, when he said to her "Hey, chicken, take us along with you." As to what occurred then she testified (p. 40): "Q. What did you say to him, madam? A. I said, "You have insulted me since I got on this car," and I said, "If you insult me again I will smack your face," and he said, "Will you," and he got up. Q. You said he had insulted you since you had been on the car and "If you insult me again I will smack your face?" A. Yes. Q. You were standing there in front of him at the time? A. Yes, sir. Q. And he was sitting down? A. Yes. Q. Is that right? A. Yes. Q. When you said that to him did he get up? A. He stood right up and said, "Will you," and he hit me here and hit me here (indicating). Q. Got on his feet? A. Yes, got on his

feet. Q. As soon as you said that? A. He rustled me past the middle of the car," whereupon (p. 41) all the men jumped to their feet and grabbed him.

When the plaintiff was passing this man Whitman, the conductor (p. 41, l. 31) was on the rear of the car leaning against the door jamb and Whitman (p. 42) was still seated between the two other men near the rear of the car, the man nearest the rear end being about two feet therefrom, when the plaintiff said to Whitman, "If you insult me again I will smack you in the jaw," Whitman jumped up and struck her; that (p. 43, l. 35) plaintiff was within two feet of the door when (p. 44) she stopped and went back to Whitman.

HENRY LANGTREE, called by the plaintiff, testified (p. 59) that he was a police officer in Bayonne; that he boarded the car upon which the plaintiff was a passenger at the corner of Fifth Street and Broadway and saw the plaintiff in the car opposite where he took a seat; that the car stopped at Sixteenth Street and the plaintiff started to leave it when one of three men who had been previously talking together near the end of the car said something to her as she was passing; that she answered him and (p. 70) one of the men got up and struck her in the face; at the time the blow was struck the man who struck the blow was between the witness and the plaintiff; that the witness immediately rushed for the man but by the time he reached him other men had hold of him; that at this time the conductor was in the rear of the car.

On cross-examination this witness testified (p. 76) that during the time he was on the car previous to the assault the plaintiff made no complaint to him, and that no one spoke or made re-

marks about the plaintiff. He says (p. 72) that when the woman spoke to the man the latter jumped up and struck her.

Referring to the short space of time within which the words were spoken by the woman and the subsequent assault occurred, he testified (p. 72, l. 25) "Q. Were you able to get down and grab hold of him before somebody else caught him? A. No. Q. Who grabbed hold of him? A. Why, the other men had hold of him down there when I got down there; they all jumped up; everyone jumped up. It happened in a moment. Q. Where were these men sitting? A. Opposite to him. Q. When he struck this woman they all jumped up? A. Yes, sir." (P. 73, l. 11) "Q. But she turned around and spoke to him and he jumped right up and hit her in the face? A. Yes. Q. Was it a slap or a punch? A. A slap that I could hear. Q. Slapped her? It was done before you had a chance to get down there? A. Yes, sir. Q. It was done before the men sitting right opposite from him— A. Yes, sir." At this time the conductor was standing in the rear of the car.

As to any indications of trouble while the witness was on the car, he testified (p. 74, l. 16) "Q. There was no loud talk carrying on when you were in the car? A. No. Q. No reason to expect a breach of the peace? A. No."

DAVID CROTTY, called by the plaintiff, testified (p. 74) that for twenty-seven years he had been a police officer in Bayonne; that he boarded the car upon which the plaintiff was a passenger (p. 75) at Fifth Street and Avenue C, at which time Officer Langtree, the last witness, had not yet boarded the car; that he saw the plaintiff start to get out of the car at Sixteenth Street, when Whitman made some remarks to her while she was

passing him; that she turned around, faced him and said something to Whitman whereupon he stood up and slapped her face; that he, with Officer Langtree, ran towards Whitman to stop the trouble, but (p. 76) before he got there other people had hold of him. Whitman was taken to police headquarters and locked up.

As to the conditions on the car immediately preceding the assault, on cross-examination this witness testified, (p. 76, l. 18) "Q. When you got on the car, Officer, did Mrs. Hoff make any complaint to you that she had been annoyed by anybody in the car? A. No, sir. Q. Was there any— did you hear any remarks at all passed on the car? A. No, sir. Q. Was there any disorder going on down on the trolley car? A. No, sir. Q. When you got to Sixteenth Street you saw this woman get up and go toward the rear of the car, didn't you? A. Yes, sir. Q. There was no disturbance when she got up, was there? A. No, sir. Q. Did you have any reason to fear trouble when you saw her walking toward the rear of the car? A. No."

He further testified (p. 77) that as soon as the woman spoke to Whitman he at once got to his feet and slapped her, and the men who sat opposite Whitman at once jumped to their feet and grabbed him; that (p. 78) both he and Officer Langtree were in uniform at the time of the disturbance; that (p. 79) when Whitman struck the plaintiff the latter was between the witness and the plaintiff; that prior to any blow being struck the witness had no reason to expect that an assault would take place; that (p. 81) at the time the assault occurred the conductor stood back of the plaintiff.

The foregoing testimony was all that was produced by the plaintiff relating to the assault, and on that testimony the defendant claims it was entitled to have its motion for a non-suit granted by the trial court. The motion for non-suit was refused and an exception taken, which appears on page 82.

The complaint was merely for the assault on the plaintiff, committed by Whitman, so whatever action she may have had for the insults to which she claims she was subjected, the matter of such insults is not the basis of any claim in this suit, and, of course, is only relevant as showing the condition of affairs leading up to the assault.

The evidence shows clearly that whatever reason there was for the conductor of the car to anticipate an assault, by reason of certain offensive remarks that were made by Whitman and his companions to the plaintiff during the two or three minutes the car was running from First to Fifth Street, such reasons had ceased to exist long before the actual assault took place at Sixteenth Street.

As soon as Policeman Crotty got on the car at Fifth Street, five blocks from the ferry, where the plaintiff boarded the car, whatever remarks were being made by Whitman and his companions to the plaintiff immediately ceased and nothing occurred thereafter until the plaintiff was in the very act of leaving the car. If from Fifth Street to Sixteenth Street, a matter of at least eleven blocks, everything was quiet in the car, and there was no reason in the opinion of the two police officers, one of whom had been in service twenty-seven years, to expect such an occurrence, and when, in the opinion of the plaintiff herself. (p. 36, l. 20) all the trouble was over, it is difficult to understand how or why the conductor of the car

could or should have anticipated that any assault was about to be committed upon the plaintiff.

In the case of *Exton vs. Central R. R. Co.*, decided by this Court in 1898, it appeared that the plaintiff, while on a station platform of the defendant, was injured by some cabmen who were scuffling on a passageway over which the plaintiff was passing. The jury's verdict in favor of the plaintiff was sustained. In that case the Court laid down the general rule to be (p. 15) "that from whatever source the danger may arise, *if it be known or should have been known*, care must be exercised to protect the passenger from that danger." In our present case it is perfectly clear that the danger of an assault was not known, nor could it be said that the conductor should have known of such danger.

Certainly after the car passed Fifth Street, up to the time the plaintiff at Sixteenth Street threatened to slap Whitman's face, the conductor had no reason to think that the plaintiff was about to be assaulted, nor did he have any reason to believe when the remarks passed between the plaintiff and Whitman as the former was leaving the car, that such words would lead to so unusual and extraordinary a thing as the assault committed upon the plaintiff by this man Whitman. One would suppose that that would be the last thing that would happen as the result of the exchange of words which took place.

Not only were there no indications to warn the conductor that an assault was about to take place, but it must also be remembered that to make the assault more unusual was the very fact that at the moment of the assault, and for some time previous thereto, there were at least two policemen in uniform on the car. No doubt these police-

men were being carried free, in accordance with the act of the Legislature of March 26, 1912, (P. L. 235) which act was held constitutional in the case of *State vs. Sutton*, 94 Atlantic 788, decided by this Court in 1915, on the ground that it was an exercise by the Legislature of its police power. Mr. Justice Garrison, in speaking for the court said, "That this statutory provision has a direct tendency to secure the presence of police officers upon street railway cars is attested by the very complaint of the plaintiff in error. That the presence of such officers upon such cars has a tendency to prevent disorderly conduct and to afford protection to passengers, if not an admitted fact, is at least one of those determinations of fact that the Legislature has a right to make for itself when prescribing a police regulation."

If the Legislature in passing the act in question had in mind that the presence of police officers riding free on defendant's cars would have a tendency to prevent disorderly conduct, and to afford protection to passengers, would not the conductor of this street car have a right to assume the same things? If so, this is another and very good reason why he should not be held to anticipate this most sudden and unlooked for assault on the part of Whitman.

That the plaintiff instead of going out the front door of the car, when she sat within two feet of it, went out of the rear door of the car, and so had to pass Whitman, who had been making offensive remarks to her, indicates very strongly that she did not anticipate any trouble from Whitman, and the conductor had no more reason than the plaintiff to anticipate the trouble that followed, nor did he have to anticipate that the plaintiff would step back to Whitman and threaten to "smack him in the jaw." (P. 42)

While it may be true that it is highly discourteous to address a young woman, when she is alone in Bayonne between eleven and twelve o'clock at night, as Whitman addressed this plaintiff, at the same time it is common knowledge that the words spoken by him are rather a common form of salutation in some localities and among some people, and although to a respectable woman such words may be offensive, yet, at the same time, they do not indicate a frame of mind on the part of the speaker of such words as would lead anyone to anticipate that he would immediately follow them up by an assault on the person to whom they were addressed.

If it can be held that the conductor should have known that the remarks made to or about the plaintiff prior to the time the car reached Fifth Street were apt to lead to an assault upon the plaintiff at Sixteenth Street the plaintiff was equally charged with the knowledge, and, therefore, was herself guilty of inviting this assault by going to the man and threatening him as she was passing out of the car at the latter street. Also if the conductor should have anticipated an assault upon the plaintiff by reason of the words spoken to her by Whitman, as she was leaving the car, and her action in stepping back to Whitman and making the reply to him she did, we submit that it was equally incumbent upon the plaintiff herself to have anticipated the result, and, therefore, her duty not to have participated in creating a condition of affairs which was likely to result in an assault upon her. On the other hand, if there was no reason why she should have anticipated such an assault as occurred then there was no reason for the conductor to have anticipated it.

Even though it could be said that from the words spoken by the plaintiff to Whitman as she was leaving the car, the conductor should have anticipated that Whitman would assault the plaintiff, yet the time that elapsed between the words being spoken and the assault taking place was so short, if, indeed, the assault was not simultaneous with the words, that neither the conductor nor anyone else had an opportunity to prevent the assault, because, as appears by the testimony of the plaintiff herself (p. 40), she had no sooner made the remark to Whitman when she was passing out of the car than he got up and merely spoke the words "Will you," and struck her, and although everyone in the car immediately jumped to their feet no one succeeded in preventing the assault.

See also testimony of Officer Langtree (p. 72), who says that he saw the plaintiff speak to the man whereupon the latter jumped up and hit her, and the testimony of Officer Crotty (p. 77), who says that as soon as the plaintiff spoke to Whitman, the latter got up and slapped her.

Therefore, as there was no evidence that the conductor could or should have anticipated the sudden assault, but, on the contrary, all the conditions would warrant him in feeling that such an assault as occurred was the last thing that would happen; that as the time elapsing between the words spoken by the plaintiff as she was leaving the car and the taking place of the assault was so short that the conductor did not have any opportunity to prevent the assault even though he had anticipated it on account of the words then spoken, and as the plaintiff herself participated in creating a condition which led up to the assault, we submit that the motion for a non-suit should have prevailed.

2. The Defendant Was Entitled to a Direction of a Verdict in Its Favor

The defendant's case did not present anything materially different from the plaintiff's, except in relation to damages.

JOHN BAILEY, conductor of the car, testified (pp. 82-83) that the running time of the car from the ferry to Fifth Street, where the first police officer boarded it, was two minutes; that while the plaintiff was on her way to leave the car Whitman said to her, "Take me with you, girlie?" whereupon the plaintiff turned around and said, "I will slap you in the (p. 84) mouth, you loafer,"; Whitman then arose and slapped her. At this time the witness was standing in the rear of the car up against the fare box. "Q. When she walked back to him and said that to him, did you believe that he was going to strike her? A. No, sir; I didn't expect nothing like that. There was two officers stood on the car there. Q. How long did it take for him to get up and strike her? A. Oh, it didn't take a second, it was all done in a second. Q. When he did strike her and got up, what happened? A. Eh? Q. Who grabbed him? A. I grabbed on the right side and the man sitting across the way there, the gentleman there in the middle—I don't know what his name is—he grabbed him on the left side."

On cross-examination (p. 85) the witness testified that the man who struck the woman seemed to have been drinking; that the witness heard no remarks made by this man to the plaintiff when the latter first entered the car, nor up to the time that she was about to leave it; that (p. 86, l. 20) when the man spoke to the plaintiff as she was

leaving the car the conductor told him to mind his own business; that (p. 87) when the conductor told Whitman this the latter "didn't do anything; just sat right there."

As to Whitman having been drinking, the witness further testified (p. 88, l. 30) "Q. You say this man was under the influence of liquor? A. He was. Q. Well, didn't you expect trouble from a drunken man at all? A. I naturally expect no trouble with the two officers sitting in the car."

On re-direct examination the witness testified (p. 98, l. 27) Q. You said this thing happened in a second? A. Yes. Q. Did you have a chance to get in and grab this man before he struck her? A. No, sir. * * * Recross-examination (p. 90) Q. When you heard this drunk say to this woman, "Take me with you, girlie," and you saw this woman getting mad and turn and walk into the car you had a chance enough to walk in then, didn't you? A. I told you I didn't expect it. I hadn't any idea that was going to happen or I would have walked in. * * * By Mr. Blake: Q. Was this man drunk, did you say? A. No, sir, I did not. By Mr. Simpson: Q. What did you say? A. I said I smelled drink on him when he was talking to me. Q. Was he under the influence of liquor? A. When he came in the car. Q. Wasn't he under the influence of liquor? A. He had drink in him."

CHARLES HERSHENRODER, a saloon-keeper, testified (p. 92) that he was on the car when the plaintiff boarded it; that he heard no remarks passed; that the man who afterwards struck her sat opposite from him.

As to what happened as the plaintiff was leaving the car, he testifies (p. 92, l. 35) "As she passed you and passed this other man, was anything said?

A. There was something said. (P. 93) Q. Did you hear what he said to her? A. No, I couldn't hear what was said. Q. What did she do? She turned around and she was half-way on the rear platform and came back and said, "You dirty loafer," she says, "I will slap you in the face, you dirty loafer." Q. When she came back and said that to him what did this man do? A. This man jumped up and I—— Q. What did he do when he jumped up? A. He struck her, he slapped her in the face. Q. Punch her or slap her? A. No, just a slap, tap in the face. Q. Did he punch her in the breast? A. It was only one slap. Q. One slap. What happened to him then when he slapped her in the face? A. I shouted, I says, "Hey, boy, cut that out." Q. Well, when you went this way, what did you do? When, when you went past her, grab or push him? A. Pushed Whitman, just forced him back. I said, "Here, cut that out, Whitman." And the two officers came running down. * * *

Q. Did you have a chance to get up and grab him before he struck her? A. It was so quick, Ward and I were speaking, talking about the fight. Q. You didn't have a chance to—— A. No."

As to whether or not Whitman, who struck the plaintiff, was drunk he testified (p. 94) "Q. Was he under the influence of liquor? A. No, sir. Q. He wasn't drunk at all? A. No, sir. Q. Hadn't had anything to drink, had he? A. Had a couple of beers. * * * Q. I say was he under the influence of liquor? A. Yes, he had a little into him, yes. Q. Had a little drink? A. Yes"; that (p.96, l. 26) Whitman was sitting about four or five feet from the door, so that the plaintiff in going back to him had to take two or three steps; that (p. 98) the witness saw Whitman draw back his hand to slap the plaintiff but did not have time to prevent the assault.

GEORGE A. WARD testified (p. 99) that he was with Hershenroder, the last witness; that (p. 100) he sat in the car opposite Whitman; that (p. 101) he recalled that somebody spoke to the plaintiff as she came into the car but does not remember what was said; that as the plaintiff got to the rear of the car on the way out Whitman said something to her and she turned back and said she would like to smack him in the face and that he was a loafer; that (p. 102, l. 22) "Q. Did you have a chance to get up and grab him before he struck this woman? A. No, sir. Q. Did you have any idea he was going to strike this woman? A. No, sir"; that (p. 103) at the time the assault took place the conductor was on the platform.

On cross-examination this witness testified (p. 104, l. 16) "Q. Then she walked up to Whitman and she said, "You dirty loafer, I will slap you in the face." A. She didn't say, she said, "I would like to." Q. But did he say anything to her? A. Yes, he said, "I would like to see you try it," or something to that effect, I can't remember. Q. Then how long a time was it before he got up after he said, "I would like to see you try it." A. Why, almost immediately. Q. He got up; did he strike her as soon as he got up? A. Yes."

From this resume of the defendant's testimony it will be seen that it did not make the case one to be submitted to the jury, and therefore if the defendant was entitled to a non-suit on the plaintiff's testimony it was entitled to have granted its motion for a direction of verdict in its favor.

At the close of the defendant's case the additional facts which appeared were that the running time of the car from the ferry to where the first police officer got on was two minutes; that the

conductor did not hear any remarks made to the plaintiff prior to the time she was about to alight at Sixteenth Street; that although the plaintiff walked back to Whitman and said something to him about slapping his face the conductor expected nothing like the assault which Whitman made upon the plaintiff, particularly as there were two police officers on the car.

It also appears that whatever was said to the woman when she first got on the car it was nothing that particularly attracted the attention of the people in the car as they took little notice of it or remembered what it was that was said. This indicates that the talk on the car was not considered of any importance by any of the witnesses, who represented practically all the passengers on the car, which goes to show that one would have to possess great imagination to anticipate that an assault would follow the words spoken.

The only other matter that was brought out in the defense was that it appeared that Whitman had been drinking but that he was by no means drunk. The conductor says of Whitman that he seemed to have been drinking. And, again, in answer to the question as to whether or not "he was under the influence of liquor," he answered, "He was." And, again, the plaintiff's attorney attempts to make it appear that the conductor says that Whitman was drunk when he refers to the latter in his questions as being drunk (pp. 89-90), although the conductor in his answers does not acquiesce in the assumption that he was drunk. Evidently even the Court is misled on this point. The testimony appears on pages 89 and 90 in the cross-examination by Mr. Simpson as follows: "Q. You had a chance to get in when you heard this drunk say to her, "Take me with you, girlie?"

Mr. Blake: I object. There is no proof that he was drunk. The Court: I think this witness said he was drunk. Mr. Simpson: He says he was drunk. Q. When you heard this drunk say to this woman, "Take me with you, girlie," and you saw this woman getting mad and turn and walk into the car you had a chance enough to walk in then, didn't you? A. I told you I didn't expect it. I hadn't any idea that was going to happen or I would have walked in. Q. You thought they were going to kiss each other, I suppose? That is all." By Mr. Blake: Q. Was this man drunk, did you say? A. No, sir, I did not. By Mr. Simpson: Q. What did you say? A. I said I smelled drink on him when he was talking to me. Q. Was he under the influence of liquor? A. When he came in the car. Q. Wasn't he under the influence of liquor? A. He had drink in him."

Another witness for the defendant, Charles Hershenroder, testifies (p. 94) that Whitman was not drunk, and that so far as he knew he had only a "couple of beers."

We submit that under that testimony there is nothing to show that the man was drunk, and, certainly, the term "under the influence of liquor" means nothing. To be sure, when one is drunk one is under the influence of liquor, but when one is under the influence of liquor one is not necessarily drunk. If an exhilaration came to Whitman on account of a couple of glasses of beer, which it is proved he drank, then it may be said that he was under the influence of liquor, but was neither drunk nor intoxicated under the common acceptance of the term. This being so, it was our duty to accept him as a passenger if his "intoxication is not to such an extent as to make the person's presence disgusting and objectionable to other

travelers or such as to substantially interfere with the comfort of passengers." *Parks vs. D., L. & W. R. R. Co.*, 89 Atlantic 983, decided by this Court in 1914 and affirmed by the Court of Errors & Appeals in 92 Atlantic 1087.

If we had refused passage to Whitman on the ground that he was drunk it would have been with a poor face that we could have come before this court and justified such refusal on any evidence in the case.

It also appears that the only indication the conductor had that the man had been drinking at all was the fact that he smelled his breath. There was nothing in the words of Whitman to indicate that he had been drinking, because however offensive the words spoken by him may have been to the plaintiff, they are forms of expression which are very commonly used on our streets, and nobody would dream of accusing everybody who used such expressions of being drunk, or even having had one drink of intoxicating liquor. But even assuming that Whitman was slightly under the influence of liquor, his condition, judging from the words he spoke, and there is nothing else from which to judge, was a condition of good nature and not of ugliness. This being so, any degree of intoxication under which he may have been laboring was far from being sufficient to indicate to the conductor or any reasonable person that Whitman was about to stand up in the car and hit a woman passenger in the face.

We submit that the verdict for the defendant should have been directed, and the court erred in refusing to grant the request of the defendant in that respect.

3. Discussion of the Opinion of the Supreme Court

We have no fault to find with the general propositions of law laid down by the Supreme Court in its opinion, but we submit that the evidence in the case did not justify the finding of certain facts mentioned in the opinion of that court.

The Supreme Court (p. 135, l. 22) refers to the passenger Whitman, who, it is claimed, struck the plaintiff, as a "drunken man." We insist that according to the evidence the passenger was not drunk, and the evidence does not warrant such an inference to be drawn from the testimony, for, as we have already pointed out in this brief, the only evidence relating to drinking was that Whitman had been drinking, and the word "drunk" was introduced in a question asked of the conductor when he was under cross-examination by plaintiff's attorney (p. 89 and 90), and was part of the question which involved a different matter. "Q. When you heard this drunk say to this woman, "Take me with you, girlie," and you saw this woman getting mad and turn and walk into the car you had a chance enough to walk in then, didn't you? A. I told you I didn't expect it. I hadn't any idea that was going to happen or I would have walked in." The conductor does say that Whitman was under the influence of liquor, but from the fact that a man is under the influence of liquor it does not follow that he is either drunk or quarrelsome.

The Supreme Court further says that it was open to the jury to find "that the conductor had reason to anticipate the assault sufficiently long in advance to have prevented it." With this statement we disagree. It must be remembered

that when the policemen got on the car the trouble had already quieted down and everyone, including the plaintiff herself, supposed the trouble was all over so that the only time it can be said during which the conductor could interfere was the period elapsing between the time the plaintiff turned and spoke to Whitman and the time Whitman rose and struck her, and all the witnesses testified that there was practically no interval of time between the words and the striking of her by Whitman. In fact, the time was so short that the policeman sitting opposite Whitman did not have an opportunity to arise from the seat to prevent the assault. If this policeman had no opportunity to prevent the assault, how can it be expected that the conductor had any opportunity to prevent it? We fail to see how the conductor, under these circumstances, should have anticipated the assault on the plaintiff in time to have prevented it. Certainly the words uttered on the part of Whitman prior to the time the policeman got on the car did not constitute a warning to the conductor that an assault would take place when the plaintiff attempted to leave the car. Even assuming Whitman was drunk, the knowledge of such fact on the part of the conductor would not have given the conductor the reasonable opportunity necessary to have prevented the assault.

For the conductor to have anticipated and prevented the assault on the plaintiff, after everything was quiet in the car, he would have had to anticipate and prepare for the following chain of circumstances: (1) That when the plaintiff was passing out of the car Whitman would again speak to her in an insulting fashion; (2) that thereupon the plaintiff would turn back toward Whitman and threaten to "smack him in the jaw";

(3) that thereupon Whitman would immediately jump up from his seat and strike the plaintiff; and (4) that all of this occurrence would happen so quickly that in order to prevent the assault the conductor, as soon as the plaintiff left her seat, would have to put himself in a position to control the action of Whitman.

We submit that notwithstanding the high degree of care due the plaintiff as a passenger, it is unreasonable to hold the conductor of the car responsible for not having prevented this most unexpected assault, and that, therefore, the judgment of the Supreme Court affirming the judgment of the Circuit Court was erroneous.

Respectfully submitted,

LEFFERTS S. HOFFMAN,
LEONARD J. TYNAN,
GEORGE H. BLAKE,
*Attorneys of and of Counsel with
Defendant-Appellant.*

INDEX

	Page
Notice of Appeal	1
Circuit Court Record	2
Motion to Non-Suit.....	82
Reading from Previous Testimony of Dr. Rector	116
Motion to Direct Verdict	122
Court's Charge to Jury.....	123
Defendant's Exceptions	129
Grounds of Appeal	131
Supreme Court Opinion	133
Order of Affirmance	139
Notice of Appeal and Grounds of Appeal	140

TESTIMONY.

Mrs. Helen Hoff:

Direct	6
Cross	11
Cross Resumed	26
Re-Direct	49
Re Cross	49

Dr. William A. Pinkerton:

Direct	22
Cross	23
Re Direct	25

Dr. Joseph M. Rector:

Direct	50
Cross	52
Re Direct	67
Re-Cross	67

	Page
Henry Langtree:	
Direct	69
Cross	71
David Crotty:	
Direct	74
Cross	76
Re-Direct	78
Re Cross	79
Recalled—Direct	91
Recalled—Cross	91
John Bailey:	
Direct	82
Cross	85
Re Direct	89
Re-Cross	89
Charles Hershenroder:	
Direct	91
Cross	94
George A. Ward:	
Direct	99
Cross	103
Dr. John G. Borgmeyer:	
Direct	105
Cross	106
Recalled—Direct	115
Recalled—Cross	115
John Convery:	
Direct	106
Cross	108
John Herman:	
Direct	109
Cross	112
Re-Direct	113
James J. Higgins:	
Direct	121

Notice of Appeal.

Hudson County Circuit Court.

HELEN HOFF, <i>Plaintiff,</i>	} Action at Law Notice of Ap- peal.	10
<i>vs.</i>		
PUBLIC SERVICE RAILWAY COM- PANY, <i>Defendant.</i>		

TO Alexander Simpson, Esq.,
Attorney of Plaintiff. 20

Sir:

TAKE NOTICE That the defendant appeals to the New Jersey Supreme Court from the whole of the judgment entered in this cause.

DATED, November 20, 1916.

Yours truly,

LEFFERTS S. HOFFMAN,
Attorney of Defendant. 30

(ENDORSED)

Service of a copy of the within acknowledged this 24th day of November, 1916.

ALEX. SIMPSON,
Attorney of Plaintiff.

Circuit Court Record.

(Filed in Supreme Court December 19, 1916.)

State of New Jersey }
 County of Hudson } ss:

HUDSON CIRCUIT COURT.

10

Holden in and for said County.

HELEN HOFF,
Plaintiff,

vs.

PUBLIC SERVICE RAILWAY COM-
 PANY AND ALBERT WHITMAN,
Defendants.

20

Action at Law
 Complaint.

The defendants was summoned to answer unto said plaintiff therein in an action at law upon the following complaint.

The plaintiff, who resides at No. 81 West 16th Street, in Bayonne, in the County of Hudson, says that:

30

Public Service Railway Company

1st. The defendant is a corporation of the State of New Jersey.

2nd. The plaintiff at Bayonne, in the County of Hudson, was injured by the negligence of the defendant, on the 20th day of March, 1915.

3rd. The negligence of the defendant consisted in this: That on the said day she was a passenger on a trolley car of the defendant Public Service

40

Circuit Court Record.

Railway Company, and it did not use reasonable care to transport her safely, but while she was a passenger on a trolley car of the said defendant as aforesaid, she was assaulted by a passenger, Albert Whitman, because of the failure of the said defendant to use reasonable care to protect her from the assault, and the said passenger without any just cause or excuse and by reason of the negligence of the defendant Public Service Company, struck her, in the face and chest. 10

4th. The plaintiff was at all times in the exercise of due care for her safety.

5th. The plaintiff by reason of the accident before described was hurt in and about her chest and face.

6th. The plaintiff expended for medical expenses \$50.00 and lost gains amounting to \$——— The plaintiff demands \$5,000. 20

ALEX. SIMPSON,
Attorney of Plaintiff.

Filed Clerk's Office June 8, 1915, Hudson County, N. J.

JOHN J. MCGOVERN,
Clerk.

The defendant answers as follows: 30

The defendant, Public Service Railway Company, answering the complaint in the above entitled cause, says that:

1. It admits the first paragraph.
2. It denies the second paragraph.
3. It denies the third paragraph.
4. It denies the fourth paragraph.

Circuit Court Record.

5. It denies the fifth paragraph.

6. It denies the sixth paragraph.

LEFFERTS S. HOFFMAN,
Attorney of Public Service Railway Company.

10 Filed Clerk's Office June 8, 1915, Hudson
County, N. J.

JOHN J. McGOVERN,
Clerk.

This action was tried before Judge Luther A. Campbell with a jury at the Hudson Circuit November 9th, 1916.

The cause having been heard and submitted to the jury they return their verdict as follows:

20 They say they find for the plaintiff, and against
the defendants and they assess the damages of
the plaintiff on occasion of the premises at the
sum of One Thousand Dollars (\$1,000.00).

Whereupon it is adjudged that the plaintiff re-
cover of the defendants the sum of One Thousand
Dollars damages and her costs which are taxed
at Seventy-two Dollars and Seventy-nine cents
(\$72.79) making in the whole the sum of One
Thousand Seventy-two Dollars and Seventy-nine
30 cents (\$1,072.79).

Judgment entered this 11th day of December,
1916.

LUTHER A. CAMPBELL,
Judge.

Attest:

JOHN J. McGOVERN,
Clerk.

Circuit Court Record.

The answer of Luther A. Campbell, Esquire, Judge of the Circuit Court holden in and for the County of Hudson and within named, the record and proceedings of the plaint whereof mention is within made with all things touching the same I send to the Justice of the Supreme Court of Judication at Trenton, N. J., at the day and year within contained, in a certain schedule to this appear annexed as within I am commanded. 10

LUTHER A. CAMPBELL,
Judge.

Testimony.

HUDSON COUNTY CIRCUIT COURT.

<p style="text-align: center;">HELEN HOFF, <i>Plaintiff,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">PUBLIC SERVICE RAILWAY COMPANY, <i>Defendant.</i></p>	<p style="text-align: right;">20</p> <p style="text-align: right;">30</p>
---	---

Transcript of shorthand notes of testimony taken on the 23rd day of October, 1916, before Judge Campbell and a jury.

APPEARANCES.

ALEX. SIMPSON, Esq., for plaintiff.
GEO. H. BLAKE, Esq., for defendant.

40

Mrs. Helen Hoff—Direct.

MRS. HELEN HOFF, sworn.

Direct Examination by Mr. Simpson:

Q. Where do you live, Mrs. Hoff? A. 81 West
16th Street, Bayonne.

10 Q. You are a married woman? A. Yes, sir.

Q. How long have you lived in Bayonne? A.
Two years.

Q. Do you remember getting on the trolley car
of the Public Service Company on the 20th day
of March, 1913? A. Yes.

Q. 1915, rather? A. Yes.

Q. Where did you get on this car? A. Around
First Street.

Q. Is that Bergen Point? A. Yes, sir.

20 Q. Was it an open or closed car? A. Closed car.

Q. What time of the night was it you got on?
A. Twenty minutes past eleven, I recollect.

Q. Mrs. Hoff, you will have to speak louder?
A. Twenty minutes past eleven.

Q. As you got on the car was there any one on
the car when you got on? A. There was six men
and one man sitting way up in the corner of the
car.

30 Q. In which corner, the corner near the conduc-
tor or away from the conductor? A. Away from
the conductor.

Q. Where was the conductor standing? A. He
was standing right at the doorway with his back
against the door, that middle part as you come in.

Q. Was there a fare box there where people put
their fare in? A. In back of him there was a fare
box.

Mrs. Helen Hoff—Direct.

Q. Did you put your fare in the box? A. No, because I was stopped by a man, who made the insult to me, so I walked on.

Q. As you got in what happened? A. When I got in the car, why, one of these men said something to me.

Q. What was it he said to you as you got in?
A. He said, "Ah, look who's coming," or "Ah, look who's here."

10

Q. He said, "Ah, look who's coming," or "Ah, look who's here." A. Yes, sir.

Q. What did you do when he said that? A. I walked in the car and sat down.

Q. Walked past him? A. Yes.

Q. What part of the car did you sit in? A. I sat furthest past the middle, about three feet—

20

Q. He was near, was he, to the conductor when he said, "Ah, look who's coming," or, "Ah, look who's here"? A. He was in the middle. There was two men here and the conductor stood in the corner of the doorway.

Q. How far away was he from the conductor?
A. About three feet—about two feet.

Q. Three feet? A. About two feet.

Q. What effect did this have on you as this man said, "Ah, look who's here," or "Ah, look who's coming?" What did it do to you, make you embarrassed or how did it affect you? A. Made me feel bad.

30

Q. What did you do? A. I turned around and gave the conductor a look, and he paid no attention to me, he smiled at me.

Q. Then what did you do? A. I got up and paid my fare and walked back again, and as I walked back again he said something to me again.

40

Q. You got seated in the car and then did you get up and walk to the fare box and put your fare in? A. I sat down and got my change and when—when I got in I sat down and got my change and walked back and paid my fare and came back and sat down again.

10 Q. As you put your fare in did this man say anything to you? A. He was saying things to me, I couldn't understand.

Q. He was talking to you? A. Yes.

Q. Then you went back and sat down? A. Yes.

Q. Where did you intend to get out? A. Sixteenth Street.

Q. When the car came to Sixteenth Street, what did you do? A. I got up to go out.

20 Q. What happened as you got up to go out? A. This man, he says to me, "Hey, chicken, take us along."

Q. How near was he to the conductor when he said that? A. Same way as he was before, about two feet.

Q. Did the conductor say anything to him when he said, "Hey, chicken, take us along?" A. Not a word.

30 Q. What happened then? A. Why, going past him, he says, "Hey, chicken, take us along," so I walked back to him and I says, "You insulted me since I got on this car," and I said, "If you insult me again I will smack you in the face," and he said, "Will you," and he went like that at me and like that. (Illustrating).

Q. Where did he strike you first? A. In the mouth first.

Q. Where the second time? A. In here (indicating).

Mrs. Helen Hoff—Direct.

Q. When you sat in the car were you sitting away from him? Did you have to pass him to get out of the rear door? A. Yes.

Q. What do you mean by saying you walked back to him? A. I was only about a foot past him when he said this to me, and I just turned like that and I just got—

10

Q. You turned around to him and said, "If you insult me again I will slap your face?" A. Yes.

Q. Then what did he do? A. And he said, "Will you," and he stood up and punched me.

Q. Up to the time you said, "If you insult me again I will slap your face," had the conductor done anything to the man or said anything? A. Not a word.

Q. Where did he strike you first? A. In the mouth.

20

Q. With his fist upon the mouth? A. It drew blood inside of my mouth.

Q. You don't know whether he struck you with his first or open hand. A. No.

Q. Which of your breasts did he strike. A. Here (indicating).

Q. Whereabouts, above your breast? A. Right there on the breast.

Q. Did he strike you with any force? A. He must have. He left a lump there.

30

MR. BLAKE: I object.

Q. Did he strike you? You know. A. Yes, certainly he hurted me.

Q. What did you do when you got these two blows? A. Why, I—the policeman came down the car and took him, and I sat down, and the police-

40

man told me to sit down and wait until they took him to the police station.

Q. The policeman took him off the car then? A. Yes.

10 Q. Up to the time he struck you had the conductor said anything to him or done anything to him? A. When he had already struck me?

Q. No; up to the time he hit you did the conductor say anything to him or do anything? A. No, he did not.

Q. How near was he standing to the conductor when he got up and give it to you in the face and in the breast; how far away? A. Just about that far. He stood here and this man stood here and this man here (indicating).

20 Q. Was he near enough for the conductor to touch him? A. Certainly he was.

Q. Did the conductor at any time do anything to him at all or was it the policeman that finally took him? A. The policeman came down there.

Q. The conductor never got hold of him? A. The conductor grabbed hold of him after the policeman got him.

Q. Did you consult a doctor about your breast? A. Yes, sir.

30 Q. How long after he struck you did you consult— A. Went to Dr. Pinkerton about a month or so after.

Q. Immediately after he struck your breast did you notice anything different with the breast? A. Well, no, not for a little while after, no, but in a week or so it pained.

Q. Did it pain you right away or pain you a week afterwards? A. Well, I didn't mind it so much until it started to pain me more.

Mrs. Helen Hoff—Direct—Cross.

Q. Did it pain you at all the next day? A. Why, certainly it pained me.

Q. When did the pain increase, how long afterwards? A. It increased right along.

Q. Did you go and see Dr. Pinkerton? A. Yes.

Q. How long did he treat you? A. Well—I only went to him once and he gave me stuff. 10

Q. Is there any lump on your breast now? A. Yes, sir.

Q. How large is it? A. I never feel it because it hurts me all the time I feel it.

Q. Is it big as a hickory nut or a walnut? A. About that big.

Q. About as big as a walnut? A. Yes, sir.

Q. Is it hard? A. Yes, sir.

Q. How is it as to sensation; does it give you any pain, or is it painless? A. Yes, it pains me. 20

Q. I can't hear you. Can't you say? A. It pains me.

Q. Does it pain you? A. Yes; the pain goes through my back, right through here.

Q. Did you ever have any pain whatever in the breast before this man punched you in the breast? A. No, sir, never.

Cross-Examination by Mr. Blake: 30

Q. What doctors did you have, Madam? A. Doctor Pinkerton.

Q. You say you had him about a month after the accident? A. Yes—yes, sir.

Q. How many times did you have him? A. Oh, I went to him once and I went to him twice by Mr. Simpson sending me there to be examined before your doctor, as I had been examined twice by your doctor— 40

Mrs. Helen Hoff—Cröss.

Q. I asked you, didn't I, Madam, how many times you saw Dr. Pinkerton? A. Once.

Q. And he treated you on one occasion? A. Yes.

Q. That was a month after the accident? A. Yes; I recollect a month.

10 Q. Is that the only time you had him? A. That is all.

Q. Is that the only doctor you have had treat you? A. Yes; I have had—no, I haven't had any doctor, but I went to a dispensary in Rhode Island.

Q. Where is that dispensary in Rhode Island? A. Well, it is the Rhode Island hospital, I just can't tell where it is.

20 Q. Is it the Rhode Island State Hospital? A. Rhode Island Hospital.

Q. Where is it located? A. South Providence some place—my sister took me down there; I don't know where it was, my sister took me.

Q. South Providence? A. Yes.

Q. When were you there? A. I was there about 19— in 1915.

Q. How many times were you there? A. I was only there once.

30 Q. Once. Did you give your name and get a card when you went in? A. Yes, sir.

MR. SIMPSON: I object. That is not proper cross-examination, whether she gave her name and got a card. I have not asked her anything about that. Whether she was treated, of course. How is that material?

THE COURT: I don't know as it is. It was answered immediately. It was answered yes.

Mrs. Helen Hoff—Cross.

Q. You had to give you address, didn't you?

MR. SIMPSON: I object to it as not proper cross-examination.

THE COURT: I will overrule the objection.

Q. You say you gave your name and address? 10
A. Name and address—of my sister, where my sister lived.

Q. Did you give your sister's name? A. No; I gave my maiden name.

Q. You gave your own name?

THE COURT: Your maiden name and address where your sister lived?

THE WITNESS: Yes, sir.

Q. What was your maiden name? A. Hannen. 20

Q. Helen Hannen? A. Yes, sir.

Q. Where did your sister live? A. She lived at Admiral Street, Providence, Rhode Island.

Q. Admiral Street, Providence, Rhode Island; that was a year ago this summer?

THE COURT: July, 1915, she says.

Q. You have had no other medical treatment since? A. No, I have not. 30

Q. Now you were slapped on which side of the face, did you say? A. Right side.

Q. Eh? A. The right side.

Q. And when did this lump develop that you have spoken of? A. Well, I should judge about a month or so after—that is the time I went to the doctor's, I felt the lump there.

Q. About a month later? A. Yes, sir.

Mrs. Helen Hoff—Cross.

Q. About a month later it developed? A. Yes, sir.

Q. How large was it when it developed? A. Well, it was just a hard surface.

Q. How large an area? A. What did you say?

10 Q. How large in area? A. Well, it was just a hard surface and then after it became a lump, say, about a month or so after I started to get a lump there.

Q. How large was the lump? A. Well, it was quite small.

Q. Is it the same size now as it was? A. No.

Q. How large is it now? A. It is about as big as a hickory nut.

Q. How large was it then? A. Was it when?

20 THE COURT: When you first noticed it?

A. It was just a hard surface.

Q. As a lump? When you first noticed it as a lump how large was the lump?

30 THE COURT: You say first it appeared just as a hard surface and then afterwards it developed into the lump and then you say it has increased in size until now it is the size of a hickory nut.

THE WITNESS: Yes, sir.

THE COURT: Now the question of counsel is when did you first discover it as a lump, what was the size of it?

THE WITNESS: Just an abrasion about half an inch, like that.

*Mrs. Helen Hoff—Cross.**By Mr. Blake:*

Q. Is it any larger now than it was last May?
 A. Seems to be. I never feel it. It hurts me when I feel it. It seems to be.

Q. Larger than it was last May at the time of the trial? A. Yes. I never feel it. 10

Q. What? A. I never feel it. It hurts me for a long while after I feel it.

Q. Can you see it? Can't you see the lump?
 A. No; you have to press way in to see it.

Q. Oh, it is not visible on the surface? A. No.

Q. Then how do you know how large it is if it is not visible on the surface? A. Oh, when I touch it it rolls around and then I feel with my finger.

Q. Is it hard? A. Yes. 20

Q. Quite hard? A. I never feel it or squeeze it, whether it is hard or not, because it hurts me.

Q. You said it was hard? A. I said it was about that much in your fingers when you grab it—take hold of it.

Q. Is it hard? A. Yes, it is hard.

Q. You didn't notice it until a month after the accident? A. Started to get sore after that.

Q. A month after the accident it started to get sore? A. It was sore right along, but about a month after it got sore altogether and I went to Dr. Pinkerton. 30

Q. Why did you say it is not sore a month after the accident if it was sore all along? A. I went to Dr. Pinkerton when I saw a lump starting there.

Q. Why did you say a moment ago it got sore a month after the accident if it was sore all along?

Mrs. Helen Hoff—Cross.

A. It was sore a day or so after I got hurt, it started to get sore.

Q. You could not see anything there? A. No.

Q. Couldn't see anything for a month after?

A. Yes, you could.

10 Q. Didn't you say there wasn't anything there? A. I say there was a kind of hard surface there.

Q. When did that come? A. That came about—I noticed it about a month or so afterwards.

By the Court:

Q. After the accident, you mean? A. Yes, sir.

By Mr. Blake:

20 Q. Then it is true that you did not notice anything there until a month after the accident? A. I felt the pain right along.

Q. You didn't notice anything there until a month after the accident? A. I never felt for anything. I didn't think there was anything there.

Q. You had a pain there, you say, right along? A. Yes.

30 Q. But you didn't think there was anything there? A. I couldn't see anything from the outside. I didn't think there was anything inside.

Q. You didn't feel it to see if there was anything? A. I did when it started to hurt me and I went to Dr. Pinkerton.

Q. You say it started to hurt you the day following the accident? A. Yes.

Q. Didn't you feel then to see if there was anything the matter with your breast? A. No.

Mrs. Helen Hoff—Cross.

Q. You didn't feel it for a month? A. Because it was shooting pain shot through it all the time.

Q. You didn't feel to see if there was any bruise or what made it sore? A. Not until about a month after I felt and I went to the doctor.

Q. What did you find? A. I found a lump there, or hard surface. 10

Q. Hard surface? A. No, sir.

Q. What do you mean by hard surface? A. It was stiff there—all the cords were stiff. This side isn't anything like that at all.

Q. I was all stiff on the left side? A. On that one side.

Q. But the surface looks just the same now as it always looked, doesn't it? A. No, it looks different. 20

Q. The surface looks different? How does it look different? A. It is kind of shrunk and it hangs on this side—it hangs on this side; this side is higher.

Q. Does it disclose the lump where it hangs down? A. No, because it is right in the middle of my breast.

Q. Over the nipple? A. Yes.

Q. That is where the spot was? A. It is right here (indicating). 30

Q. It is right over the nipple? A. Well, it is a little bit—it is not right over it; it is about—it is near it.

Q. How near to it? A. I should judge it is right in the same line as the nipple is.

Q. To the right or to the left of it? A. To the left of it.

Q. But you are sure you did not notice anything there until a month after the accident and 40

Mrs. Helen Hoff—Cross.

you noticed this hardness? A. Didn't notice a lump, but I felt pain.

Q. When did you first notice the lump, the lump itself? A. I just can't remember now, but I think it was a month after I felt the lump and I went to Dr. Pinkerton.

10

Q. A month after what? A. A month after I was struck.

Q. Didn't you tell us right along that a month after you were struck, Mrs. Hoff, you only felt a hard spot on your breast? A. That is why I went to Dr. Pinkerton, because I felt that hard surface there.

Q. When did you find the lump there? A. What do you call a lump?

20

Q. You are the one that called it a lump. Something that you could take hold of, it was hard and about an inch or two long? A. A month after there was an abrasion—a hard surface there, and then about two or three weeks or so after that it started to form the lump.

Q. That is the idea? A. Yes.

Q. How large was the lump then when you noticed it form? A. You could move it all around; it was about as big as a marble.

30

Q. That was one month to three weeks after the accident? A. Yes, sir.

Q. Quite sure about that? A. Yes.

Q. Remember testifying at the last trial, don't you, Madam? Remember testifying at the last trial? A. Do I remember?

Q. Yes. A. Why, I can recollect some things I said.

40

Mrs. Helen Hoff—Cross.

By the Court:

Q. You remember that you did testify at the last trial? A. Yes.

By Mr. Blake:

Q. Do you remember being asked this question by your counsel: "Q. Was there any lump on your breast? A. Next morning when I got up there was." Remember answering that question? A. I meant a hard abrasion there; I didn't mean a lump. 10

THE COURT: The question is do you remember that question being put to you and do you remember answering in that way? 20

Q. Is that correct? A. Yes.

Q. Remember answering it? A. Yes.

Q. What is your sister's name? A. Mrs. E. D. Atwood.

Q. Don't know the name of the doctor who examined you at the hospital, do you? A. No, I do not. There were three doctors examined me there, there wasn't one.

Q. Do you know the name of any of the three? A. No. 30

Q. Three doctors at that clinic, eh? Now getting down to the time you got on the car, you came over from Staten Island, didn't you, Madam? A. Yes.

Q. Walked down to the ferry on the Staten Island side—rode down? A. I rode. I don't remember now whether I did or not.

Q. And took the ferry across to Bergen Point, did you? A. Yes, sir. 40

Mrs. Helen Hoff—Cross.

Q. And there was a trolley car waiting there?

A. Yes.

Q. And you got on the trolley car, didn't you?

A. Yes.

Q. At the time you got on the trolley car was
10 the conductor standing on the rear platform? A.
I think he was.

Q. You forgot to put your fare in the box or
something, didn't you? A. Yes, sir.

Q. And walked on in the car and sat down? A.
Yes. Well, when I got on the car the conductor
was standing against this corner part of the door,
when I got on the car.

Q. You forgot to put your fare in and went on
inside? A. I didn't forget at all.

20 Q. You didn't put it in at all? A. No, I didn't
put it in.

Q. You went inside the car and sat down? A.
Yes.

Q. And the conductor, you said, looked in and
smiled at you? A. No, he didn't look and smile.

Q. Why, you testified on your direct examina-
tion "the conductor smiled at me—looked in and
smiled at me"?

30 MR. SIMPSON: I object. She did not.
She testified she gave him a look when this
man insulted her, and all he did was smile.

Q. Didn't you testify the motorman smiled at
you, "and I got up and put my fare in the box"?
A. He looked at me.

Q. Yes. A. I knew he wanted the fare. That
is why I got up.

Q. Didn't he smile or anything when he looked

Mrs. Helen Hoff—Cross.

at you? A. Well, he looked at me in a way, and I came back and put my fare in.

Q. You could remember by the way that you could tell what he wanted from the way he looked at you? A. Yes, sir.

Q. You knew he wanted your fare? A. Yes, sir. 10

Q. He gave you a fare look, did he—that is an awful pun. From the way he looked at you you knew he wanted money for your ride; is that right? A. Yes, sir.

Q. You went back and gave him your money and put it in the box? A. Went back and put it in the box.

Q. You said to him at that time, “I thought I was on Staten Island,” didn’t you? A. I never said it to him. 20

Q. On Staten Island they don’t have pay-as-you-enter cars, do they? A. No, sir.

Q. Do they, over there? A. They have pay-as-you-enter cars.

Q. You didn’t tell him that you thought you were on Staten Island? A. No; I don’t remember saying it, no.

Q. You might have said it to him? A. No, I didn’t say it to him. 30

Q. Will you say that you didn’t say it to him? A. I didn’t say it to him.

Q. You say you didn’t say it? How many men were sitting in the car when you went in? A. There were six men, and one, the seventh, at the other end of the car—six men sitting together, three on this side and three on that side of the car, right by the door.

(Adjourned to October 24, 1916.)

Dr. Wm. A. Pinkerton—Direct.

Jersey City, N. J., October 24, 1916.

MR. SIMPSON: I wanted to call Dr. Pinkerton, who is in a hurry to get away.

THE COURT: I will do anything that counsel will agree to.

10

DR. WILLIAM A. PINKERTON, sworn.

Direct Examination by Mr. Simpson:

Q. Doctor, you are a practising physician and surgeon in Bayonne? A. Yes.

Q. Where is your office? A. 375 Avenue C.

Q. How long have you been in practice there? A. About eight years.

20

Q. Towards the latter part of March, 1915, or the early part of April, 1915, did you examine this Mrs. Hoff as a patient of yours? A. Yes.

Q. And prescribed for her? A. Yes.

Q. Did you examine her left breast? A. Her left breast.

Q. What did you find the condition to be? A. At the first examination it was a contusion and a swelling of the outer part of the left breast.

Q. That is the first time? A. Yes.

30

Q. The second time you say was in connection with Dr. Borgmeyer, of the defendant company, at your office? A. Yes, sir.

Q. How long was that after the first time? A. I forget the exact time, but several months, anyway.

Q. What was the condition at that time? A. There is a little lumpy growth there—a lump on the situation of the injury, the former contusion.

40

Dr. Wm. A. Pinkerton—Direct—Cross.

Q. In your opinion could that condition be produced by force, by violence? A. Yes, it might be.

Q. And from the history of the case as given to you by the plaintiff would you say it was? A. Yes, considering the situation.

Cross-Examination by Mr. Blake:

10

Q. You don't know how long after the accident it was you saw her, do you? A. No, I don't recall that.

Q. You know it was in the last part of March or early part of April, but you don't know how long after the accident? A. I think I saw her soon after the—either the day or the next day after the accident, the first time.

Q. You think it was the day or next day after the accident that you saw her? A. Yes, sir. 20

Q. And she complained to you then of pain in the breast? A. Pain and soreness, yes.

Q. You found a swelling? A. Yes, contusion of the—one of the milk ducts seemed to be enlarged and swollen.

Q. How large was it, Doctor? A. About the size of a hickory nut.

Q. Then you saw her several months after that? A. Yes. 30

Q. Was the swelling still there? A. Yes, sir; only it was a little harder and the character of it had changed; there wasn't too much tenderness, but still a lump.

Q. It was not as tender as it was before? A. No.

Q. And it was a little harder? A. Yes, sir.

Q. And it was still a lump? A. Lump there.

40

Q. Increased any in size, Doctor? A. No, it had not increased any.

10 Q. Had not increased any in size. What do you think it was? A. Why, it looks as if the result of an injury to one of the milk ducts. You get any blow or a contusion that way you sometimes get a hard lump formed in the tissue. I don't know what the character of it is. You could not tell without an examination of a section of it.

Q. How could you determine what the character was? A. Only way to be taken out and have a microscopic section made.

Q. That would require an operation to remove it? A. Require an operation, yes.

20 Q. Dangerous operation, Doctor? A. Not particularly, no.

Q. How long would it take? A. The operation?

Q. Yes. A. Do you mean to remove it or to recover from it?

Q. No; to perform the operation? A. I suppose about fifteen or twenty minutes.

Q. Fifteen or twenty minutes; and how long to recover from it? A. Ordinary success, ten days.

30 Q. About ten days; and then that would relieve all—remove all question?

(Objected to. After discussion the objection was withdrawn.)

Q. And then that would remove all question as to trouble from that particular lump? A. If it was not malignant, yes. If it was malignant, of course, the breast would have to be taken off and the gland in the—under the axilla removed.

Dr. Wm. A. Pinkerton—Cross—Re-Direct.

Q. The only way to find out is actually remove it? A. Yes; have simply a section taken and microscopic examination.

Q. The condition it is now I understand you cannot tell whether it is malignant or not? A. I presume not, if it is not increasing any in size.

Q. It is not increasing any? A. As far as I saw it several weeks ago it was not. 10

Q. You saw it again several weeks ago? A. With Dr. Börgmeyer.

Q. It was the same size then as it was right after the accident? A. Yes.

Q. Not having increased any in size you could not say whether it was malignant or not? A. I would say it was not.

Q. In your opinion then it is not a malignant growth? A. It is not a malignant growth. 20

Q. How many visits did she make to you altogether? A. I don't recall—several.

Q. How much did you charge her? A. Well, only ordinary office fee, I suppose in the neighborhood of five or six dollars.

Q. Doctor's bill altogether five or six dollars? A. Seven dollars I think it was, if I recall it.

Q. Never been to you for treatment other than the visit she paid you following the accident? A. No, sir. 30

Re-Direct Examination by Mr. Simpson:

Q. You would not know whether it was a malignant growth or not until you cut into it? A. No, you couldn't tell.

Q. Until you cut into it? A. Not absolutely, no.

Q. When you saw her three or four weeks ago you say it was with Dr. Borgmeyer? A. Yes. 40

Dr. Wm. A. Pinkerton—Re-Direct—Re-Cross.
Mrs. Helen Hoff—Cross—Resumed.

Q. The lump was still larger? A. Yes.

Q. Still is as large as it had been? A. About the same size.

10 Q. You did not take any definite measurements of it at any time, did you? A. No; only a matter of opinion, that is all.

Q. Just visual? A. Visual.

Re-Cross Examination by Mr. Blake:

Q. You would say from the fact it had not increased, Dactor, that in your opinion it was not a malignant growth? A. Yes, in my opinion it is not a malignant growth.

20

MRS. HELEN HOFF, resumed:

Further Cross-Examination by Mr. Blake:

Q. Mrs. Hoff, I think last night we had gotten down to where you were getting—where you had gotten on the car and you saw some men sitting in the car? A. Yes.

30 Q. Will you tell us just where they were seated? A. There was three of them sitting by the door and three on the other side of the car by the door, rear end of the door.

Q. When you say on this side you mean the right or left hand side facing forward? A. The right and left.

Q. Well, now, how many were on the right hand side facing forward? A. Coming in the right hand side?

40

Mrs. Helen Hoff—Cross—Resumed.

By the Court:

Q. As you came in the car going towards the front of the car? A. Yes.

Q. You are asked how many men were on your right hand side as you came in the car? A. There was three at the corner and one up at the front of the car. 10

By Mr. Blake:

Q. Which corner were they seated in, on the right hand side? A. The right hand side of the corner to the rear of the car.

Q. Who was on the left hand side of the car? A. There was three men sitting on the left hand side of the car by the door,

Q. By which door? A. Where the conductor stands in back. 20

Q. And the conductor was standing on the rear platform, wasn't he? A. He was standing against the door—between the platform and the car.

Q. He was standing with his feet down on the platform? A. No; he was right in the car standing against the door.

Q. Against which door? A. The back door, the door when you come in the car, that closes the car inside. 30

Q. The door that he shuts with his hand by pulling the handle? A. No, the other door; pull the two handles together.

Q. The door up from the platform of the car in the body of the car? A. Yes, sir.

Q. Were those doors open or shut? A. They were open.

Q. Pushed back? A. Yes. 40

Mrs. Helen Hoff—Cross—Resumed.

Q. And you say he was leaning against one of them? A. He was leaning against it when it was closed.

10 Q. Well, you say he was leaning against one of them which was closed and you just told me in the last breath it was open? A. The one that was closed in, you push it in, and it is closed in, he was standing right at the corner when it was pushed in.

Q. Where was the fare box? A. Why, on the back of the car as you would come in the vestibule.

Q. He was standing near his fare box, wasn't he? A. After he had come in he was not standing there.

20 Q. Was he standing there when you came in? A. No; he was standing at the door when I got in the car and sat down, he stood against the door.

Q. Yes; then did he get down on the platform? A. Did he get down on the platform?

Q. Yes. A. N.

30 Q. Didn't you go back and put your fare in the box? A. He stood there and gave me a look—I went back and put my fare in the box and then he stood down on the car, on the vestibule and turned the thing and I put the money in.

Q. He turned that over after you put the money in it? A. Yes.

Q. And he did it while still standing up on the vestibule? A. No; he wasn't standing in the vestibule then, but when I put my money in he went down there where the box is.

Q. That is what I asked you before. When you put the money in he did get down to the platform and he turned that thing around? A. Yes.

Mrs. Helen Hoff—Cross—Resumed.

Q. Was the car moving then? A. Yes.

Q. On its way? A. Towards 16th Street.

Q. And you went back and sat down in your seat, didn't you? A. Yes.

Q. In what part of the car? A. I sat further—about three feet from the front door on the left hand side.

10

Q. Any one near you up there? A. Not alongside of me; across from me there was two policemen and a man sitting in the corner.

Q. Were the two policemen across from you when you went back and put the fare in the box? A. Yes.

Q. They were sitting up on the right hand corner? A. Not right hand corner; near the right corner. There was a man sitting in the right hand corner.

20

Q. They were on the right hand side of the car? A. Yes.

Q. Opposite side? A. Yes.

Q. They were sitting there when you went back to put your fare in the box, were they, in uniform? A. Yes.

Q. Did anybody say anything to you when you went back to put your fare in the box? A. Not as I heard.

30

Q. Pardon me? A. Not as I heard. I haven't heard anything—or do you mean did the conductor say anything to me?

Q. Did anybody say anything? A. Yes; this man here passed a remark; he said, "Hello, chicken," and all such stuff as that.

Q. Why did you just tell us that nobody said anything to you? A. I didn't understand your

40

Mrs. Helen Hoff—Cross—Resumed.

question. I understood you did the conductor say anything.

Q. Didn't I say, "Did anybody say anything to you"? A. Yes, you said that.

Q. You said, "Who do you mean, the conductor"? A. I didn't understand that question.

0 Q. Was there anything about "anybody" that you didn't understand?

MR. SIMPSON: I object to that question. It is not comprehensible.

Q. Did you understand what I said when I said "anybody," or what I meant?

MR. SIMPSON: I object. That is a waste of time.

20 THE COURT: Did you understand it?

A. I didn't understand it. (Witness crying.)

THE COURT: All right. She didn't understand it.

(Witness continues crying.)

Q. What did they say to you?

(Witness continues crying.)

30 A. He says, "Hey, chicken—hey, chicken," he says.

Q. Said what? A. Said, "Hey, chicken."

Q. "Hey, chicken." That made you mad, didn't it? A. Why, yes.

Q. And you felt indignant about it, didn't you?

A. Yes, sir.

Mrs. Helen Hoff—Cross—Resumed.

Q. Did you say anything to him? A. I never noticed it.

Q. But you were very angry, weren't you? A. Well, it would make anybody angry.

Q. What time of night was this? A. It was twenty minutes past eleven; I was coming from my mother's. 10

Q. Twenty minutes past eleven at night, and there were policemen on the car, weren't there? A. Yes.

Q. And this man said to you, "Hello, chicken"? A. The policemen hadn't got on the car yet. The policemen didn't get on the car until 5th Street.

Q. Didn't you just tell the court and jury that the policemen were on the car sitting opposite you when you went back and put your money in the box? A. I didn't understand your question. 20

Q. Well, what was there about that question that you— A. The policemen got on at 5th Street, between 5th and 6th Street.

Q. Why did you tell us that the policemen were on the car when you went down and put your money in the box? A. You have got me so worked up I don't know what I am saying.

Q. You don't know what you are saying? A. You have got me so worked up. 30

Q. I have got you worked up, Madam? A. (Witness crying.) Policemen got on between 5th Street and 6th Street.

Q. So they were not on the car when you put your money in the box? A. No.

Q. 5th Street is five blocks up from the ferry, isn't it? A. Between 5th and 6th; I just can't remember what street they got on. It was either 5th or 6th. 40

Mrs. Helen Hoff—Cross—Resumed.

Q. 5th Street is five blocks up from the ferry?

A. Yes.

MR. SIMPSON: I will admit that if you like.

10 Q. When you got on the car the car started right off, didn't it? A. Yes, sir.

Q. And you walked in the car without paying your fare? A. Yes, sir.

Q. And the car was going then? A. Yes.

Q. You got up about the middle of the car and you saw the conductor looking at you? A. The reason I didn't put my fare in was because this man stopped me in the vestibule and said something to me, and I walked through; I didn't want
20 to stand there and be insulted.

Q. The man stopped you in the vestibule? A. The man said something to me when I was there in the vestibule, "Ah, look here," or "Hello, look who is here," so I turned around and walked in; I was getting my fare out, getting the money. I wasn't going to stand there until I got the money, and I walked through, and I sat down and got my change out, and I walked back and put my
30 money in. When I came back he said, "Hello, chicken," and then I sat down. He said, "Hey, you in the blue dress, turn around and give us a look, too, can't you." He kept saying things, and I turned around and gave the conductor a look, and he smiled at me.

Q. Haven't you told us several times that the conductor gave you a look and that is the reason you went back and paid your fare? A. That is not the reason. He gave me a look when I sat

Mrs. Helen Hoff—Cross—Resumed.

down. I know I can't ride without paying my fare.

Q. Haven't you told us that the reason you went back to pay your fare was because the conductor stood there and gave you a look? A. And he gave me a look just as if I had to pay my fare, and I went back and sat down and paid my money. 10

Q. And was that the reason that you paid your fare, because the conductor gave you a look? A. No, I knowed I had to go back and pay my fare.

Q. He didn't say anything to you? A. No, sir.

Q. Not a word? A. Not a word.

Q. When you put your money in the box what did you say to him, if anything? A. I didn't say anything to him.

Q. You didn't say to him you thought you were in Staten Island? A. No, I did not. 20

Q. You walked back and took your place half way up the car, toward the front of the car, on the left hand side? A. Yes, sir.

Q. You were very angry because this man had spoken to you? A. Yes.

Q. When the police officers got on the car were they in uniform? A. They were in uniform.

Q. Were these men still on the car? A. Yes, sir. 30

Q. Did you go over to this police officer or either of the police officers who were in uniform and tell them that the men back there had insulted you? A. No, I did not. They had seen them and I thought it was going to be stopped, and I didn't say anything.

Q. Did you say anything to the police officers that these men had insulted you? A. No, I did not. 40

Mrs. Helen Hoff—Cross—Resumed.

Q. You rode in the car for how long a time?

A. Rode up to 16th Street.

Q. You lived at 16th Street? A. Yes.

Q. Did you tell the conductor you wanted to get off at 16th Street? A. Yes.

10 Q. Did the car stop there? A. Yes.

Q. On which side of 16th Street did it stop, before crossing or after crossing? A. I think it stopped on the nearer side here. I just forget where it stopped now. I think it stopped on the nearer side of going up.

Q. Well, on the near side of the street? A. Here is the corner, and it stopped on this corner.

Q. Did it cross 16th Street before stopping? A. Yes, it crossed.

20 Q. Then you got up out of your seat and left the car, didn't you? A. Yes, sir.

Q. You did not try to go out the front way of the car? A. No, because I know it was the other way there.

Q. You knew you could get out the front way? A. I was nearest to my corner where I got out.

Q. You knew you could get out the front way of the car? A. Yes.

30 Q. You were sitting up in the front of the car, within two or three feet of the front, weren't you? A. Yes.

Q. But you walked out back, toward the back of the car and passed this man or these men, didn't you? A. Yes.

Q. And as you passed the men you say that one of them spoke to you? A. Yes.

Q. What did he say? A. He said, "Hey, chicken, take us along." There wasn't only one

Mrs. Helen Hoff—Cross—Resumed.

spoke; the whole six of them was passing remarks to me on the car.

Q. Did the six of them speak? A. The whole six of them. There was three men with this other man kept saying things all the time to me, I don't know, and I sat there I felt terrible.

Q. They were talking to you all the time? A. No, only up to Fifth Street when these policemen got on; I never heard any more. 10

Q. Oh, they were talking to you all the time until the policemen got on? A. Yes.

Q. Incessantly? A. They were saying to themselves and hollering up to me.

Q. All that happened between First Street and Fifth Street? A. Yes.

Q. Don't you know that only takes you about two minutes to run? A. Yes, sir. When I got on the car there was rowdyism right on the car when I got on. 20

Q. You testified when you got on the car that the car started right away? A. Yes, sir.

Q. Is that correct? A. Yes.

Q. Did the policemen get on at Fifth Street? A. Yes, sir.

Q. During that time you walked up to your seat and had to walk back again to pay your fare and go back again to your seat? A. Yes. 30

Q. Don't you know that that only takes about two or three minutes for the trolley car to run that distance? A. Yes, sir.

Q. So the men were talking to you all the time; they would only talk to you about the two minutes? A. No, they wasn't; they were talking all the time.

Mrs. Helen Hoff—Cross—Resumed.

Q. If they only talked to you from the time you got on the car and until the time the policemen got on the car and you ran five blocks in two minutes, they could only have talked to you about two minutes? A. I think it was more than two minutes.

10 Q. That was all the length of time they talked to you, the time you got on until the officers got on? A. And then when I got off?

Q. You say you were quite mad because they had been talking to you up until the time the officers got on? A. Yes.

Q. Why didn't you talk to the officers and complain about it? A. I didn't think it was up to him; I thought it was up to the conductor to have it stopped.

20 Q. There were two policemen on the car in uniform? A. The conductor I always thought was supposed to protect me on the car. They didn't say anything to me when the policemen got on; I didn't have any reason to say anything, because I thought it had stopped.

Q. They had been talking to you right up to the time the policemen got on? A. I didn't want to raise any trouble; I went out.

30 Q. You were getting out at— A. I had forgot about it and walked down when he stopped me again, and I couldn't help but get mad.

Q. You forgot about it by the time the car stopped and the policemen got on? A. I didn't want to raise any trouble. I wanted to let it go as it was. I didn't want to have any show.

Q. Didn't want to have any trouble about it? A. I didn't want to have any show made by myself.

Mrs. Helen Hoff—Cross—Resumed.

Q. Then why didn't you go out to the front door when the car stopped? A. I couldn't help it. He said so much to me I had to do something.

Q. Why, but you said you had all quieted down and you didn't want any trouble, and didn't want to make any trouble in the matter. A. I quieted myself down. 10

Q. You said you had all quieted down? A. They kept talking all the time. I turned my back, and this man hollered, "Hey, chicken, turn around; you with the blue dress, and give us a look at you."

Q. And they talked how far? A. Up to Fifth Street.

Q. And did you turn around? A. No; I kept looking like this, looking towards the conductor, never paid any attention to them, what they kept saying, before the police got on, I never paid any attention to them, I sat there like this. 20

Q. You don't know what they said to you? A. Oh, yes, I do. t

Q. You didn't pay any attention to them? A. I know what they said.

Q. You did listen to it, did you? A. Yes.

Q. Did it make you angry? A. Certainly.

Q. Yet you made no complaint to the two uniformed police officers? A. I didn't think I ought to. 30

Q. You didn't want any trouble about it? A. I thought the conductor ought to stop it.

Q. Why didn't you tell the conductor to stop it? A. I had already gave him a look, I didn't want to go down there and get myself in trouble again. They had been saying things to me all the time. 40

Mrs. Helen Hoff—Cross—Resumed.

Q. You didn't talk to the conductor and didn't tell him to stop it? A. If I say something to the conductor they would have made a row and then the conductor would have a fight and everything.

10 Q. Then why didn't you talk to the police officers if you were afraid the conductor would get into a row?

MR. SIMPSON: I object. Five or six times he has asked the same question and he gets the same answer, that the thing was all over.

MR. BLAKE: Then she goes right on again and says she was worked up about it and they were talking all the time.

20 THE WITNESS: I would like to see your wife get on the car—

THE COURT: Strike that out. I will allow it just once again, but I think it has been asked over and over.

Q. Now, Madam, why didn't you ask the police officers? A. I didn't want to make any trouble.

30 Q. Didn't want to make any trouble; so you got up out of your seat and walked toward the rear of the car when the car stopped, didn't you; is that correct? A. Yes, sir.

Q. Right down past these men who had been speaking to you; is that right? A. Yes, sir.

Q. They didn't say anything to you when you got up out of your seat, did they? A. When I passed them?

Q. When you got up out of your seat they didn't say anything to you, did they? A. No.

40 Q. And you walked on down the car past these men, didn't you? A. Yes, sir.

Mrs. Helen Hoff—Cross—Resumed.

Q. You got down as far as the rear platform, didn't you? A. Yes, sir.

Q. And while you were passing— A. I didn't get as far as the rear platform.

Q. While you were passing these men one of them spoke to you, didn't he? A. Yes, sir.

Q. What did he say to you? A. He said, "Hey, chicken, take us along." 10

Q. What man was that, do you know? A. That was—I don't know his name—I think his name was Whitman or Whiteman.

Q. Mr. Whitman. "Hey, chicken, take us along with you," is that what he said? A. Yes, sir.

Q. Now, at that time you were at the rear of the car, weren't you? A. I wasn't quite as far as the rear. I turned like this. 20

Q. But you had passed this man, hadn't you? A. I was about that far—past him (indicating).

MR. SIMPSON: Show us.

A. About that much.

MR. SIMPSON: About six inches.

Q. Will you just show, Madam—take these two jurors sitting in the seat. You just walk down here and we will say this is Mr. Whitman. Now, you were walking out, how far did you get when he spoke to you? A. I was going this way and he said something to me and I turned around like this (illustrating). 30

Q. What did they say to you?

MR. SIMPSON: Showing that she was almost opposite the first juror.

MR. BLAKE: Turned around in front of the first juror. 40

Mrs. Helen Hoff—Cross—Resumed.

Q. What did you say to him, Madam? A. I said, "You have insulted me since I got on this car," and I said, "If you insult me again I will smack your face," and he said, "Will you," and he got up.

10 Q. You said he had insulted you since you had been on the car and "if you insult me again I will smack your face"? A. Yes.

Q. You were standing there in front of him at the time? A. Yes, sir.

Q. And he was sitting down? A. Yes.

Q. Is that right? A. Yes.

Q. When you said that to him did he get up? A. He stood right up and he said, "Will you," and he hit me here and hit me here (indicating).

20 Q. Got on his feet? A. Yes, got on his feet.

Q. As soon as you said that? A. He rustled me past the middle of the car.

Q. And punched you in the face? A. Yes, and drew blood in my mouth.

Q. And punched you in the breast? A. Yes.

Q. Did you hit him at all? A. Certainly not.

Q. Did you make any pass at him? A. No, I did not.

30 Q. Did the men sitting there grab this man? A. Why, the policemen grabbed him and Mr. Hershenroder came over to me and said, "If you will let it go he will make it all right with you."

MR. BLAKE: I object.

THE COURT: That is not the question. (Question repeated.)

40 A. They all stood up together, I don't know who did grab him. The next I saw the policeman had hold of him.

Mrs. Helen Hoff—Cross—Resumed.

Q. The man got up as soon as he struck you, didn't he? A. The whole lot of them stood up and I turned around and the two policemen had hold of him.

Q. All the men jumped to their feet and grabbed him? A. Yes.

Q. When you noticed who had hold of him you found the two policemen had hold of him? A. Yes, sir. 10

Q. What did they do; did they take him off? A. They took him off.

Q. Where was the conductor standing at the time you went to the back of the car? A. Oh, he was standing there all the time, and he seemed to be alongside of these men.

Q. Where was he standing? A. Standing at the same place in the car where I told you before. 20

Q. When you went down and stopped in front of this man and turned around and spoke to him you turned your back to the conductor, didn't you? A. No, the conductor was—here was the conductor and here was a man and here was me.

Q. The conductor was on the rear of the car?

MR. SIMPSON: That don't show on the record. 30

Q. The conductor was on the rear, leaning up against the door jamb? A. Yes.

Q. You stood around in front of this Mr. Whitman? A. Yes.

Q. Is that right? A. Mr. Whitman sat there and I stood in front of him.

Q. The conductor stood leaning up against the door? A. Yes. 40

Mrs. Helen Hoff—Cross—Resumed.

Q. So you were between Whitman and the conductor, weren't you? A. No; Mr. Whitman was here, the conductor was here, here was a man sitting here, and here was me (indicating).

10 Q. Standing in front of the man? A. I was standing in front of the man and he was standing say about two or three foot away from this Mr. Whitman.

Q. Two or three feet away from Mr. Whitman, when you said, "You have insulted me. I would like to smack you in the face." A. I said, "If you insult me again I will smack you in the jaw."

Q. Then this man Whitman jumps up out of his seat and punches you in the jaw? A. And he punches me here.

20 Q. And everybody jumped and grabbed him, or everybody jumped up and the police officers grabbed him; is that correct? A. Did you say when he hit me?

Q. After he hit you all the men got up? A. Yes.

Q. And the police officers grabbed him? A. That is all I could see.

Q. That is all I am asking you; that is what you say, isn't it? (No answer.)

Q. That is what you saw, wasn't it? A. Yes.

30 Q. Now, Mr. Whitman was standing there with—or was sitting there with two other men, wasn't he? A. Yes.

Q. Was sitting between the two men? A. Sitting between.

Q. And how close was the man sitting, the end man, sitting to the corner? A. Say about two feet.

Q. About two feet from the corner?

Mrs. Helen Hoff—Cross—Resumed.

THE COURT: Let me interrupt you. I do not understand the seats in this car.

By the Court:

Q. In this car were the seats at the end or running lengthwise of the car? A. Yes, longways 10
of the car.

Q. Was or was not this the situation of the three men, on each side sat— A. Yes, sir.

Q. Not at the cross seats? A. There were no cross seats in the car.

Q. There were seats on both sides and they run the full length of the car? A. Yes, sir.

Q. I see.

By Mr. Blake:

20

Q. Now, Madam, you did get to the back of the car, didn't you? A. Yes, not to the back yet; didn't get a chance to get to the back.

Q. How close did you get to the back of the car? A. I got about that far (indicating). About that far, and this man sat—

Q. You got that far from where?

MR. SIMPSON: "That far" don't mean anything unless it gets down on the 30
record.

Q. Indicating about two feet?

MR. SIMPSON: Two feet, all right.

Q. You were two feet from what, Madam? A. Two feet from going out of the door.

Q. You were two feet from going out of the door? A. Yes.

40

Mrs. Helen Hoff—Cross—Resumed.

Q. When you stopped and went back? A. Yes.

Q. You were not just ready to step down on the platform? A. No.

Q. Remember being asked this question at the last trial: "You were standing at the back of the car? A. Yes. Q. Ready to step down on the platform? Ready to step on the platform? A. Yes." A. The truth I told.

Q. Did you so swear at the last trial, that you were at the baack of the car just ready to step down on the platform? A. I don't remember what —when I spoke of it now—I know I thought of it before. I could imagine I was that far.

Q. Well, was that the truth when you testified at the last trial that you were at the back of the car ready to step down on the platform? A. I was two feet from the front door.

Q. From the front door? A. From the back door.

Q. Did you testify truthfully at the last trial when you said you were ready to step down on the platform? A. I testified truly, yes.

Q. You did testify to that question that you were ready to step down on the platform? A. Well, as near as I can get at it. I don't just remember what I said, but I am trying to tell the truth.

Q. Now, was the door open, the door leading from the car into the street? A. Yes.

Q. That was open? A. From the street? I don't remember. All I could see was the door in the car was open.

Q. You don't know whether the other one was open or not; is that right? A. Yes, sir.

Mrs. Helen Hoff—Cross—Resumed.

Q. When you said that you would strike him in the face or would smack him in the face, I think is the language, did you intend to smack him in the face if he said anything more to you?

MR. SIMPSON: I object to that as not material or relevant, what the lady's intention was, under *Grace vs. The Pennsylvania*. 10

THE COURT: I do not see the materiality.

MR. BLAKE: Allow me an exception.

Q. Had you 'ever struck a man in the face, Mrs. Hoff?

MR. SIMPSON: I object to that as not proper cross-examination, whether she has ever struck a man in the face. 20

THE COURT: How is it cross-examination?

MR. BLAKE: The plaintiff, your Honor, complains that she was a passenger on the car and that she was insulted by some people in the car and she went to him and said she was going to smack him in the face. Now, of course, the gist of the action is that the conductor should have protected her from the assaults of passengers. I think if we can show this woman is quick-tempered and has had fights before and she has turned around and turned on this man and struck at him and this man got up and struck at her before anybody could interfere, why, certainly, it is relevant. 30

THE COURT: As to a great part of it I have no reply, Mr. Blake, except to say 40

10 you are right, but I cannot quite conceive, however, what her past standing in that respect is going to help us to prove in this present controversy. It might be so in an ordinary case of assault and battery if the other party participant had known of her traits and her high temper and that sort of thing, that he might then be excused if he acted too quickly, anticipating that, knowing her past, he might expect she would do it or carry out her threat, I would say there it would be relevant, but it does not appear that any of these parties ever knew this woman before, especially this man—either the conductor or
20 the man Whitman—therefore I cannot see how it is relevant.

MR. BLAKE: I offer the question, your Honor.

THE COURT: I will sustain the objection.

MR. BLAKE: To lay the foundation, because I want to show that at other times and other places she has had fights with men.

30 THE WITNESS: I never had fights with men.

THE COURT: Never mind. Now, there is an objection to that or not?

MR. SIMPSON: Yes, I object to the question. That is all I can object to. I simply object to the question on the ground it is not proper cross-examination, that it is not relevant or competent to show her disposition. Assuming as a fact that she
40

Mrs. Helen Hoff—Cross—Resumed.

has licked everybody in Jersey City at some anterior time, it does not help us at all to determine whether the conductor should have protected her at this time or not.

THE COURT: I will sustain the objection. 10

Q. Mrs. Hoff, do you know a man by the name of Mr. Neubar—Neubauer? A. I remember that name.

Q. Did he used to live with you, or in the same house, I mean, with you, in Staten Island?

Objected to as not proper cross-examination.

After discussion the objection was withdrawn. 20

A. I recognize the name, but I don't—that is, I don't ever remember him living in a house with me at Staten Island. I can tell there is only one house I lived in.

MR. SIMPSON: You have answered the question, Madam. That is all that is necessary, to just answer the question. 30

Q. It was in Lineoleumville, wasn't it? A. This man lived.

Q. Yes? A. I don't know.

Q. Where you lived? A. Oh, I lived, yes.

Q. Don't you know whether Mr. Neubauer lived there or not?

MR. SIMPSON: I object, on the ground it has been asked and answered. 40

Mrs. Helen Hoff—Cross—Resumed.

MR. BLAKE: She says she doesn't know, doesn't know whether she knows or not, which is no answer.

By the Court:

10 Q. What is your best recollection as to that, Mrs. Hoff, as to whether or not he lived in the same house as you did at Lineoleumville? A. Well, I don't think he did.

By Mr. Blake:

Q. Now, I will ask you, did you ever have a fight with Mr. Neubauer? A. Not as I remember of.

Q. Might you have had one and forgotten it?

20 MR. SIMPSON: I object, on the ground that calls for an opinion. She has already testified to her recollection.

THE COURT: I think that covers it. She said she doesn't remember.

Q. Your name at that time was Estelson, wasn't it? A. Yes, sir.

Q. What was your husband's first name?

30 MR. SIMPSON: I object to it on the ground that it is not material or proper. I do not object to what her first name was, if he asks her what her first name was. Her husband hasn't anything to do with this case.

THE COURT: I cannot see how it has.

Q. You lived there with your husband, Mrs. Hoff? A. Yes.

40 Q. Mr. Estelson at that time? A. Yes.

*Mrs. Helen Hoff—Re-Direct—Re-Cross.**Re-Direct Examination by Mr. Simpson:*

Q. When you were struck in the mouth, did that have any effect on your teeth, at all? A. Yes, it loosened my tooth and it has come out since.

Q. What tooth? A. This here (indicating).

Q. This here don't mean anything? A. It is out. 10

Q. The lower tooth? A. Yes, a lower tooth.

Q. Was it sound before you were struck in the mouth? A. Why, yes.

Q. All right? A. Yes.

Q. Now, you said something to Mr. Blake about being examined by doctors. You were examined by Dr. Borgmeyer for the traction company, weren't you? A. Yes.

Q. How many times? A. Twice.

Q. Do you remember when those occasions were that you were examined by him? A. Well, one was say about three weeks ago and the other was about, I should judge, three months after the case. 20

Q. Did he give you a thorough examination? A. Yes, sir.

Re-Cross Examination by Mr. Blake:

Q. Now, you have seen other doctors since then, haven't you? A. I have seen— 30

MR. SIMPSON: Dr. Rector.

A. Dr. Rector.

Q. You went to see this gentleman last night?

A. Yes.

Q. You had never seen him before? A. No.

Q. He had never treated you? A. No.

Q. Never done anything about looking at you 40

Mrs. Helen Hoff—Re-Cross.
Dr. Joseph M. Rector—Direct.

until last night? A. He gave me a good examination.

10 Q. Are you an expert on examinations, so that you know which are good and which are bad? A. I know it hurted me. I should think he was trying to do right.

Q. He gave you a good examination? A. Yes, a good examination.

Q. That is the first time you ever had seen him? A. First time.

Q. Never treated you in any way? A. No.

Q. Did you ever go to a dentist about your tooth? A. No, it came out.

20 Q. How long after the accident did it come out? A. Well, about three months after it came out; I can show you the hole where it came out.

Q. Was it loose for three months and then it came out? A. I didn't want to pull it out because I didn't want to disfigure my teeth.

Q. You never went to a dentist to have it fixed? A. No.

DR. JOSEPH M. RECTOR, sworn.

30

Direct Examination by Mr. Simpson:

Q. Where do you live, Doctor? A. 452 Jersey Avenue, Jersey City.

Q. You are a practicing physician and surgeon? A. Yes.

Q. And how long have you been such? A. Twenty-three years.

40

Dr. Joseph M. Rector—Direct.

Q. Have you lately held any official position with reference to the New Jersey troops on the Mexican border? A. Yes.

Q. What position did you hold? A. I was Chief Surgeon of all New Jersey troops in the field.

Q. Did you examine this lady at my request at your office last night? A. Yes, sir. 10

Q. Will you tell these gentlemen what you discovered her condition to be? A. On the left breast on the upper left hand side or quadrant there is an irregular shaped mass of foreign or new tissue, situated within the gland substance. That is, instead of being gland tissue it is of tissue which we call fibrous tissue, which means that there has been a destruction of the gland tissue and in its place this fibrous tissue has been formed. This tissue is of low vitality and it breaks down in course of time, changes its character and becomes malignant. 20

Q. What does that mean, malignant? A. Carcerous formation.

Q. In your opinion an operation be necessary? A. Yes, sir.

Q. What would that operation be? A. Amputation of the entire breast.

Q. Take the whole breast off? A. Yes. 30

Q. What would the purpose of that be? A. To save the growth from extending and to save it from spreading from the breast to the gland of the arm, and from the gland of the arm to the other parts of the body.

Q. Would that result in death if— A. Yes.

Q. So that in your opinion she has to be operated on now and this entire breast removed? A. The sooner the better for her good. 40

Dr. Joseph M. Rector—Direct—Cross.

10 Q. Now, Doctor, in your opinion, if this woman on the 19th or 20th of March had nothing the matter with her breast and received a blow from a man's hand, either open or clenched, in the breast, and after that experienced pains in the breast and this growth formed—in your opinion would that condition that you found last night be due to that blow? A. Yes.

Cross-Examination by Mr. Blake:

Q. Doctor, how large is this—by the way, as the chief surgeon of all New Jersey troops in the field, you did not examine any female breasts, did you, Doctor? A. No, sir.

20 Q. You have been a physician for some twenty-three years in Jersey City? A. Yes.

Q. By the way, are you in the employ of the Public Service Railway Company? A. I am not.

Q. It was announced yesterday in court by eminent counsel that you were, and I would like to get you cleared up on the record.

MR. SIMPSON: What is the purpose, to affect his credibility?

30 MR. BLAKE: No; I would like to get him on the record that he is not.

Q. This irregular mass that you found in the left breast is how large in area or extent? A. Why, I said it was irregular in shape.

40 Q. Well, irregular, but how large? Take the entire mass, how large is it? A. Well, it spreads out in different sizes; that is, there is one large mass, in the upper quadrant on the left side probably about two inches from the nipple line, taking the central line of the body as one end of a radius;

then there is—it is not circular or circumscribed, but there is one mass and then leading out from this mass there are a number of small nodules.

Q. Well, Doctor, you say that this tissue is continuously breaking down and forming? A. I said—no, I said the tissue, as it formed, is of that fibrous formation, that is, it changed from the glandular formation to a fibrous formation, as a destruction of the gland cells and destruction of that part of the breast— 10

Q. As the destruction of the cells go on does that increase the size of the irregular mass? A. It does if it continues to spread from the original focus of the disease.

Q. If it remains stationary for a period of over a year what in your opinion would be the character of the mass? A. I should say that extent of time when it will break down—instead of being irregular and large it will break down in one spot. 20

Q. Do you think the fact that the mass does not increase in size has any bearing upon whether the growth is malignant or not? A. No, sir; that makes no difference.

Q. Makes no difference whatever? A. Not a particle.

Q. You made no examination other than the exterior examination of the breast, did you? A. I examined both breasts. 30

Q. Pardon me? A. I examined both breasts.

Q. You did not find any tissue—did not cut in and find out whether it was cancerous or not? A. No.

Q. There are such things as tumors in the breast, are there not? A. Yes.

Q. They are not malignant? A. Yes. 40

Q. And if you remove the tumor it is not necessary to remove the breast if the growth is not malignant, is it, Doctor? A. Depends on the character of the tumor. We have benign or non-malignant tumors which do not become malignant, and we have a certain class of tumors which do that.

Q. The non-malignant tumor, there is no more trouble if you simply remove the tumor? A. No.

Q. How can you tell whether this is malignant or non-malignant? A. We take into consideration the origin of the disease. The origin of the history from the case, that is, of cancer of the breast, is a blow on the breast.

Q. Does not tumor also sometimes come from the blood? A. Yes, sir.

Q. You have only seen this case once? A. Yes, sir.

Q. And the fact that the condition is the same or was the same for over a year would make no difference at all? A. What do you mean by the same? You mean the same in size?

Q. This mass had not increased any in size for more than a year? A. That wouldn't make any difference as to the size of the mass. It is the character of the mass that makes the malignancy.

Q. Can you determine the character of the mass? A. It has a hard, leathery feel, the fibrous formation—the cancerous state of all that formation of new tissue itself.

Q. Don't they always make a microscopic examination, Doctor, of the mass after they operate? A. No.

Q. Did you hear the former doctor testify that the only way that you could be sure of what the

Dr. Joseph M. Rector—Cross.

character of the disease was was by operating and then taking some of the tissue and subjecting it to an examination? A. No, I didn't. I wasn't here when he testified.

Q. Is that true, or not? A. It is if you have any doubt. Some men do that if there is doubt as to the character of the mass. 10

Q. Isn't it done almost universally? A. No; if a man is satisfied with the diagnosis and the tumor is characteristic sufficiently on appearance to make him believe it is malignant, he does not take any of the chances of removing any parts of it, inside of six months or two years, when they return, and then it spreads into the general tissues of the body and it would be impossible then to save the patient. 20

Q. Well, Doctor, isn't that exactly what is done in all hospitals in all operations; if they remove a tumor, don't they immediately subject that to a microscopic test so as to determine whether or not it is a malignant growth cut in? A. It is often done.

Q. Isn't it uniformly done? A. It is not always done; it depends on the custom of the surgeon?

Q. Isn't it the better practice to do it? A. It is a good practice. 30

Q. You are often mistaken, aren't you, in diagnosis? A. Sometimes.

Q. You frequently go wrong, don't you? A. Sometimes.

Q. All doctors do, as a matter of fact? A. Yes.

Q. Is there a possibility you are mistaken in this instance? A. No; I don't think I am mistaken in this instance, and I am satisfied with my diagnosis. 40

Dr. Joseph M. Rector—Cross.

Q. Do you remember on the 8th day of April, 1914, testifying in the case of Anna L. Eckert against the Public Railway Company, where the plaintiff was carried into the Court House on a stretcher—

10 MR. SIMPSON: I object. I do not think he has any right to make any such statement as that to the jury, that some plaintiff in some other case was carried in on a stretcher. We are not responsible for any other plaintiffs being carried in on a stretcher.

THE COURT: Well, excepting that—I suppose the record doesn't show that.

20 Q. Doctor, you were present at the trial, weren't you?

MR. SIMPSON: Nobody has testified to that. He cannot—

MR. BLAKE: I withdraw the question.

Q. You were present at the trial, weren't you, Doctor? A. What?

30 Q. Of the case of Anna L. Eckert against the Public Service Railway Company? A. Yes.

Q. Was she brought in the Court House on a stretcher?

MR. SIMPSON: I object.

A. I don't remember.

40 MR. SIMPSON: Objected to as not proper cross-examination. How does it affect the Doctor's credibility if Anna was carried in on a stretcher?

Dr. Joseph M. Rector—Cross.

THE COURT: Well, it is preliminary only.

MR. SIMPSON: Being preliminary does not save it.

Q. She was in your charge, Doctor, wasn't she? 10
A. Yes.

Q. Wasn't she brought on a chair and a stretcher to the Court House? A. She was not brought on a stretcher. My recollection is she was carried out on a stretcher after a severe cross-examination by your counsel which tired her out so completely after her severe injury, and she was taken home and I stayed the whole afternoon and evening at—

Q. You don't hear her counsel objecting to that. 20
You don't hear him trying to cut that off.

MR. SIMPSON: I object to this comment.

THE COURT: Go on.

Q. The injury was to her spine? A. That is one of the injuries.

Q. One of the many was to her spine? A. Yes.

Q. And you testified in your opinion that she would never recover and never be any better 30
than she was the day of that trial, didn't you?
A. I don't remember all that testimony. If you will read it all to me I will tell you that which I remember.

Q. Will you tell us some of the things that she had?

MR. SIMPSON: Who?

Q. Annie L. Eckert. 40

Dr. Joseph M. Rector—Cross.

MR. SIMPSON: I object, on the ground it is not proper cross-examination.

MR. BLAKE: He said, "Among other things."

MR. SIMPSON: Have him to show Annie Eckert has—we are not trying that.

10 A. She had—

THE COURT: You have the testimony there undoubtedly, and the Doctor says if you will read it to him, that portion to which you are referring, he will be able to tell us whether he so testified or not. Now, of course, the proper way would be for you to read the questions and answers to which you have reference and then for him to say whether or not he so testified.

20

Q. Now, did you testify—after other things— Doctor, that her back began to arch and to bend at the part of fracture; that her back was broken— A. I remember it did at the time of the accident when I examined her and it did for a long while and has since. I am still treating Annie Eckert for conditions of her back and for the rupture which she had on the right side, and she was in my office about two days ago.

30

Q. Will you answer the question? A. I am trying to answer it.

Q. Whether she was treated for a broken back? A. Yes.

Q. "She had a certain amount of rigidity at that part which would protect it. There was a loss—there was a certain amount of fixation, we call it, at that part, which was caused primarily by a fixation of the muscles—so to speak—that

40

Dr. Joseph M. Rector—Cross.

lasted for some time, but it would give way when the support was taken away and her back would bend again. I found at that time—or the reason of putting on a solid cast again was the fact that after a little while—as she was unable to bear the weight of her body and I was getting an arch and curvature just at the point of the break which showed an angulation, which showed a beginning of the weakness at first, and ever since that time I have had a solid plaster cast on her back, from the lower part of her breasts to the lower part of the ribs. Q. What was this angulation forward? 10
 A. The point of the break where I have a fibrous union instead of a bony union. I have a fibrous union at the portion of the break, which was due either to the stretching of the fibrous union or losing the support of the muscles which formerly held it in a rigid position. Q. Now, at these various times you observed of course, the locality of this break. What was its condition as far as you could observe? A. What do you mean what was its condition? Q. Well, as to break? A. It simply showed callous. Q. How much callous? Did that decrease or increase? A. It remained about the same. Q. How about the discoloration? A. Well, there is a discoloration now.” Did you— 30

MR. SIMPSON: I object. He cannot read all the medical testimony in the Eckert case in my case.

MR. BLAKE: We want to show what the condition was. You insisted that I read it rather than have the Doctor tell it, so I am reading it now.

Dr. Joseph M. Rector—Cross.

Q. At that trial, Doctor, was Miss Eckert able to move? A. Yes.

Q. Freely. Could she walk freely? A. She walked with assistance, if I remember it.

Q. She had to be assisted from a chair into the stand? A. That is as I remember it, yes.

10 Q. Didn't she have a plaster cast on at that time? A. Yes.

Q. How large a cast was it? A. At what time?

Q. At the last trial?

MR. SIMPSON: I object.

A. I don't remember that.

MR. SIMPSON: I object. He is not now asking the Doctor what he testified.

20 THE COURT: The Doctor is answering it when he says he doesn't remember it.

MR. SIMPSON: I know, but has he a right to describe Annie Eckert? He is not asking the Doctor now did you so testify with the idea of proving afterwards it was false.

Q. Now, Doctor, did you testify this in answer to your counsel's question: "What in your opinion is the likelihood of her recovery? A. She will not recover. Q. Do you think she will be any better than she is today? A. No. Q. Has she got a broken back, Doctor? A. She has the result of a broken back, that is, there is a partial fibrous union between the parts that were broken." Did you so testify, Doctor? A. That is my recollection.

Dr. Joseph M. Rector—Cross.

Q. Do you remember testifying in another case, Doctor, six months after this case in April?

A. Which?

Q. Six months after the case of April 8th, do you remember testifying, the second case? A. I don't remember the date, but I have testified in that case several times.

10

Q. And the third case, do you remember testifying with Dr. Jelliffe? A. I don't remember which trial it was. I remember Dr. Jelliffe having been here at one of the trials.

Q. Do you remember testifying in that case that she would never recover? A. I don't remember the entire—the gist of all that testimony, but you have got to recall the correlative facts which lead up to the answer.

20

Q. Wasn't that the gist of it, that she would never recover? A. I said completely recover. This trouble, they make a certain amount of recovery, but they do not completely recover.

Q. And your opinion was :“What in your opinion is the likelihood of her recovery?” And your answer was, “She will not recover.” A. Completely recover. As I remember my testimony now, she will not completely recover.

Q. “Do you think she will be any better than she is today.” Did you so testify? A. I have answered your question, that she would not completely recover.

30

Q. Did you so testify? A. I don't remember the answer to that question as being stated.

MR. SIMPSON: It is not at all apparent that his transcript is correct. It may not be a correct transcript.

40

Dr. Joseph M. Rector—Cross.

Q. Remember testifying on the 15th of December, 1913, at the trial of Anna Eckert against the Railway Company, before Judge Speer? A. I don't remember the date of any of these trials.

10 Q. Well, you have testified in three different trials, haven't you? A. Several; I don't remember the number of them. I have no record of this here.

20 Q. Remember being asked this question: "Well, Doctor, if at the end of six months she were no better and you were then at that time asked whether at the end of six more months you couldn't tell whether she would be more likely to recover than you could at that time of the examination, what would your answer be? A. I would say that she was going to remain disabled the rest of her life." A. I don't remember all that testimony.

Q. Did you so testify? A. I tell you that I don't remember that testimony, all of it.

Q. You might have so testified? A. It may be possible I did. In that case there was a mass of testimony—a number of questions asked and answered. How could I remember?

30 Q. Your opinion? A. My opinion was exactly what I have testified to. I simply call your attention to these transcripts are not always correct. Time after time I have been compelled to correct those transcripts.

Q. I haven't asked you any question. You were asked: "My opinion now is that she will not be better. If any change takes place six months from now, why, my opinion now is not proper. That is all I can say. Q. We all understand that. A. My opinion now is she will not get better. If

Dr. Joseph M. Rector—Cross.

in six months she does get better, I am mistaken.

Q. That always follows? A. Absolutely. Q. But

suppose six months from now you were on the stand and she was not then better? A. Then I

would say she would remain. Q. But wouldn't

your opinion be only your opinion yet? A. It would be the same as now, but verified by further

time. Q. So if it were a year from now it would

be still further verified by time? A. Yes, sir. Q.

And in ten years it would be still further verified, wouldn't it? A. Yes, considering conditions were

the same. Q. But from your experience and your

study in your profession, are you or are you not

now able to express an opinion as to whether or

not she is likely to recover? A. I am. Q. Well,

what is your opinion? A. That she will remain

about the same." Q. Is that your testimony? A.

As far as I remember it is the gist of the testimony.

Q. Testimony of the 7th day of December, 1914?

A. I don't remember the date, but as far as I remember it is the gist of the testimony.

Q. I show you some pictures and ask you if you can recognize that as Miss Eckert, the girl

with the broken back? A. I do not recognize that face at all.

Q. Do you recognize that as a picture of Miss Eckert? A. No—wait a minute.

Q. Something like her, doesn't it? A. Yes—looks a little bit, yes.

MR. BLAKE: I ask that it be marked.

(Photograph marked D-1 for identification.)

10

20

30

40

Dr. Joseph M. Rector—Cross.

Q. I show you another and ask you— A. Well, it is a woman in boy's clothes, with the appearance of a face—

MR. SIMPSON: Do not characterize them, they are not offered as evidence.

10

Q. The one in the middle? A. It looks like the face.

Q. The one in boy's clothes? A. Yes.

MR. SIMPSON: I object, that counsel has no right to state the contents of these pictures. They have not been offered yet. (Picture marked D-2 for identification.)

20

MR. SIMPSON: I will object to them when they are offered, and he knows better—it is very unfair when he characterizes them.

MR. BLAKE: There are two visible in the picture.

MR. SIMPSON: I object to that statement.

30

THE COURT: Well, gentlemen, of course, the rule is this, that when offering pictures for identification, what they contain and what they are is of no consequence, you are simply asked to identify them.

MR. BLAKE: If there are ten people in the picture—

THE COURT: Well, mark them some way,—A and B, that will identify them.

Q. Which one there? A. The one with the striped blazer.

40

Dr. Joseph M. Rector—Cross.

MR. BLAKE: Mark that one.
(Picture marked D-3 for identification.)

Q. Do you recognize Miss Anna Eckert? A.
Yes, sir.

(Picture marked D-4 for identification.) 10

Q. Do you recognize her? A. I do not, unless
that is the one. I don't know whether that is she
or not.

Q. The one that you pick is she? A. That is
the one.

(Picture marked D-5 for identification.)

Q. And that one, please, Doctor? A. That looks
like her, the one in the center group looks like
Miss Eckert. 20

(Picture marked D-7 for identification.)

Q. That one? A. I do not recognize any there.

Q. I show you that one? A. I said I didn't
know. It looked like her.

(Picture marked Exhibit D-8.)

Q. Doctor, if Miss Eckert were able to take
walks and go in swimming and exercise around
like other girls you would say she has made a
pretty good recovery from the broken back? A.
As far as convalescence in a general condition,
yes. Her back may have remained the same and
been supported. I don't know what she had under
the covering. If she was supported the back
would be the same as if she walked in the room.
The support would hold up that portion. I know
40

for a fact she has worn a support and has worn it up to a recent time.

Q. Do you know as a fact whether or not she walked and is able to go in swimming? A. I don't know about going in swimming. She walks. I have seen her lately.

10 Q. You have seen her lately? A. Yes, sir.

Q. What sort of support do you have reference to? A. I don't know what she is wearing. I told her to wear a continual support. She has a corset on now with steel ribs in the back; that is the last time I examined her, and I examined her just before I went to the border, and she has been in my office shortly after my return.

20 Q. What sort of brace did she wear? A. It is a corset with steel ribs in, that is all; the steel ribs being in the back and on either side of the spine, a distance of, as I remember now, of about two inches; just simply supports that part of the back.

Q. Just a special corset, is that the idea? A. Why, I simply instructed her to have an ordinary corset fit her and then have steel ribs put in that instead of whalebone, so that part would remain almost immobile.

30 Q. Just a regular pair of corsets with steel ribs? A. Yes, a regular corset instead of having whalebone or ordinary—some other material—it is steel ribbed.

Q. Wearing one of those, would she get around? A. I suppose that is what she is wearing. I instructed her to wear them.

Dr. Joseph M. Rector—Re-Direct—Re-Cross.*Re-Direct Examination by Mr. Simpson:*

Q. Is Miss Eckert any relation to this woman Hoff, that you know? A. No, sir.

Q. Where does she live, Miss Eckert, or where did she live? A. She did live in Hackensack Avenue.

Q. Up in Guttenberg? A. She lived originally in Guttenberg.

Q. She never lived in Bayonne? A. Not to my knowledge.

Q. As far as you know she never had anything to do with this plaintiff, did she? A. Not to my knowledge.

Q. Did Dr. Pinkerton ever attend her to your knowledge? A. Not to my knowledge.

Q. When her case was tried—it was tried three times, wasn't it? A. Yes.

Q. And I was not the lawyer in the case, was I? A. No, sir.

Q. Had nothing to do with the case? A. Not to my knowledge.

Q. Has the Eckert case anything to do, as far as you know of, with the case of this woman Hoff? A. None whatever.

Q. It was not an injury of the same kind? A. No, sir.

Q. Now, then, has the Eckert woman's progress caused you to change your opinion in any way as to her injuries? A. No, sir.

Re-Cross Examination by Mr. Blake:

Q. But you are expressing an opinion in this Hoff case as to what that growth is on the breast, aren't you? A. I am expressing an opinion which is based upon a knowledge of previous

cases, cases of the same character and from the feel of the hardness.

Q. You have answered as to whether you are expressing an opinion, that is all I asked you.

10 THE COURT: Whether you are expressing an opinion?

A. I am expressing my knowledge.

Q. But you are expressing an opinion in the Hoff case? A. Based upon my knowledge.

Q. I presume so, but you have expressed an opinion? A. I am answering the question.

Q. An opinion based upon knowledge is the best answer you can give to my question? A. Yes.

20 Q. You are frequently here in connection with Mr. Simpson, are you not? A. Sometimes.

By Mr. Simpson:

Q. You are frequently in cases against Mr. Simpson? A. Yes, just about the same.

By Mr. Blake:

30 Q. Did I understand you to say to Mr. Simpson that there was nothing in this Eckert case to cause you to change your opinion?

MR. SIMPSON: That is not what he said. Read the question.

(Stenographer repeated previous question as follows: "Now, then, has the Eckert woman's progress caused you to change your opinion in any way as to her injuries? A. No, sir.")

Henry Langtree—Direct.

HENRY LANGTREE, sworn:

Direct Examination by Mr. Simpson:

Q. Officer, you are a police officer in Bayonne. aren't you? A. Yes.

Q. How long have you been such? A. Going 10
on five years.

Q. On the 19th of March were you on a car coming from the Bergen Point Ferry to Jersey City? A. If that was the date, yes.

Q. Where did you get on that car? A. Fifth Street and Broadway.

Q. When you got on the car did you see this lady, Mrs. Hoff, on the car? A. She was sitting opposite Officer Crotty, and I went up and sat alongside Officer Crotty. 20

Q. Where was the car when she got up to get off? A. Sixteenth Street.

Q. When she started to leave the car—I will withdraw the question. Did you see any men sitting in the rear of the car near the conductor? About how many of them were there? A. Yes: there were three of them and they were sitting down talking together.

Q. Where were you sitting? A. Up near the front door. 30

Q. As she started to leave the car did you see or did you hear any of these men say anything? A. When she got down near the end of the car one of the men said something to her.

Q. You couldn't hear what it was? A. No, I could not.

Q. Now, then, after he said that to her did you see the lady turn and answer him? A. Yes.

Henry Langtree—Direct.

Q. And you couldn't hear what she said, could you? A. No.

Q. Now, then, did you see him get up—one of the men get up? A. Yes.

Q. What did he do when he got up? A. He got up and he struck her in the face.

10 Q. Struck her in the face; and was her back to you when he struck her or how was she standing? A. She was towards the man, towards the other side.

Q. What I want to get, did you have a clear view of her face or her side or her back? A. Well, of her face.

Q. That is, she sort of facing you? A. Yes.

20 Q. Was the man between you and him when he hit her? A. No; I was up one end of the car and this happened at the other.

Q. But what I mean is, when this man got up, when he and the woman stood side by side, was he between you and the woman, or was he behind the woman when he hit her? A. He was in front of the woman.

Q. Then he was between you and the woman? A. That would be, yes.

30 Q. Then you made a rush for him, did you? A. Yes; but before I got in there three or four other men had hold of him at the end of the car.

Q. Did you have to use force to subdue him? A. Well, when we got outside—off the car, he was turned around and we had to push him and use force.

Q. You rode then from Fifth Street to Sixteenth, didn't you? A. I rode from Fifth Street to Police Headquarters.

Q. Where did you get off the car, at Sixteenth?

Henry Langtree—Direct—Cross.

A. No, Police Headquarters.

Q. How soon after he hit the woman did you get down there? A. Just as quick as I possibly could.

Q. Where was the conductor all this time? A. Down the rear of the car.

Q. Near the fare box? A. Yes.

10

Cross-Examination by Mr. Blake:

Q. When you got on the car at Fifth Street were you with anybody, officer? A. By myself.

Q. Any other officer get on there? A. He was on already, he got on Fifth Street and Avenue C.

Q. Where did you get on? A. Fifth Street and Broadway.

Q. So that the other officer was on the car when you got on? A. Yes, sir. 20

Q. While you were on the car did Mrs. Hoff come to you and complain that anybody had insulted her? A. No.

Q. Where was she sitting in the car? A. Opposite to the officer Crotty and myself.

Q. Did anybody speak to her while you were sitting there? A. No.

Q. Did anybody at the lower end of the car pass any remarks up to her at all? A. No. 30

Q. At Sixteenth Street, where the car stops, did you see her get up to leave? A. Yes.

Q. Did you see her walk down towards the back of the car? A. Yes.

Q. Did anybody speak—did you hear anybody speak to her as she passed the men down there? A. They had some words, but I couldn't understand what it was.

40

Henry Langtree—Cross.

Q. You couldn't see? Did you see her stop?

A. Yes.

Q. Did you see her come back? A. I seen her turn around.

10 Q. Turn around; and did she walk back? A. Not that I noticed. She just turned around and spoke to the man.

Q. You saw her speak to the man? A. Yes.

Q. What did he say? A. Why, he hit her.

Q. Jumped up and hit her? A. Jumped up off his seat.

Q. Where did he hit her. A. Gave her a hit in the face.

Q. Did you see him punch her breast? A. No.

20 Q. Slapped her in the face? A. Slapped her in the face.

Q. Was there any mark on her when you got down to see her? A. I couldn't say.

Q. You saw her at the police station, didn't you? A. Yes.

Q. Any mark on her? A. I didn't see any mark.

Q. Were you able to get down and grab hold of him before somebody else caught him? A. No.

30 Q. Who grabbed hold of him? A. Why, the other men had hold of him down there when I got down there; they all jumped up; everyone jumped up. It happened in a moment.

Q. Where were these men sitting. A. Opposite to him.

Q. When he struck this woman they all jumped up? A. Yes, sir.

Q. Did you see him grab the man? A. Yes.

Q. What did they do with him? A. Why, they held him.

Henry Langtree—Cross.

Q. Until you got down there? A. Until we grabbed him from him.

Q. When she came back and spoke to him could you hear what she said to the man? A. No.

Q. Did she try to hit the man? A. No, I didn't see it.

Q. But she turned around and spoke to him and he jumped right up and hit her in the face? A. Yes. 10

Q. Was it a slap or a punch? A. A slap that I could hear.

Q. Slapped her? It was done before you had a chance to get down there? Yes, sir.

Q. It was done before the men sitting right opposite from him— A. Yes, sir.

Q. Could you see the conductor standing down there? A. He was standing in the rear of the car. 20

Q. How far away was he from them? A. From who?

Q. From this man who was sitting down in the seat? A. Oh, a few feet.

Q. The man sitting between these men and the conductor, did you see him grab the man that hit the woman? A. There was two or three men jumped up and grabbed him. 30

Q. Don't you know just which ones it was that grabbed him? A. I don't know; I couldn't say that.

Q. Only saw the one blow struck? A. That is all I seen struck.

Q. Now, did you all get off the car down there? A. Why, four of us got off the car at 26th Street, the lady and the man that struck her, Whitman,

Henry Langtree—Cross.

David Crotty—Direct.

or whatever his name may be, and Officer Crotty and myself.

Q. You placed this man under arrest? A. Under arrest.

10 Q. And you all rode up on the car to police headquarters? A. Police headquarters, 26th Street.

Q. The woman went up with you too? A. Yes.

Q. And made a complaint against this man Whitman? A. Yes.

Q. There was no loud talk carrying on when you were in the car? A. No.

Q. No reason to expect a breach of the peace? A. No.

20 MR. SIMPSON: I object that it calls for an opinion.

MR. BLAKE: That is all.

By Mr. Simpson:

Q. You were the length of the car when whatever blow or blows were struck—you were the length of the car away, weren't you? A. Yes.

30 DAVID CROTTY, sworn.

Direct Examination by Mr. Simpson:

Q. You are a police officer in Bayonne? A. Yes, sir.

Q. How long have you been a police officer in Bayonne? A. Going on twenty-seven years.

Q. On this night did you get on the trolley car

40

David Crotty—Direct.

at Fifth Street with the other officer? A. I got on the trolley car at Fifth Street and Avenue C.

Q. Avenue C? A. Yes, sir.

Q. Was the other officer, Langtree, on the car when you got on? A. No, sir.

Q. He got on after you? A. He got on further down, a block further down, Broadway. 10

Q. Did you see this lady on the car when you got on, this Mrs. Hoff? A. Yes.

Q. When the car got to Sixteenth Street, did you see her get up to go out? A. Yes, sir.

Q. Did you see her get near the rear door? A. Yes, sir.

Q. Now, when she got near the rear door did you see anything happen? A. Yes; there was somebody passed remarks—while she was passing to the door. 20

Q. Some of the men down to the door? A. One man, Mr. Whitman, I guess.

Q. While she was passing through the rear door? A. Yes.

Q. What did she do when he said something to her? A. She turned around and faced him and said something to him but I couldn't understand it.

Q. You could not hear it? A. No; I seen him stand up and slap her in the face. 30

Q. Was his back to you? A. Yes.

Q. When he did this? A. Yes.

Q. What did you do? A. He stood up—Officer Langtree and I ran down towards him to stop their trouble.

Q. Where was the woman when you got down there? A. She was still standing—one foot was

David Crotty—Direct—Cross.

on the platform and the other was on the floor of the car?

Q. Had one foot down on the platform and ont up on the body of the car? A. Yes, sir.

Q. Was she crying? A. Yes, he was crying.

10 Q. Who had hold of this man when you got down there? A. Well, I noticed Mr. Hershenroder was one.

Q. He had hold of him? A. Yes.

Q. What did you do, lock the man up? A. Took him to police headquarters and locked him up.

Cross-Examination by Mr. Blake:

20 Q. When you got on the car, Officer, did Mrs. Hoff make any complaint to you that she had been annoyed by anybody in the car? A. No, sir.

Q. Was there any—did you hear any remarks at all passed on the car? A. No, sir.

Q. Was there any disorder going on down on the trolley car? A. No, sir.

Q. When you got to Sixteenth Street you saw this woman get up and go toward the rear of the car, didn't you? A. Yes, sir.

Q. There was no disturbance when she got up, was there? A. No, sir.

30 Q. Did you have any reason to fear trouble when you saw her walking toward the rear of the car? A. No.

Q. When she got down toward the rear of the car and passing some men you saw one of them pass a remark to her? A. He passed some remark, but I couldn't understand it.

Q. You don't know what it was? A. No.

Q. Did you see her turn around and stop in

David Crotty—Cross.

front of the man? A. She turned around and said something to the man.

Q. Don't know what she said to the man? A. No.

Q. As she said something to the man what did he do? A. He stood up and slapped her in the face. 10

Q. Did he get up as soon as she spoke to him? A. Yes, sir.

Q. Right on his feet? A. Yes, sir.

Q. Then as quickly as she spoke to him he got up on his feet? A. Got up on his feet.

Q. And slapped her? A. And went towards her and slapped her.

Q. With one hand? A. Yes.

Q. Did you see him punch her in the breast? A. No, sir. 20

Q. Who grabbed this man? A. Mr. Hershenroder here and some other party—two other men stood up and had hold of him when they grabbed him.

Q. Were the other men sitting down in the lower end of the car? A. They were sitting opposite this man Whitman.

Q. And they jumped up and grabbed him? A. Yes. 30

Q. Then you went down and put him under arrest, did you? A. Placed him under arrest.

Q. And took him up— A. To police headquarters.

Q. —to police headquarters and there a charge was made against him by Mrs. Hoff? A. Yes.

Q. You had no time to get down and stop the man before he struck her? A. No.

David Crotty—Cross—Re-Direct.

MR. SIMPSON: I object to it as a question of opinion. That is for the jury to say whether he did or not, not for him to say.

10 THE COURT: I will let it stand. He answered no. Rather it was answered before the objection.

Q. Just as soon as this man struck her and the other men grabbed him you went down and took charge of things, you and Officer Langtree? A. Yes.

Q. Were you in uniform? A. Yes.

Q. Was Officer Langtree in uniform? A. Yes.

20 Q. Both on the way to headquarters? A. Yes, both on the way to headquarters.

By the Court:

Q. Officer, from the time you saw this man get up, as you say, and slap Mrs. Hoff in the face, were you looking at both of those parties? A. Just looked down at that end of the car at that time.

Q. And continued to look at them? A. Yes.

30 Q. And continued to look up until you took him in charge? A. Yes.

Re-Direct Examination by Mr. Simpson:

Q. You didn't try to get down until the blow was struck, did you? A. No, sir.

Q. You didn't get up until the man hit the woman? A. We saw the blow struck.

Q. Then you got up? A. Yes, sir.

David Crotty—Re-Direct—Re-Cross.

Q. But you didn't get up until the blow was struck? A. No.

Q. When you got down there somebody else had hold of him? A. Yes.

Q. When you saw the blows struck the man was between you and the woman, wasn't he? A. Yes.

10

Re-Cross Examination by Mr. Blake:

Q. But you had no reason to expect a blow would be struck?

MR. SIMPSON: I object.

A. No, sir.

MR. SIMPSON: I object on the ground that he is not being tried, and in the second place as calling for an opinion. It is for the jury to say whether there was reasonable cause to believe there were going to be any blows struck.

20

MR. BLAKE: Ask him why he didn't get hold of the man?

MR. SIMPSON: I didn't ask him that.

THE COURT: Your question was he didn't go down.

30

MR. SIMPSON: Just the fact, not his mental condition. Bricks vs. Public Service is authority for that.

THE COURT: I think I will sustain the objection.

Q. You say that the woman was between you and the man or the man between you and the woman?

40

David Crotty—Re-Cross.

MR. SIMPSON: I object. Doesn't say that. He said the man was between him and the woman.

A. The man was between the woman and I.

10 Q. And the conductor was in back of the woman? A. The conductor was standing right back of the woman on the platform.

Q. So that there was the conductor—coming from the back of the car—there was the conductor and then the woman and then the man and then yourself? A. Yes.

Q. So this woman stood between the conductor and the man? A. Yes.

20 Q. In order to get to the man he would have to get around the woman? A. Yes.

Q. Is that correct? A. Yes.

Q. And the woman was between him and the man? A. The woman stood between the conductor and the man.

By Mr. Simpson:

Q. They were all in one spit practically together? A. Pretty close by him.

30 Q. The woman had a foot on the platform and the conductor stood on the platform and the man stood inside of the car? A. The conductor, I guess, stood behind the woman on the platform.

Q. She had one foot on the platform? A. She had one foot on the platform and she stood on the floor of the car.

MR. BLAKE: That is after it was over?

MR. SIMPSON: I object.

David Crotty—Re-Cross.

MR. BLAKE. That was the testimony. I object now that it contains an unwarranted assumption of fact, because the witness said it was after it was over, when he got down there.

By the Court:

10

Q. Now, Mr. Officer, at the time that this blow was struck that you have spoken of, where did Mrs. Hoff stand at the time she was slapped? A. She was standing right in the rear of the car with one foot I think on the floor of the car going to step on the platform, on the floor of the car, facing Whitman.

Q. All right. As I understand you, you think that at the time that Whitman struck the blow that you saw Mrs. Hoff was standing on the rear of the car with one foot down on the platform or the floor of the vestibule and the other foot up on the floor of the car, standing in the doorway? A. Yes.

20

Q. Is that right? A. That is right.

By Mr. Blake:

Q. The conductor was in back of her? A. The conductor stood on the platform.

30

Q. In back of her? A. Yes, sir.

Q. And Whitman was inside the car? A. Whitman stood in the car.

PLAINTIFF RESTS.

40

Motion to Non-suit.
John Bailey—Direct.

Motion to Non-suit.

10 MR. BLAKE: If your Honor please, I move for a non-suit on the ground that no negligence has been shown on the part of the servants of the defendant company.

THE COURT: I am inclined to think, Mr. Blake, that this is a question I should send to the jury under all the circumstances of the case.

MR. BLAKE: Allow me an exception.

JOHN BAILEY, sworn.

Direct Examination by Mr. Blake:

20 Q. What is your full name, Mr. Bailey? A. John Bailey.

Q. You will have to talk up so we can hear you? A. John Bailey.

Q. You were the conductor? A. Yes, sir.

Q. On the Bayonne car? A. Yes.

Q. What time of the night did the accident happen, or did you leave the ferry? A. Left the ferry about eleven forty- I guess.

30 Q. Does a boat come in about that time? A. Thirty-eight.

Q. Did you wait for the thirty-eight boat? A. Yes.

Q. Did Mrs. Hoff, the plaintiff in this case, come from the ferry house and get on your car? A. Yes, sir.

Q. At the time she got on your car—when she got on your car did the car start off? A. Yes.

40 Q. How long does it take in running time, and how long did it take that night, to run from the

John Bailey—Direct.

ferry to Fifth Street where the first officer got on?

A. Two minutes is the running time.

Q. When she got on your car did she pay her fare? A. Well, she didn't pay her fare until she went up in the car and came back and said, "I thought I was in Staten Island," and then she dropped her nickel in. 10

Q. Did anybody say anything to her at that time. Anybody sitting in the car? A. No, sir.

Q. Where were you standing? A. I was standing right up against the fare box.

Q. Nothing was said to her while you stood there? A. No, sir.

Q. After she paid her fare and walked back in the car what did she do? A. Well, she went up to the—about the middle of the car and sat down facing the front of the car. 20

Q. Were any remarks passed to her while she sat down there? A. No, sir.

Q. Then when the car got to Fifth Street one officer got on and the next corner another officer got on? A. Yes.

Q. When she got to Sixteenth Street did you stop the car for the plaintiff to get off? A. Yes.

Q. When she got off—did she walk off the front or rear platform? A. Got off the rear. 30
she passed this man Whitman, didn't she? A. Yes.

Q. And some one else? A. Yes.

Q. What did they do, if anything—what was done? A. Well, he says, when she got just a little ways past him—she got to the rear door where the handle is, you know—she says, or, he said to her, he says, "Take me with you, girlie," so she turned around and said, "I will slap you in the 40

John Bailey—Direct.

mouth, you loafer," and she walked back to him, and she got up to him and he stood up and he slapped her.

Q. Where did he slap her? A. Slapped her on the cheek.

Q. Did he punch her in the breast? A. No, sir.

10 Q. Where were you standing at the time? A. Standing right up against the fare box.

Q. Where? A. In the rear of the car.

Q. On the platform or in the car? A. Right in the—the end of the platform.

Q. Up against the fare box? A. Yes.

Q. When she walked back to him and said that to him, did you believe that he was going to strike her? A. No, sir; I didn't expect nothing like that. There was two officers stood on the car there.

20 Q. How long did it take for him to get up and strike her? A. Oh, it didn't take a second; it was all done in a second.

Q. When he did strike her and got up, what happened? A. Eh?

Q. Who grabbed him? A. I grabbed on the right side and the man sitting across the way there, the gentleman there in the middle—I don't know what his name is—he grabbed him on the

30 left side.

Q. Then did the officers come down? A. The officers come down and took hold of him and said, "I will take care of him. I will take care of him. Start the car." I started the car.

Q. Took him up to the police headquarters? A. Yes.

Q. Did they take him off there? A. Yes.

Q. You went on the car to Jersey City? A. Made out my report and went on.

40

*John Bailey—Cross**Cross-Examination by Mr. Simpson:*

Q. Who got your car first, this lady or these men? A. Three men got on first.

Q. Where did they sit? A. Two sat on the right side of me and one on the left.

Q. See either of them in court today? A. Yes, 10
sir.

Q. See these two men; were they two of the crowd that got in the car? A. Yes.

Q. And the third man was the man that hit the woman? A. Yes.

Q. They all got in together, didn't they, these three? A. Yes.

Q. Did they seem to have been drinking at all? A. Well, this man alone seemed to be drinking.

Q. This man that hit the woman seemed to be 20
drinking? A. Yes.

Q. When she came in did they say anything to her as she passed by? A. Not as I heard.

Q. Well, you were right near there? A. I was right there.

Q. If they said—if this man that hit her said, "Look who's here," or "Here she comes," or "you with the blue dress," you were standing close enough to hear it? A. I would have heard it. 30

Q. You did not hear it? A. No.

Q. And in fact nobody said anything further at all all the time she was in the car until she started to go out and this man suddenly said to her, "Take me with you." A. Yes.

Q. Up to that time you say nothing had been said? A. No, sir.

Q. When she got on the car she didn't pay her fare, did she? A. No, sir. 40

John Bailey—Cross

Q. How did you get her to pay the fare? A. Well, she thought of it herself and came back and put it in.

Q. Did you speak to her or tell her to come in? A. No, sir.

10 Q. How long a time was there between the time she got on the car and the time she came and paid her fare? A. Well, it was no time; she just walked up and sat down and came right back again.

Q. You were not afraid of these three men at all? A. No, sir.

Q. That was not the reason that you didn't interfere, was it? A. No, sir.

20 Q. When this man said, "Take me with you, girlie," did you step in the car and say to him, "That is no way for you to speak to a woman"? A. I told him to mind his business.

Q. Did you step in and say something? A. I stood right there where I was.

Q. Why didn't you say that to Mr. Blake when he was—

MR. BLAKE: I didn't ask him.

A. I didn't get asked that question.

30 Q. You heard him say he didn't ask you and then you adopt that as your reason. But you were to tell everything that happened when you were on the stand? A. Yes, sir.

MR. BLAKE: Answer the question.

Q. Why didn't you tell us that you said something to this man after he said to the woman,

John Bailey—Cross

“Take me with you, girlie”? A. I am telling you now that is what I said.

Q. Did you say something to him? A. That is what I said.

Q. Did you step in and say to him, “That is no way for you to talk to a lady, this lady,” at that time of the night? A. I attended to him and I told him, “Mind your business there.” 10

Q. What did he do when you pointed your finger at him and told him to “mind your business”? A. Didn’t do anything; just sat right there.

Q. You saw her walk back? A. Yes, and turn around.

Q. Did you go up with her to see that he didn’t do anything to her when she walked out? A. No.

Q. Did you hear what she said to him? A. Yes. 20

Q. What is it? A. She said, “You loafer, I will slap you in the mouth.”

Q. What did he do then? A. He didn’t get up, no, not until she went up to him. That is the time she said it to him.

Q. He was just sitting down? A. Yes.

Q. How far away from her was he? A. About four feet, four or five feet.

Q. Then he got up, didn’t he? A. He got up when she went up to him. 30

Q. When she went up to him is the time she said, “You loafer, I will slap you in the face.” A. When she was walking up to him.

Q. Then as she walked up she said, “You loafer, I will slap you in the face.” You then saw her continue to walk towards him, didn’t you? A. Yes.

Q. Did you think she was going to slap him in

the face? A. I didn't know whether she would or not.

Q. You still stood on the rear platform, didn't you? You didn't get in the car? A. No.

Q. Then she did get up to him and he got up, didn't he? A. He got up.

10 Q. Then when he got up you still stayed on the rear platform, didn't you? A. Yes.

Q. Then he gave her this slap in the face and you still were on the rear platform, weren't you? A. I stood right on the edge of the platform.

Q. You didn't grab him until after the passengers grabbed him, did you? A. I grabbed him, yes, right on the right hand side.

Q. When did you go in the car to grab him? A. Right after he slapped her.

20 Q. After he slapped her? A. Yes.

Q. Did he have hold of her when you grabbed him? A. No, he did not.

Q. How near was he to her when you grabbed him? A. How near was who?

Q. How near was this man Whitman to her when you grabbed him? A. Well, he was right close to her.

Q. You say this man was under the influence of liquor? A. He was.

30 Q. Well, didn't you expect trouble from a drunken man at all? A. I naturally expect no trouble with the two officers sitting in the car.

Q. You were going to let them do the protecting? A. I wasn't going to let them—

Q. They were further up in the front of the car, weren't they? A. They were on the front of the car.

John Bailey—Re-Direct—Re-Cross

Q. They were not on this car when this drunk got on the car? A. No, sir.

Q. The drunk was on the car with this woman alone for some time without any policeman? A. He was on for two minutes.

Q. How far did the car ride in the two minutes, how many blocks? A. Five blocks. 10

Q. In two minutes? A. Yes.

Q. Some car! A. And short blocks.

Q. That's all.

Re-Direct Examination by Mr. Blake:

Q. How long are the blocks there A. They are all short blocks.

Q. How long is it, about, in distance? A. Well, I couldn't judge the distance. 20

Q. Was it your last trip at night? A. It was the last trip at night.

Q. Of course you always loaf along on the last trip in, don't you?

MR. SIMPSON: Is that sarcasm?

Q. You said that this thing happened in a second? A. Yes.

Q. Did you have a chance to get in and grab this man before he struck her? A. No, sir. 30

Re-Cross Examination by Mr. Simpson:

Q. You had a chance to get in when you heard this drunk say to her, "Take me with you, girlie"?

MR. BLAKE: I object. There is no proof that he was drunk.

THE COURT: I think this witness said he was drunk. 40

John Bailey—Re-Cross

MR. SIMPSON: He says he was drunk.

10 Q. When you heard this drunk say to this woman, "Take me with you, girlie," and you saw this woman getting mad and turn and walk into the car you had a chance enough to walk in then, didn't you? A. I told you I didn't expect it. I hadn't any idea that was going to happen or I would have walked in.

Q. You thought they were going to kiss each other, I suppose. That is all.

By Mr. Blake:

20 Q. Was this man drunk, did you say? A. No, sir, I did not.

By Mr. Simpson:

Q. What did you say? A. I said I smelled drink on him when he was talking to me.

Q. Was he under the influence of liquor? A. When he came in the car.

Q. Wasn't he under the influence of liquor? A. He had drink in him.

30 *By Mr. Blake:*

Q. He got on the car by himself? A. Yes.

Q. Nobody helped him in the car? A. No, sir.

By Mr. Simpson:

Q. You have often seen a drunk get on the car by himself, haven't you? A. Yes, sir.

David Crotty—Recalled—Direct—Cross
Chas. Hershenroder—Direct

DAVID CROTTY, recalled:

Direct Examination by Mr. Blake:

Q. Officer, how far is it from the ferry up to where you got on the car? A. Why, it is about eleven hundred feet. 10

Q. Are the blocks long or short there? A. Short blocks; no more than two hundred feet or a little more to a block.

Cross-Examination by Mr. Simpson:

Q. Eleven hundred feet? How long are the blocks? A. No more than two hundred feet.

Q. There is only four houses on the block, or six houses on a block? A. Some blocks there is no houses at all. There is no houses in some blocks. 20

Q. Ever measured it? A. No, I never measured it.

Q. Just giving your opinion, are you? A. Guesswork, yes.

CHARLES HERSHENRODER, sworn: 30

Direct Examination by Mr. Blake:

Q. Mr. Hershenroder, where do you live? A. 272 East 22nd Street, Bayonne.

Q. What is your business? A. Saloon.

Q. Keep a saloon down there? A. Yes.

Q. On the night that this affair happened at Sixteenth Street, in Bayonne, were you on the car? A. I was. 40

Q. Where did you get on the car? A. First Street.

Q. Down at the ferry? A. Down at the ferry.

Q. Bergen Point? Did you see Mrs. Hoff, the plaintiff in this case, get on the car? A. Yes, sir.

10 Q. Where did she get on? A. On First Street.

Q. Were you on the car as she got on? A. I was on the car first.

Q. When she got on the car did anybody pass any remarks to her as she got on? A. I didn't hear a word,—and I was talking—I was talking about the fight. I didn't hear no remarks passed.

Q. Was this man that struck her sitting with you? A. No, sir.

20 Q. Where was he? A. I was on the opposite side.

Q. Did you see her go back and put her fare in the box? A. I did.

Q. After she got her fare in the box what did she do? A. What?

Q. What did she do after she put her fare in the box? A. I didn't take notice. She walked right back through the car again.

30 Q. Don't you know where she sat down? A. Way up in the other end.

Q. Now when your car got near Sixteenth Street did you see her leave her seat? A. No; she came walking through the car to get off.

Q. To the back of the car? A. Yes, sir; she passed us.

Q. As she passed you and passed this other man, was anything said? A. There was something said.

Chas. Hershenroder—Direct

Q. Did you hear what he said to her? A. No, I couldn't hear what was said.

Q. What did she do? A. She turned around and she was half way on the rear platform and came back and said, "You dirty loafer," she says, "I will slap you in the face, you dirty loafer."

Q. When she came back and said that to him what did this man do? A. This man jumped up and I—

Q. What did he do when he jumped up? A. He struck her, he slapped her in the face.

Q. Punch her or slap her? A. No, just a slap, tap in the face.

Q. Did he punch her in the breast? A. It was only one slap.

Q. One slap. What happened to him then when he slapped her in the face? A. I shouted, I says, "Hey, boy, cut that out."

Q. Well, when you went this way, what did you do? When, when you went past her, grab or push him? A. Pushed Whitman just forced him back. I said, "Here, cut that out, Whitman." And the two officers came running down.

Q. You are sure that is the only one blow that was struck? A. That is the only one.

Q. Sitting right opposite? A. Right opposite.

Q. Did you have a chance to get up and grab him before he struck her? A. It was so quick. Ward and I were speaking, talking about the fight.

Q. You didn't have a chance to — A. No.

Q. Did the officers come down and put him under arrest? A. Yes.

Q. When they put him under arrest did they

Chas. Hershenroder—Direct—Cross

take this man up to the police station? A. Took him up to headquarters.

Q. You didn't go up there? A. I got off at 22nd Street.

Cross-Examination by Mr. Simpson:

10

Q. This gentleman was a friend of yours that struck this woman? A. He didn't get on with us. He happened to come in Meisner's while waiting for a car.

Q. You came out of the same saloon with him and got the car? A. Yes.

Q. And had a drink with him? A. Yes.

Q. Well then, don't try to make out you didn't know him? Did you know this man? A. I know
20 this man, yes.

Q. You got in the car with him? A. He got in the car.

Q. Was he under the influence of liquor? A. No, sir.

Q. He wasn't drunk at all? A. No, sir.

Q. Hadn't had anything to drink, had he? A. Had a couple of beers.

Q. Couple of beers. How long had you been with him that night? A. I wasn't with him at all
30 that night.

Q. How do you know he only had a couple of beers? I had, I thought you said me.

Q. We are not talking about you hitting any woman. We are talking about him? A. I didn't hear what you said first.

Q. I say was he under the influence of liquor? A. Yes, he had a little into him, yes.

Q. Had a little drink? A. Yes.

40

Chas. Hershenroder—Cross

- Q. You got on the car with him? A. Yes, sir.
- Q. Is he in court to-day. A. We got on the car first and he came out after us, out of the saloon.
- Q. Where was it, in some saloon? A. Yes.
- Q. Meisner's? A. Yes.
- Q. How long were you in Meisner's? A. About
twenty minutes. 10
- Q. Were you at the fight with him? A. Yes—
not with him, no.
- Q. But at the fight? A. At the fight.
- Q. You met him at Meisner's? A. He came in
at Meisner's, yes.
- Q. Had he been at the fight? A. He was there.
- Q. Then he, you and your friend, came out of
the saloon and got on the car and he came out of
the same saloon and got on after you; is that
right? A. Yes, that is right. 20
- Q. And he, you say, had been drinking, he had
some drink in him? A. Yes.
- Q. You sat on one side of the car and he sat on
the other? A. Opposite.
- Q. Is that right? A. Yes.
- Q. At the last trial you were in court, weren't
you? A. What say?
- Q. The last trial of this case you were in court,
weren't you? A. Yes. 30
- Q. And sat here with this man all through the
trial, didn't you? A. Yes.
- Q. Talking to him all through the trial, weren't
you? A. I could not speak in court.
- Q. Yes. In the same seat. He is not here to-
day, is he? A. No.
- Q. Is he a friend of yours, this man? A. I
know him about three years.

Q. Now you then sat on one side of the car and he sat on the other and you were talking to Mr. — what is this gentleman's name here? A. Ward.

Q. You were talking to him about the fight? A. Yes.

10 Q. You were then paying no attention to what this man was doing, were you? A. Not in the least.

Q. Don't know whether he said anything to the woman or whether he did not? A. Didn't pay any attention.

Q. Don't know what happened when she came in? A. I never paid any attention.

Q. You were attending to your own business? A. Yes.

20 Q. Then you saw her coming along and you heard him say something to her, did you? What did he say to her? A. Coming out.

Q. What did he say? A. I couldn't get it.

Q. Don't you know he said, "Take me with you, chicken"? A. No, I couldn't catch it. It was something.

Q. How near was he sitting to the door? A. I should judge about four or five feet.

30 Q. When he said that to her she turned around, didn't she? A. Yes.

Q. Did she walk back to him? A. She walked back.

Q. How many steps did she take? A. Oh, probably—two or three.

Q. Did not have one foot on the platform and one foot in the car then, did she? A. She had one foot on the platform, and one—she turned back.

40 Q. When this occurred between the man and the woman she didn't have one foot on the platform

Chas. Hershenroder—Cross

and one in the car, did she? She had already walked four feet into the car, hadn't she? A. About that.

Q. So that she didn't have one foot on the platform of the car; and when she got up to him what did she say? A. She said, "You dirty loafer, I will slap you in the face." 10

Q. Then what did he do? A. He says, "I dare you—" no, "Do it," or something like that, I just forget what it was.

Q. Get up then? A. He got up and he made a slap and slapped her in the face.

Q. Was she between you and him then, her back to you? A. No; I was looking right at it.

Q. He was on one side of the car and you were on the other and the woman was standing up? A. They were facing one another and I was looking right at him. 20

Q. If she was facing him her back was towards you. A. No.

Q. Well, if he got up out of his seat opposite you and stood up, looking at you, and she was facing him, why wasn't her back towards you? A. I was sitting facing him. I was on the right hand side of the car and he was on the left hand side. She came back from the rear end to strike him and I was facing her and I could see her and I could see him slap her in the face. 30

Q. Her back was to you? A. No.

Q. Why not, if he was sitting opposite you and he got up—when he got up was he facing you? A. He was not. I was sitting, but I could see them sideways.

Q. Was he facing you? A. No, he was not facing me, not when he was standing up. 40

Chas. Hershenroder—Cross

Q. How was he to you? A. He was sideways.

Q. How was she? A. Facing me.

Q. Did you see him draw back his hand to slap her? A. Certainly slapped her.

Q. Did you see him draw back his hand to slap her? A. Yes.

10

Q. Did you get in between them? A. Yes.

Q. Then she did not get the blow at all? A. She was hit in the face.

Q. When you saw your friend draw off to hit this woman did you step in between them. A. I didn't have time.

Q. Did you? A. No.

Q. She got the blow before you got in, did she? A. Yes.

20

Q. Then you got right in, did you? You got right in between them? A. Yes.

Q. Did you get in between them or did you have to give him a push away? A. After the blow. I said, "Whiting, cut that out."

Q. Why did you push him away? A. I didn't want to see the woman struck.

Q. She had been struck? A. She got slapped.

Q. Why did you push him away? Was he going to strike her again? A. No.

30

Q. Why did you push him away? A. The thing was done. What anybody else would do.

Q. You knew he was not going to hit her again? A. I didn't know. I didn't know what his intentions were.

Q. What was he doing when you pushed him away? A. Well, he was standing there, and I says—after he struck her—

Q. Did you testify at the last trial? A. I did.

40

Chas. Hershenroder—Cross
George A. Ward—Direct

Q. Didn't you swear at the last trial as this woman got on the car he said something to her?

A. There was something said, but I didn't hear what was said.

Q. As she got on the car, I am talking now? A. 10
 As she got on the car?

Q. Yes. Did you testify at the last trial as she got on the car something was said to her and you didn't know what it was? A. I don't remember that.

Q. Don't remember whether you so testified?
 A. No.

GEORGE A. WARD, sworn. 20

Direct Examination by Mr. Blake:

Q. Mr. Ward, what is your business? A. Clerk.

Q. For whom? A. Standard Oil Company.

Q. Where is your place of business? A. Bayonne mostly—Brooklyn and New York and Williamsburg.

Q. You have been employed by the Standard Oil Company how long? A. About ten years or 30
 more.

Q. On the night that this happened had you been down to a fight somewhere in Bayonne? A. Yes, sir.

Q. Who had you been with? A. Mr. Hershenroder.

Q. He is the man that was just on the stand?
 A. Yes.

Q. After the fight where did you go? A. We went in Meisner's. 40

George A. Ward—Direct

Q. Waited there for a car? A. Yes.

Q. While in there did you have a couple of drinks? A. Yes.

Q. Did a man by the name of Whitman or Whit-
ing come in there? A. Yes.

10 Q. Did you know him at the time? A. I had
seen him, but I didn't know him.

Q. Know who he was; did you know his name at
the time? A. No.

Q. After you had your drinks in Meisner's did
you go out and go on the trolley car? A. Yes.

Q. Did Whitman get out on the trolley car?
A. Yes.

Q. Was he in there before you got in there?
A. No, sir.

20 Q. Came in after you got on the trolley? A.
Yes.

Q. Where did he sit? A. About five feet oppo-
site where I was on the left hand side of the car;
I was sitting on the right.

Q. He was opposite you? A. Yes, sir.

Q. Then did you see this lady get in the car?
A. Yes, sir.

Q. Where did she go? A. She went up forward
in the car, on the—

30 Q. Then did she come back again to the fare
box? A. Yes.

Q. Pay her fare? A. Yes.

Q. And go back again? A. Yes.

Q. Did you hear anybody pass remarks to her
at that time? (No answer.)

Q. Now, what were the remarks. A. I don't re-
member now whether there was anything said. I
know a remark was spoken about, but I don't

George A. Ward--Direct

know whether it was after she came back or when she first got on the car. I don't recollect now.

Q. Somebody spoke to her? A. Of course I can't say. I don't remember.

Q. Your recollection is that somebody spoke to her, is that it? A. Yes.

Q. And she took her seat up in the car, didn't she? A. Yes, sir. 10

Q. And after a while did police officers get on the car? A. Yes, sir.

Q. When the car got up to 16th Street did it stop? A. Yes, sir.

Q. When it stopped did this plaintiff come to the back of the car? A. Yes, sir.

Q. As she passed you and passed this other man what happened? A. Why, there was a remark passed then, but I don't know what it was, but she got to the rear of the car and she turned back and said that she would like to smack him in the face. 20

Q. To the man? A. That he was a loafer.

Q. To the man who made the remark to her? A. Yes.

Q. When she walked, you say she came back to him and said she would like to slap him in the face? A. Yes. 30

Q. What did the man do when she slapped him in the face?

MR. SIMPSON: I object to that.

Q. Pardon me. What did the man do when she said she would like to slap him in the face? A. He said—I don't recollect what he said.

Q. No, not what he said. What did he do? What did this man do when she said she would 40

George A. Ward—Direct

like to slap him in the face? A. Why, he didn't do nothing at the time.

Q. Who slapped her in the face? A. Why, he did.

Q. When did he slap her in the face? A. After she had come back from the rear of the car.

10 Q. Did she get in front of him? A. Yes, sir.

Q. When she got in front of him what did he do? A. Why, he got up.

Q. When he got up what did he do? A. He slapped her in the face.

Q. Did he punch her in the face with his fist? A. No.

Q. Did you see him punch her in the breast? A. No.

20 Q. You were sitting right opposite? A. Yes, about opposite.

Q. Did you have a chance to get up and grab him before he struck this woman? A. No, sir.

Q. Did you have any idea he was going to strike this woman? A. No, sir.

Q. Did your friend alongside there grab hold of him? A. Yes.

30 Q. After he grabbed hold of him, did the police officers come down and arrest him? A. Yes, sir.

Q. Then took him to the police headquarters? A. I guess so, yes.

Q. You don't know that? A. No.

Q. Where was the conductor at the time she walked back to the man and he got up and struck her in the face? A. After he slapped her?

Q. No; where was he when she turned around and walked back toward this man? A. He was at the rear of the car.

40

George A. Ward—Cross

Q. On the platform? A. Yes.

Q. Or in the car?

No answer.

Cross-Examination by Mr. Simpson:

Q. Where was the fight that you were at? A. I don't remember what the name of the place was now, on First Street, some hall of some description. 10

Q. You know where it was, don't you? A. I am telling you down First Street, that is all.

Q. Don't know the name of the hall where you saw the fight? A. No, sir.

Q. Who took you there? A. Mr. Hershenroder.

Q. Have a guide? A. Yes.

Q. You were guided there, so you don't know the place? A. Yes, sir. 20

Q. Did you pay for the ticket? A. No, sir.

Q. Mr. Hershenroder had the ticket? A. Yes.

Q. What kind of a fight was it, finish fight, or what? A. Six round bout.

Q. How long were you there? A. Just a couple of hours, maybe more.

Q. Did you see Whiting there at all, the man that hit the woman, was he in any of the bouts at all? A. No. 30

Q. Where did you first see him? A. Whiting? No; I first seen Whiting that night in the place where—Boyle's.

Q. Did you know him at all? A. Whiting?

Q. Yes? A. No.

Q. You sat with him in the court room all through the last trial, didn't you? A. Yes; he happened to be sitting alongside of me.

Q. Yes; and as I understand you got on the car and sat down and talking with your friend 40

George A. Ward—Cross

and didn't pay much attention to what happened?
A. No, sir.

Q. Until a woman went to get out and some one said something to her, you don't know what it was? A. No.

10 Q. Do you know who said it to her? A. No. I imagine it was—I don't know who said it to her. There was two people sitting there.

Q. Who was with Whiting? A. There was nobody there. There was some stranger on the rear of the car, not sitting down.

Q. Then she walked up to Whiting and she said, "You dirty loafer. I will slap you in the face."
A. She didn't say, she said, "I would like to."

20 Q. But did he say anything to her? A. Yes, he said, "I would like to see you try it," or something to that effect, I can't remember.

Q. Then how long a time was it before he got up after he said, "I would like to see you try it."
A. Why, almost immediately.

Q. He got up; did he strike her as soon as he got up? A. Yes.

Q. Was her back to you when he struck her? A. No, about sideways.

Q. Sideways? A. I could see it.

30 Q. Was he pretty close to her? A. Well; she was about the center of the car.

Q. How far from this man? A. About a foot, I guess.

Q. Well, what makes you so sure he didn't hit her in the breast? A. Why, because when he did hit her first time we all got up, that is, I got up and I grabbed hold of him right away.

40 Q. But you didn't get up until after he had hit her? A. No, not until after he slapped her.

Dr. John G. Borgmeyer—Direct

DR. JOHN G. BORGMEYER, affirmed.

Direct Examination by Mr. Blake:

Q. Doctor, you are a practicing physician and surgeon in Hudson County? A. I am.

Q. Did you make an examination for the defendant company of Mrs. Hoff, two examinations? A. Yes. 10

Q. Will you tell us what you found at your first examination? A. The first time I examined her was on the 28th of July, 1915, I examined her at the office of Dr. Pinkerton, her family physician. I found a lump in her left breast about the size of an English walnut.

Q. That was last year? A. Yes.

Q. Now, have you examined her since then? A. I did. 2)

Q. When did you examine her last? A. On the 22nd of September of this year.

Q. What did you find her condition to be? A. I found the same lump, the same size, except it was further from the surface; there seemed to be fatty tissue around it, in other words, I think her breast was larger.

Q. Could you tell from your examination, Doctor, whether it was a malignant tumor, or how do you term the other? A. There was absolutely no way or determining that by feel. Q. How was the only way of determining whether the growth is malignant or not? A. Microscopical examination. 39

Q. You mean by that you must take a part of the defective tissue and examine it under a microscope? A. Yes.

Dr. John G. Borgmeyer—Cross
John Convery—Direct

Q. Is that done in all hospitals? A. All hospitals that are worthy of being called hospitals, yes.

10 *Cross-Examination by Mr. Simpsons*

Q. Doctor, there is something the matter with her breast, some kind of a growth. What is that? A. I don't know.

Q. Could it be produced by a blow? A. It might, yes.

By Mr. Blake:

Q. You don't know how long standing it is, Doctor? A. No.

20 Q. Not what she told you, but aside from what she told you, you cannot tell how long it has been there? A. How long it was there previous to my first examination? No, I don't know.

MR. SIMPSON: What was the date of that first examination.

THE COURT: July 28, 1915, he says.

30 JOHN CONVERY, sworn.

Direct Examination by Mr. Blake:

Q. Mr. Convery, you are a constable of Hudson County? A. I am, sir.

Q. And have been assigned to Judge Campbell's court room? A. Yes, sir.

Q. You were on duty here in 1915 when the Eckert case was tried—1914, when the case of

40

John Convery—Direct

Anna Eckert against the Public Service Railway Company was tried? A. Yes, sir.

Q. You had charge of swearing the witnesses at that time? A. Yes, sir, I did.

Q. Did you assist Mrs. Eckert or Miss Eckert from the anteroom to the stand that day?

10

(Objected to. Objection overruled.)

A. Why, I think I did.

Q. You had to assist her into the chair, there, didn't you? A. Sir?

Q. You had to assist her into the witness chair? A. Yes, sir.

Q. Then you had to get pillows, didn't you, to put behind her back? A. I think I did.

Q. When she left the witness stand you had to assist her from the stand, didn't you? A. Yes, sir.

20

Q. In the anteroom they had her in an invalid chair, didn't they? A. Why, I think it was one of those steamer chairs.

Q. She was carried into the anteroom, wasn't she? A. I couldn't say that, Mr. Blake, because I wasn't there. I only seen the young lady when she was in the anteroom.

Q. You assisted her out of some sort of steamer chair in the anteroom and brought her in here to be sworn? A. Yes, sir.

30

Q. And that was the trial held before Judge Campbell; is that correct? A. Yes; that was tried here, yes, sir.

Q. You were present at both trials before Judge Campbell, weren't you? A. I wouldn't say for sure about that, Mr. Blake. I was here at one trial, I am positive of that.

40

*John Convery—Cross**Cross-Examination by Mr. Simpson:*

Q. At the first trial when you had to assist her she had a hemorrhage here, didn't she, on the floor or somewhere? Wasn't there blood all over her and Dixon told the jury—

10

MR. BLAKE: I object. ,

Q. Was there blood, do you remember? A. Whatever trial it was, I couldn't say whether it was the first or second, there was something happened to the young lady, whether it was a hemorrhage or what it was I couldn't say; I know there was something there that happened, whether the first or second trial.

20

Q. That was right in open court, wasn't it?

A. Yes.

Q. Before the jury? A. Yes, sir.

Q. Now then the second time you didn't have to assist her, did you? Didn't she sit in the back seat here at the last trial and didn't she walk up to the stand with some lady? That was the last trial, the third trial? A. Give me them dates, because—I don't remember.

30

Q. You are trying to testify what you saw? A. Of course, Mr. Simpson, I was out of this court for three months or more.

Q. Do you know whether you were here at the last trial or not? A. I don't think I was here. I wasn't here at one trial, because I was away three months myself.

Q. Do you know what trial you are testifying to? A. I do not.

Q. Now when you say you assisted her in what did you mean, that you carried her or gave her

40

John Convery—Cross
John Herman—Direct

your arm? A. No, sir; I didn't carry her. In fact I assist all women into the chair, but I assist this woman in and put pillows behind her.

Q. A little bit of a Chesterfield? A. Yes.

By Mr. Blake:

10

Q. She was around here for—the trial took two or three days, didn't it? A. Yes.

Q. She stayed here all the time, did she, in the steamer chair? A. Yes.

Q. While not on the stand? A. Yes.

JOHN HERMAN, sworn.

2)

Direct Examination by Mr. Blake:

Q. Mr. Herman, you are employed by the Public Service Railway Company? A. I am.

Q. What is your business? What position? A. Why; clerical.

Q. In the Newark office? A. Newark office.

Q. Where were you this summer. A. At Holmes, New York.

Q. What date were you there? A. Why, from August the 19th to September the 1st.

30

Q. Nineteen hundred and sixteen? A. Nineteen hundred and sixteen, this year.

Q. Was a girl by the name of Miss Anna Eckert up there at that time? A. There was.

Q. Did you take some photographs of her during that time? A. I did.

Q. I show you D-1 for identification and ask you if you recognize that? A. Yes, I do.

40

John Herman—Direct

Q. Who is that? A. That is Miss Eckert.

Q. Miss Anna Eckert? A. Yes.

Q. Did you take that photograph? A. I did.

Q. Is that a likeness? A. It is.

Q. What day did you take it? A. Why, I was
—between that period.

10 Q. Between the period of— A. Of August 19th
and September 1st.

MR. BLAKE: I ask that it be marked.
(Photograph marked Exhibit D-1)

MR. SIMPSON: Can't we save time on
all these?

You could say they were all taken.

MR. BLAKE: All were identified—were
all taken at the same time.

20 MR. SIMPSON: And all taken at the
place he stated.

THE COURT: And within the period
which he stated?

MR. SIMPSON: The period. That is
all.

Q. In this there are two appear here—in D-2,
which is Miss Eckert? A. The one here dressed
up.

30 Q. The one dressed like a man? This is a
group picture, D-7, and the one marked with an
X, is that she? A. Yes, that is.

Q. There is another group picture, D-5; is Miss
Eckert in that? A. This one immediately—the
top one here.

Q. The top picture. In D-3, there are two fig-
ures. Which is she? A. The one with the sweater
on.

40 Q. The striped blazer? A. Yes.

John Herman—Direct

MR. BLAKE: I offer these.

MR. SIMPSON: I object until I have had an opportunity first of cross-examining a second. After I examine I do not waive my objection.

Q. These are all likenesses of Miss Anna Eckert? A. Yes, they are. 10

Q. While you were there this summer did you walk with her? A. I did.

Q. Boat and swim in the same parties?

MR. SIMPSON: I object, on the ground that is not relevant or material in my case. I am not suing for Annie Eckert.

THE COURT: He is attacking by this method—he is attempting to attack the credibility or weight to be given to the testimony of Dr. Rector. 20

MR. SIMPSON: He has no right to do it, because he asks on collateral matter.

THE COURT: I do not agree with you. That is the reason I overrule your objection.

MR. SIMPSON: Objection.

THE COURT: I do not know that I favor this method of examination, because of the extremes to which it may go, but I am inclined to permit it at this time. You may have your exception to it. 30

A. Yes sir; we were all together.

MR. BLAKE: I won't pursue that any further.

*John Herman—Cross**Cross Examination By Mr. Simpson.*

Q. How do you know this Miss Eckert? Did you know her before you went into this country place, or did you go up as a detective to get these pictures? A. Why, I went up there on my vacation. I went up there as I was told she was up there.

10

Q. Who told you she was up there? A. Why, from the office.

Q. You never knew her before that time, did you? A. No, I did not.

Q. And the woman whose pictures you took, the first time you ever saw her, was up in this country place, was it? A. It was up there.

20

Q. Did you go around with her as a friend—meet her as a friend and go around with her as a friend, did you? A. No, not as a friend at all. I went around just in a casual way the same as I meet anybody to go on your vacation.

Q. Went out alone with her without letting her know you were a Public Service investigator or detective? A. She never asked.

Q. You didn't tell her? A. No.

30

Q. In other words, you were trying to get her confidence, trying to be her friend, while actually you were a sort of spy for the Public Service?

MR. BLAKE: I object to that language.

A. No.

MR. BLAKE: I object to that language. We are not trying her case. Her case is tried and she got her money.

40

John Herman—Cross—Re-Direct

Q. Were you paid for this work? A. Not paid, no—no sir.

Q. Did it as a labor of love for the Public Service? A. That is, my salary was on just the same.

Q. You were not paid?

MR. BLAKE: His vacation. 10

Q. When was it that you did this, the last—this present summer? A. This present summer.

Q. Do you know when Miss Eckert was hurt, how many years ago it was? A. Why, as I remember it was about four or five years ago.

Q. And you did not take any pictures of her except these and you don't know what she wore under her clothes, do you? A. No sir.

Q. You didn't take any pictures of a brace or anything of that kind? A. No, sir. 20

Re-Direct Examination By Mr. Blake.

Q. You took it, as I understand you,—you said you were on your on your vacation up there; is that correct? A. Yes sir.

Q. You get two weeks vacation each year, don't you? You were spending your vacation up there this year? A. I was. 30

Q. Did you speak with this Miss Anna Eckert and talk with her about her trial?

Mr. SIMPSON: I object.

Mr. Blake: I want to be sure it was the same.

Mr. SIMPSON: Are we bound by admissions of Anna Eckert?

The COURT: What would be the purpose; to identify this as the person? 40

John Herman—Re-Direct

MR. BLAKE: Yes.

MR. SIMPSON: Objected to as pure hearsay.

The COURT: I have in mind this, Mr. Blake. I have in mind Dr. Rector has identified these pictures.

10

MR. BLAKE: All but one, and that he said it looked like her, but he wasn't sure. I don't suppose it is so important.

MR. SIMPSON: I object to them all.

MR. BLAKE: I offer the pictures.

MR. SIMPSON: I object on the ground that they are irrelevant and incompetent.

The COURT: For the same reason you suggested before, I take it?

20

MR. SIMPSON: No; and they also have nothing to do with this case. We are not for Annie Eckert. We are suing for Helen Hoff.

The COURT: Overruled.

By Mr. Simpson

Q. This Mrs. Hoff, the plaintiff, was not up here summering at the same time with Miss Anna Eckert?

30

MR. BLAKE: No, we will admit that.

Mr. SIMPSON: I want it from him.

Q. You didn't have her out boating or canoeing at the expense of the Public Service? A. I didn't see her up there.

The COURT: I will overrule the objection to the offering of these papers.

MR. SIMPSON: Take an objection.

40

The COURT: I admit them.

*Dr. John G. Borgmeyer—Recalled—Direct—
Cross*

DR. JOHN G. BORGMEYER recalled.

Direct Examination by Mr. Simpson:

Q. Doctor, did you say anything about an operation; it was or was not necessary? 10

THE COURT: No; he wasn't asked about it.

Q. Let me ask if you limit it to an operation.

(Witness resumes witness stand.)

Q. Doctor, an operation in this case in your opinion necessary or advisable? A. Yes.

Q. Could you tell until you cut in how extensive it would have to be? A. Well, to remove the tumor, the entire tumor that is all I would remove 20

Q. Could you tell how deep that is in until you get in, until you cut in? A. In that case I should say yes.

Q. How much of a hole would you have to make in her breast? A. Why, it would be—merely the removal of the tumor tissue, which would be the size of an English walnut. 30

Q. Would that hole fill up or would that always be a hole? A. Oh, no, that would fill up.

Cross Examination By Mr. Blake.

Q. Would it be necessary to remove the entire breast to get that? A. Oh, absolutely no.

Q. I have forgotten something else. Doctor, were you last year engaged in surgical work on 40

*—Dr. John G. Borgmeyer—Recalled—Cross
Reading of Previous Testimony*

the other side in any of the hospitals, war hospitals? A. I was.

Q. Where were you engaged? A. I was in the Military Hospital in Vienna.

10 Q. For how long a time? A. About four months.

By A Juror.

Q. May I ask a question? Will that have any effect on the milk duct of this woman if the tumor was removed? A. No.

Q. Wouldn't hurt that at all? A. No, it is a capsulated tumor.

20

Reading from Previous Testimony of Dr. Rector.

Mr. BLAKE: I want to offer the testimony—I have the typewritten extract. I want Mr. Kelley's notes on it.

THE COURT: As I understand it, this is to be an offer of the testimony of Dr. Rector, taken at the previous trial of the Eckert case?

30

Mr. BLAKE: Yes sir.

MR. SIMPSON: I object to the offer of admit the testimony, on the ground that so much of it as the Doctor refused to if he denied it there is no proof of it.

THE COURT: Then you want formal proof from the minutes?

MR. SIMPSON: Well, I also object that if has he said it is not his testimony

40

Reading of Previous Testimony

there is no proof that is was his testimony.

THE COURT: That means in order to establish it—

MR. SIMPSON: I will admit this type-written record, of course. I also object on the ground that it is irrelevant and incompetent in this case, what the Doctor testified to in another case. 10

THE COURT: I understand then that you are not requiring or your objection does not go to it being formally proved.

MR. SIMPSON: No, not as an accurate transcription, but as to its competency and relevancy I object.

THE COURT: I understand. I over-rule it. 20

Mr. SIMPSON: I ask an objection.

MR. BLAKE: These questions are from the transcript of the shorthand notes of the testimony taken on the 15th day of December, 1913:

Q. "Well, Doctor, if at the end of six months she were no better and you were then at that time asked whether at the end of six more months you couldn't tell whether she would be more likely to recover than you could at that time of the examination, what would your answer be? 30

A. I would say that she was going to remain disable the rest of her life. Q. Why a year, more than six month?

It has been seven or eight months now?

A. Well, that would give her about a year from the time of her injury, and by that

Reading of Previous Testimony

10 time we would know definitely whether these parts were going to repair. Q. But can't you tell from your own judgment and experience now as accurately as you could a year from now? A. My opinion now is that she will not be better. If any change takes place six months from now, why, my opinion now is not proper. That is all I can say. Q. We all understand that. A. My opinion now is she will not get better. If in six months she does not get better, I am mistaken. Q. That always follows? A. Absolutely. Q. But suppose six months from now you were on the stand and she was not then better? A. Then I would say she would remain. Q. But wouldn't your opinion be only your opinion yet? A. It would be the same as now, but verified by further time. Q. So if it were a year from now it would be still further verified by time? A. Yes sir. Q. And in ten years it would be still further verified, wouldn't it? A. Yes,—considering conditions were the same. Q. But from your experience and your study in your profession, are you or are you not now able to express an opinion as to whether or not she is likely to recover? A. I am. Q. Well, what is your opinion? A. That she will remain about the same."

20

30

MR. SIMPSON: I want the further objection that he has no right to read anything that was not called to Dr. Rector's attention.

40

Reading of Previous Testimony

MR. BLAKE: We can—

THE CUORT: Of course that objection would be good. I am assuming he is not going any further than that. If you have, that should be stricken out.

MR. BLAKE: It is exactly identical. I have marked alongside. If not, you can verify from what I did read and strike out. 10

MR. BLAKE: This is from the testimony taken on the 8th day of April, 1914:

“Q. Her back began to what? A. Began to arch, began to bend at the part of the fracture. In the beginning she would have a certain amount of rigidity at that part which would protect it. There was a loss 20
—there was a certain amount of fixation, we call it, at that part which was caused primarily by a fixation of the muscles, so to speak,—that lasted for some time, but it would give way when the support was taken away and her back would bend again. I found at that time—or the reason of my putting on a solid cast again was the fact that after a little while—as she was un- 30
able to bear the weight of her body and I was getting an arch and curvature just at the point of the break, which showed an angulation, which showed a beginning of the weakness at first, and ever since that time I have had a solid plaster cast on her back, from the lower part of her breasts to the lower part of her ribs. Q. What was this angulation forward? A. The point of 40

Reading of Previous Testimony

10 the break where I have a fibrous union instead of bony union. I have fibrous union at the portion of the break which was due either to the stretching of the fibrous union or losing the support of the muscles which formerly held it in a rigid position. Q. Now at these various times you observed of course the locality of this break. What was its condition as far as you could observe? A. What do you mean, what was its condition? Q. Well, as to its break? A. It simply showed callus. Q. How much callus? Did that decrease or increase? A. It remained about the same. Q. How about the discoloration? A. Well, there is a discoloration now, not the discoloration which was there originally, originally was due to a pouring out of blood or serum of the tissues—”

20

MR. SIMPSON: I object. They didn't read to-day, anything telling about discoloration growing out of serum tissues. Getting the record all loaded up with a lot of stuff.

30 MR. BLAKE: Right, Aleck. All except down to “As to break? A. It simply showed callus. Q. How much callus? A. Did that decrease or increase? It remains about the same.” I did not go into discoloration.

Mr. Blake continues reading as follows:

“Q. Have you formed an opinion or judgment from your knowledge of the case, as you have treated it and found her from

Reading of Previous Testimony
James J. Higgins—Direct

time to time? A. I have. Q. As to whether or not she is liable to recover or will recover? A. I have. Q. What in your opinion is the likelihood of your recovery? A. She will not recover. Q. Do you think she will be any better than she is to-day? A. No. Q. Has she got a broken back, Doctor? A. She has the result of a broken back, that is, there is a partial fibrous union between the parts that were broken." That is the testimony, your Honor. 10

THE COURT: That closes the case, gentlemen.

MR. SIMPSON: Not for me.
 Defendant rests. 20

PLAINTIFF'S TESTIMONY IN REBUTTAL.

JAMES J. HIGGINS, sworn.

Direct Examination by Mr. Simpson:

Q. Mr. Higgins, you are the trial expert for the Public Service, aren't you? A. No.

Q. You attend to all the trials? A. Yes. 30

Q. And were you present at the last Eckert trial? A. Yes, I was present.

Q. There were three altogether? A. Yes, there were three of them.

Q. Didn't she sit in the back seat the last trial? Didn't some woman walk with her up to the stand and support her around at the last trial? A. My recollection is that each time that she was here she used the steamer chair. If you 40

James J. Higgins—Direct

say that is so I may be mistaken, but I don't know. I saw her, my recollection is that she had a green pillow and sat in that seat? A. I think perhaps she did sit with some pillows in the last seat, all propped around her.

10 Q. And that some woman walked with her one day to the stand very slow. Is that your recollection? Of course I can't testify. I ask you as my witness? A. I think that some—I know that she was assisted each time that she came in the last seat with pillows propped around her. I think that is true.

Q. Wasn't the accident which she sued for jumping or being thrown off the trestle of the Public Service Company? A. Oh, yes; she fell
20 off the trestle.

Q. Which trestle was it? A. At the West Shore Ferry.

Q. And that is what she was suing for? A. Yes sir.

BOTH SIDES REST.

Motion to Direct Verdict.

30 MR. BLAKE: I ask a direction of verdict, if your Honor please, on the ground that no negligence has been shown on the part of the defendant's servants.

THE COURT: I will decline that for the same reasons I declined to grant the non-suit, that being in my estimation it is a question passed upon by the jury.

MR. BLAKE: Your Honor grant me an objection?

THE COURT: Yes.

40

Court's Charge to Jury.

This is a case brought by Helen Hoff against the Public Service Railroad Company in which she seeks to recover damages for this: She says that while a passenger upon a car of the defendant company an assault and battery was committed upon her by another passenger of the defendant company. You will understand, gentlemen, she does not say that this assault and battery was the act of the defendant company, because that could not be physically so, but she says that the assault and battery was committed upon and against her by another person who was upon a car of the defendant company, and that her right of recovery rests upon this, that the defendant company was negligent in that it did not under the circumstances properly protect her from the assault and from the acts of this other person. In order to be entitled to recover she must have satisfied you by a fair preponderance of the evidence primarily that what did happen to her was chargeable or imputable to the defendant company because it had not exercised and did not exercise through its agents and servants that care which the law imposes upon such a concern as the defendant company.

Our courts have said as to the degree of care, quantity of care, and the manner of care which a company such as a railway company or a street railway company owes to its passengers this—and it is important, gentlemen, that you should bear this rule in mind, because it will be necessary for you to do so and to apply it to the facts in this case before you can properly come to a conclusion as to whether or not the plaintiff is entitled to a verdict—

10

20

30

40

Court's Charge to Jury

10 "A railroad company is a common carrier and owes to its passengers the duty of guarding them from assaults and insults from their fellow passengers and strangers when by a high degree of care the same might have been prevented. This duty grows out of and is impliedly a part of the contract between the carrier and the passenger. According to the uniform tendency of adjudications which we admit as authorities the carrier owes to the passenger the duty of protecting him from the violence and insults and assaults of his fellow passengers or intruders, and will be held responsible for its own or its servants' neglect in this particular when, by the exercise of proper care, the acts of violence might have been
20 foreseen and prevented, and while not required to furnish watchmen or servants sufficient to overcome all force or negligence when unexpectedly happening, yet it is the duty to provide reasonable precautions to protect the passenger from assault from any quarter at which they might reasonably be expected to occur under the circumstances of the case and the condition of the parties."

30 And further: "The general rule is clear that from whatever source the danger may arise, if it be known or should have been known, care must be exercised to protect the passenger from that danger."

And further, upon that same point, our courts have again said this:

40 "A common carrier is negligent if it fails to take a high degree of care to protect its passengers from every danger that the exercise of reasonable foresight would anticipate."

Court's Charge to Jury

That is the rule, gentlemen, which has been laid down by the courts of other jurisdictions and seemingly and undoubtedly has been adopted by the courts of this state, in such situations as the one in question. So, therefore, gentlemen, that is the rule which you must use the rule which you must apply in the determination of this particular case. In other words, it is the measure by which you are to determine, by its applications to the facts as you find them in this case, as to whether or not the plaintiff has satisfied you by a fair preponderance of the evidence that the defendant company through its agents or its servants transgressed that rule which I have just given you. If she has not satisfied you thereof, then she is not entitled to recover.

10

If you get to that point in your deliberations and you find that, taking the facts as she may have shown them to you and applying them to this rule which I have given you, she has not satisfied you by a fair preponderance of the evidence that the defendant was guilty of negligence under that rule then you need not go any further, because that ends the case, and then she has not made out that case to that extent, and cannot recover.

20

30

It is also the duty of the plaintiff, of course, gentlemen of the jury to satisfy you by fair preponderance of the evidence of the facts which she alleges as to this occurrence and she must, as I say, make out her case in all its particulars by a fair preponderance of the evidence. If she has not, then she is not entitled to recover.

As I understand the plaintiff's allegation it is this: that she entered this car at Bergen Point,

40

Court's Charge to Jury

and at the time of her entering the car there were upon it a number of passengers, six or seven in number, the major portion of them were sitting at the rear end of the car, the end at which she entered, and that as she entered the car or was about entering the car a remark or remarks were
10 passed which she says were directed to her. That she proceeded into the car without paying her fare and then returned and deposited her fare in the box for that purpose on the rear platform; that she was expecting to alight from the car at Sixteenth Street and the car stopped for that purpose; that she proceeded from her seat, somewhere in the car, at the center or beyond the center toward the front of the car, toward the back of
20 the car, and as she was about leaving the car proper some further remark or some remark was made by a party by the name of Whitman, who was upon the car, which caused her to turn and to proceed back towards the point where he was and to retort to a remark which he had made; that he arose from his seat, and as she says, slapped her in the face and also struck her in the breast. There are other witnesses who were produced and who testify to practically that state
30 of affairs, except that they say that the only blow was struck was the one that she says was first struck, and they say that she was slapped in the face by Whitman; they say that they did not see Whitman strike the second blow, which was the one which she says hit her in the breast.

Now then, gentlemen, if under the rule which I have given you and under the evidence as you may find it, you find that she is entitled to recovery, she would be entitled to recover for pain

Court's Charge to Jury

and suffering, both mental and physical, which she may, if she has, shown was the proximate result of this happening. She is also entitled to compensation for such disability, if any, that she may have shown you, if she has, is the proximate result of this happening. You will see, gentlemen, that it will be necessary for her to have satisfied you as to the correctness or truth of what actually occurred, because if what actually did occur was only the one thing, that is the slapping of her in the face, and not the second thing which she says was a blow struck, then of course she is not entitled to recover for anything that might be said to be the result of the blow in the chest or in the breast, but only entitled to that which would grow out of and be the proximate of the one blow which was struck, and which she says was a slap in the face. The burden is upon her to satisfy you as to that. If she has satisfied you by a fair preponderance of the evidence that both the blows which she says were struck were struck, then, too, and again, before she can recover for what she says is the result of the blow in the breast she must have satisfied you, not alone that it is possible that the infirmity of which she speaks now, in her breast, the trouble which she says she is now experiencing, was the result of that blow, but she must have made it appear to you that it is reasonable, considering all of the circumstances, to infer that what she complains of now as being the trouble with her breast was the proximate result of a blow which she received.

Now, gentlemen of the jury, if she is entitled to a verdict she is entitled to just that sum which will compensate her for those things which I have

10

20

30

40

Court's Charge to Jury

spoken to you of, provided, of course, she has satisfied you of them by a fair preponderance of the evidence. She is not entitled to a verdict which will punish this company, because that is no part of a verdict in a case of this character.

10 Plainly speaking, she is entitled only to be compensated—in other words, to be made good—for that which she has suffered, by a showing upon her part, by a fair preponderance of the evidence, is chargeable approximately to the negligence of the defendant company, if she has satisfied you of any such negligence.

20 Of course, gentlemen of the jury, it is your particular province and right and duty to determine from the whole testimony what is the truth. It is your duty and your right to determine what weight is to be given to each part and particle of the testimony.

30 That brings to my attention the testimony with regard to the case that was said to have been previously tried in this court. That is the manner and that is the testimony in which these photographic exhibits have been produced and used. The only purpose of that testimony, gentlemen of the jury, is to attack the credibility and the weight and the testimony of Dr. Rector in this case, if it does lessen it or make it less creditable. That is the only purpose and that is the only use to which that testimony can be put. It is the only reason why it was permitted to be used in this case, and that was to attack the credibility of Dr. Rector and to attack and break down, if it does, the weight of his testimony in this case, and that is the only purpose for which you will use it.

40

Court's Charge to Jury
Defendant's Exceptions

Now, gentlemen of the jury, there is nothing else that I see in this case that I can bring to your attention which will assist you, and therefore with that you may take the case.

10

DEFENDANT'S EXCEPTIONS.

MR. BLAKE: I except to that part wherein you said "a railroad company is a common carrier and owes to its passengers," etc.

THE COURT: I read that from 33 Vroom, page 14 and 15: "A railroad company is a common carrier, and owes to its passengers the duty of guarding them from assaults and insults from their fellow passengers and strangers, when by a high degree of care the same might have been prevented. * * * * This duty grows out of and is impleidly part of the contract between the carrier and the passenger. According to the uniform tendency of adjudications, which we admit as authorities, the carrier owes to the passenger the duty of protecting him from the violence and insults and assaults of his fellow passengers or intruders, and will be held responsible for its own or its servants' neglect in this particular, when by lence might have been foreseen and prevented; and while not required to furnish the exercise of proper care, the acts of vio- watchmen or servants sufficient to over-

20

30

40

Defendant's Exceptions

10 come all force or negligence when unexpectedly happening, yet it is the duty to provide reasonable precautions to protect the passenger from assault from any quarter at which they might reasonably be expected to occur under the circumstances of the case and the condition of the parties.
 * * * * Carriers of passengers are bound to exercise the utmost care in maintaining order and guarding those they transport against violence from whatever source arising, which might be reasonably anticipated or naturally expected to occur. * * * * The general rule is clear that from whatever source the danger should arise, if it be known or should have been known, care must be exercised to protect the passenger from that danger.”

20

MR. BLAKE: An exception to that part of your Honor's charge wherein you said, “A common carrier is negligent if it fails to take a high degree of care to protect its passengers from every danger that the exercise of reasonable foresigh would anticipate.”

30

Grounds of Appeal.

(Filed December 13, 1916.)

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">HELEN HOFF, <i>Plaintiff-Respondent</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">PUBLIC SERVICE RAILWAY COM- PANY, <i>Defendant-Appellant</i></p>	}	<p>On Appeal 10 from Hudson County Circuit Court.</p>
--	---	--

To ALEXANDER SIMPSON, ESQ.,

Attorney of Plaintiff-Respondent.....

20

Sir:

TAKE NOTICE that the following are the grounds of appeal which the defendant-appellant will urge in the above-entitled cause:

1. Because the trial court, although requested so to do by the attorney of the defendant below, such request being based on the ground that no negligence on the part of the defendant below had been shown by the plaintiff below, refused to non-suit the plaintiff below; 30

2. Because the trial court, although requested so to do by the attorney of the defendant below, such request being based on the ground that the whole case disclosed no negligence on the part of

40

Grounds of Appeal

the defendant below, refused, at the close of the whole case, to direct a verdict in favor of the defendant below.

Dated, December 8, 1916.

Yours truly,

10

LEFFERT S. HOFFMAN,
Attorney of Defendant-Appellant.

(Endorsed with acknowledgment of service December 11th, 1916, by attorney of plaintiff-respondent.)

20

30

40

Supreme Court Opinion.

NEW JERSEY SUPREME COURT.

FEBRUARY TERM, 1917.

<p style="text-align: center;">HELEN HOFF, <i>Plaintiff and Respondent,</i></p> <p style="text-align: center;">VS.</p> <p style="text-align: center;">PUBLIC SERVICE RAILWAY COM- PANY, <i>Defendant and Appellant.</i></p>	}	10
---	---	----

Submitted March 22, 1917; Decided June 22, 1917. 20

Syllabus.

1. A carrier owes to its passenger the duty of protecting him from the violence and insults of other passengers so far as this can be done by the exercise of a high degree of care, and it will be held responsible for its servant's negligence in this particular when by the exercise of proper care the act of violence might have been foreseen and prevented. 30

2. The failure of the servant of a carrier to prevent the commission of an assault upon a passenger by another passenger, to be a negligent failure or omission, must be a failure or omission to do something which could have been done by the servant; and, therefore, there is involved the essential ingredient that the servant had knowledge, or with proper care could have had knowledge, that the tort was imminent, and that he had that knowledge, or had the opportunity to acquire it suffi- 40

Supreme Court Opinion.

ciently long in advance of its infliction to have prevented it with the force at his command.

10 3. In passing upon a motion for the direction of a verdict, the court cannot weigh the evidence, but is bound to concede to be true all evidence which supports the view of the party against whom the motion is made, and to give to him the benefit of all legitimate inferences which are to be drawn in his favor.

20 4. The fact that a passenger was intoxicated to the knowledge of the carrier's conductor, the fact that he had repeatedly insulted a woman passenger in the presence and hearing of the conductor, and immediately after the last insulting remark arose from his seat and struck her twice, all without any word of admonition or protest by the conductor or attempt upon his part to prevent the assault, although he was throughout within arms reach of the drunken man, are circumstances from which the jury could properly infer that with proper care upon the part of the conductor the act of violence might have been foreseen and prevented.

30 On appeal from the Hudson County Circuit Court before JUSTICES TRENCHARD and BLACK.

For the appellant, LEFFERTS S. HOFFMAN, LEONARD J. TYNAN and GEORGE H. BLAKE.

For the respondent, ALEXANDER SIMPSON.

The opinion of the court was delivered by TRENCHARD, J.

40 This suit was brought by the plaintiff, a passenger on a trolley car of the defendant company, to recover for injuries sustained by her by reason of the failure to protect her as a passenger.

Supreme Court Opinion.

The plaintiff had a verdict of the jury and the defendant appeals.

The defendant complains of the refusal of the trial judge to direct a verdict in its favor, and the determination of the propriety of that action will dispose of every question raised and argued. 10

We are of the opinion that the refusal to direct a verdict was right.

At the time when the motion was made, it was open to the jury to infer from the evidence, if they saw fit, the following matters of fact:

The plaintiff, a young woman, boarded a closed "pay-as-you-enter" car of the defendant company on March 20, 1915, at First Street in Bayonne. It was late at night and there were some men on the car who had been to a prize fight and who had been drinking. As she walked into the car, one of the men said, "Look who is here!" or "Look who is coming!" The plaintiff was agitated and walked into the car without paying her fare and afterwards got up and paid her fare. As she passed the man the second time he again spoke to her, saying "Hello, chicken!" and addressed other insulting remarks to her as she was paying her fare. When the car reached Sixteenth Street 20 (where she wished to alight) as she passed the drunken man he said "Hey, chicken, take us along." The plaintiff resented this remark and turned and said to him, "You insulted me since I got on this car, if you insult me again I will smack your face." The man then arose from his seat and struck her twice; once in the breast and once in the face, severely injuring her. These insulting remarks made by the drunken man to and concerning the plaintiff were all in the presence of 30 40

Supreme Court Opinion.

10 the conductor of the car (who stood within two feet of the man) and were heard by him, but he uttered not a word of admonition or protest and made no effort to protect the plaintiff from such insults, nor from the assault, although he knew that the man was intoxicated.

Now the rule is that a carrier owes to its passenger the duty of protecting him or her from the violence and insults of other passengers, so far as this can be done by the exercise of a high degree of care, and it will be held responsible for its servant's negligence in this particular, when, by the exercise of proper care, the act of violence might have been foreseen and prevented.

20 *Exton vs. Central R. Co.*, 62 N. J. L. 7; 63 N. J. L. 356.

30 It is unquestionably the right of a carrier to control a person who is behaving in an improper manner on its conveyance, or to eject a person who refuses to desist from objectionable and indecent conduct, or whose condition is such as to render his presence on the conveyance offensive or dangerous to the reasonable comfort or safety of other passengers. And having this power of control or ejection it is only reasonable to hold the carrier liable in case its negligent failure to exercise it results in injury to a passenger. The gist of the action for such injuries is the negligence of the carrier or its officers in charge of the conveyance.

40 The negligent omission of the servant of a carrier to prevent the commission of a tort upon a passenger by fellow passengers being, as we have stated, the basis of the carrier's liability to a passenger injured by such tort, it follows, of course,

Supreme Court Opinion.

that the failure to prevent the commission of the tort, to be a negligent failure or omission, must be a failure or omission to do something which could have been done by the servant; and, therefore, there is involved the essential ingredient that the servant had knowledge, or with proper care could have had knowledge, that the tort was imminent, and that he had that knowledge, or had the opportunity to acquire it, sufficiently long in advance of its infliction to have prevented it with the force at his command. 10

The defendant argues that the evidence conclusively shows (1) that the man who committed the assault upon the plaintiff was not drunk and (2) that its conductor had no reason to anticipate the assault, and hence that a verdict should have been directed in its favor. 20

But this contention is not well founded in fact.

In passing upon the motion for a direction of a verdict for the defendant, the court cannot weigh the evidence, but is bound to concede to be true all evidence which supports the view of the plaintiff, and to give her the benefit of all legitimate inferences which are to be drawn in her favor. So considered, it was open to the jury to find both that the passenger who assaulted the plaintiff was drunk, and that the conductor had reason to anticipate the assault sufficiently long in advance to have prevented it. Of course, the mere fact that a passenger may have drunk to excess, will not, in every case, justify his expulsion from the car. It is rather the degree of intoxication, and its effect upon the man, and the fact that, by reason of the intoxication, he is dangerous or annoying to the other passengers, that gives the right or im- 30 40

Supreme Court Opinion.

poses the duty of expulsion. In the present case the mere fact that the drunken man was not ejected is not a controlling circumstance. But the fact that the man was intoxicated to the knowledge of the conductor, the fact that he had repeatedly grossly insulted the plaintiff in the presence and hearing of the conductor, and immediately after the last insulting remark, arose from his seat and struck the plaintiff twice, all without any word of admonition or protest by the conductor or attempt upon his part to prevent the assault, although he was throughout within arms reach of the drunken man, are circumstances from which the jury could properly infer that with proper care upon the part of the conductor the act of violence might have been foreseen and prevented.

The judgment below will be affirmed, with costs.

30

40

Order of Affirmance.

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">HELEN HOFF, <i>Plaintiff and Appellee,</i></p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">PUBLIC SERVICE RAILWAY COM- PANY, <i>Defendant and Appellant.</i></p>	}	<p style="text-align: right;">On Appeal.</p>	<p>10</p>
---	---	--	-----------

The above appeal having been duly argued at the February Term, 1917, by Lefferts S. Hoffman, Leonard J. Tynan and George H. Blake for the appellant, and Alexander Simpson for the appellee, and the Court being of the opinion that the judgment below should be affirmed,

It is on this 29th day of June, 1917, ordered that the judgment below be affirmed with costs.

Entered June 29, 1917.

On motion of

ALEXANDER SIMPSON,
Atty. of Appellee.

Notice of Appeal and Grounds of Appeal.

(Filed July 14, 1917.)

NEW JERSEY SUPREME COURT.

10

HELEN HOFF,
Plaintiff-appellee,

vs.

PUBLIC SERVICE RAILWAY COM-
PANY,*Defendant-appellant.*Action
at Law.

20

TO ALEXANDER SIMPSON, ESQ.,
Attorney of Plaintiff-appellee.

Sir:

TAKE NOTICE that the defendant-appellant appeals to the New Jersey Court of Errors and Appeals, from the whole of the judgment entered in this cause in the New Jersey Supreme Court on appeal from the Hudson County Circuit Court, upon the following grounds:

30

1. Because the New Jersey Supreme Court, on appeal to that court from the Hudson County Circuit Court, refused to reverse, but on the contrary affirmed, a judgment entered in favor of the plaintiff-appellee in the said Hudson County Circuit Court, despite the fact that the said Hudson County Circuit Court, although requested so to do by the attorney of the defendant appellant, such request being based

40

on the ground that no negligence on the

Notice of Appeal and Grounds of Appeal.

part of the defendant below had been shown by the plaintiff below, refused to non-suit the plaintiff below;

2. Because the New Jersey Supreme Court, on appeal to that court from the Hudson County Circuit Court, refused to reverse, but on the contrary affirmed, a judgment entered in favor of the plaintiff-appellee in the said Hudson County Circuit Court, despite the fact that the said Hudson County Circuit Court, although requested so to do by the attorney of the defendant appellant, such request being based on the ground that the whole case disclosed no negligence on the part of the defendant below, refused, at the close of the whole case, to direct a verdict in favor of the defendant below.

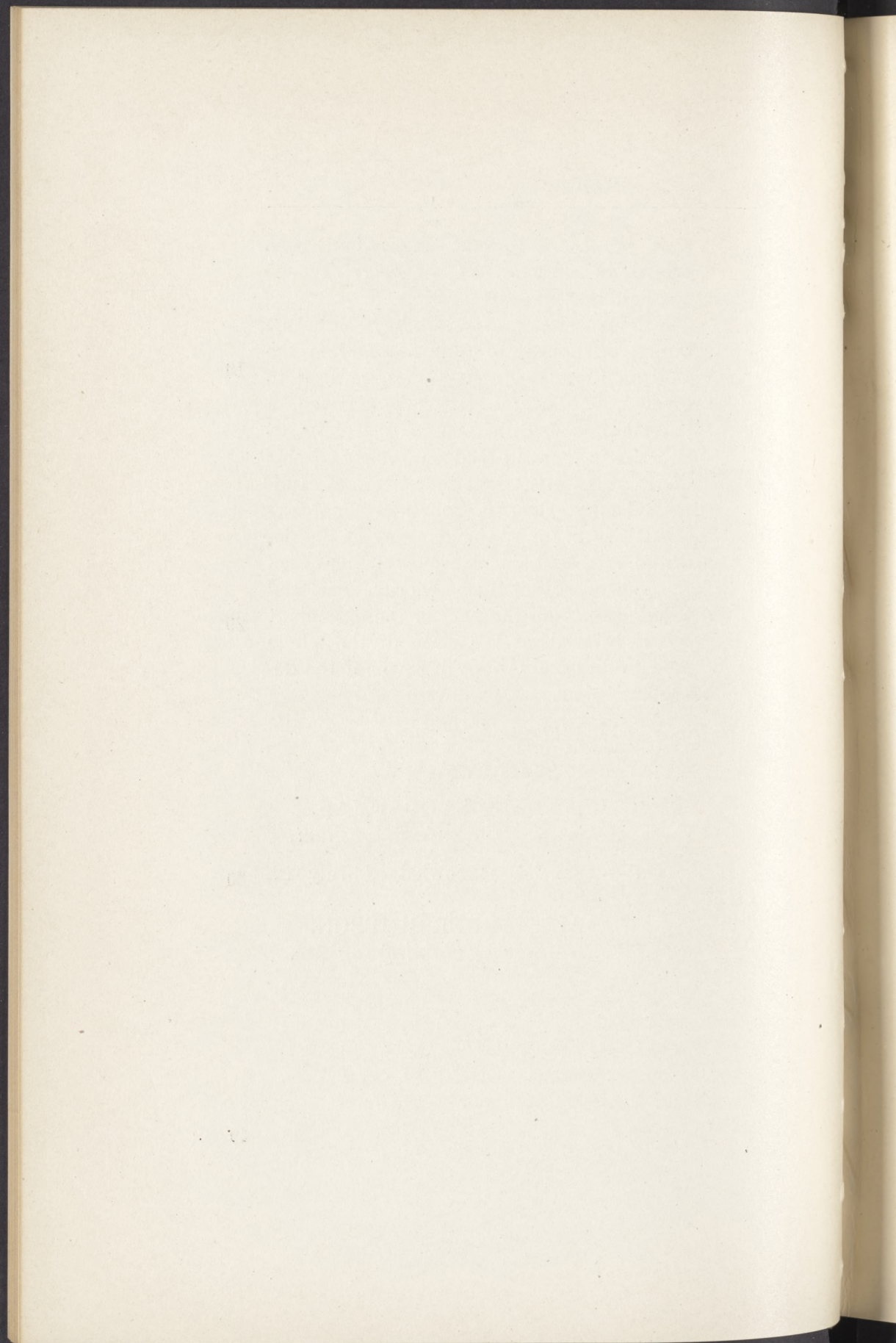
Dated July 12, 1917.

Yours truly,

LEFFERTS S. HOFFMAN,
Attorney of Defendant-appellant.

(Endorsed)—“Service acknowledged July 12, 1917. 30

ALEXANDER SIMPSON,
Attorney of Plaintiff-appellee.



New Jersey Court of Errors
and Appeals

HELEN HOFF,

Plaintiff-Appellee,

vs.

PUBLIC SERVICE RAILWAY COM-
PANY,

Defendant-Appellant.

Action at Law
On Appeal.

Respondant

Appellant

Alexander Simpson

Lefferts S. Hoffman

APPEAL FROM SUPREME COURT

Sat below: TRENCHART and BLACK, J. J.

BRIEF FOR PLAINTIFF-APPELLEE

Statement of Facts

This is a suit by a plaintiff, a passenger on a trolley car against the operator of a trolley car by reason of injuries sustained by her by reason of the failure to protect her as a passenger. She got on a closed car of the defendant company on the 20th day of March, 1915. It was late at night

and there were some men on the car who had been to a prize fight and who had been drinking. As she walked into the closed car, one of the men said, "Look who is here!" or "Look who is coming." The conductor paid no attention to the man and said nothing to him, although he saw he was under the influence of liquor. The woman was agitated and walked into the car without paying her fare and afterwards got up and paid her fare. As she passed the man the second time he again spoke to her. At no time did the conductor warn the man to desist or tell him to behave or eject him from the car. When the car came to Sixteenth Street, the plaintiff having gotten on the car at First Street, as she passed the drunken man he said, "Hey chicken, take us along." He was sitting near the conductor as he said this. The plaintiff said to him, "You insulted me since I got on this car, if you insult me again I will smack your face." This was said in the presence of the conductor and in the hearing of the conductor. The man then arose from his seat and struck her twice; once in the breast and once in the face. As the result of the injury to the breast she sustained an injury which produced a tumor of the breast.

The case was tried twice. At the first trial a verdict was recovered for \$2500, which was set aside on a rule to show cause. At the second trial a verdict for \$1,000 was recovered which the Court refused to set aside.

This appeal brings up the verdict and judgment upon the refusal of the Court below to nonsuit or direct a verdict.

At the trial of this action, the plaintiff swore a physician, who had testified in another case, not for the same plaintiff or in any way connected with the facts in this case, in a suit against the same defendant, the Court admitted testimony to show the doctor was wrong in the other case. Pictures were used but these have not been incorporated in the printed case by the defendant. If it were not for this testimony, the plaintiff would have recovered a much larger verdict.

Grounds of Appeal

The grounds of appeal are that no negligence was shown on the part of the defendant.

Argument

If the facts testified to by the plaintiff were true, it appears that although the defendant knew that the drunken men were on this car, and although the defendant knew the drunken men were abusing the plaintiff, and although the defendant knew or should have known that there might be in addition to insult some injury to the plaintiff by reason of the condition of the man, yet the defendant, through its conductor, did nothing to protect the plaintiff in any way from First to Sixteenth Street, and when the plaintiff was alighting from the car and was insulted by the drunken passenger who called her a chicken and asked her to take him along, she being a married woman and of respectability, still the defendant's conductor did nothing. When the plaintiff walked back and spoke to the man and accused him of insulting her, still the conductor remained in a place of safety on the back platform and did nothing although he

had ample opportunity to interfere, and it was for the jury to say under the circumstances, whether a man of ordinary judgment would not have known there was danger and he be required to intervene, yet he did nothing. The plaintiff was struck by the drunken man twice and it was not until one of the passengers intervened that she was protected. The conductor did nothing. Under these circumstances it was for the jury to say whether the defendant as a common carrier of passengers had discharged its duty to use a high degree of care towards the plaintiff.

In *Exton v. Central R. R.*, 33 Vr., p. 14, it is said:

“A railroad company is a common carrier, and owes to its passengers the duty of guarding them from assaults and insults from their fellow-passengers and strangers, when by a high degree of care the same might have been prevented. *Putnam v. Broadway R. R. Co.*, 55 N. Y., 108; *Holly v. Atlantic St. R. R. Co.*, 61 Ga., 215; *Hendricks v. Sixth Avenue R. R. Co.*, 12 Jones & S., 8.

“This duty grows out of and is impliedly a part of the contract between the carrier and the passenger.

“According to the uniform tendency of adjudications, which we admit as authorities, the carrier owes to the passenger the duty of protecting him from violence and insults and assaults of his fellow-passengers or intruders, and will be held responsible for its own or its servants' neglect in this particu-

lar, when by the exercise of proper care, the acts of violence might have been foreseen and prevented; and while not required to furnish watchmen or servants sufficient to overcome all force or negligence when unexpectedly happening, yet it is the duty to provide reasonable precautions to protect the passenger from assaults from any quarter at which they might reasonably be expected to occur under the circumstances of the case and the condition of the parties. *New Orleans R. R. Co. v. Burke*, 53 Miss., 200; *Pittsburgh R. R. Co. v. Hinds*, 53 Pa. St., 512; *Flint v. Norwich Transportation Co.*, 34 Conn., 554. Carriers of passengers are bound to exercise the utmost care in maintaining order and guarding those they transport against violence from whatever source arising, which might be reasonably anticipated or naturally expected to occur. *Flint v. Norwich Transportation Co.*, *supra*. The carrier must exercise the care required to protect the passenger from violence even by a stranger. *Shirley v. Billings*, 8 Bush, 147; *Farber v. Missouri Passenger Rwy. Co.*, 116 Mo., 81; *Eads v. Metropolitan St. Rwy. Co.*, 43 Mo. App., 536. The carrier is bound to protect from the insults and wanton interference of strangers and fellow-passengers. *Winnegar's Admr. v. Central Passenger Rwy. Co.*, 34 Am. & Eng. Cas., 462, 85 Ky., 547; *Milwaukee M. R. Co., v. Finney*, 10 Wis., 388. The general rule is clear that from whatever source the danger may arise, if it

be known or should have been known, care must be exercised to protect the passenger from that danger.”

It will be seen here that the Supreme Court makes it a question for the jury, whatever the source is of the danger that may arise from it, if it be known or should have been known, care must be exercised to protect the passenger from the danger. If the presence of the drunken men on the car and their riding in the car, their actions when the plaintiff got on the car, their insulting her, did not put the conductor on his inquiry and the second insult did not make him act, then what could be the facts upon which the jury would have a right to say that the conductor should have known of the danger.

In the case of *Miller v. West Jersey*, the opinion of Chief Justice Gummere, 71 N. J. Law, 364, cites the case of *Pittsburgh R. R. Co. v. Heinz*, 53 Pa. State:

“The likelihood of danger to passengers by the presence of drunken riotous persons who came upon the train in defiance of the conductor in charge, was for the jury.”

This case is tacitly approved by the opinion of the Chief Justice in *Miller v. West Jersey*. If this is the law, then the question as to whether or not the conductor should have anticipated danger to the plaintiff from the presence of the intoxicated passengers, having in addition his insulting conduct towards her and should have intervened and have used a high degree of care to protect her, would be for the jury and not for the Court.

In the case of *Brown v. Chicago & R. I. R. R.*

Co., 2 L. R. A. (N. S.), p. 103, which is fully annotated, will be found the principle declared that the liability depends upon the presence or absence of evidence showing the employee of the carrier either knew or should have known by the exercise of due care on all the facts and circumstances in the case, that injury was threatened and that is a jury question where there is evidence to support it. A number of cases in this note show judgment affirmed in the Court of Appeals on the Supreme Court opinion.

In the case of *Jansen v. Minneapolis & St. Louis R. R.*, 32 L. R. A. (N. S.), p. 1206, will be found in the note the case of *Montgomery Traction Co. vs. Wakely*, 152 Ala., 111, where it was for the jury to determine whether or not the defendant was liable where a drunken man was staggering about the car and fell against the passenger. So in the case in the notes, *McMahon vs. Interborough Rapid Transit Co.*, 110 N. Y. Suppl., 876, the liability was for the jury where passengers were acting boisterously and committing various acts of rowdyism and the guard's attention was called thereto but he failed to interfere.

Also the case of *Washer vs. Interborough Rapid Transit Co.*, 125 N. Y. Suppl., 767, where the plaintiff was insulted by drunken passengers and called the conductor's attention thereto and the latter merely laughed at him and also failed to interfere after the passenger kicked him, it was held the company was liable for the subsequent violent assault upon him.

In the old *Lawyer's Reports Annotated*, Vol. 16, p. 627, is the case of *Illinois Central vs. A. F. Miner*, in which are cited many cases among them, *Hindes vs. Pittsburgh & Fort Wayne R. R.*, 53

Pa., 517 and in the notes is also cited the case of *King v. Ohio & Mo. R. R.*, 18 American & English R. R. cases 386, an *Indiana* case holding that the carrier is bound to see that no harm comes to a passenger from a fellow-passenger whose condition and conduct clearly show that he is a dangerous person; when train hands are changed, the new ones must be informed as to passengers who need watching.

In the annotations of *Cyc.*, 1901 to 1912, p. 630 are found a list of cases where carriers are liable for acts of fellow-passengers, and all the cases hold it a jury question unless this thing could not be anticipated such as an act not in accord with the ordinary course of events—one passenger suddenly pushing another one from the steps.

Where the carrier is negligent in protecting from intoxicated fellow-passengers, it is held in *Grimsley v. R. R.*, 1 Ga. App., 557, is for the jury.

Whether the servant should have anticipated the injury was held for the jury in *Twitchell vs. R. R.*, Texas Civil App., 131 S. W., 243.

In the annotations 1914-1916 to *Cyc.*, in *Corpus Juris*, p. 325, it is held carrier must anticipate thoughtlessness of children in injuring other passengers. *Accore vs. R. R.*, 212 Mass., 307; 98 N. E., 1041, cited, carrier is bound to protect passenger from injurious acts of other passenger as far as same can be reasonably anticipated.

Taking the law of all these cases, how can it be said that there is no liability unless the knowledge is brought home to the servant of the defendant. It is not knowledge alone, it is that he should have known or should have anticipated the possibility of what happened and caused injury to the pas-

senger. If therefore, the defendant is bound to use a high degree of care to protect its passenger and to reasonably anticipate from the condition of the drunken passenger, etc., the probability of injury to a passenger, it is a jury question and not a Court question in this case, as to whether under the facts, the defendant's conductor should have anticipated the injury to the passenger.

The defendant argued below and will probably argue here that it was a sudden assault without notice to the defendant's servant and without any reason for him to anticipate that such an assault would occur.

The facts are that the servant of the defendant know that the drunken passenger had insulted the woman when she got on at First Street and had insulted her again when she put her fare in the box. He knew that he insulted her again at Sixteenth Street when she walked to the door and he was bound to use a high degree of care to protect her from any other conduct on the part of the passenger which would be likely to come from a passenger in such condition. The man who insulted the plaintiff being drunk and showing a disposition to insult her it was not beyond the bounds of probability that he would also put hands on her. Therefore, it cannot be said as a matter of law that the Judge should have decided that the servant of the defendant was without fault and the defendant without negligence. That was, under these cases before cited and under the facts herein given, peculiarly the province of the jury to say.

The respondent therefore respectfully submits that the negligence of the defendant was a jury question and that there was no error on the part of the Court in sending it to the jury.

Respectfully submitted,
ALEX. SIMPSON,
Attorney for Plaintiff-Respondent.

THE UNIVERSITY OF CHICAGO
PRESS

