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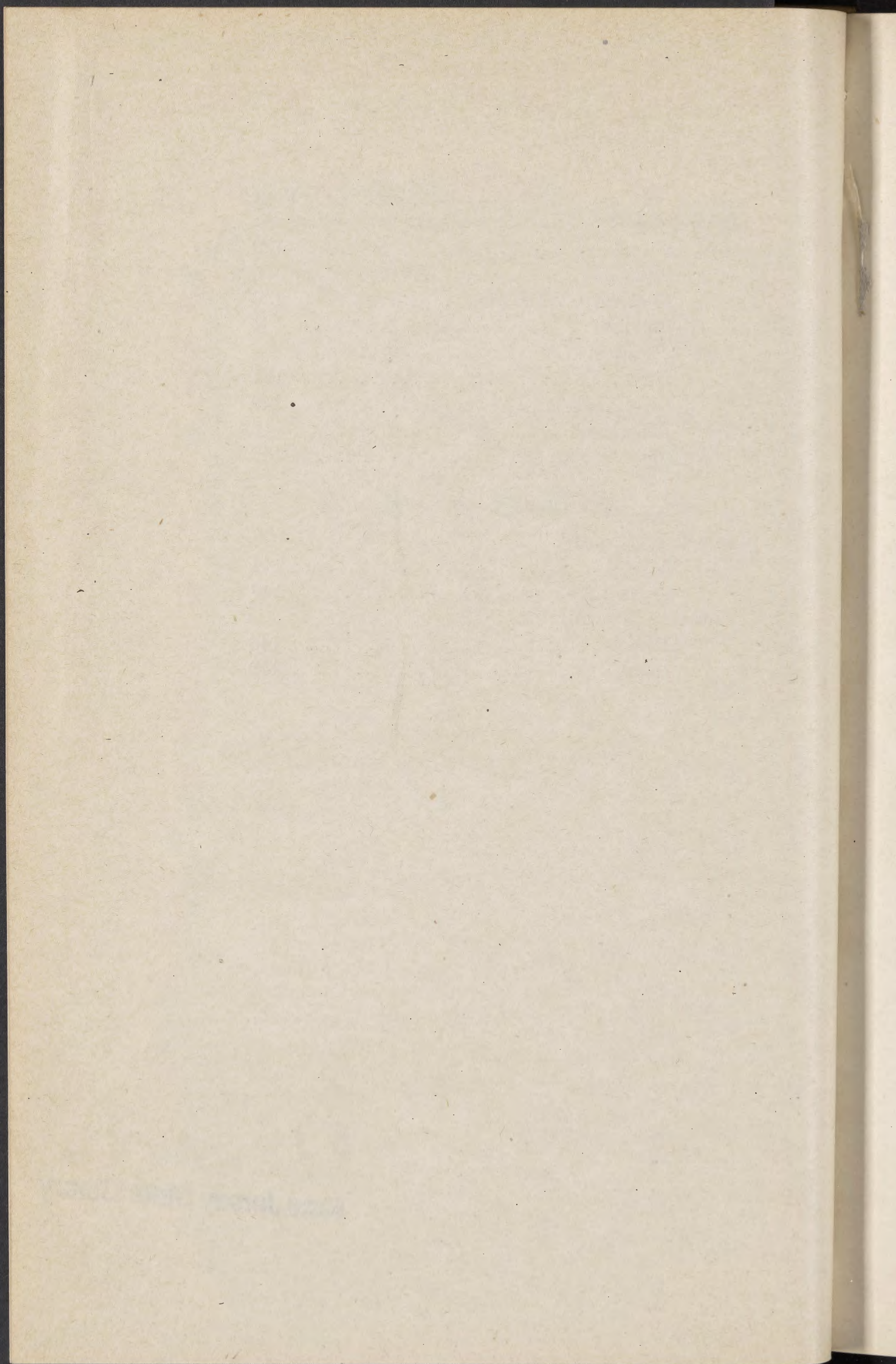
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Notice of Appeal.

New Jersey Supreme Court.

PASSAIC COUNTY.

10

ELIZABETH NOGRADY, adminis-
tratrix *ad prosequendum* of
the Estate of MICHAEL NO-
GRADY, deceased,

Plaintiff-Appellant,

vs.

The ERIE RAILROAD Co., a corpor-
ation, and WALTER HUNT,
Defendants-Appellees.

Action at Law

Notice of
Appeal.

20

To HOBART & MINARD,
Attorneys for Defendants-Appellees.

Sirs:

Take notice that the plaintiff, Elizabeth No-
grady, administratrix *ad prosequendum* of the es-
tate of Michael Nogrady, appeals to the New Jer-
sey Court of Errors and Appeals from the whole
of the judgment entered in this cause.

30

WEINBERGER & WEINBERGER,
Counsel for Plaintiff-Appellant.

Dated May 31st, 1928.

40

Summons.

*The State of New Jersey to THE ERIE RAILROAD
COMPANY, a corporation, and WALTER HUNT.*

10 (L.S.) You are Summoned to answer
the annexed complaint of Elizabeth
Nogrady, administratrix *ad pros-*
Nogrady in an action-at-law in the
New Jersey Supreme Court.

And Take Notice that unless you file your answer to said complaint with the Clerk of the Supreme Court, at Trenton, within twenty days after the service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

20 Witness, WILLIAM S. GUMMERE, ESQ., Chief Justice of the Supreme Court, at Trenton, this 4th day of September, nineteen hundred and twenty-five.

EDWARD J. KELLEHER,
Clerk.

WEINBERGER & WEINBERGER,
Attorneys.

30

40

Complaint.

Filed Sept. 24, 1925.

NEW JERSEY SUPREME COURT,
PASSAIC COUNTY.

ELIZABETH NOGRADY, adminis-
tratrix *ad prosequendum* of
the Estate of MICHAEL NO-
GRADY, deceased,

Plaintiff,

vs.

The ERIE RAILROAD COMPANY, a
corporation, and WALTER
HUNT,

Defendants.

10

20

Summons issued September 4, 1925.

Plaintiff, residing in the City of Garfield, in the
County of Bergen and State of New Jersey, says
that:

1. On or about the 3rd day of August, 1925, the
plaintiff, Elizabeth Nogrady was appointed admin-
istratrix *al prosequendum* of the Estate of Michael
Nogrady by the Surrogate of the County of Bergen
and State of New Jersey.

30

2. On or about the 27th day of July, 1925, at
Passaic, New Jersey, the defendant, the Erie Rail-
road Company, a corporation, was and still is en-
gaged in the business of common carrier of pas-
sengers and freight by railroad and as such com-
mon carrier is the owner and is in control and op-

40

Complaint.

erates a certain railroad, with its appurtenances consisting of tracks, signals and equipment, which said tracks and railroad run through the City of Passaic and County of Passaic to the City of Jersey City, in the County of Hudson and which said railroad tracks run through the City of Passaic in
10 a general northerly and southerly direction.

3. On said date the defendant, Walter Hunt was an engineer on one of the trains of the Erie Railroad Company, a corporation, running from Passaic to Jersey City as aforesaid.

4. At the intersection of Jefferson Street, in the City of Passaic, the said defendant company maintains and operates a certain depot or station
20 known as the Passaic station of the Erie Railroad Company.

5. That at said station or depot known as the Passaic station, passengers enter and board the cars of the said defendant company and alight therefrom either at the station platform or at the adjacent walk.

30 6. That on the aforesaid date, for a consideration, the plaintiff's intestate, Michael Nogrady received and was lawfully possessed of a ticket entitling said plaintiff's intestate to be carried on that day in one of the cars of the train of the defendant corporation from Passaic aforesaid to Jersey City, in the County of Hudson and State of New Jersey, and was then and there a passenger of the defendant corporation.

40 7. That at the said station or depot referred

Complaint.

to in paragraph 5 the said defendant corporation, by its agents and servants, and Walter Hunt, caused certain of its trains to stop and then and there requested its passengers to board and enter the cars of the said train to be safely and securely carried by the said corporation, its agents and servants. 10

8. That on the day and year aforesaid the defendant corporation, by its agents and servants and Walter Hunt, caused the said train going in the direction of Jersey City, to stop at the Passaic Station.

9. That when said train had stopped and while the said plaintiff's intestate, Michael Nogrady was in the act of boarding the said train at the said station at Passaic, New Jersey, as he had a lawful right to do, the said defendant, the Erie Railroad Company, a corporation, its agents and servants, and Walter Hunt, suddenly set the train in motion causing the same to start with an unusual jerk and forcibly throwing the said plaintiff's intestate from the steps of the said train and under the wheels of one of the cars thereof and running over both legs, severing them at the ankles and seriously injuring the said intestate, Michael Nogrady as a result of which the said plaintiff's intestate died a few days later on. 20 30

10. By reason of the said careless, negligent and improper operation of said train, and the carelessness and negligence of the defendant's agents and servants and Walter Hunt to properly ascertain whether all the passengers were in a safe po- 40

Complaint.

sition on said train, and because of their failure to allow the said plaintiff's intestate reasonable time to board said train properly, and because of their failure to give any signal or warning of the starting of said train, and because of the negligence of the defendant,
10 its agents and servants and Walter Hunt, who were operating said train, the plaintiff's intestate suffered the loss of both of his legs and underwent great pain and suffering as a result of which the plaintiff, Elizabeth Nogrady was obliged to expend money for medicines, nurses and physicians; as a result of the premises aforesaid plaintiff's intestate died.

20 11. Plaintiff was obliged to undergo great expense for the proper funeral of the said Michael Nogrady.

12. The said Michael Nogrady left surviving him as his next of kin and heirs at law, his wife and two children, who have suffered great pecuniary loss.

30 13. That this action has been commenced within twenty-four calendar months next after death of the said Michael Nogrady.

Wherefore plaintiff demands the sum of Seventy-five thousand dollars (\$75,000.00) damages.

WEINBERGER & WEINBERGER,
Attorneys of Plaintiff.

Answer of Defendant, Erie Railroad Company.

Filed Sept. 28, 1925.

NEW JERSEY SUPREME COURT,

PASSAIC COUNTY.

ELIZABETH NOGRADY, adminis-
tratrix *ad prosequendum* of
the Estate of MICHAEL NO-
GRADY,

Plaintiff,

vs.

The ERIE RAILROAD COMPANY, a
corporation, and WALTER
HUNT,

Defendants.

10

Action at Law

Answer.

20

The defendant, the Erie Railroad Company, a corporation of the State of New York, having its principal office in New Jersey, at the foot of Pavonia Avenue, Jersey City, Hudson County, for its answer to the complaint herein, says that:

FIRST DEFENSE.

1. It has no knowledge or information suffi- 30
cient to form a belief as to paragraph 1.

2. It admits paragraph 2.

3. It admits paragraph 3.

4. It admits that it maintains and operates a certain depot or station known as the "Passaic Station", which station is located upon its right-of-way west of the intersection of Jefferson Street; but denies that said station is maintained and op- 40
erated at the intersection of Jefferson Street and

Answer of Defendant, Erie Railroad Company.

the railroad right-of-way.

5. It admits that passengers and intending passengers enter and board certain of its cars and trains at the Passaic Station; but denies that passengers or intending passengers board or alight from its trains at the adjacent walk located upon
 10 Jefferson Street, and it denies further that the plaintiff's intestate was invited to board its train at the time and place when it is alleged he undertook to do so.

6. It denies paragraph 6.

7. It denies paragraph 7.

8. It denies paragraph 8.

9. It denies paragraph 9.

20 10. It denies paragraph 10.

11. It denies paragraph 11.

12. It denies paragraph 12.

13. It has no knowledge or information sufficient to form a belief as to paragraph 13.

SECOND DEFENSE.

30 The alleged accident as set forth in the complaint was due to contributory negligence on the part of the plaintiff's intestate.

THIRD DEFENSE.

The alleged accident as set forth in the complaint was due to contributory negligence on the part of the plaintiff's intestate in that he failed to exercise reasonable care for his own safety.

FOURTH DEFENSE.

40 The alleged accident as set forth in the com-

Answer of Defendant, Erie Railroad Company.

plaint was due to contributory negligence on the part of the plaintiff's intestate in that he was jumping on a car while the same was in motion.

FIFTH DEFENSE.

At the time of the accident as alleged in the complaint the plaintiff's intestate was a trespasser on the property of the Erie Railroad Company, and as such, the only duty owing to him was to refrain from wilful or wanton injury. There was no such injury in this case. 10

SIXTH DEFENSE.

At the time of the accident as alleged in the complaint the plaintiff's intestate was a mere licensee on the property of the Erie Railroad Company, and as such, the only duty owing to him was to refrain from wilful or wanton injury. There was no such injury in this case. 20

SEVENTH DEFENSE.

At the time of the accident as alleged in the complaint the plaintiff's intestate, who was then not connected with or employed upon the railroad of the defendant, was injured by an engine or car while jumping on a car while the same was in motion, in violation of Section 55 of the Act entitled "An Act concerning railroads. (Revision of 1903)". 30

By reason of the premises, the plaintiff's intestate is deemed to have contributed to the injury alleged to have been sustained, and the plaintiff cannot recover therefor from the defendant.

HOBART & MINARD,
Attorneys for Defendants. 40

Answer of Defendant, Walter Hunt.

Filed Sept. 28, 1925.

NEW JERSEY SUPREME COURT,

PASSAIC COUNTY.

10 ELIZABETH NOGRADY, adminis-
tratrix *ad prosequendum* of
the Estate of MICHAEL NO-
GRADY, deceased,

Plaintiff,

vs.

20 The ERIE RAILROAD COMPANY, a
corporation, and WALTER
HUNT,

Defendants.

Action at Law
Answer.

The defendant, Walter Hunt, residing in the City of Waldwick, County of Bergen and State of New Jersey, for his answer to the complaint herein, says that:

FIRST DEFENSE.

30 1. He has no knowledge or information sufficient to form a belief as to paragraph 1.

2. He has no knowledge or information sufficient to form a belief as to paragraph 2.

3. He admits paragraph 3.

4. He has no knowledge or information sufficient to form a belief as to paragraph 4.

40 5. He has no knowledge or information sufficient to form a belief as to paragraph 5.

Answer of Defendant, Walter Hunt.

- 6. He denies paragraph 6.
- 7. He denies paragraph 7.
- 8. He denies paragraph 8.
- 9. He denies paragraph 9.
- 10. He denies paragraph 10. 10
- 11. He denies paragraph 11.
- 12. He denies paragraph 12.
- 13. He has no knowledge or information sufficient to form a belief as to paragraph 13.

SECOND DEFENSE.

The alleged accident as set forth in the complaint was due to contributory negligence on the part of the plaintiff's intestate. 20

THIRD DEFENSE.

The alleged accident as set forth in the complaint was due to contributory negligence on the part of the plaintiff's intestate in that he failed to exercise reasonable care for his own safety.

FOURTH DEFENSE.

30

The alleged accident as set forth in the complaint was due to contributory negligence on the part of the plaintiff's intestate in that he was jumping on a car while the same was in motion.

FIFTH DEFENSE.

At the time of the accident as alleged in the complaint the plaintiff's intestate was a trespasser on the property of the Erie Railroad Company, 40

Answer of Defendant, Walter Hunt.

and as such, the only duty owing to him was to refrain from wilful or wanton injury. There was no such injury in this case.

SIXTH DEFENSE.

10 At the time of the accident as alleged in the complaint the plaintiff's intestate was a mere licensee on the property of the Erie Railroad Company, and as such, the only duty owing to him was to refrain from wilful or wanton injury. There was no such injury in this case.

SEVENTH DEFENSE.

20 At the time of the accident as alleged in the complaint the plaintiff's intestate, who was then not connected with or employed upon the railroad of the defendant, was injured by an engine or car while jumping on a car while the same was in motion, in violation of Section 55 of the Act entitled, "An Act concerning railroads, (Revision of 1903)".

30 By reason of the premises, the plaintiff's intestate is deemed to have contributed to the injury alleged to have been sustained, and the plaintiff cannot recover therefor from the defendant.

HOBART & MINARD,
Attorneys for Defendants.

Reply.

NEW JERSEY SUPREME COURT,
PASSAIC COUNTY.

ELIZABETH NOGRADY, adminis-
tratrix *ad prosequendum* of
the Estate of MICHAEL NO-
GRADY, deceased,

Plaintiff,

vs.

The ERIE RAILROAD COMPANY, a
corporation, and WALTER
HUNT,

Defendants.

10

Action at Law
Reply.

20

The plaintiff replying to the answer filed by the
defendant, Erie Railroad Company, a corporation,
says:

AS TO SECOND, THIRD, FOURTH, FIFTH,
SIXTH AND SEVENTH DEFENSES.

Plaintiff denies each and every allegation con-
tained in said defenses.

WEINBERGER & WEINBERGER,
Attorneys of Plaintiff.

30

Dated: October 2nd, 1925.

40

Reply.

NEW JERSEY SUPREME COURT,
PASSAIC COUNTY.

10	ELIZABETH NOGRADY, adminis- tratrix <i>ad prosequendum</i> of the Estate of MICHAEL NO- GRADY, <div style="text-align: right;">Plaintiff,</div> <div style="text-align: center;">vs.</div> The ERIE RAILROAD COMPANY, a corporation, and WALTER HUNT, <div style="text-align: right;">Defendants.</div>	}	Action at Law Reply.
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20 The plaintiff replying to the answer filed by the defendant, Walter Hunt, says:

AS TO SECOND, THIRD, FOURTH, FIFTH,
SIXTH AND SEVENTH DEFENSES.

Plaintiff denies each and every allegation con-
tained in said defenses.

30 WEINBERGER & WEINBERGER,
Attorneys of Plaintiff.

Dated: October 2nd, 1925.

Postea.

NEW JERSEY SUPREME COURT,

ERIE RAILROAD COMPANY, a corporation, and WALTER HUNT,
Defendants.

advs.

ELIZABETH NOGRADY, administratrix *ad prosequendum* of the Estate of MICHAEL NOGRADY,
Plaintiff,

10

Action at Law

On Postea.

20

No Costs.

It is ordered that judgment be and hereby is entered in favor of defendants and against the plaintiffs, without costs.

Entered November 5, 1927.

On motion of

HOBART & MINARD,

Attorneys. 30

40

Judgment.

NEW JERSEY SUPREME COURT,

10	<p>ELIZABETH NOGRADY, adminis- tratrix <i>ad prosequendum</i> of the Estate of MICHAEL NO- GRADY, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>ERIE RAILROAD COMPANY, a cor- poration, and WALTER HUNT, Defendants.</p>	<p>Action at Law On Postea. Judgment for Defendants. Hobart & Minard, Attorneys.</p>
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20 No Costs.

Judgment entered this fifth day of November, A. D. nineteen hundred and twenty seven in favor of defendants and against the plaintiffs without costs.

WM. S. GUMMERE,
C. J.

30

40

Postea.

NEW JERSEY SUPREME COURT,

PASSAIC COUNTY.

ELIZABETH NOGRADY, adminis-
tratrix *ad prosequendum* of
the Estate of MICHAEL NO-
GRADY,

Plaintiff,

vs.

ERIE RAILROAD COMPANY, a cor-
poration, and WALTER HUNT,
Defendants.

10

Action at Law
Postea.

20

This case was tried before the Honorable New-
ton H. Porter with a jury at the Passaic Circuit,
on October 31st and November 1st, 1927. The case
having been submitted to the jury, they returned
their verdict in favor of the defendant and against
the plaintiff.

NEWTON H. PORTER,
Supreme Court Commissioner
Holding position as Circuit Court Judge. 30

Entered this 5th day of November,
1927, on motion of
HOBART & MINARD,
Attorneys of Defendant.

40

Testimony.

NEW JERSEY SUPREME COURT,

PASSAIC CIRCUIT.

10	ELIZABETH NOGRADY, adminis- tratrix <i>ad prosequendum</i> of the Estate of MICHAEL NO- GRADY, <div style="text-align: right; padding-right: 20px;">Plaintiff,</div>	}	Action at Law
	vs.		
20	The ERIE RAILROAD Co., a corpor- ation, and WALTER HUNT, <div style="text-align: right; padding-right: 20px;">Defendants.</div>		

Paterson, N. J., Oct. 31, 1927; 10:00 A. M.

Before—Hon. NEWTON H. PORTER, Judge and a
Jury.

APPEARANCES:

JOSEPH J. WEINBERGER, ESQ., for Plain-
tiff.

30 JOHN E. SELSER, ESQ., for Defendants.

A jury was duly empanelled and sworn.

(Noon Recess).

October 31, 1927; 2:00 P. M.

40 Counsel for the respective parties opened
the case to the Jury.

Mrs. Elizabeth Nogrady—Direct.

PLAINTIFF'S CASE.

Mr. Weinberger: For the purpose of the record, your Honor please, Mr. Selser, on behalf of the Erie Railroad Company and the other defendant, admits death resulted from the injuries sustained in an accident which occurred on the 27th of July, 1925.

10

Mr. Selser: That is correct; I have admitted that in my opening, and that he died on July 29th, two days later.

MRS. ELIZABETH NOGRADY, sworn.

Direct-examination by Mr. Weinberger:

Mr. Weinberger: I desire to offer in evidence at this time, your Honor please, the letters of administration ad prosequendum.

20

Mr. Selser: I have no objection to the offer. I will admit, so as not to encumber the record, that Mrs. Nogrady is the administratrix ad prosequendum of the Estate of Michael Nogrady.

Q. Mrs. Nogrady, how old are you? A. I am 32. 30

Q. You are the widow of Michael Nogrady? A. Yes, sir.

Q. Your husband was killed in an accident on July 27, 1925— A. Yes, sir.

Q. Is that correct? And your husband was how old at that time? A. He was 34.

Q. What was the condition of his health? A. He was in good health; that is all I can say.

Q. What kind of work did he do, Mrs. Nogrady? 40

Mrs. Elizabeth Nogrady—Direct.

A. He was a laundry man, a shirt ironer.

Q. Shirt ironer in a laundry? A. Shirt ironer in a laundry.

Q. Where was he employed, in what city? A. He was employed in New York City.

10 Q. Did he commute every day between Passaic and New York? A. Every day, several days, dinner hour, he was supposed to go.

Q. Well, now, where did you live when your husband was killed? A. I live on the corner of Hudson Street.

Q. Did you have a family? A. I did.

Q. Who was your family composed of? A. I, my husband.

Q. I mean, how many children did you have? A. Two children.

20 Q. How old were the children when your husband was killed? A. Well, the baby was fourteen months old.

Q. What date, what month was the child born? A. He was born, 1924, July 28th—not July—April 28th.

Q. Did you have another boy? A. And another boy is sixteen years old now.

30 Q. How old was he when your husband was killed? A. He was fourteen.

Q. Was that the entire family, two boys and yourself and your husband? A. Two boys and myself.

Q. Now, how much money did your husband make a week as a shirt ironer in the laundry in New York? By the way, what is the name of it? A. Well, he was making from thirty-five to forty-five and sometimes even more because he worked on piece work.

40

Mrs. Elizabeth Nogrady—Direct.

Q. You mean thirty-five or forty dollars a week?

A. A week; yes, sir.

Q. What did he do with all of his money, Mrs. Nogrady? A. Well, he handed it over to me.

Q. Well, did you run the household, take care of your children with that? A. I did.

Q. How much money would your husband spend a week out of that sum? A. Well, he used to take maybe three—three and a half a week, like that. 10

Q. Did you pay the rent in the house? A. I paid the rent and paid the food, buy the tickets, supplied the family with everything, what we need,—clothes.

Q. What time of day did your husband usually go into New York City? A. Well, week days he goes—he used to go in the morning, he took six o'clock train, but Monday he had to go in, he takes down the shirts, and then he only just took the two-fifteen or something like that. 20

Q. Well, now, Mrs. Nogrady, did your husband have a commutation ticket between Passaic and New York—a monthly ticket? A. Yes, he had.

Mr. Selser: I admit, doctor, that he was a passenger, an intending passenger.

Mr. Weinberger: Well, for the purpose of the record, Mr. Selser admits, your Honor please, that he was an intending passenger and had a right to be there to take the train to New York. 30

The Court: I do not suppose he will admit that he had a right to be where he was.

Mr. Selser: That, I do not, no; I imagine that he had a right to take a train at Passaic station for New York under proper conditions. 40

Mrs. Elizabeth Nogrady—Direct.

The Court: Very well.

Q. Well, now, what kind of a man was your husband, Mrs. Nogrady? Just tell the jury with reference to his habits. A. Well, he used to come home, he was home with us and the family; I couldn't say nothing bad about him.

10 Q. What could you say good about him? A. What could I say? I could just say the right, that he would come home from the work, stay home with his family.

The Court: Was he sober?

The Witness: Yes, he was sober.

The Court: Industrious?

The Witness: Yes.

20 The Court: Home loving?

The Witness: Yes, he was home loving.

The Court: Provided for the family?

The Witness: Yes, sir.

The Court: All right.

Q. Now, what do you do for a living? A. I have to go to work now; I am working now.

Q. What do you do? A. Dressmaking.

30 Q. What is your condition of health? Are you all right? A. Well, sometimes I am and some times I am not.

Q. While your husband was alive, were you compelled to go out dressmaking for a living? A. No, I never—didn't go out.

Q. I mean, you were home, were you not? A. Yes, I was taking care of everything for us.

Q. Since your husband was killed— A. I am kind of nervous, sometimes.

40 Q. I mean,—you go out to make a living, do you? A. I have to, yes.

Mrs. Elizabeth Nogrady—Cross.

Q. As a dressmaker? A. Yes.

Mr. Weinberger: That is all.

Cross-examination by Mr. Selser:

Q. Mrs. Nogrady, you spoke of providing out of the thirty-five to forty-five dollars a week all of the clothes and other things necessary for the whole family. Out of that money you bought your husband's clothing, didn't you? A. Yes, sir. 10

Q. And bought his commutation ticket? A. I had to buy everything out of that.

Q. Everything? A. Everything, yes.

Q. His wants, your own wants, children's wants? A. Yes, sir.

Q. Out of what was left from the moneys, sometimes he would take three dollars to three dollars and a half a week for his own spending money? A. Yes, sir. 20

Q. For spending money? A. Yes.

Q. Now, you said, Mrs. Nogrady, that your health is not so good. Do you actually suffer any ailments? A. Well, no, it is just what I said, that I have to go out every day to work, and of course that worries me for—because I have that baby, and it is quite some, you know. 30

Q. You do not actually have any ailment, do you? A. No.

Q. No disease of any kind? A. No, no.

Q. Children are in good health, aren't they? A. I suppose so.

Q. Now, you spoke of two children. You say the baby was born 1924, April 28th? A. Yes, sir.

Q. What is that baby's name? A. Roy M. Nogrady. 40

James J. Burns—Direct.

Q. Roy is the baby; the other boy's name is what? A. Rudolph W.

Q. Rudolph W. was born when? A. 1911, June, on the 5th.

Q. What was that? A. 1911.

Q. June 5th? A. Yes, sir.

10 Q. That is all. Well, were you married, yourself, to Mr. Nogrady? A. Yes.

Q. What I mean, married, you know what I mean? A. Yes.

Mr. Selser: That is all.

JAMES J. BURNS, sworn.

20 *Direct-examination by Mr. Weinberger:*

Q. Mr. Burns, where do you live? A. Paterson, 109 Sixteenth Avenue.

Q. How long have you lived in Paterson? A. All of my life.

Q. You work for whom? A. Augenblick Brothers, Paterson.

Q. What line of business? A. Butter, cheese, eggs and poultry.

30 Q. Are you a salesman for them? A. Salesman, yes.

Q. How long have you worked for Augenblick? A. Going on seven years now.

Q. To what cities does your duty as a salesman take you? A. Passaic, Paterson, Clifton, Garfield, Lodi.

Q. Before you worked for Augenblick Brothers, for whom did you work? A. Armour & Company.

40 Q. Armour & Company, beef concern? A. Yes, sir.

James J. Burns—Direct.

Q. For how many years did you work— A. Three years.

Q. For Armour & Company? A. Three years.

Q. What were your duties there? A. Salesman.

Q. Before you worked for Armour & Company, with whom did you work? A. Atlantic & Pacific Company. 10

Q. And the Atlantic & Pacific Company, what did you do? A. Manager.

Q. As a manager, in what store? A. Haverstraw, New York.

Q. You recall the 25th of July? Is that the correct date? Do you recall the 27th of July, 1925? A. Yes, sir.

Q. Were you in the City of Passaic on that date? A. Yes, sir. 20

Q. Where were you? A. I was at the subway; I had just purchased a paper on the other side, coming in through the track there on the subway of the Erie Railroad.

Q. What side of the station were you on,—side going to New York? A. Right hand side, going down to New York.

Q. So that you were on the side known as the Main Avenue side? A. Main.

Q. You had just purchased a newspaper, you say. A. Yes, sir. 30

Q. You were standing there? A. Sir?

Q. What were you doing? A. I was coming up the steps, reading the paper there when the train was pulling out or just pulled in there.

Q. Did you observe a man by the name of Mr. Nogrady? A. Oh, I didn't know what his name was; I know it now.

Q. Was the train standing or moving when you saw him? A. The train was standing. 40

James J. Burns—Direct.

Q. Did you see this man get on the train? A. Yes, sir.

10 Q. Tell us in your own words, out loud, what you saw him do. What happened? A. Just as soon as the man, he stepped his left foot on the train, and his left hand on the bar, just then the train began to go and jerked him off, and he tried to grab for the bar or handle.

Q. Was the train standing still when he put his left foot on the first step of the train? A. Yes, sir; then he went to lift up his other foot.

Q. Was his left hand on the bar when the train was standing still? A. Left hand was, yes.

20 Q. What happened when he was getting on the train, with his left foot on the first step and his left hand on this rail or bar? A. The train gave a sudden jerk and pulled him off his balance.

Q. Now, did you observe whether there were people getting on and off the train? A. No, there were—

Q. I mean at that time, just prior— A. Just prior to that?

Q. —were there people getting on and off? A. Yes.

30 Q. Now how long, approximately, did that train stay in the station, Mr. Burns? A. Oh, about a minute or so; maybe not that.

Q. Did you see the people getting on and off? A. Yes, sir.

Q. After you say this train giving this jerk that you have described, what happened to Nogrady, Mr. Burns? A. Mr. Nogrady fell sideways, fell to this way, and his legs went under.

40 Q. Did you see the train cut his legs off? A. Yes, sir.

James J. Burns—Direct.

Q. How far did the train go after it cut his legs off? A. It went the other side of Jefferson, or this other street; I don't know—to what would be the Jefferson Street crossing.

Q. How far was that from where this man was getting on the train, about? A. That was about twenty feet—twenty-five feet.

10

Q. Now, did you observe any station men on the ground when Nogrady was getting on the coach? A. No, I didn't; I don't recall.

Q. Where this Mr. Nogrady was getting on, what coach, if you recall, was it, he was getting on, when you say the train started? A. I wouldn't say, either the second or third; I wouldn't say for sure, though.

Q. You have no interest in this matter? A. No, sir.

20

Q. And you are not related to Mrs. Nogrady? A. No.

Q. You are still with Augenblick Company? A. Yes, sir.

Q. This was about what time of day, Mr. Burns? A. It was after two o'clock, little after two.

Mr. Weinberger: That is all.

Cross-examination by Mr. Selser:

30

Q. Mr. Burns, were you working that day? A. Yes, sir.

Q. At that time, you were canvassing Passaic, were you? A. Yes, sir.

Q. And you had had your lunch? A. Yes, sir.

Q. And you went over there to the east bound side of the station, or the west bound, rather, to buy your paper? A. To buy the paper; yes, sir.

40

James J. Burns—Cross.

Q. Then you say you came down under the tunnel— A. Yes, sir.

Q. —under the tracks, to the east bound side? A. Yes, sir; to the east bound.

Q. Now, when you came through the tunnel— A. Yes, sir.

10 Q. —was the train then in the station? A. When I just come up, it was in the station.

Q. The train was there, standing? A. Yes, sir.

Q. Discharging and taking on passengers? A. Yes, sir.

Q. You continued walking right on up out of the tunnel? A. Right by the tunnel, right by that little mouth there.

The Court: Keep your voice up.

20 Q. Little arrangement like the have for coming out of the tunnel; is that the thing? A. There was a waiting station right by there.

Q. Now, on the east bound track side, that is the side toward West Main Avenue— A. Toward Lexington—

Q. Toward West Main Avenue? A. Yes, that is right.

Q. On one side is East Main Avenue? A. Yes.

30 Q. On the other side it is West Main Avenue? A. Yes.

Q. On the side you were on, is the West Main Avenue side; isn't it? A. The side I was on was going to New York, on the right hand side.

Q. Yes, that is the west side of the tracks— A. Yes.

Q. —and the West Main Avenue side? A. Yes.

40 Q. Now, as you were walking up from Lexington Avenue, along the station platform, some distance away from Lexington Avenue, say, approximately

James J. Burns—Cross.

thirty-five feet, there is a waiting room, isn't there? A. There is a waiting room.

Q. That distance is about correct, isn't it,—about thirty-five feet? A. About that.

Q. That waiting room is about twenty feet long, is it not? A. I mean, the one on the—

Q. East bound track side? A. —east bound track. 10

Q. How long a station is that, or waiting room is that? A. That is only a small waiting room.

Q. What is your estimation of its size? A. Say, about fifteen feet.

Q. About fifteen feet? A. About fifteen feet.

Q. From that point on there is a covered platform? A. Covered platform, with benches; that was where I was going to read my paper. 20

Q. That roof was the length of the platform itself, except the stairs coming out of the tunnel? A. Out of the tunnel, yes.

Q. So that you came out of the tunnel slightly west of the waiting room? A. Yes.

Q. As you were coming up those stairs from the tunnel, you say the train was actually standing in the station? A. Actually standing in the station.

Q. When you came out on the platform, you came out with the station waiting room between you and Lexington Avenue, didn't you? A. Yes, between— 30

Q. So that you couldn't see— A. Jefferson Avenue.

Q. —down to Jefferson Avenue? A. Jefferson Street.

Q. That is right. Lexington Avenue is the street that runs over toward River Road. A. Same way as Main Avenue. 40

James J. Burns—Cross.

Q. You couldn't see Jefferson Street, coming up out of the tunnel? A. Yes, you can.

Q. You can? A. I was going in there to read the paper.

Q. Into the station room? A. That is where I generally go in lunch hours.

10 Q. But you could actually see Jefferson— A. You could see Jefferson Street; yes, sir.

Q. When you came out of the tunnel, up the stairs, you walked directly toward the waiting room? A. Toward Jefferson Street.

Q. Were you actually going in that waiting room? A. I was going to go in that waiting room; yes.

20 Q. Did you actually go into it? A. I was looking at the head of the paper coming up to the station.

Q. As you were walking up the steps from the tunnel, you glanced at the headlines? A. Yes.

Q. You continued glancing at the headlines going toward the waiting room; is that correct? A. Right by the waiting room, but then I just put the paper down for a moment.

Q. Now, had the train started to leave at that time? A. No, sir.

30 Q. Well, that is where you were when the train actually did start to leave? A. Right by the waiting room there.

Q. Right just about to go into it? A. Well, just, from right at the corner there of the waiting room.

Q. You were. You just went walking along slowly, glancing at your newspaper headlines? A. No, sir.

40 Q. Just tell us what you did do. A. I just look-

James J. Burns—Cross.

ed down where the train came in, and seen this man coming along to get on.

Q. Just get these in their chronological order, Mr. Burns. A. Yes.

Q. When you got up out of the tunnel, the train was actually standing there, that is the situation? A. Yes, sir. 10

Q. Then, as you were coming out of the tunnel, you were glancing at the headlines, weren't you? A. Yes, sir.

Q. You were walking in the direction toward the waiting room? A. Yes, but when I got up to the top of the stairs there, I just put the paper down for a moment.

Q. But you continued walking toward the waiting room? A. Yes.

Q. You didn't stop? A. I don't know; I might have. 20

Q. Did you actually stop, Mr. Burns? A. I might have stopped and had a smoke there.

Q. You might have done so? A. I might have; I think I did, sir; I wouldn't say for sure; I am not positive.

Q. Well, haven't you got a recollection of what really did happen, Mr. Burns? That is most important. A. It is over two years ago, nearly three years ago. 30

Q. Well, how long a period of time would you say elapsed from the time you came out of the tunnel until the time the accident actually occurred? A. Why, I don't believe it was a half minute.

Q. Not a half minute? A. Not a half minute, or so, a little—say, forty-five seconds; something like that.

Q. Cannot you recall actually whether you 40

James J. Burns—Cross.

stopped, Mr. Burns? A. Well, I don't—I couldn't say whether I stopped, or not, no.

Q. But is it not true, Mr. Burns, that your present recollection is now that you came out of this tunnel? A. Yes, sir.

10 Q. And you were walking in the general direction toward the waiting room, where you customarily read your paper? A. Yes.

Q. And somebody screamed out, and you looked, and watched the man go under the wheels? A. No.

Q. That is not true? A. No, I seen him just when he got on the train, and I saw him pulled off,—

20 Q. Just when he got on? A. —pulled off his balance. Just when he got on he put his foot on and as he put his foot on and went to reach the other foot up, he went right under that; there was some woman around, hollering and excited; I don't know who they were, sir.

Q. Wasn't that a fact, Mr. Burns, that the scream came first, before you looked? A. No, sir.

30 Q. You say that the man was thrown off his balance? A. Yes, sir; and I seen him when the man went under and dragged, as he dragged himself this way to save himself, but he couldn't save himself.

Q. Which way, Mr. Burns, to the front of the train or to the rear of the train? A. To the side, he was; he was like on this side.

Q. You are saying this side; that doesn't mean very much. A. He was like this way, on his right side.

Q. On his right side? A. Yes.

40 Q. Feet dragging on the ground? A. No, he fell that way, in between like a hole there in be-

James J. Burns—Cross.

tween that; there is no sidewalk there, it is like a little hole right in there at that time.

Q. Outside of the tracks, between the tracks, and the platform, you mean? A. Yes.

Q. Distance of about twelve or eighteen inches? A. Yes; if he had fell on the sidewalk, of course, he would never have went under. 10

Q. Then when you looked you actually saw the man falling? A. Yes.

Q. Down to the platform, or, rather, the space between the platform and the tracks? A. Yes, sir.

Q. Then you saw his foot go in that space? A. Yes, sir.

Q. You were not going to take that train, of course. A. No, sir. 20

Q. And you saw Mr. Nogrady for the first time. I believe you stated on your direct examination, there were no other passengers getting on the train? A. No.

Q. And the trainmen themselves were not on the platform, were they? A. I didn't see nobody there at all.

Q. You didn't see—

By the Court:

Q. Did you see the train men at any time? A. No, sir; I didn't take notice. 30

Q. Well, before you saw Mr. Nogrady, had you seen anyone else there? A. There was people getting on, yes.

Q. You did see people getting on before he got on? A. Yes; when I come up there was people getting on; there was nobody getting off, though.

The Court: All right. 40

Mr. Selser: That is all.

*James J. Burns—Redirect.**Redirect-examination by Mr. Weinberger:*

Q. How much time elapsed, Mr. Burns, from the time you saw Nogrady with his one foot on the step and left hand on, holding the handle, before this train gave this jerk and started up? A. How long—

10 Q. Did you understand my question? A. No.

Mr. Weinberger: Just read it.

Q. (Repeated by stenographer)? A. Why, he just had his foot on. It wasn't no more than a second or three or four seconds, I wouldn't say.

The Court: Before he could get his other foot on, in other words?

20 The Witness: Yes. Just as soon as he got his one foot on it pulled out.

Q. You are sure that when he boarded this train, it was standing absolutely still? A. Yes, sir.

Mr. Weinberger: That is all.

Recross-examination by Mr. Selser:

30 Q. Just one question more, Mr. Burns. You know, in the operation of railroad trains, don't you, that the members of the train crew pull a rope as a signal to the engineer, and there is a little whistle up in the engine that whistles? Have you ever heard that? A. I have heard that, yes.

Q. A little sharp whistle? A. Yes.

Q. Before you saw Mr. Nogrady, had you heard that whistle? A. No, I didn't; I didn't say I did.

40 Q. Did you see any of the trainmen on the sta-

James J. Burns—Recross.

tion platform before the accident occurred? A. Before?

Q. Yes. A. Why, someone was standing by the train, but I didn't take notice, though.

Q. You didn't take notice of them? A. No.

Q. You didn't take notice of the trainman who was standing right by, at the end of the tunnel steps, did you? A. No, sir; I did not. 10

Q. So you did not actually see the train men getting on the train at all? A. I did not; no, sir.

Q. You did not see where Mr. Nogrady had come from, did you? A. Where he had hung from?

Q. You did not see where Mr. Nogrady had come from before he attempted to get on the train? A. The way he must have been coming that way—

Q. Not what he must have been, but did you actually see the way he came from? A. No. 20

Q. You just saw him in the act of pulling himself up? A. Just the way he got on, that is all I could say; I couldn't say where he walked from.

Q. You didn't see him coming from the side, in this direction? A. No, sir.

Q. Just saw him in the act of pulling himself up? A. That is all; yes, sir.

Mr. Selser: That is all. 30

THOMAS HELLER, sworn.

Direct-examination by Mr. Weinberger:

Q. Mr. Heller, where do you live? A. Passaic.

Q. How long have you lived in Passaic? A. 35 years.

Q. Married and have a family? A. Yes. 40

Thomas Heller—Direct.

Q. Do you remember the 27th of July, 1925, when an accident happened at the Passaic Main Line station of the Erie Railroad? A. Yes, sir.

Q. Now, did you see a man getting on the train who was injured? A. Yes, sir.

Q. Tell us, in your own words, what you saw?
10 A. Yes, sir. Coming down Jefferson Street I seen the train coming in—

Mr. Selser: A little louder.

Q. A little louder. A. As I went across the street, the train pulled in. I stopped there and waited for the train to cross over. I seen the people coming on and coming off out of the train. Then that man he come in and all of a sudden that man steps on it—

20 Q. Was the train standing still? A. The train was standing still, so he got hold by the car, and before he could get his left foot up, the train jumped, and he pulled back again, swung back, and he tried to put the other foot on and catch the stair, but he couldn't do it.

Q. You say you saw his left foot on the platform? A. He put him up on the stair.

30 Q. On the stair of the train? A. And then he hold the bar with the handle; just as soon as he got by the handle, then the train jump back again; then he swung himself back again.

Q. Was he knocked underneath the train? A. And a minute after the train started to go a little; then he tried to hold with the other hand, to get the other side of the bar; then he falled right on the curb.

40 Q. Were there people getting on and off the train, Mr. Heller? A. Not at that time, when it happens.

Thomas Heller—Direct.

Q. Where were you standing, on the side of Main Avenue going toward New York City? A. Going toward New York City.

Q. You were waiting for the train to go by. You were coming across the street to the East Main Avenue side? A. Yes.

Q. Did you see any trainmen or brakemen or any men there when this man, Mr. Nogrady, was getting on? A. I didn't notice that. 10

Q. You are the gentleman who did not want to give to the policeman your name; is that correct? A. I didn't want to give my name to the policeman.

Q. You told him you didn't want to be a witness in this case. A. Yes.

Q. But they finally took your name and address? A. The officer told me that, and I gave my name right away. He didn't take me up to the police court; I told him I didn't want to bother with it. He said, "You will have to give your name," which I gave my name there. 20

Mr. Weinberger: That is all.

Cross-examination by Mr. Selser:

Q. Mr. Heller, you said you were at the drugstore— A. What is it? 30

Q. Did you say you were at the drugstore? A. No, I was in the bank building on the corner.

Q. That is on West Main Avenue, isn't it? A. Just across the street.

Q. Is that Mr. Weinberger's bank? A. No, that is the building and loan bank.

Q. So you had been to the building and loan

Thomas Heller—Cross.

bank and you walked up Main Avenue to Jefferson Street? A. Yes.

Q. Then you walked across Main Avenue at Jefferson Street— A. I didn't cross—

10 Q. —is that correct? A. I didn't cross the other track; I was on this side of Main Avenue yet.

Q. You were on the New York side? A. I was on the New York side.

Q. But you walked across Main Avenue down to the gates? A. I walked across Main Avenue down to the gates; yes, sir.

Q. And the gates were down? A. Were down.

Q. You stood there by the lowered gate? A. When I come there, I stood by the lowered gate; the train had just pulled in.

20 Q. Were the gates already down? A. When I come down, it was already down.

Q. Then you stood there by the lowered gates; is that correct? A. Yes.

Q. When the train pulled in the station? A. When the train just pulled in.

30 Q. You watched the train, you say, as you were standing there? A. Well, of course, we have got to watch, but the train was just across my view; I couldn't wait until she moved to go across.

Q. Which side of Jefferson Street were you on, —the side nearest to Paterson or the side nearest to Jersey City? A. Across the street; it had crossed Jefferson Street.

Q. The train was across— A. The train was across the street, yes.

Q. So that the front of the engine was nearer to Jersey City than you were, or nearer to Paterson?

40 A. Nearer to Jersey City.

Thomas Heller—Cross.

Q. You were looking up toward the rear of the train, were you? A. Yes.

Q. All of the time? A. Certainly, you have to look there. I seen people coming on and coming off.

Q. So you actually did look up toward the end of the train all of the time? A. I have to look. 10

Q. Not what you have to do, Mr. Heller,— A. I did look.

Q. —what did you do? A. I did look.

Q. You did look? A. Yes.

Q. You saw all of the people getting on the train— A. Yes, sir.

Q. —and some people getting off? A. Some people getting off as soon as the train come in.

Q. Yes, then after all of the other people had gotten on and all of the people who wanted to had gotten off, did you see the trainmen get back on the train? A. I seen the conductor on the train, just the train conductor coming in the conductor coming off. 20

Q. After all of the people got on, did the conductors then get on the train? A. I didn't notice them.

Q. You didn't notice them. Then, you say you saw this man? A. Then I seen a little while I seen a man was stepping on the train to go on. 30

Q. That was a little while later, after all of the other people got on? A. A few minutes later, I suppose.

Q. Then you saw a man stop on up? A. Step on up.

Q. Then the train started? A. Train started and he swings back again.

Q. Swings back again? What do you mean by that—swung himself away from the train? A. 40

Thomas Heller—Cross.

No, no; when he touched his foot on the bar, on the steps, when he took the bar in the hand, see, at the time he just grabbed the bar, the train jump-back again.

10 Q. Back to Paterson? A. No, I don't know which way it took, I don't, but I seen the way the man step back himself on the step; he had hold step but he just fall back, see? he couldn't get the right hand on the other step.

Q. Which way did he fall, Mr. Heller? A. He fell to New York way.

Q. To the New York way? A. Yes, into curb.

Q. His feet, then, were towards Paterson and his head toward New York; is that right? A. Well, the whole body was toward New York; this is the way he fell (illustrating).

20 Q. Which way is New York now? A. The feet was to Paterson.

Q. Now, what coach was that, Mr. Heller? A. I don't remember that exactly.

Q. You do not know that; where was he with respect to the little waiting room on the east bound side—New York bound side? A. You mean from that——it happened——accident happened—to where he step on?

30 Q. Yes, where he stepped on. A. Well, about fifteen or eighteen feet from him, twenty-five, something like that. You see, I was by the corner, so I couldn't tell exactly right.

The Court: Keep your voice up.

Q. Well, was he nearer to Jersey City than the little waiting room or nearer to Paterson? A. Nearer to Jersey City.

40 Q. Nearer to Jersey City. Would you say about ten or fifteen feet away from the waiting

Thomas Heller—Cross.

room, nearer to Jersey City? A. Exactly, I couldn't say, but something like it, maybe more, maybe less.

Q. Mr. Heller, you were standing right close to the engine, weren't you? A. Not engine, by the gate.

Q. Well, wasn't the engine there? A. Yes, more 10
to the engine at the back.

Q. Just what part of the engine was in front of you? A. Exactly I didn't notice that; it was over the street, over Jefferson Street.

Q. You are very sure of that, aren't you? A. Certainly, across the street even.

Q. You are very sure that the engine was across Jefferson Street? A. Positive.

Q. You are positive? A. Of course, if he hadn't been across Jefferson Street, I would have crossed 20
the street; I wouldn't have had to wait.

Q. You are not sure of what part of the engine was in front of you? A. No, sir.

Q. Well, the whole engine wasn't toward Jersey City, away from you, was it? A. Well, I don't—I couldn't say exactly how it was; I think—

Q. What were you going to think? A. I think if the engine cross the tracks, across the street—

Q. Was the engine in front of you, Mr. Heller, 30
or not—engine in front of you? A. No, the coach and train.

Q. A coach in front of you? A. No engine.

Q. No engine at all? A. Engine was further up.

Q. You know about this little whistle they have in the engine, don't you, when the conductor pulls the rope, little whistle blows up in the engine? A. Yes, sir. 40

Thomas Heller—Cross.

Q. Did you hear that whistle blow? A. I couldn't say that.

Q. You couldn't say that? A. I don't know that.

10 Q. You don't know whether that blew before or after? A. It is over two years ago; I don't remember how it was, I wasn't watching.

Q. You do not think your memory is so good about all of these details now? A. It is more than two years.

Q. More than two years. Is your memory real good as to the things you have told, Mr. Heller?

A. What I have told you just now?

Q. Yes. A. That I seen? That is the truth.

20 Q. That much you are certain of. You are sure, too, that the engine was all of the way across Jefferson Avenue? A. I could say it was so far over that the engine was down so far I couldn't get across there.

Q. Mr. Heller, didn't you, just a moment ago, say that right in front of you, on the track directly in front of you, was a coach? A. There was a coach—

30 Q. Aren't you sure of that? A. I am almost sure, but how far the engine was over tracks, I couldn't say exactly.

Q. You are almost sure about the engine, but not quite? A. I am sure that always when the train comes in it is always the engine across the track, all of the time, because the depot is not so long that the train could not be on the track, engine it is all of the time on the track.

Q. At times— A. It should not be on the street, it never happens; it is always there; it could be possibly two or three or four coaches.

40 Q. How many times have you seen trains come

Thomas Heller—Cross.

into that station? A. I know it is across; I know that.

Q. Every time a train comes in the engine is over the street? A. Possibly.

Q. That is what you said, isn't it? A. Not every time, but, to be exact, even I have seen always passing engine passing the train, or the street. 10

Q. Can you tell, Mr. Heller, which handle of the coach the man got ahold of? A. With the left hand.

Q. He did not have hold with his right hand at all, did he? A. No, with the left.

Q. Could you tell from where you were standing whether his left hand was on the rear grab handle of one coach or the forward grab handle of another coach? A. No, it was the—it was one handle right by the coach, that is all he had. 20

Q. At the very end of the coach? A. Yes, it was by the middle, I believe, from the end; I couldn't tell exactly right.

Q. You couldn't tell? A. Either at the end or the middle.

Mr. Selser: That is all.

30

Mr. Weinberger: We rest, with the exception of this, your Honor please, that Mr. Selser and I have agreed that whatever the mortality tables show with reference to the expectancy of life—

Mr. Selser: I have got it right here, doctor. You can read it in the record. The Carlisle table of expectancy shows that a 40

Defendants' Motion for Non-Suit.

man in good health, in the average occupation, etc., can reasonably expect to live 29.64 years at 37 years of age.

Mr. Weinberger: And at 34?

10 Mr. Selser: The husband as well as the woman;—at thirty-seven years is 29.64; at 34 years of age, the Carlisle table shows there is an expectancy of 31.68 years.

Mr. Weinberger: We rest.

(Plaintiff Rests.)

DEFENDANTS' MOTION FOR NON-SUIT.

20 Mr. Selser: Your Honor please, I move at this time for a non-suit on the ground that the plaintiff has not proved the allegations of negligence contained in the pleadings.

The Court: (After extended discussion) I think there has been some evidence adduced here of negligence from which the jury could properly infer negligence, that it couldn't infer anything else; for that reason I think it is a jury question. I will deny your motion.

30 Mr. Selser: Your Honor will allow me an exception.

The Court: You may have an exception.

Nicholas DeVries—Direct.

(DEFENDANTS' CASE.)

NICHOLAS DEVRIES, sworn.

Direct-examination by Mr. Selser:

Q. Officer, you are a patrolman of the City of Passaic, are you not? A. Yes, sir.

10

Q. How many years have you been a patrolman in the City of Passaic? A. About eighteen years and a half.

Q. Where were you stationed on the day of July 27, 1925, around two o'clock in the afternoon? A. At the Erie depot at Passaic.

Q. Do you remember the 2:15 train bound for New York coming into the Erie station at Passaic? A. I do.

Q. Where were you at the time that train came into the station? A. I was on the west side of the Erie Railroad.

20

Q. That is, the west side— A. On the west side.

Q. —is the east bound track side? A. Yes, sir.

Q. Now, officer, where were you with respect to Jefferson Street? A. About, I should judge, about seventy-five feet from the Jefferson Street crossing.

Q. That would be where with respect to the waiting room which is on the east bound platform side? A. I beg pardon.

30

Q. That would be where with respect to the waiting room on that side of the track? A. Yes.

Q. Where would it be with respect to that, toward Paterson or towards— A. Toward Paterson.

Q. Where was it with respect to the steps leading up from the tunnel? A. Well, I should judge about fifty feet from the steps of the tunnel.

40

Nicholas DeVries—Direct.

Q. Now, officer, did you see passengers board that train and alight from that train while it was standing at the station? A. Yes, sir.

10 Q. Now, just tell us, if you will please, in your own words, what you saw from the time the train got into the station at Passaic until this accident occurred, and thereafter. A. Well, I saw the train come in and come to a stop. As a rule—

Mr. Weinberger: I object to that.

Q. Not as a rule. You cannot tell us that, remember. A. I am only saying that there was not many passengers got on or got off the train.

20 Q. Yes, that is all right. Now, go on and tell us what happened from that point on. A. The train come to a stop as usual—

Mr. Weinberger: I object, and ask that it be stricken out.

Mr. Selser: Strike out "as usual."

30 Q. You see, officer, you cannot compare this movement with any other movement. You must just tell us what happened this day, as an actuality, and tell us nothing of what happened on other dates or what the practice was or anything of that sort. Now, your train came to a stop at the station? A. Yes, sir.

Q. Now, tell us from that point on what happened. A. The train come to a stop by the station, and passengers got on the train and the conductors went out on the platform until everything was clear. The conductor gave the men the signal everything was all right, and they got on. The platform was clear.

40 Q. The station platform you are referring to?

Nicholas DeVries—Direct.

A. The station platform was clear, and I looked up and down both ways, both north and south, to see if everything was clear on my part, and I noticed a man running up the platform—

Q. At that time, now, officer, was the train moving or standing still? A. At that time the train was pulling out.

10

Q. Yes. A. After the train pulled out a man came running up the platform from Jefferson Street, on the west side of the track, and I attempted to run down towards him. I did run down partly towards him but it was too late. He jumped on this train, or attempted to jump on it, and I noticed he didn't get on. He held his grip on the handle of the train, but his legs kept dangling around, and I says to myself—

20

Mr. Weinberger: I object to what you said to yourself.

The Witness: All right.

A. (Continuing) Well, I watched him holding his grip until he could, as long as he could hold it, and the man fell. The train was going by, and myself and Officer Ervansky took him from the track. His both legs were crushed. We tied him up with a belt on one foot and a rope on the other foot, called for the ambulance and rushed him to the hospital.

30

Q. Now, officer, at the time this man—I want to make sure that this is straight—came running up from Jefferson Street and attempted to board the train, was the train actually in motion? A. Yes, sir.

Q. Were you able to see, Officer DeVries, where the engine of the train was standing while the

40

Nicholas DeVries—Direct.

train was in that station discharging passengers?
Was it east or west of Jefferson Street?

Mr. Weinberger: I object to that as leading.

10 The Court: I do not think it is leading.
There is a good way from east to west.

A. The engine was on the east side, on the south side, I will call it, of the Jefferson Street crossing.

Q. That is, toward Jersey City or toward—? A. Toward Jersey City.

Q. Toward Jersey City. The gates were down or up at the time? A. Down.

Q. Did you observe the train actually as it started in motion, as to whether or not it jerked or jolted?
20 A. No, the train went out smoothly.

Mr. Selser: That is all; take the witness.

By the Court:

Q. Is the track straight there, officer? A. Over that street?

Q. Yes. A. Perfectly straight.

Q. No curves? A. No curves.

30 *Cross-examination by Mr. Weinberger:*

Q. Who pays your salary? A. The City of Passaic.

Q. Who pays half of it? A. The City of Passaic pays me it all.

Q. Do I understand you to say that you do not get paid by the Erie Railroad Company part of your salary?

40 Mr. Selser: Now, if your Honor please—

Nicholas DeVries—Cross.

A. The Erie Railroad may pay the City of Passaic some part of my salary, but the City of Passaic pays my salary.

Q. Now, don't you know, Mr. DeVries, who pays your salary, or part of it?

Mr. Selser: Now, if your Honor please, I will permit Mr. Weinberger as City Counsel for the City of Passaic to state what the fact is. 10

The Court: He says he is paid, but the City of Passaic pays him all; that the Erie Railroad Company, for all he knows, pays the City part of it.

Q. Don't you know that, officer, that the Erie Railroad Company pays half of your salary? A. That is what they say. 20

Q. Don't you know? A. I am not concerned in that; I have had talks with some of the other officers.

Q. Officer DeVries, you don't know if the Erie Railroad Company pays half of your salary for being on duty at the Erie Railroad? A. I believe it.

Q. You believe it? A. But they do not pay it to me; they pay it to the City of Passaic, and the City of Passaic pays it to me. 30

Q. You have been on duty at that station how many years? A. Four and a half years.

Q. And you do not know who pays your salary?

Mr. Selser: He has stated, that he believed that the railroad paid part of it.

Q. You get your check from the City of Passaic?

The Court: And he has told us that the 40

Nicholas DeVries—Cross.

railroad company pays part of it, or he believed it. You get it anyway, don't you?

The Witness: I get it and I earn it, too.

Q. You earn it, don't you? A. I do.

10 Q. Now, Officer DeVries, you are stationed the main part of the time on the other side of the railroad station and part of the time on this side of the railroad station, toward New York? A. Both sides.

Q. (Continuing) Walking up and down? A. Right.

Q. Is that right? A. Right.

Q. You watch the movements of every train there? A. Yes, sir.

Q. Carefully? A. Yes, sir.

20 Q. You can tell whether they blow a whistle or they ring a bell, or how the train starts— A. No, sir.

Q. —two years after it happened? A. No.

Q. Huh? A. No.

The Court: The answer is "No." Keep your voice up.

A. No.

30 Q. Now, how many trains a day come into that station?

The Court: While you are on duty.

Q. While you are on duty? A. Give me a little time to figure it up; I will tell you.

The Court: Well, about, without figuring it—estimate it.

40 A. About? About nine trains going east bound to New York, from twelve-thirty until eight P. M.

Nicholas DeVries—Cross.

Q. How many going west bound? A. Up until about four-thirty there is probably five trains. After that, about a quarter of five, another train; the trains come in then, what we call the working class people, that works in New York, they come in very fast; I have never kept a record of them.

Q. You know every train that comes in, as you are the only one there between twelve-thirty and eight o'clock, from the police department? A. Yes. 10

Q. You remember this 27th day of July very clearly, don't you? A. I do.

Q. Why? A. Because I was right there—

Q. Is that the— A. —when this accident took place.

Q. Aren't you there all of the time? A. Why, no. 20

Q. Huh? A. Not on that side.

Q. Well, aren't you there at the Erie Railroad station every day? A. I am on the east side or the west side.

Q. That is not the first accident you ever saw in your life, since you have been on duty there? A. No.

Q. Hundreds of others? A. No, not hundreds— one or two.

Q. One or two; which is it? A. Two besides this one, to my knowledge. 30

Q. That you ever saw? A. Yes.

Q. Was this a clear day? A. Clear.

Q. About two o'clock in the afternoon? A. 2:15.

Q. I see, about 2:15, to be exact. A. You said two.

Q. Train was on time, I suppose? A. Yes.

Q. Huh? A. Right.

Q. You noticed that, too, didn't you? A. I did. 40

Q. Huh? A. I did.

Nicholas DeVries—Cross.

Q. What made you notice that? A. Because I liked to see the trains on time, so that people don't have to wait so long.

10 Q. That is the answer you give us, was because you like to see trains on time? A. Because I had several complaints about trains being late, always asking me what is the matter with the Erie trains late.

Q. I see. Now, Mr. DeVries, were you walking toward Jefferson Street or were you walking toward Paterson, in the opposite direction, when this train was coming in? A. I wasn't walking; I was standing.

Q. Where? A. Up about thirty feet from the small waiting room, on the west side of the railroad track.

20 Q. Thirty feet from the small waiting room would be right across from where the old ticket agent—ticket station was? A. Not the old—well, the one that is there now, at the present time.

Q. Temporary station on the opposite side of the track? A. Right about opposite.

Q. So you were standing by the entrance, or exit, as you may call it, to the subway to go underneath the track? A. I was not.

30 Q. Well, isn't that about thirty feet from where this little temporary station is? A. No.

Q. Huh? A. No.

Q. Well, had you passed that? A. No, I hadn't passed nothing; I was thirty feet to the south from the small waiting room on the west side of the railroad.

Q. Had you passed the subway entrance? A. Had I passed it?

40 Q. Had you passed the subway entrance? A. I hadn't passed it, no; I hadn't passed it.

Nicholas DeVries—Cross.

Q. All right; which way were you looking? A. Both ways.

Q. At one time? A. Not at one time, that is north and south—north and south.

Q. Was the train coming in? A. The train was pulling out.

Q. I am talking before this train came in; where were you standing? A. Before? When the train was coming in? 10

Q. Yes. A. Why, I probably stood right on the platform.

Q. Where, on the platform? That platform is about thirty feet long? A. At the waiting room.

Q. At the waiting room? A. Yes.

Q. That is where you probably stood? A. Yes, probably, yes. 20

Q. You saw the train coming in, as you walked which way—toward Paterson? A. No, I walked towards—

Q. Jefferson Street? A. Towards Jefferson Street.

Q. So that you had your back facing the direction in which the train was coming in? Is that correct? A. I stopped before that; I stopped and stood.

Q. Well, which way were you facing when you stopped and you stood? A. Facing the railroad, facing the train, looking north and looking south. 30

Q. Now, you were looking north and you were looking south? A. Yes.

Q. You were by the Jefferson Street crossing when you were looking? A. I was not.

Q. Where were you? A. I was thirty feet from the little waiting room, on the west side of the track. 40

Nicholas DeVries—Cross.

Q. You saw the train coming in, you say. A. Yes, sir.

Q. It was coming in very slowly, was it, or very fast? Which is it? A. At its natural rate of speed.

10 Q. All right; nothing unusual about a train coming in there is there? A. Nothing unusual.

Q. Not to you? A. Not to me.

Q. And as you saw this train coming in, where were you when it stopped? A. I was at the waiting room.

Q. At the waiting room? A. Yes.

Q. Now, how many feet is that waiting room on the east bound side from the subway entrance or exit? There is only way to go in and come out, isn't there? A. That is it.

20 Q. All right; how many feet were you away from that entrance to the subway?

The Court: When the train came in?

Q. (Continuing) When the train stopped? A. I do not know; I was on the west side of the tract, or the station east side.

Q. On the west side, on the Main Avenue side? A. On the Main Avenue side? That is the west side of Main Avenue.

30 Q. That is where you were when it stopped? A. By the waiting room.

Q. How many feet is that from the subway exit? A. About twenty-five feet.

Q. All right. A. That is, from one end; that is from the south side of the waiting room.

Q. Is that where you were? A. That is where I were.

40 Q. Now, when that train stopped, you saw people get on and off? A. Yes.

Nicholas DeVries—Cross.

Q. How many coaches could you see from where you stood? A. All of them.

Q. You could see at a point thirty feet from the subway entrance coaches up all along the Erie Railroad track? A. All of the way.

Q. And you could see them in both directions? A. Both directions. 10

Q. Were you looking? A. Looking both directions when the train pulled out.

Q. I am talking about when the train stopped there. A. Yes.

Q. Did you look? A. I looked.

Q. Did you see people getting on the train? A. Getting on the train.

Q. How many, about? A. I don't know.

Q. Can you tell us about how many? A. About— 20

Q. (Interrupting) One, two or three? A. Four or five, I will say.

Q. Four or five, you would say, getting on what part of the train? A. Getting on the train; that is all I know.

Q. Well, what part? How many coaches were there on this train? A. How many coaches? Eight coaches.

Q. You saw about four or five people getting on eight coaches? A. No, only on one coach. 30

Q. Oh, now you could only see one coach; is that it? A. No.

Q. Did you see people getting on every coach? A. No.

Q. Did you see people getting on one coach? A. I saw them walking to go to get onto that coach, what they were walking for to get on.

The Court: They didn't all get on the same place? 40

Nicholas DeVries—Cross.

The Witness: No, they didn't all get on the same coach.

Q. Your attention was directed to what coach?

A. It wasn't on any particular coach, while the train was standing, my—

10 Q. Just a minute; we will get there. You saw some people, getting on, did you—about four or five people, that is all you saw? A. That is about all.

Q. What coach were they getting on, the people that you saw, toward Jefferson Street, the front part of the train or toward the rear of the train?

A. On the platform where the train stopped, at the platform.

20 Q. There were eight coaches— A. On the cement platform.

Q. There were eight coaches on that train? A. Yes.

Q. And the train extended all of the way across Jefferson Street away up almost to Harrison Street; is that right? A. What is that?

Q. Didn't you hear me? A. No, I didn't; no.

Q. Up to Monroe Street? A. Three hundred feet this side of Monroe Street, the last coach.

30 Q. Can you describe any particular person who was getting on the train that day? A. No.

Q. Huh? A. Can I describe any—

Q. Have an overcoat on, sweater or a hat, or anything at all, about any person that got on that train, any of them? A. I don't know anyone that got on it, no; there is never very many that get on that train.

40 Q. Now, you say you saw a man by the name of Mr. Nogrady— A. I saw the man that was hurt.

Nicholas DeVries—Cross.

Q. Tell us how he was dressed. A. I didn't look over his clothing very good, just be guessing at it.

The Court: Don't guess.

A. Well, he wore dark clothes.

The Court: We don't want you to guess.

The Witness: All right.

10

The Court: Is it your recollection that he had dark clothes?

The Witness: Dark clothes.

Q. Did he have a sweater on? A. I couldn't tell you.

Q. Have a cap, derby or a soft hat? A. I paid no attention to his clothes.

Q. Well, you saw somebody running; is that right? A. I saw him that time on the platform, trying to get on the train.

20

Q. You saw him running across Jefferson Street? A. I did not.

Q. Huh? A. I did not.

Q. Well, where did he come from? A. Come running up the platform of the railroad, from the Jefferson Street crossing, north.

Q. Yes, and the train was already halfway out of the station; is that right? A. The train was pulling out. The train was pulling out. It was going at a fairly good rate of speed.

30

Q. It was halfway out of the station? A. I don't say half, partly out.

Q. Did you see the conductor on the train? A. When the train was at a stop, I saw him.

Q. Did you move from where you were? A. I didn't move until I saw the man come running up the railroad to attempt to jump the train.

40

Nicholas DeVries—Cross.

Q. You were facing toward him, were you? A. Yes, sir.

Q. And you ran towards him? A. Ran towards him; yes, sir.

By the Court:

10 Q. Why did you run toward him? A. I wanted to try to stop him from attempting to jump on this train.

Q. You suspected that was what he was going to do? A. Yes.

Q. All right; how far did you get toward him? A. Why, I guess—

Q. How far did you run before he got on? A. Probably thirty feet.

20 Q. How near were you then to where he got on? A. I had about twenty feet more to go.

Q. About twenty feet more to go; then the train was going away from you, from then on? A. Yes, sir.

Q. That is correct, isn't it? A. Yes, sir.

Q. How far had the train traveled up to the time he got on, would you say? A. The engine was about at the—in between Jefferson Street and Washington Place crossing, the engine was.

30 Q. Where was the engine when it started? A. When it started? Why, it was on the north side of the crossing.

Q. Well, would that be a half a block, quarter of a block, or what? A. I don't get you, your Honor; from what point?

40 Q. The platform on which this man got was where when it stopped? Can you tell me that, and where it was that he got on it? I want to know how far the train traveled from the time it was stopped until this man got on it? A. Why, I

Nicholas DeVries—Cross.

should judge about five hundred feet.

Q. Five hundred feet; all right.

By Mr. Weinberger:

Q. Do I understand you correctly to tell Judge Porter that this train traveled five hundred feet before he got on it? A. Five hundred feet from where it stopped, from where it came to a stop. 10

By the Court:

Q. That is not what I asked. The question is how far it traveled from the time it started until the time that Mr. Nogrady got on? A. Five hundred feet.

Q. Well, that is how far it traveled, you say, from the time it started until it stopped; that is correct, isn't it? A. (No answer).

Q. Now, it didn't stop immediately that he got on? A. I don't know whether it stopped or not at all, your Honor, after the accident occurred. 20

Q. You don't know whether it stopped or not? A. I don't know.

Q. But you think it traveled five hundred feet? A. Yes.

Q. From the time he got on? A. Yes.

Q. From the time it started until the time he got on? A. Yes. 30

Q. Is that correct? A. Yes.

Q. That is about two city blocks, isn't it? A. Well, I don't know just how long a city block is.

Q. Well, how long is your station? A. Well, the station platform actually takes in all of the way from Jefferson Street, we will say, almost to Monroe Street.

Q. And how far is that? A. That is quite a distance. 40

Nicholas DeVries—Cross.

Q. Five hundred feet? A. I should think, every bit of seven hundred feet.

Q. Seven hundred feet, so that it wasn't that long that the train had gone? A. No.

The Court: All right; proceed.

10 *By Mr. Weinberger:*

Q. Now, Mr. DeVries, so that this jury can get this straight. You claim that this train traveled five hundred feet at least from the time it started to where this man got on? A. Yes, sir.

Q. Is that true? A. Not the whole train, the engine was five hundred feet from where the man got on.

20 Q. What coach did the man attempt to get on—first or second coach? A. Third coach—rear end of the third coach.

Q. How long is each coach? A. Each coach?

Q. About? A. Probably sixty—

Q. Sixty? A. —to seventy feet long.

30 Q. You know that there is no sidewalk or nothing whereby he could run alongside of it, so that after the train passes Jefferson Street, which is about forty feet from where the train stopped, there is no sidewalk or nothing there, is there? A. There is no platform.

Q. You mean to say, under oath, that there is a platform after you passed the Jefferson Street crossing? A. No, not after you pass the crossing, there is nothing.

Q. Don't you know that there is an iron fence there; there is no place to walk, even, along there? A. There is nothing there but stones and ties.

Q. Stones and ties? A. Yes.

40 Q. You don't mean to tell this jury that he ran

Nicholas DeVries—Cross.

along those ties, do you? A. No.

Q. For five hundred feet before he jumped on the train, do you? A. No.

Q. Well, now, Mr. DeVries, isn't it a fact that this station platform, that this whole station building there is no more than seventy-five feet from this crossing at Jefferson Street, on Main Street? A. Seventy-five to one hundred feet. 10

Q. Seventy-five to a hundred feet. Now, is it not a fact that the crossing is about thirty feet, the width of every ordinary crossing? A. Yes.

Q. That is true? A. That is right, yes.

Q. The man didn't attempt to get on no train alongside of the cars east from this station platform, did he? A. On the platform, the station platform. 20

Q. Oh, he did get on on the station platform; is that right? A. Yes, sir; attempted to.

Q. You say there were eight coaches on this train; is that right? A. Right.

Q. How do you know that? How do you know that? A. I know that because every day it carries about eight coaches.

Q. You know that because every day it carries about eight coaches? A. I used to figure that out, doctor, or your Honor; you see, I was interested in my work there a little. 30

Q. How would that be of interest to you to see how many coaches there were? A. Just—

Q. Curiosity, that is all? A. That is all, just for curiosity.

Q. What coach did he attempt to get on? A. At the rear end of the third coach.

Q. Rear end of the third coach— A. Yes, sir.

Q. —is that right? A. Yes, sir. 40

*Nicholas DeVries—Cross.**By the Court:*

Q. Now, Mr. DeVries, where was the rear end of the third coach when the train was at a standstill, before it started? A. About at the waiting room.

10 Q. And how far is it from that point to the point where he fell off, or where he jumped on, rather? A. About ninety feet.

Q. Then the train must have gone ninety feet from the time it started until he got on; is that correct? A. (No answer).

Q. Here is the platform and the train is still— A. Yes.

20 Q. —and the train starts up, and he tried to get on, and it goes a little further, and he dropped off. It did go a distance before he fell off, didn't it, from the time he got on? A. Yes.

Q. So that the place where he got on was about ninety feet from where that particular part of the train was when it was stopped; is that right? A. You are asking me a question.

30 Q. Don't answer it, if you cannot. I was only trying to find out how far the train had gone on from the time it started until this man attempted to board it. I thought you could tell me. You say he got on the third coach, and you know where he was when he started to get on the third coach, because you know it was about fifty feet from where you stood. That is correct, isn't it? A. Yes.

Q. Now, I am asking you where that third coach was when the train was at a standstill. A. Oh, that was at the waiting room.

Q. That was— A. At the waiting room.

40 Q. —at the waiting room. How far from that

Nicholas DeVries—Cross.

point was it to the point where he got on? A. About ninety feet.

Q. About ninety feet; all right. A. Yes, sir.

Q. So that when you said the train had gone five hundred feet, you were talking about where the engine was, weren't you, when I asked you before how far the train had gone from the time the man had got on, and you said five hundred feet? 10

A. Yes, I meant the engine then.

By Mr. Weinberger:

Q. Now, Mr. DeVries, this man was coming in this direction—say my back was the direction in which he was coming—is that correct?—and the train was coming in the opposite direction, going toward New York; is that correct? Am I right or wrong? A. You are pointing east; I would take that is the way for New York. 20

Q. Let you take whatever direction you want to. A. All right.

Q. This man was going in the direction of Paterson, New Jersey? A. Yes, sir.

Q. Train was going in the opposite direction; is that correct? A. Correct.

Q. Now, you were turned that way when the man started to go toward Paterson, New Jersey? A. Yes. 30

Q. This locomotive engine hadn't passed him yet, had it? A. Yes, sir.

Q. Had it? A. Yes, sir.

Q. Where did he come from? A. He come running up the platform.

Q. Well, then, he had to pass the engine, didn't he? Didn't he? A. He didn't have to pass the engine. He had to pass the engine wherever—I don't know wherever he come from, but he come running up the platform. 40

Nicholas DeVries—Cross.

Q. Now, Mr. DeVries, let me get this clear, and the jury as well. Didn't that man have to pass that engine to get onto one of the coaches? A. No, sir.

Q. He did not? A. He did not.

Q. Was he coming from the other direction? A.
10 He come from the front of the platform, from in front of the train.

Q. From the front? A. From the front.

Q. Then he had to pass the engine, didn't he?

The Court: It depends on where this man said he first saw him coming from; he saw him coming from the direction of Jefferson Street.

Mr. Weinberger: That is in front of the
20 engine.

The Court: No, he said the engine was beyond Jefferson Street. Now, the testimony is that he saw the man coming from the direction of the front of the train. That is right, isn't it?

The Witness: Correct.

The Court: And the train was traveling when you first saw him running?

The Witness: Yes, sir.
30

The Court: So that the train was traveling in one direction and he was running in the other; that is correct, isn't it?

The Witness: Correct.

The Court: All right.

Q. Now, Mr. DeVries, when this train stopped, where was this locomotive, in front of Jefferson Street or beyond it? A. When it started?
40

Nicholas DeVries—Cross.

Q. When it stopped? A. When it stopped? On the north side of the crossing, Jefferson Street crossing.

Q. What does that mean to this jury? A. That means, on this side, towards Paterson, when it stopped.

Q. All right. When you first saw this man coming up the platform toward Paterson— A. Yes. 10

Q. —where was the locomotive? A. The locomotive was traveling at a rate of speed of about six miles—six to eight miles an hour, to my knowledge.

Q. All right. A. The locomotive engine was in the middle of the block, between Jefferson Street and Washington Place. 20

Q. All right. Now, how many cars did this man pass, that you saw, before he attempted to board the train? A. Two coaches.

Q. You want us to understand that he stood there and let two coaches go by? A. He didn't stand—

Q. He was running? A. Running.

Q. At top speed? A. I couldn't say how fast the man could run.

Q. He was running the opposite direction? A. Yes. 30

Q. From which the train was going? A. Right.

Q. Is that right? A. Right.

Q. You don't know where he came from or how he got there? A. No, sir.

Q. Whether he came from this side of Main Avenue or whether he came from the northerly side, New York side or the Paterson side? A. No, sir.

Q. Huh? A. No, sir. 40

Nicholas DeVries—Cross.

Q. Now, this train traveled how many feet from the time when you first saw this man until the accident happened? A. Probably five hundred feet from where the man attempted to jump the train.

10 Q. How long is Main Avenue, about, between Main Avenue, Jefferson Street and Main Avenue, Washington Place? A block? A. Well, I would say eight hundred feet, probably a little more.

Q. Half of that would be four hundred feet? A. Probably a little more.

Q. I say, half of that would be four hundred feet? A. Yes.

Q. Now, how long was that engine, about, with the cab on the back of the engine? A. I didn't measure it.

20 Q. About, Mr. DeVries? A. About, I would say, a hundred feet, a hundred and ten feet.

Q. And the three coaches was about how many feet—eighty feet—sixty apiece? A. About sixty apiece, yes.

Q. That is a hundred and eighty feet. Now, where did this man fall? Was he on the station platform, or not? A. On the station platform.

Q. Now, where? A. Thirty feet from the crossing, north from the Jefferson Street crossing.

30 Q. North? You mean toward Paterson? A. Right.

Mr. Weinberger: That is all.

JOSEPH J. WEINBERGER, sworn.

Direct-examination by Mr. Selser:

40 Q. Mr. Weinberger, you are City Counsel of the City of Passaic, are you not? A. I am.

Joseph J. Weinberger—Direct.

Q. As City Counsel of the City of Passaic, are you acquainted with the relationship existing between the Erie Railroad and the City with respect to police protection at the station? A. I am not.

Q. Do you know whether or not there is an agreement between the City of Passaic and the Erie Railroad with respect to police protection at the station? A. I understand there is; I never saw it, though, Mr. Selser. It must have been made long before my time. 10

Q. Do you, or have you any understanding as to what relation there is under that agreement as to the pay of City policemen stationed at the Passaic station? A. Except from what I have been told; I never saw any such agreement, Mr. Selser. I understand— 20

The Court: Don't tell us what you understand, unless he asks you. You don't know any more than the cop.

A. I never saw the agreement, Mr. Selser.

The Court: Neither did he.

A. That is all I can tell you.

Q. Do you know Officer DeVries? A. Do I know him? 30

Q. Yes. A. I know he is a police officer.

Q. Do you know whether or not he is employed by the City of Passaic? A. I presume he is; he says he is.

Mr. Selser: That is all.

The Court: That is all. Do you want to cross-examine yourself?

Irving Evansky—Direct.

IRVING EVANSKY, sworn.

Direct-examination by Mr. Selser:

Q. You are a police officer, employed by the City of Passaic, are you not? A. Yes, sir.

10 Q. Do you know whether or not your salary is paid by the Erie Railroad Company? A. It is not.

Q. You know that? A. I know it.

Q. What type of duty do you do? A. Traffic officer at the corner of Jefferson Street and Main Avenue, Passaic.

Q. On July 27th, 1925, about two o'clock in the afternoon, where were you, officer? A. I was on the west side of Main Avenue, outside of the gates—of the railroad gates.

20 Q. At Jefferson Street crossing? A. At that crossing, Jefferson Street.

Q. At that time, you were directing traffic, were you? A. I was not directing traffic. I usually stand outside of the gates when the gates go down, and wait until the gates go up again, and then handle my traffic. Otherwise, while the gates are down the traffic keeps moving by, keeps running north and south on that street.

30 Q. There is no cross traffic while trains are in the station, in other words? A. No, sir.

Q. Now, officer, do you remember the 2:15 train coming into the station that afternoon? A. I do.

Q. Do you remember where the engine stopped with respect to the crossing itself? A. I do not remember.

40 Q. Well, just tell the court and jury, if you please, what you know about the accident. A. Well, at that time, on that particular day, at that time, the train had stopped, and I turned my back to

Irving Evansky—Direct.

the train, and there were two women with baby carriages up against the gate.

The Court: Were the gates down?

The Witness: The gates were down.

The Court: Why?

The Witness: The train had come in at that time, I suppose; the gates was down. 10

The Court: Well, why?

The Witness: I don't know; sometimes they keep the gates down when the trains are upon the cross-walk, and sometimes they keep them down when the crossing is blocked.

The Court: You do not know whether the crossing was blocked at this particular time or not? 20

The Witness: I do not remember.

The Court: All right. Go on.

A. (Continuing) And I had my back turned, and these two women were right against the gate; there is room enough right at that spot for the size of a baby carriage anyhow; and one of the women screamed as the train was pulling out. I turned my back and I saw this man falling off the train, off the right side of the train, and I run to him and tried to help him. 30

Q. Now, officer, at the time this woman screamed, you say the train was then pulling out. How far, in your opinion, had the train gone when you heard the screaming?

Mr. Weinberger: I object to this, your Honor please.

The Court: He saw the man falling off 40

Irving Evansky—Direct.

the train. That is correct, isn't it?

The Witness: Yes, sir.

10 The Court: The woman screamed, then he fell off; he heard her screaming and he looked, and he saw the man falling off; the train was then in motion. It was in motion when she screamed. Now, the question is, if you know how far had the train traveled from the time it had started until you heard her scream?

Mr. Selser: That is the question exactly.

The Court: Don't guess, if you don't know, tell us so.

The Witness: I would like to have you repeat that question again.

20 The Court: How far had the train gone from the time it started until you heard the woman scream?

The Witness: That I do not know.

The Court: All right, where was the engine at that time, if you know?

The Witness: I do not know.

The Court: Was the train crossing the crossing at that time, or do you know?

The Witness: Yes, sir.

30 The Court: It was; were any coaches crossing the crossing at that time?

The Witness: Yes, sir.

The Court: When the train was in the station at a standstill, were there any coaches across the crossing at that time?

The Witness: I do not know.

The Court: Well, do they ever?

The Witness: Sometimes.

40 The Court: Coaches as well as the engine?

Irving Evansky—Cross.

The Witness: Well, that happens once in a while.

The Court: All right.

Q. Officer, were you paying any attention to the little whistle on the engine, the go whistle? A. No, sir.

10

Q. You didn't pay any attention to that at all. That is all.

Cross-examination by Mr. Weinberger:

Q. You don't know when this man, Mr. Nogrady, got on this train, whether it was standing still or in operation, do you, when your back was turned? A. My back was turned.

Q. You were doing traffic duty? A. My back was turned; I didn't see him get on it. I saw him falling off. I didn't see him at all until the woman shouted, attracted my attention to it.

20

Q. The first thing you know, you heard the woman shouting? A. That is the time.

Q. Then you turned and saw a man falling off the train? A. Yes, sir.

Q. Whether when this man was boarding the train it was standing still, you don't know? A. I don't know.

30

Q. You were the traffic officer at the middle of the street, at the far end of the Jefferson Street crossing; that is correct? A. Yes, sir.

Q. You have nothing to do with the station platform itself? A. I direct traffic on both sides; I have nothing to do with the railroad at all.

Q. On one side, you are in a booth, in front of Leggett's drug store? A. Sometimes.

40

Irving Evansky—Redirect.

Q. That is across the street from the station?

A. Yes, sir.

By the Court:

Q. Where was the man when you got to him?

10 A. Well, when I got to him, the wheels were going over him, and I tried to pull him from under the train, while the wheels were going over his legs.

Q. Where was he? What point? What part of the tracks? A. Of the track?

Q. Where was the point where the man was lying at that time? A. About fifteen feet from the cross-walk.

20 Q. What crosswalk? A. The crosswalk nearest to the station platform. That is, on that walk would be the north crosswalk on the north side of that crossing.

Q. Did you see Officer DeVries there? A. About the time—well, I didn't take notice as to who was there; I don't even remember now whether he was one that helped me or not. I know somebody helped me.

Q. An officer? A. An officer.

Mr. Weinberger: That is all.

30 *Redirect-examination by Mr. Selser:*

Q. Officer DeVries is commonly in the uniform of the City Police Department? A. Yes, sir.

By the Court:

Q. You know him? A. Yes, sir.

Q. He is stationed at the Erie? A. Yes, sir.

By Mr. Selser:

40 Q. Do you remember seeing Officer DeVries on

Michael Burhorn—Direct.

the station platform before the accident occurred at all? A. On that day?

Q. Yes, at the time this particular train was in the station? A. I don't remember that.

Q. You don't remember seeing him. That is all.

10

MICHAEL BURHORN, sworn.

Direct-examination by Mr. Selser:

Q. Mr. Burhorn, you work for the Erie Railroad Company, don't you? A. Yes, sir.

Q. What is your job? A. Flagman on the crossing.

Q. What crossing were you in charge of on July 27, 1925? A. Jefferson Street.

20

Q. Do you remember this accident occurring? A. I remember the man running in front of me on the crosswalk.

Mr. Weinberger: I ask that be stricken out, if your Honor please, not being responsive.

Mr. Selser: Not responsive; I consent to striking it out.

The Court: Strike it out.

30

Q. As this train came into the station, Mr. Burhorn, the 2:15 train, where were you? A. In the middle of the track, on the west bound track.

Q. At the Jefferson Street crossing? A. Yes, sir.

Q. What were you doing there? A. Standing there, seeing that nobody gets hurt.

Q. Just tell us, if you please, what happened from that time on? A. Well, as I was standing

40

Michael Burhorn—Direct.

there, a man come from Jefferson Street, running around the engine that way (illustrating)—

The Court: Around the front of the engine?

The Witness: Yes, sir.

10 A. (Continuing)—in front of it, running right around; that was the last of him—that is all I seen of it, because there was another train coming west and I didn't dare to go on account of watching that train, so I stayed where I was.

Q. Now, as this man came running by, Mr. Burhorn, running across in front of the engine, was the engine then moving? A. Yes, sir; just started.

Q. Just started? A. Yes, sir.

20 Q. Where was the engine standing as the train was stopped in the station? A. On the end of the crossing.

Q. Nearest to Paterson or nearest to New York?

A. Nearest to New York.

By the Court:

Q. Thereby blocking the other traffic? A. Well, the—

30 Q. I say, nobody could go over the crossing because the engine was on the crossing? A. Yes, sir; the gates were down.

Q. Well, if the gates had been up, an automobile couldn't have crossed? A. No.

The Court: All right.

By Mr. Selser:

40 Q. Where was the cowcatcher of the engine, Mr. Burhorn? Was the cowcatcher over apast the crossing or just over, toward Jersey City or to—

Michael Burhorn—Cross.

ward New York? A. Just about a little hanging over toward Jersey City.

Q. Did you see the injured man after the accident occurred? A. No, sir.

Q. You did not. You did, however, see this man who run to go in front of the engine and cut up the platform? A. I couldn't tell you what way he run,—right around the engine by the front, that is all I seen him. 10

Mr. Selser: That is all.

Cross-examination by Mr. Weinberger:

Q. Mr. Burhorn, you are the flagman there? A. Yes, sir.

Q. You work up in a tower? A. No, sir; on the ground. 20

Q. I see; you are not connected with the tower? A. No, sir.

Q. Where do you stay when the trains go by? A. Where do I stay? In the middle of the track.

Q. I know, but after the trains are gone, where do you go? A. In the shanty.

Q. That is part of that tower down there? A. Downstairs.

Q. Downstairs in that tower. Now, when a train comes in, you stay on the left hand side of the train going into New York; is that right? A. Sometimes. 30

Q. Always? A. No.

Q. Well, on this day where did you stand? A. West side.

Q. On the west side? A. Yes, sir. I mean the east.

Q. East side? A. On the east side.

Q. On the east side. You were holding one of 40

Michael Burhorn—Cross.

these little portable metallic signs, "stop" or whatever it may be? A. They call them bijou.

Q. Bijou not banjo? A. No, bijou.

Q. Now, on this day, you were holding this bijou, as you call it? A. Yes, sir.

10 Q. Railroad language; and you say that this engine had blocked the entire Jefferson Street crossing, toward Jersey City, toward New York? A. Not before he started.

Q. Well, didn't you answer the court— A. Judge ask me about where the engine go and I told him.

Q. Wait a minute. When the engine stopped, you saw it come in, did you? A. Yes, sir.

Q. Where did it stop, the front part of the engine? A. That end of the crossing.

20 Q. What do you mean by that end? A. That end, the west end, from the crossing.

Q. Toward Paterson or toward Jersey City? A. Toward Paterson.

Q. Toward Paterson? A. Yes, sir.

Q. You swore on your direct examination toward Jersey City. A. Toward Paterson; as that gentleman ran around the engine was moving, and I told the judge he stopped at that end.

30 Q. You were on this side of the street? A. Yes, sir.

Q. East Main Avenue side? A. Yes, sir.

Q. Where the City Trust Company is— A. Yes, sir.

Q. —is that right? A. Yes, sir; over that way.

Q. This train was on the station platform when you stood there? A. By the depot, yes.

Q. By the depot? A. Yes, sir.

40 Q. You stood in between the middle of the gates — A. Yes, sir.

Michael Burhorn—Cross.

Q. —is that right? A. Yes, sir.

Q. Was this in the center of the street? A. Yes, sir.

Q. The train didn't block the crossing, then, did it? A. No, well, that other train was coming in.

Q. The train didn't block the crossing, then, did it? A. You understand that, don't you? A. 10
When he come up this way, he blocked it, until she started out.

Q. Oh, there was another engine standing there? A. So you couldn't lift up the gates to let the traffic through.

Q. There was another engine standing there? A. No, he wasn't standing; he was coming.

The Court: He was traveling?

The Witness: Traveling is right. 20

Q. So you flagged the crossing because there was another engine coming? A. Yes, sir.

Q. You saw some kind of a man run in front of this engine? A. Yes, sir.

Q. Huh? A. Yes, sir.

Q. Are you sure of that? A. Yes, sir.

Q. And he ran right in front of your nose then, did he not? A. Yes, sir; right alongside of me.

Q. Certainly, and the train then, the engine had not passed you yet? You are sure of that? A. 30
Yes, sir; I am sure the engine didn't pass me.

Q. Certainly. A. It blocked the road though, the gates was down.

Q. And the engine was on the north side of the crossing? A. Yes, sir.

Q. And this man went by you, you say; didn't he? A. The engine started up as he run around.

Q. Wait a second. He was in front of the 40

Michael Burhorn—Cross.

engine, you have got him now? A. Yes, sir; he was.

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

Q. He had passed by you? A. Yes.

Q. And the engine hadn't started yet, had it?
A. Yes.

10 Q. Had it? A. Yes.

Q. Now, after the engine there is a part of the engine called the caboose?

The Court: No.

Q. Cab of the engine, is that right? A. Certainly.

Q. Then there is the first coach, is that right?

20 Mr. Selser: Then there is a tender back there.

A. There is a bell on it.

Q. There is a bell on it. I forgot to tell him that. A. Yes.

Q. Now, the engine comes first? A. Yes.

Q. Is that right? A. Certainly.

Q. Then comes the coach? A. That follows the tender.

30 Q. And he had to pass that first coach? A. I do not know whether he passed the first coach or not, or he run up the line.

Q. Didn't he have to pass it? A. Certainly, he had to pass it on the other side.

Q. Certainly, Mr. Burhorn? A. Certainly, he had to pass it or he wouldn't have got there.

Q. Well— A. He has to pass it, or he wouldn't have got there. If he didn't have to pass it, he wouldn't be where he was.

40 Q. And he had to pass the second coach, didn't he? A. Certainly.

Michael Burhorn—Cross.

- Q. He had to pass the third coach, didn't he?
 A. I don't know where he dropped.
- Q. You don't know whether this fellow running for the train, around the front of the engine, might have jumped over that fence, for all you know; you don't know whether that was the same man in the accident? A. I know it was the man in the accident. 10
- Q. How do you know it was the man in the accident? A. I seen the ambulance taking him.
- Q. You saw the ambulance taking a man; you assumed that was the man? A. Yes.
- Q. You are guessing? A. No.
- Q. What? A. No, I am not guessing.
- Q. You didn't see the man try to get on, did you? A. No, sir.
- Q. You didn't see him fall off, did you? A. No, sir. 20
- Q. Your answer is what? A. No, sir.
- Q. That is all.

WALTER D. HUNT, sworn.

Direct-examination by Mr. Selser:

- Q. Mr. Hunt, you are a locomotive engineer, employed by the Erie Railroad Company? A. Yes, sir. 30
- Q. You are one of the defendants in this case, are you not? A. Yes, sir.
- Q. How many years have you been a locomotive engineer? A. Six years.
- Q. You were in charge of train 130 which runs east on Main Line and gets into Passaic station about 2:15? A. Yes, sir.
- Q. July 27, 1925? A. Yes, sir. 40

Walter D. Hunt—Direct.

Q. Will you just describe to the court and jury, Mr. Hunt, if you please, the manner in which you brought that train to a stop at the station, and the manner in which you drew your train out of the station? A. Why, we come into Passaic and stopped with the engine just west of the crossing.

10 Q. West is a railroad term, isn't it? A. That would be toward Paterson.

Q. Toward Paterson? A. I shut the bell off and laid there a short length of time.

Mr. Weinberger: I ask that be stricken out.

The Court: Strike it out; you were not asked that.

Mr. Selser: Strike it out.

20

Q. What was the length of time that you were at the station? A. Just a short time, and I got the whistle to start, and I started, when the gates were down. There was a signal ahead of me, and I had to watch that signal, and I have got the highway to watch. I went about two car lengths after I got the whistle to proceed, and I got the whistle to stop and I stopped. Naturally, when I got the whistle to stop, naturally I turned around to look

30 back, and I saw a crowd there. That is all I know about it.

Q. Now, Mr. Hunt when you brought your engine to a stop, state where it was at with respect to the Jefferson Street crossing? A. Just west of it.

Q. No, I mean, after the accident occurred, when you got your whistle to stop. A. After the accident occurred? I was east of the Jefferson Street

40

Walter D. Hunt—Direct.

crossing, right at the signal bell, where the engine was.

Q. About how far was that away from the crossing? A. I should judge, about sixty feet.

Q. About how wide is Jefferson Street, as nearly as you can estimate it? A. I should judge forty foot.

10

Q. Now, will you just tell the court and jury how your engine started from the station—how your engine and train started away? A. It started very easily, without a jerk; there was no jerk at all, went out of there very easily; I was going at the rate of about six miles an hour when I got the whistle to stop.

Q. When you saw this crowd down by—at the station platform, where do you say, with respect to the crossing, that is? A. Where what?

20

Q. Where was the crowd with respect to the crossing? A. They were west of the crossing after I got stopped.

Q. That was toward Paterson from the crossing? A. Yes, sir.

Q. About how far from the crosswalk was the crowd? A. Well, I wouldn't just say how far from where I was.

Q. Was it at or near the station? A. Well, it was near that little waiting room.

30

By the Court:

Q. Had the end of that train passed the station platform when you came to a stop? A. When the entire train—

Q. Had the entire train passed the station platform when you came to a stop? A. Second stop, you mean?

Q. Yes. A. After the accident?

Q. Yes. A. No, not the entire train; no, sir.

40

Walter D. Hunt—Direct.

Q. All right. You say you went an engine length and two car lengths about from the time you started until you got the signal to stop? A. Yes, sir.

10 Q. About how much distance would that be? How long was that? A. I think it was about ninety feet.

Q. About ninety feet? A. Or a little more.

Q. Or a little more? A. I wouldn't just judge the distance I went.

The Court: All right.

By Mr. Selser:

Q. How quickly, after you got the signal to stop, did you stop? A. How quick?

20 Q. Yes. A. I should judge I stopped in about ten or fifteen feet.

Mr. Selser: That is all; take the witness.

Cross-examination by Mr. Weinberger:

Q. Now, let me see; this train of which you were the engineer had eight coaches outside of the engine; is that correct? A. No, sir.

Q. How many? A. Six.

30 Q. Six? A. Yes, sir.

Q. Each car length, or each coach as you call it, is at least sixty feet in length? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Well, now, you were the engineer on this train going toward New York, and you have a little window up in your engine, and you looked out from the right hand side of this engine? Am I correct? A. Little engine up in the front of the

Walter D. Hunt—Cross.

car, outside of the engine; I don't understand your question.

Q. Just listen to me. You have a little window through which you look on the right hand side of this locomotive? A. Not at all times.

Q. Is there a window there? A. Yes, sir.

Q. Out of which you look? A. Yes, sir; I look out of the window, look alongside of my cab. 10

Q. Certainly. A. But not at all times, but not through that window, not at all times, no.

Q. Well, do you look when people are getting on the train? A. No, sir.

Q. That is not your business? A. No, sir.

Q. Your business is to look ahead of you? A. Yes, sir.

Q. Listen to the whistle and go; is that right? A. If things are clear; yes, sir. 20

Q. Surely, you don't look behind to see if they are clear, do you? A. No, sir.

Q. And you didn't this time, did you? A. Not at that point.

Q. Not at that point? A. No, sir.

Q. On this particular day, you were paying attention to business, I take it? A. Always.

Q. Can't be any mistake about that? A. No, sir. 30

Q. As you looked ahead of you, did you see a man coming in front of your engine? A. No, sir.

Q. You were looking? A. Yes, sir.

Q. No man came right in front of that engine? A. I cannot say no.

Q. Did you see— A. I seed two or three run across in front of the engine, I don't know where they come across; I have got other things to watch there. 40

Walter D. Hunt—Cross.

Q. Just a minute. Did they run across? You say, "Yes"? A. Yes.

Q. You saw them? A. Yes.

Q. Your train was standing still? A. No.

Q. It was moving, was it? A. What do you mean? Do you mean they run across after I started or before I started, which do you mean?
10

Q. Now, Mr. Hunt, you were standing at the Main Line station in Passaic, on July 27, 1925?

A. Yes.

Q. Now, while you were standing there, before you started to move your train, did anyone go in front of it? A. Why, yes, numerous people went across the crossing.

Q. Ran in front of your train? A. I don't know whether they run or not; I didn't pay no attention to whether they run.
20

Q. Well, did you see anybody run up toward the station to go onto the train? A. Why, yes, lots of them.

Q. You say you knew that those people were going to go on that train? A. I don't know where they were going.

Q. What did you expect they were doing there? A. I cannot say.

Q. Did you expect that they were going to take an aeroplane? A. That may be.
30

Q. That may be? A. That may be.

Q. When you see people walking along the station platform, with your train standing still, what do you expect them to do? A. I don't know what they are going to do; I can't answer that question.

Q. You cannot? A. No, sir; I can't answer that question.

Q. Well, you were stopped at the station for
40

Walter D. Hunt—Cross.

what reason? A. To stop to unload passengers and load them.

Q. You knew that was what you stopped there for? A. Yes, sir.

Q. Now, on this particular day, at that time when you were there stopped, you paid no attention to those people whom you claim walked in front of your engine, and walked along the station platform, whether they got on your train safely, or whether they did not, did you? A. That is nothing to me. 10

Q. I say, you didn't do anything? A. I hadn't anything to do with them; I didn't.

Q. No way? A. No way. I can't tell whether they are going on the train, I don't know they are going on the train or not; a station is a public place, a million people can walk around, you know. 20

Q. So you paid no particular attention? A. I paid no particular attention to them; no, sir. I have other things to do.

Q. Certainly; before you started, you wouldn't look around to see if someone was getting on? A. I suppose, if they were getting on, I wouldn't get the signal to go.

Q. I didn't ask you that. You wouldn't look around,—didn't look around? A. No. 30

Q. Although you knew that there was people on the station platform? A. I don't know.

Q. You just swore that they were? A. I don't know; after I got the whistle to go, I had to go, after my conductor signals me to go.

Q. Just listen to me, Mr. Hunt. A. Yes.

Q. Before you started that train on that day, did you turn your face and look up at the people who went by you on the railroad station platform to see whether they got on the train safely, or not? 40

Walter D. Hunt—Cross.

A. The question you asked me, did anybody go in front of my engine.

Q. Let's not quibble, Mr. Hunt. Did you have people passing along the side of your train, walking in the direction of Oak Street? A. I don't know.

10 Q. Why, you swore that they did go by you before. Did they go by you, or didn't they? A. I don't know which way they went, whether they went by or not; I cannot look out and look down that way.

Q. You paid no attention, did you? You didn't care where they went, did you? A. No, I didn't care where they went.

Q. Certainly not; all you have got to do is to look ahead of you, according to your view; is that right? Is that right? A. At that present time; yes, sir.

Q. Well, now, you say you got a whistle to go ahead? A. Yes, sir.

Q. And you went about sixty or ninety feet when you got a whistle to stop? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. You didn't see anybody getting on, and you didn't see anybody falling off; is that correct? A. Yes, sir.

30 Q. You don't know whether this man was getting on the train when it was standing still or when it was moving, of your own knowledge? A. No, sir; I do not.

Q. Well, now, you do know that when your train came to a stop, there were left about four coaches on the station platform, then, of the Erie Railroad at Passaic? A. At what?

40 Q. Which still had to cross the Jefferson Street crossing? A. What do you mean, when?

Walter D. Hunt—Cross.

Mr. Selser: You mean, when it stopped the first or second time?

Q. Second time? A. Yes.

Q. Cannot be any mistake about that? A. Yes.

Q. Let's get this clear. When you brought your train to a stop, there was still four coaches on the station platform of the Erie Railroad at Passaic? 10

A. The second time?

Q. Yes. A. I can't state just how many were there; there was some, I don't know how many.

Q. Where was the crowd? On the station platform—isn't that correct? A. Yes.

Q. Isn't that where the waiting room is? A. Not exactly there.

Q. Exactly where then? A. The waiting room is west of that, where the crowd was. 20

Q. Now, how far was the waiting room from the Jefferson Street crossing? A. Oh, that, I can't tell; I do not know.

Q. Isn't it about thirty-five or forty feet? A. At least every bit of that.

Q. Isn't it a hundred feet? A. I couldn't answer that question, not accurately, because I don't know just how many feet it is from Jefferson Street.

Mr. Weinberger: That is all. 30

The Court: We will take a recess now until tomorrow morning, at ten o'clock.

(Evening recess)

Harry M. Katzin—Direct.

HARRY M. KATZIN, sworn.

Direct-examination by Mr. Selser:

Q. Dr. Katzin, where do you live? A. 134 Madison Street, Passaic.

10 Q. Do you recall the day of July 27, 1925? A. Yes, I do.

Q. Before we go into that, doctor, what is your profession? A. Well, I am a student of divinity.

Q. You have your degree—theological degree? A. I have my degree in Philosophy, Master.

Q. Where were you at about 2:15 o'clock on the day of July 27, 1925? A. Why, at the Erie train, leaving for New York.

20 Q. Now, will you just tell the jury please, Dr. Katzin, what you observed with respect to some passenger boarding that train, to the passenger who was injured? A. Well, I usually—

Mr. Weinberger: I object to what you usually do.

The Court: Objection sustained.

30 Q. Don't tell us what you usually do, doctor. What you usually do is not evidential. Just what you did on this occasion, just what you saw and heard on this occasion. A. I was one of the last passengers to enter the smoker and took my seat at the second from the entrance toward the engine, I mean, toward the end of the car. I opened the window, which opened half-ways. It was —————to my way of opening it, with the catch, the way that opens, from both sides. I looked out the window. It was a hot day. I saw people running from buses that had stopped on
40 Main Avenue through the structure on Main Ave-

Harry M. Katzin—Direct.

nue station, out the entrance. The gates were down at that time. Out of curiosity only I wanted to see—

Mr. Weinberger: I object to "out of curiosity" he wanted to see.

The Court: I will allow it as to why he watched. At any rate, you did watch. 10

A. (Continuing) I watched the people running toward the structure. At the moment I lost sight of them, because the structure hid them from me. Then I saw one man grabbing the handle, the front handle of about two cars back from mine, or maybe the second car, at the front. I don't recall whether it was the second or the third, but quite far back from my place. The train was, at that time, in motion, and he tried to get on. I watched him to see whether he was going to succeed, or not. I was watching him and I saw that he ran in an awkward way, in an unusual way; it was not the way of running for the train but being dragged rather. The exact position of that man was not in a running position, but in a half seated position, not exactly sitting on the ground but not anyway in a straight running position, and a moment afterwards I saw him sliding under the wheel and I hollered to stop the train. A man approached me—I think it was a trainman—and he asked me some questions; I was nervous, and I don't know what I answered or what he asked me, and I didn't look out of the window no more. The train stopped. The engine was at the end of the gate of Jefferson Street toward Jersey City, but the—whether the man was dead, or not, I don't know, because I didn't leave the car. 20 30 40

Harry M. Katzin—Direct.

Q. Now, Dr. Katzin, when the train first came to a stop at the Passaic station, did you observe where the engine was with respect to the Jefferson Street crossing? A. Pardon me; I did not get the question.

10 Q. When the train was standing at the station to take on passengers— A. Yes.

Q. —did you then observe where the engine was with respect to Jefferson Street? A. Well, in its usual place, about twenty feet away from the end, or maybe less,—maybe fifteen,—about where it usually belongs; I didn't notice anything unusual.

Q. Was the front of the engine toward Paterson from the Jefferson Street crossing, or toward Jersey City? A. Toward Jersey City.

20 Q. Was it entirely across the crossing? A. When it stopped?

Q. When the train stopped the first time, to take the passengers on,—not the second time. A. It stopped before the gate.

Q. That would be toward Paterson from Jefferson Street. A. That would be toward Paterson.

By the Court:

30 Q. Was the gate lowered, or not; do you know? A. At that time?

Q. Yes, when the train stopped at the station. A. Well, I don't recall, but—

Q. All right.

Mr. Selser: Take the witness.

Cross-examination by Mr. Weinberger:

40 Q. You are studying to be a rabbi? A. Yes.

Q. You stated you were in the first coach in the

Harry M. Katzin—Cross.

back of the engine. A. In the back of the engine; yes, sir.

Q. That is the smoking car? A. Yes, sir.

Q. You were seated in the second seat from the front of the first coach; is that correct? A. Yes.

Q. And as you were seated there, were you on the extreme right of that seat, in the second seat of the front coach? A. If I recall correctly, I was the only passenger in the seat. 10

Q. Well, now, as you opening the window, I take it, that all you can see by looking to your right, would be directly opposite and across the street? Am I right or wrong? A. Correct.

Q. I take it, you didn't put your head out of the window to look at everybody getting on that train? A. Pardon me; I didn't get that. 20

Q. (Repeated by stenographer). A. No, I observed the buses.

Q. I say, you didn't put your head out of the window? A. I did.

Q. Did you? A. (No answer).

Q. Where did this man come from that you saw—or these people come from that you saw getting on the bus? A. The people came from a bus.

Q. Where was the bus? A. The bus stopped out toward the main structure of Main Avenue, but facing the fence, near the gate. 30

Q. Was the bus coming from the direction of Newark and going toward Paterson? A. It was facing that direction; whether it came from Newark or some other place, I do not know.

Q. I think you said you were watching this bus?

The Court: He couldn't say it was going to Newark; he said it was facing as though 40

Harry M. Katzin—Cross.

it came from that direction. Is that correct?

The Witness: That is correct.

Q. When did you first observe this bus? A. When he stopped there.

10 Q. How many people got off, approximately? A. Approximately, five or six.

Q. Men or women? A. More men than women; there were a few women, however.

Q. Did they all come inside on the station platform and go for the train, too? A. Most of them, about four of them, began running toward the structure on Main Avenue, and I lost track of them.

20 Q. By the "structure" you mean the railroad station? A. Railroad station.

Q. You lost sight of them all? A. Yes.

Q. After you lost sight of them because of this structure being in your way, did you notice anybody again? A. I noticed a man trying to get on the train.

Q. What part of the train did he try to get on? A. About two cars back of mine.

30 Q. Now, when you—I take it, you were standing still at that time; am I right? A. Well, I was sitting, watching from the window.

Q. I mean, the train was standing still? A. Yes.

Q. And this gentleman that you saw running was on the station platform proper; am I right or wrong? A. I suppose he was.

Q. When you saw this man running, he was on the station platform proper? A. Yes.

40 Q. That station platform extends all of the way from Jefferson Street down almost to Oak Street,

Harry M. Katzin—Cross.

to Harrison Street; am I right, doctor? A. Well, I would say it stops, because the gate is Monroe Street.

Q. I mean, Monroe Street. I beg your pardon in saying Harrison Street. It is a sort of a gravelly pavement, partly cement, when you get near the shed; am I right? A. Yes.

10

Q. I take it that you saw these other people board this train, too, did you? A. The other people on the bus you refer to?

Q. Yes. A. No, I didn't see them boarding the train.

Q. Did you see them boarding the— A. No.

Q. You didn't see the stationmen on the platform, where they were stationed at? You couldn't see that far, all of the way back to Monroe Street? A. No, naturally I didn't look so far back.

20

Q. Certainly. You were not interested to see if there was a trainman down at the end of the train, or the conductor, or the brakeman? A. No, I was just interested out of curiosity, to see whether that man will get on the train.

Q. I take it that you had to lean away out of your window and turn around to look; is that correct? A. Correct.

30

Q. And you stayed in that position? A. Yes, sir.

Q. And the length of a coach is approximately how many feet, in your judgment? A. Well, in my judgment, it would be about—

Q. Twenty feet? A. No, much more than that.

Q. Well, how many? A. I would say, about fifty.

Q. So that it was at least three car lengths that you had to see; you were seated in the second seat

40

Harry M. Katzin—Cross.

of the front, was that—

Mr. Selser: I object.

Q. So that it was at least three car lengths in back of where you say you saw a man attempting to board—

Mr. Selser: I object.

10 Mr. Weinberger: I think it is proper cross-examination, sir.

Mr. Selser: Misconstruing the testimony, sir; he has no right to misconstrue. He said it was about two car lengths between where he attempted to get on. It was not therefore at least three.

The Court: I will allow him to answer. What is your answer?

20 A. I said, at least two cars; that is sure.

Q. I take it, you were seated in the first coach?

A. Yes.

Q. Where did you say this man started to board the train? A. Whether the end of the second car or the beginning of the third car, at that place, it seems to me, it was.

30 Q. Now, at that time, when you saw this man attempting to board this coach that you described as the rear part of the second or the beginning of the third coach, where was the train then,—the engine? A. The engine was about at the gate, in the middle of the gate, going towards Jersey City.

Q. Now, how far did the engine go before it came to a stop—ten feet, five feet? A. From the time that the man dropped or from the time it started?

40 Q. From the time you say he attempted to board that train, how far did that train go? A. I should

Harry M. Katzin—Cross.

say, about twenty or thirty feet, about that much.

Q. Couldn't be more than fifty feet by any means? A. I would say, about forty, at the highest.

Q. You would say about forty, at the highest, so that the front part of that engine had not as yet crossed the Jefferson Street crossing; am I right? A. When it came to a full stop, and after it had stopped already? 10

Q. How far? A. Just across the gate.

Q. Was that the front part of the engine just across the gate? A. Yes.

Q. Is that right? A. Yes.

Q. This train had on it how many coaches, in your best judgment? A. I don't recall that.

Q. Was it five or six or ten or twelve? A. Surely not ten or twelve; it may have been about five or six. 20

Q. So that the remaining number of coaches that you saw— A. Yes, sir.

Q. —were all in the station proper; am I right?

The Court: When the train came to a stop?

Q. When the train came to a stop?

The Court: After the accident? 30

Q. After the accident? A. I don't recollect it, but it may have been the last car still stood in the main structure; I wouldn't try to recall where the last car was at this moment, but I would assume that it was there.

Q. Do you know with reference to the subway entrance, whether it was at that point where the man attempted to board that train? A. Well, he came from that place in the street, through the en- 40

Harry M. Katzin—Cross.

trance, but he had to run a little bit alongside of the train until he got from about five or six feet, because he didn't take the handle at this moment.

Q. Let me get this clear. A. Yes.

10 Q. You want the court and jury to understand that this gentleman was in that bus until it got to the subway entrance; is that correct? A. No, the gentleman was in the bus until it stopped at the gate, after he go toward Paterson.

Q. Well, did he run along along, run back toward Paterson? A. Yes.

Q. You are sure about that? A. That particular man?

Q. Yes. A. I am speaking about them—about the five or six men who left the bus; I cannot distinguish one from another at that time.

20 Q. Well, now, as an actual fact they got off the bus, they got off in front of the engine, over on the opposite side of the street, did they, and they all ran on the side, where Main Avenue is, according to your view? A. Yes.

Q. And they were on the street then? A. Yes, on the street.

Q. All of them? A. Yes.

Q. On the opposite side of the railroad station? A. Yes.

30 Q. When you saw this man coming in to get on the train, he was coming in front of the subway entrance, is that true? A. Yes, correct.

Q. So that this man, you are sure, that was injured did not come by that locomotive? A. No.

Q. On the station gravel platform? A. No, no; on the street.

Q. You have got good eyesight; am I right? A. Yes, I have.

40 Q. Now, doctor, you were not in court yester-

Harry M. Katzin—Cross.

day when Officer DeVries was on the stand, were you? A. No.

Q. You didn't hear what he swore? A. No.

Q. Well, now, let's see; when the train came into the station, doctor, it stopped, as you testified, in the usual place, and as you described that, about fifteen or twenty feet from the first— A. Gate. 10

Q. —gate or the crossing at Jefferson Street? A. Yes, sir; correct.

Q. Is that correct? A. Correct.

Q. Well, now, doctor, how many feet, in your judgment, is the first gate or the first crossing at Jefferson Street, where the train going to Jersey City has got to pass, from the subway entrance?

A. I would say, about sixty feet.

Q. Sixty feet? A. Or seventy feet.

Q. Is that your best judgment, as to how many? Might it not be two hundred feet, or more? A. Well, I have never measured that distance; I can't tell. 20

Q. Don't you know, doctor, that the shed is at least a hundred and fifty feet from the Jefferson Street crossing? A. Well, I can't estimate that.

Q. Well, let's see if I can demonstrate it to you. There is a cigar store directly across the street to where the first gate is? A. Yes, sir. 30

Q. Is that correct? A. Yes, sir; correct.

Q. Next to the cigar store is the Greenfields Five & Ten Cent Store; is that correct? A. Yes, sir.

Q. That Greenfield store has got a frontage of about a hundred and fifty feet; is that correct? A. I can't tell.

Q. Well, about? A. It may be.

Q. Next comes Castle's jewelry shop; is that correct? A. I don't recall his place.

Q. Well, you are there every day? A. But, 40

Harry M. Katzin—Cross.

still, I have no recollection of that.

Q. That has got a frontage of about sixty feet, has it not? A. I cannot, cannot say.

Q. Then comes Berdan's furniture store with about a hundred and fifty feet; am I right? A. I don't know; I can't testify to that.

10 Q. And isn't the station platform directly opposite the corner where the Harding Drugstore is?

A. The entrance to it.

Q. No, the station platform itself? A. Yes.

Q. That building? A. Yes.

Q. When you say sixty feet, you are just roughly guessing? A. Well, I told you, I can't estimate.

20 Q. Well, whatever the distance is, there was a point where you had to look up to where this man was boarding this train; is that correct? A. Yes, sir.

Q. There cannot be any mistake that the man you saw, who was injured in this accident,— A. Yes.

Q. —came out of the subway entrance or had passed that subway entrance to get on that train, where he attempted to board it? A. From the street, but not from the entrance.

30 Q. I mean, from the street? A. From the street.

Q. But he had to pass by the place to go down into the subway; is that right? A. That place, yes, he had to pass.

Q. That is where he attempted to board that train, you say? A. Correct.

Q. And that is where you saw him attempt to get on? A. Correct, but he ran a few feet with the train.

40 Q. Now, describe how the man was dressed that

Harry M. Katzin—Cross.

you saw. Did he have an overcoat on? A. I didn't look—

Q. Have a red sweater, doctor? A. I didn't look at his clothes at all.

Q. Have a cap on? A. That man, it seems to me, as though, now, trying to recall,—now, I may be entirely wrong—

10

Q. You are guessing? A. —as though he had on a gray suit, as far as I could recall the clothes.

Q. He had on a light gray suit? A. Not a light one; he had on a gray suit, as it appears to me now, trying to recall, although it happened about fifteen months ago, so I can't be sure about those details.

Q. Gray is a light color, I take it? A. A dark gray suit, something like that, and he had in his right hand, it appeared to me, as if he had a bundle in his right hand; he tried to board the train with his left.

20

Mr. Weinberger: That is all.

Redirect-examination by Mr. Selser:

Q. Dr. Katzin, I understood you to say under direct and also under cross-examination that the man whom you saw under the wheels—

30

Mr. Selser: Strike that out.

Q. —that you saw some people get off the bus—
A. Yes, sir.

Q. —on the West Main Street side, and running in the general direction, toward the subway entrance— A. Yes, sir.

Q. —to the platform— A. Yes, sir.

Q. You say you lost sight of all those people—
A. Yes, sir.

40

Harry M. Katzin—Redirect.

Q. —for sometime while the station building itself was between you and those running persons — A. Yes, sir.

Q. —and the next you saw was some man running beside the train? A. Correct.

Q. Is that correct? A. Correct.

10 Q. Now, Dr. Katzin, did you actually see this man who attempted to board the train—

Mr. Selser: Strike that out.

Q. Are you able to recognize the person who actually boarded that train as one who came from that bus? A. No.

Q. So that your testimony is your inference, from the fact that persons were running—

20 Mr. Weinberger: I object, if your Honor please.

A. It is inferential.

Mr. Selser: Strike it out, I will consent; it is probably improper.

Q. But you are sure, doctor, are you not— A. I am sure about that.

Q. —that some person attempted to board that 2:15 train— A. Correct.

30 Q. —after it was in motion— A. Correct.

Q. —and that that person fell from the train and was run over? A. Yes, sir. Whether that person was one of those four or five who run from the bus, I do not know for sure. I saw them running and I lost sight of them; whether this was one of the four or five men I described running off the bus and running toward the station, or he came just from the entrance, or the street proper,

40 I do not know.

*Harry M. Katzin—Recross.**By the Court:*

Q. But are you sure that the train was in motion and he was running alongside of it? A. Yes.

Q. Previous to grabbing the handle? A. Yes, sir.

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

Q. Is that what prompted you to watch and see whether he got on, or not? A. It prompted me to watch out of curiosity to see whether he was going to get on or not, because he had been running along the train. 10

The Court: All right.

Mr. Selser: That is all.

Recross-examination by Mr. Weinberger:

Q. Just a minute, until we get this clear. There is an iron fence on Main Avenue which separates the station platform where people get on Main Avenue proper? A. Yes, sir. 20

Q. Am I right? A. Yes, sir.

Q. Now, the men you claim—or the men and women—you claim got off the bus and all ran? A. Not all.

Q. Most of them? A. Most of them.

Q. Ran on the outside of that fence, on the asphalt pavement? A. On the street. 30

Q. In the street? A. Correct.

Q. But not on the station side? A. No.

Q. Alongside of the train? A. No.

Q. There must have been at least twenty feet between the train itself, the fence and the asphalt; am I right? A. Well, maybe about twenty.

Q. Well, doctor, you are positive, though, that none of those people came from the opposite side 40

Harry M. Katzin—Recross.

of Main Avenue, in front of the engine, and ran up on the station platform itself?

Mr. Selser: No.

A. No, I haven't seen—

10 Q. None of those people or the man who attempted to board the train that you claim that you saw injured— A. I didn't see him come along the platform.

Q. Well, your eyesight is good? A. On the street I saw him running.

Q. You were watching these particular people until you lost sight of them? A. Yes.

Q. Then you looked again and you saw them again; am I right? A. Yes; whether those were the same, I must say, I do not know.

20 Q. Now, did you see the policeman there? A. No, I didn't see him.

Q. Are you sure of that—running on the station platform? A. No, I haven't noticed.

Q. Well, if he was there, you would have seen him? A. I haven't noticed him.

30 Q. Well, you were looking, doctor? A. Well, I haven't noticed very much things such as man traveling—as to men along on the platform, I wouldn't notice; I just wanted to see whether that man was going to get on the train.

Q. Now, doctor, you are sure, however, that the man you saw get injured attempted to board the train? A. Yes.

Q. You saw him come along the train, along the station platform, from Jefferson Street, run up and get ahold of it? A. No, not along the platform.

40 Q. You are positive of that? A. Yes, sir.

Mr. Weinberger: That is all.

Harry M. Katzin—Redirect.

Redirect-examination by Mr. Selser:

Q. Doctor, what makes you so positive that the man who was injured did not come along the station platform?

Mr. Weinberger: Just a minute; your Honor please, I do not think he has got a right to impeach his own witness. 10

The Court: I do not think that he is impeaching him at all.

Mr. Selser: That is not impeaching at all; that is just asking his explanation.

A. I will answer you. Because I saw that man come in from the street side of Main Avenue at one of the entrances, and ran a few feet, maybe five or ten or eight, alongside of the train, and then grabbing that handle and trying to get on. 20

Mr. Selser: That is all.

Recross-examination by Mr. Weinberger:

Q. Now, just one more question. The man you claim you saw was running toward Jersey City after the train; am I right? A. Yes, for a few feet. 30

Mr. Weinberger: That is all.

Redirect-examination by Mr. Selser:

Q. You saw him even have his hand upon the grab handle? A. Yes, sir.

Mr. Selser: That is all.

Michael F. Wynne—Direct.

MICHAEL F. WYNNE, sworn.

Direct-examination by Mr. Selser:

Q. Mr. Wynne, you are employed by the Erie Railroad Company as conductor; is that correct?

A. Yes, sir.

10 Q. You were so employed in July, 1925? A. Yes, sir.

Q. Were you conductor upon the train which arrived at the Passaic station, east bound, at 2:15 o'clock on the afternoon of July 27th? A. Yes, sir.

Q. How many cars were there in that train? A. Six cars and the engine.

Q. What is the names of the members of your crew? A. Starting with the engineer?

20 Q. Yes, all of the way through the train. A. Walter Hunt.

Q. The engineer; the fireman was— A. Fireman's name was—I don't always recall his name—it is a funny name—

Q. Mr. Blauvelt? A. Yes, Mr. Blauvelt.

The Court: That isn't funny.

The Witness: Yes, it is to me.

The Court: All right.

30 A. (Continuing) And the baggage master was John A. Parsons; collector was John T. Daly; and the rear flagman was T. R. Lewis.

Q. Where were you stationed upon the train as it arrived at the Passaic station? A. Between the head end and the first and second car.

Q. That was between the first and second coach? A. Yes, sir.

40 Q. Now, will you describe, if you please, what

Michael F. Wynne—Direct.

you did from the time your train came into Passaic station until this accident occurred, what you saw, what you heard, everything about it? A. On the arrival of the train at Passaic on that day, I got off the train and stood on the platform—

Q. Where were you standing with respect to the train? A. Between the head and the second head car. 10

Q. I see. A. After the passengers were unloaded—discharged, rather,—I then made ready for to load our passengers, and after our passengers were all loaded, our platform clear, and I received signals from all men that they were all right, I passed the signal to the baggage master who gave it to the engineer by our whistle blast to proceed, which he did.

Q. Yes. A. Then I stepped inside of the car. 20

By the Court:

Q. Where were you at that time when you gave the signal to the baggage master? A. On the platform, your Honor.

Q. Not on the train? A. No, I am the last one to board.

Q. When did you get on the train? A. After just as I gave the signal. 30

Q. Well, did you hear the signal sound in the engine? A. Well, I couldn't say about that.

Q. All right, don't say, if you don't know. Did you then get on the train? A. Yes, sir.

Q. Was the train moving when you got on? A. Yes, sir; just starting to move.

By Mr. Selser:

Q. Now, as you got onto the train, Mr. Conductor—or at the instant the train started to move, 40

Michael F. Wynne—Direct.

and before you got on, did you then observe up and down your train as to whether the train was clear, or not? A. The platform, you mean?

Q. The platform and the— A. Not after I got on the train.

Q. Well, after you gave your go signal. A. Before I gave the signal, I looked.

Q. And as the train actually started to move? A. Yes, sir.

Q. Did you then observe up and down your train? A. Yes, sir.

Q. Did you observe any person then attempting to board your train? A. No, sir; I did not.

Q. Now, tell us what happened? A. Just as the train started I walked on to the head end and proceeded to collect my transportation, and one of the passengers raised the window, but the train was going then; he raised the window and he watched and then he called my attention—

Mr. Weinberger: I ask that be stricken out as calling for a conclusion. How can he tell if the man watched out?

Mr. Selser: Yes, you can tell whether or not I am watching out of this window.

Mr. Weinberger: You might be having a daydream.

The Court: He appeared to you to be watching out?

The Witness: Yes.

The Court: I will allow it to stand, that he appeared to be looking out.

A. (Continuing) —and he called my attention as I started to pick up the transportation, he beck-

Michael F. Wynne—Direct.

oned and said that there was somebody trying to board the train. Then he also made some kind of an alarm, and I reached up to pull the whistle, with which the whistle was pulled by another man, which was my baggage master, and the train went on until it stopped. He stopped about—I don't know how many feet—but we stopped across the crossing, with the baggage car on the crossing. I went out of the train then and went back, and I saw two policemen working on this man. I sees one of his feet was under the wheel of the third car and the other was loose and they were tieing up the other. After they had tied up the other, then I sent one of my men over to tell them to back up just a little bit, the engineer, and he backed up off the other foot just a little bit to release that, and then the policemen started to tie up that one.

Q. Now, how many person were hurt on this train. Mr. Conductor? A. Hurt?

Q. Yes, that is the question. A. Oh, there was only one.

Q. How long were you standing at the station taking on passengers and discharging passengers?

A. Well. I wouldn't say over a minute or a minute and a half, or so.

Q. Did you get the name of the man who was injured? A. Who was injured?

Q. Yes, sir. A. Yes, sir.

Q. Was it Mr. Michael Nogrady? A. Yes, sir; it was Mr. Nogrady.

Q. Was Mr. Nogrady conscious at the time? If you don't know, don't guess. A. I don't know; I am not sure.

Michael F. Wynne—Cross.

Mr. Selser: That is all.

By the Court:

Q. Was the man that called to you, who was at the window, the man that was just on the stand, Dr. Katzin? A. I recognized him, yes, sir, when
10 he came in the door, that he was the man.

The Court: Cross-examine.

Cross-examination by Mr. Weinberger:

Q. You didn't see this accident, Mr. Wynne? A. No, sir.

Q. You didn't see the man attempt to board the train? A. No, sir.

20 Q. You didn't see the man get injured? A. Get injured?

Q. Yes. A. No, sir.

Mr. Weinberger: That is all.

JOHN T. DALY, sworn.

Direct-examination by Mr. Selser:

30 Q. Mr. Daly, you are employed by the Erie Railroad Company as brakeman; is that correct? A. Yes, sir.

Q. You were a brakeman upon the train which arrived at the Passaic station at two-fifteen July 27, 1925? A. Yes, sir.

Q. What was your position upon the train that day? A. Ticket collector.

40 Q. Where were you stationed upon the train as

John T. Daly—Direct.

it came into Passaic? A. Between the third and fourth head car.

Q. That was between the third and fourth head car? A. That is between the third car from the engine and the fourth car from the engine.

Q. Now, as the train came into the Passaic station, just what did you do? A. I got off, helped the people off, and after everybody was on and the station platform was clear, I raised my right hand "all right". 10

Q. That is, passing the signal to your conductor? A. Yes, sir; when I got it from the rear man.

Q. At that time, were you then on the station platform? A. Yes, sir.

Q. Between the third and fourth head cars? A. Yes, sir. 20

Q. Now, just what happened from that point on, Mr. Brakeman? A. Well, after we left shortly the train stopped sudden, and I got out. I wondered what was the matter.

Q. You told us before you passed the signal to the conductor— A. Yes, sir.

Q. You were then on the station platform? A. Yes, sir.

Q. Subsequently, you got from the station platform to the platform of the train, didn't you? A. Yes, sir. 30

Q. Tell us about that. A. When the train started, I seen everything was all clear, and I got on the train, and I started to collect transportation.

Q. What did you do on this occasion that you seen everything was clear? A. I looked up and down the platform, took the signal from the rear man, which I passed to the conductor, and he pass- 40

John T. Daly—Direct.

ed it to the baggage master, and the train started and I got aboard.

Q. Now, as you got aboard, did you look up and down your train? A. No, I did not.

10 Q. Which car did you board, Mr. Daly? A. The third head car, because I worked back away from the conductor.

Q. Were you upon the front or rear of that car? A. I was on the front.

Q. So that you boarded the front of the third head car? A. Yes, sir.

Q. And then what did you do upon getting aboard your train? A. Why, I started to collect transportation.

Q. Went inside of your coach? A. Yes, sir.

20 Q. Which coach? A. Third head coach.

Q. Now, as your train was standing at the station, were you able to see, or are you now able to say where your engine was with respect to the Jefferson Street crossing, that is, as it was standing at the station, taking on passengers? A. Why, my observation of it, it was this side of the crossing, toward Paterson.

Q. Toward Paterson? A. Yes, sir.

30 Q. Where was your third head car with respect to the waiting room of the station? A. Why, it was just opposite the concourse where you go down stairs.

Q. When that train came to a stop, where was your third head car?

The Court: You mean, after the accident?

40 Q. After the accident occurred? A. I should say, about twenty feet east of that little waiting room, on the east side, toward New York.

John T. Daly—Direct.

Q. Would that be east or west of the crossing?

A. This way, toward Paterson.

Q. Toward Paterson from the crossing? A. (No answer).

Q. Did you get out of your train? A. Yes, sir.

Q. Just tell us what you saw and did. A. First thing I see was right under the wheels of the third head coach, the car I started to collect— 10

Q. Was that the rear, the front or the rear truck, Mr. Daly? A. Toward the New York, the east end the man laid like this, with his foot upon the rail. I immediately summoned the conductor. The two policeman was there. I went up to our engineer, as the conductor told me to do it, and told him he would have to move back about a foot to release the man's legs. We done that, and we pulled him out. That is all I know about it. 20

Q. Did you find out who the man was? A. I did from the conductor; yes, sir.

Mr. Selser: That is all; take the witness.

Cross-examination by Mr. Weinberger:

Q. When the train came in from Paterson into Passaic, you say the third car was stopped or, rather, the third coach was stopped at the entrance to the subway steps, where you stood? A. Yes, sir. 30

Q. Is that correct? A. Yes, sir.

Q. When the train stopped, it stopped after going about a car length, is that correct, from the subway entrance, which would make it about twenty feet east of that little passenger station that the people who take the train to New York— A. Why, I should say it went about two car lengths, 40

John T. Daly—Direct.

that would be about a hundred and twenty feet, about.

Q. Well, it was still on the station platform?
A. Yes, sir.

Q. The coaches? A. It didn't get to the crossing.

10 Q. It didn't get to the crossing? A. That car hadn't, that I was working, the third car.

Q. You didn't see this man attempting to board the train? A. No, sir.

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

Q. You knew nothing of the accident until a signal was given and the train came to a stop? A. No, sir.

The Court: You mean, "yes, sir."

20 The Witness: Oh, yes, sir. I mean, I didn't know anything about the accident until the train had stopped.

Q. Who had charge of the coach in front of you?
A. The conductor, M. F. Wynne.

Q. Was the train late? A. I couldn't say.

Q. Don't you know? A. No, sir.

30 Q. Isn't that part of your duties, to know if you are late or on time? A. No, isn't part of my duty; I am only the ticket collector.

Q. Don't you keep a record— A. No—

Q. Huh? A. —not of the time.

Q. Huh? A. Not of the time of the train, no.

Q. Who does keep a record of that train? A. The conductor, Mr. Wynne.

Mr. Weinberger: That is all.

Edward A. Delaney—Direct.

EDWARD A. DELANEY, sworn.

Direct-examination by Mr. Selser:

Q. Officer, you are a police officer employed by the City of Passaic, are you not? A. Yes, sir.

Q. You were a police officer in July, 1925? A. Yes, sir. 10

Q. Employed by the city? A. Yes, sir.

Q. Do you know whether or not any portion of your salary is paid by the Erie Railroad Company? A. None at all.

Q. You do know that, do you? A. I do.

Q. Where were you stationed at about two o'clock—2:15 o'clock—on the day of July 27, 1925? A. I was directing traffic on Main Avenue and Jefferson Street, that is, East Main Avenue and Jefferson Street, directly in front of the Leggett building. 20

Q. East Main Avenue is the side of Main Avenue toward Garfield; is that correct? A. That is correct.

Q. That would be on the side of the west bound trains, wouldn't it? A. Yes, that is right.

Q. Now, do you recall the 2:15 train coming into the Passaic station and making a stop at the station? A. Yes, sir. 30

Q. Where did the engine come to a stop with respect to the Jefferson Street crossing? A. Just north of the crossing, on the cross-walk there.

Q. North is in the direction toward Paterson? A. Yes, sir.

Q. Now, just tell us whether or not the gates were lowered or in an upright position? A. The gates, if I remember correctly, were lowered.

Q. Just tell us now, officer, if you please, what 40

Edward A. Delaney—Direct.

you know about this accident, what you saw from that time on. A. That particular day a man had got off the bus, one of these Garfield buses, we found out; it was one of the Garfield Avenue buses, and he darted across the street from the United Cigar store south.

10 Q. That would be where, from the East Main Avenue side? A. From the East Main Avenue side and over to get to this train.

Q. Now, you say he darted over. Where did he go with respect to the engine? A. He went in front of the engine, darted just like passengers are generally doing down there, and as he looks where the gates was down, and he was coming over on an angle; the bus stopped on this side of the street, and he runs over, then up the platform.
20 The next thing I saw the train come to a sudden stop, and I heard somebody pull the signal, like an air signal, you know, and the train stopped. Everybody ran for the train, and my box was right behind me, so I pulled for the ambulance.

Q. Did you go up to see the injured man? A. No, sir.

Q. You didn't go up to see the injured man? A. My partner took care of that.

30 The Court: Who was your partner?

Q. Who was your partner? A. Officer Evansky.

Q. Now, at the time this man ran across in front of the engine, officer, are you able to say the engine was then in motion? A. The engine was about starting.

Q. About starting? A. Yes, sir; just starting to roll.

40 Q. Where did the engine come to a stop the sec-

Edward A. Delaney—Cross.

ond time? A. The second time, just below the crossing, on the south side, say about, maybe one car had pulled up on the crossing.

Q. And the engine was entirely over the crossing; is that correct? A. Over the crossing; yes, sir.

Mr. Selser: That is all. 10

Cross-examination by Mr. Weinberger:

Q. Now, let's see, officer, you were standing in the little booth on the left side of Main Avenue, going in the direction of New York? A. Yes.

Q. Directing traffic, is that correct? A. No, sir; out side of the booth.

Q. Well, in front of the booth; you were standing outside of the booth, on the sidewalk part? A. 20
Yes, sir.

Q. Between the sidewalk and the first gate, going across Jefferson Street, is Lexington Avenue—East Main Avenue, they call it at that point—which is about forty feet wide? A. Approximately thirty-five or forty.

Q. Then there comes a walk of about ten feet until you come to the first set of rails for trains going to Paterson; is that right? A. Approximately 30
so.

Q. Then there is a space between the first set of rails and the second set of rails for trains going to New York; is that right? A. About a track, I should say.

Q. Then there is the width of the rails of that set of tracks; is that correct? A. Yes, sir.

Q. Then comes the station platform, on the right hand side, which is about fifteen feet wide; is that correct? A. Approximately. 40

Edward A. Delaney—Cross.

Q. So that trains coming from Paterson and going toward New York stopped on the extreme right from where you were standing, a distance of about seventy feet? Am I right; at least seventy feet? A. I don't—they stop on the track, of course; I can't say it is seventy feet from the crossing, through.

10 Q. It is seventy feet from where you were standing? A. On that track?

Q. Yes. A. I would say—

Q. On this particular day, you were standing there? Am I right? A. That is right.

Q. You saw a man running across the street after he got out of the bus, in front of the United Cigar store, which is still further; that is across the street from where you stood, toward New York; is that correct? A. Yes.

20 Q. You saw him run across the tracks, in front of the engine. Of course, you couldn't see through the locomotive, could you? A. I don't say that.

Q. I say, you couldn't see through the locomotive, could you? A. I don't say so.

Q. You saw this man running on the station platform? A. Up the platform.

Q. You are sure? A. I saw him make a right hand turn.

30 Q. You saw him make a right hand turn, up the platform he went? A. Yes.

Q. You didn't see any man attempt to board the train? A. I did not see that.

Q. I say, you did not see that? A. No.

Q. You say you lost track of him? A. After he ran up the track.

Q. How was he dressed? A. I don't remember that.

40

Edward A. Delaney—Cross.

Q. Overcoat? A. I don't remember that.

Q. Have a red sweater on? A. I don't remember that; I didn't notice to his attire whatsoever.

Q. You didn't take notice? A. No.

Q. You stood there directing traffic after the accident, and your partner, Officer Evansky, took care of the accident? A. Yes. 10

Q. You stayed on your stationary beat? A. Yes.

Q. All right, that is a stationary beat you have got? A. Yes.

Q. You handle traffic? A. Yes.

Mr. Weinberger: That is all.

By the Court:

Q. The train was not moving when the man ran in front of the engine, was it? A. No, sir; it was not. 20

Q. How soon after that did it move? Soon or not? A. Your Honor, it seemed to move just as he went around, just as if it was about to pull out.

TRACY R. LEWIS, sworn.

Direct-examination by Mr. Selser: 30

Q. Mr. Lewis, you are a brakeman, employed by the Erie, are you not? A. I am.

Q. You were brakeman on the train which arrived at the Passaic station about two-fifteen o'clock July 27, 1925, in the afternoon? A. Yes, sir.

Q. Where was your position upon the train as it pulled into the Passaic station? A. Between the last two coaches, fifth and sixth coaches.

Q. As the train came to a stop in the Passaic 40

Tracy R. Lewis—Direct.

station, just what did you do? A. I got down on the platform and assisted the passengers on and off.

Q. Where was your position on the platform with respect to the coaches, or the train? A. Between the fifth and sixth cars.

10 Q. All right, go on and tell us. A. The train made its regular stop, passengers taken on and off, and the train proceeded toward Jersey City after the signal was given.

Q. Now, something must have happened before the train proceeded. What did you do, if anything? A. We started from the rear end, that was me passed the signal to the forward man, to the man ahead of me.

20 Q. How do you pass the signal? A. By holding up our right hand that everything is O. K. to go.

By the Court:

Q. When is everything O. K. to go? A. When all passengers are on and off the train everything is clear.

Q. When you gave that signal were all of the passengers off or on? A. All off and on.

30 Q. Did you see anyone on the platform at that time, other than the trainmen? A. Not making any attempt to board the train.

The Court: All right.

By Mr. Selser:

Q. When you say you passed the signal forward, you were then on the platform, were you not—station platform? A. I was on the platform, yes.

40 Q. What did you do from that point on? A. The train proceeded—

*Tracy R. Lewis—Direct.**By the Court:*

Q. No, what did you do after you gave the signal? A. Why, we—

Q. No, "you", not "we." A. I got aboard.

Q. When did you get aboard? A. As the train started.

Q. Was the train in motion when you got aboard? 10

A. Just starting.

By Mr. Selser:

Q. When you got aboard and the train had just started, did you look down toward the head end of the train? A. I did not.

Q. You did not? A. No.

Q. Then as you got aboard of your train, what did you do? A. I stepped inside of the car and started to collect the transportation. 20

Q. Then what happened? A. The train came to a sudden stop; we had only proceeded two car lengths.

Q. From the time it started— A. Until it stopped.

Q. Then what did you do, if anything? A. I got out to see what was the matter, and I saw this policeman having hold of this man, and from where I was, about three car lengths from him, I knew that the man was under the wheels, because he was down between the platform and the wheels, so I took my flag and went back up the track to protect the back of the train. 30

Q. You mean, in the direction toward Paterson?

A. Toward Paterson.

Q. You remained in that position until when?

A. We were ready to go again and I was recalled.

Q. Recalled in what manner? A. By the engine 40

Tracy R. Lewis—Cross.

whistle, that we were ready to proceed.

Q. Then you came back and got aboard the train and proceeded? A. Yes.

Q. That is all you know about it? A. That is all.

Mr. Selser: Take the witness.

10

Cross-examination by Mr. Weinberger:

Q. This subway entrance where people come out of to board the train is about two feet from the first step of your coach that stops there; am I right? A. No, it is more than two feet.

Q. Three feet? A. It is, I dare say, at least six.

Q. From the rail? A. No, from the edge of the curb, your platform curb and the nearest edge of the course, where you come up the stairs.

20

Q. About six feet? A. Six to eight feet.

Q. You didn't see any man attempt to board the train? A. I did not.

Q. Your duty is to watch your coaches down the line? A. Back towards the rear, yes.

Q. There are a lot of people who walk up and down that platform, ordinarily, during those hours of the day? A. Oh, yes, they stand around.

30

Q. Use that subway to go across the track, and use it to walk up and down the station platform? A. For buses, a nice waiting room.

Q. Waiting room for to take the bus and train and all? A. Yes.

Q. You say you didn't notice anyone attempting to board the train? A. I did not.

40

Q. You didn't see this gentleman who was injured getting on the train, one way or another, where he was, or whether he was on the train or not? A. No.

Harry W. Blauvelt—Direct.

Q. You don't know whether he was on the step, or not, when the signal was given— A. No.

Q. —and was thrown off? A. No.

Mr. Weinberger: That is all.

10

HARRY W. BLAUVELT, sworn.

Direct-examination by Mr. Selser:

Q. Mr. Blauvelt, you are employed by the Erie Railroad Company as a fireman, are you not? A. Yes, sir.

Q. You were fireman upon the train which arrived at the Passaic station at 2:15 o'clock, the afternoon of July 27, 1925? A. I was.

20

Q. Where did your engine come to a stop as you came in to make your regular station stop at Passaic station on this day, with respect to the Jefferson Street crossing? A. Why, this day we stopped, I should judge, about two feet this side of the crossing, on the track going toward Jersey City, we were.

Q. This side is toward Paterson? A. Yes, sir.

Q. How long were you standing in the station? A. I should judge, about a minute or so.

30

Q. Now, then, what happened from that point on? A. Why, we got two whistles to proceed.

Q. Yes. A. I went back over to the left hand side of the engine and we started.

Q. You had been to the right side of the engine? A. I had been standing on the right side.

Q. Where is your regular position on the engine? A. When we are not working or coming into a station, we are at liberty to go there. This particu-

40

Harry W. Blauvelt—Direct.

lar day I stood at the right side, and as soon as we got two whistles to go, I crossed over, proceeded over in my cab to sit down or to watch signals either way, as I was doing, when the two whistles were given to stop, and we were just going over the crossing about the time when the engineer put
10 the emergency brakes on and stopped.

Q. Now, Mr. Blauvelt, how quickly after you got your two whistles for to go, following your regular station stop, did your engine actually proceed?

A. You mean, at what rate of speed?

Q. No; how soon? Was there any period of time between your two whistles for to go and the engine actually starting forward? A. Well, only the length of time it took the engineer to put his arm up to pull the throttle and turn the bell on.
20

Q. How long a time is that? We don't know anything about running engines. A. It was a motion of his hand, that is all.

Q. Now, when your engine came to a stop the second time, following the accident, where was the engine with respect to the Jefferson Street crossing? A. It had crossed over Jefferson Street crossing.

Q. How far over? A. We were standing when we came to a stop just the signal post, on the other side of the Jefferson Street crossing.
30

Q. Did you get off your engine? A. I did.

Q. When you alighted from your engine, how far were you, at the point of alighting, from the Jefferson Street crossing, in feet? A. I was right at that signal post. I judge that signal post is about fifteen feet away from the New York side of the crossing.

Q. Did you go back? A. I did.
40

Harry W. Blauvelt—Direct.

Q. Did you find out the name of the man who was hurt? A. Yes, sir.

Q. Was it Michael Nogrady? A. It was.

Q. Was there any other person hurt on that train? A. Not that I know of.

Q. Well, you would know it, wouldn't you? A. Possible. 10

By the Court:

Q. How did your engine start after the stop in the station, just before you got the final bell to stop? A. It started the same as all engines started, just natural.

Q. Tell us how that is. A. Just naturally, moved out just slowly.

Q. Was there any jerking about it? A. No, sir; none whatever. 20

Mr. Selser: That is all.

Cross-examination by Mr. Weinberger:

Q. Didn't this engine start with a terrific jerk? A. At that time?

Q. Didn't this particular engine start with a terrific jerk at that time? A. No, sir. 30

The Court: Start or stop, did you say?

Q. Start after leaving Passaic station? A. No, sir.

Q. Now, you didn't see this man attempt to board this train? A. No, sir.

Q. As a fireman, you were leaning out of the window on the other side, facing toward Leggett's Drug Store; am I right? A. At times.

Q. At that particular time? A. No, sir. 40

Q. What? A. No, sir.

Harry W. Blauvelt—Cross.

Q. Where are you stationed at when the train comes in? A. This particular time I was standing between the tank and engine, on the right side.

Q. Between the tank and engine? A. Yes, on the right side.

10 Q. You didn't see any man walking or running on the station platform, did you? A. While the train was standing, yes.

Q. What? A. While the train was standing, I did.

Q. Yes, did you? A. While the train was standing, yes.

Q. You saw people walking by? A. I saw people walking by.

Q. You see that every day? A. Every day.

Q. Huh? A. Every day.

20 Q. They have all got to go by there to get on the train, coming from Jefferson Street? A. More than likely, if they are coming from Jefferson Street.

Mr. Weinberger: I ask that be stricken out.

The Court: Strike it out.

30 Q. Nothing unusual about that, is there, seeing people—men and women—walking up and down and running on the station platform? A. No, sir.

Q. So that your attention was not attracted to anything in particular on this particular day? A. No, sir.

Q. You didn't see Mr. Nogrady attempting to board the train? A. No, sir.

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

40 Q. You only know what is the general custom, about the general custom about the signal— A. Well—

John DeWolf—Direct.

Q. —the train started beautifully with a mild, easy way, is that right? That is all you know?

A. —I know a few other things.

Mr. Weinberger: That is all.

10

JOHN DE WOLF, sworn.

Direct-examination by Mr. Selser:

Q. Mr. DeWolf, you are employed by the Erie Railroad Company as a hostler, aren't you? A. Yes, sir.

Q. At Jersey City? A. Yes, sir.

Q. On the day of July 27, 1925, 2:15 o'clock in the afternoon, you were aboard this train? A. Yes, sir. 20

Q. Now, just tell us where you were in the train at the time it made this stop in Passaic? A. I was in the rear coach of the train, dead-heading to Jersey City, to go to work.

The Court: Dead-heading?

The Witness: Yes, sir.

Q. That is a railroad term meaning—? A. Railroad term, meaning no fare. 30

Mr. Weinberger: Free passengers.

Q. In other words, if you don't pay fares, you are dead-heads? A. Yes, sir.

The Court: Does that include judges who have passes?

The Witness: It includes all free passes.

Q. Were you still in the train when it started out of the Passaic station? A. Yes, sir. 40

John DeWolf—Direct.

Q. Just describe, if you please, the manner in which it started out of the station, as to whether or not it jerked or jolted. A. The train did not jerk; when it pulled out of the station it moved out very smoothly and it moved possibly two or two and a half car lengths when it came to a sudden stop.

10 Q. Did you get off the train after it stopped the second time? A. I did not.

Q. Now, when the train came to a full stop the second time, Mr. DeWolf, where was your coach with respect to the structure or something that was on the station platform? A. It was opposite to the shed on the station platform.

20 Q. How many sheds are there on that station platform? A. Just the one open shed and the small waiting room at the end of it.

Q. Now, the shed you are referring to is the waiting room, or the open shed? A. Open shed. shed.

Q. That is west of the waiting room? A. West of the waiting room.

Q. You were in the last car? A. Yes.

30 Mr. Selser: That is all. Take the witness.

Cross-examination by Mr. Weinberger:

Q. That shed is about a hundred and fifty feet in length? A. I should think so.

Q. You were at the extreme end of it? A. I would not say right at the extreme end.

Q. Toward Paterson? A. Possibly the end of the train was at the extreme end.

40 Q. You ride every day on the Erie Railroad? A. Yes, sir.

John DeWolf—Cross.

Q. I take it, you were paying no attention, looking for accidents, were you? A. No, sir.

Q. What made you notice how this particular train on this particular day started? A. Well, I generally notice when a train starts with a sudden jerk.

Q. You generally notice that? A. Yes, sir. 10

Q. You have had occasion to see them start that way frequently; is that correct? A. Well, I wouldn't say frequently.

Q. Huh? A. I wouldn't say frequently.

Q. But you recall on this particular day it started in a mild, calm, easy manner? A. Yes, sir.

Q. You don't know anything about this particular accident? A. No, sir.

Q. How did you come to be a witness today? Just to prove that the train didn't start with a jerk? A. I suppose so. 20

Q. You suppose so. That is all? A. (No answer).

Q. Did you tell anybody that you were on that train? A. Yes, sir.

Q. That the train didn't start with a jerk? A. Yes, sir.

Q. Huh? A. Yes, sir.

Q. Who? A. The claim agent. 20

Q. You ride every day on the Erie Railroad for how many years? A. Last twelve years.

Q. Every time a train stops or starts you tell somebody whether it starts nice, calmly, or— A. If it happens at an accident, I will.

Q. If it is not an accident, you don't? A. Nothing to tell anything about that, then.

Mr. Weinberger: That is all.

*John DeWolf—Redirect.**Redirect-examination by Mr. Selser:*

Q. You made a written statement, didn't you, following this accident? A. Yes, sir.

Q. To the representative of the Claim Department? A. Yes, sir.

10 Mr. Weinberger: That is a self-serving declaration.

Mr. Selser: I am not going to offer it in evidence, doctor. Please don't jump to conclusions; sometimes you may be wrong.

Q. Is that your signed statement? A. Yes, sir.

Q. Tell us when you made the statement—

Mr. Weinberger: I object—

20 A. When? I couldn't tell you just when I made it.

Mr. Weinberger: I object to counsel showing the witness the statement.

The Court: You asked him who he told and when he told.

Mr. Weinberger: That is correct.

30 The Court: That opens the door to show, if he did, make a statement to the claim agent and when.

Q. Do you recall whether or not it was soon after the accident had occurred? A. It was soon after the accident.

Mr. Selser: That is all.

Peter Paulito—Direct.

PETER PAULITO, sworn through interpreter.

Direct-examination by Mr. Selser:

Q. Mr. Paulito, you work for the Erie Railroad Company as a trackman? A. Yes.

By the Court:

Q. Do you need an interpreter? How long have you been in the country? A. Me? Twenty-nine years. 10

Q. You do very well. You can talk English without teeth, as well as Italian. You may try him without an interpreter.

Mr. Selser: I might try him. I understood he needed one.

By Mr. Selser:

Q. Where were you July 27, 1925, when this accident occurred in the Passaic station? A. I clean the platform. 20

Q. Clean the platform? A. Yes; train comes and I stopped, and the people that was in the train is come down and the rest of the people is gone in. After the train started come one man this side, and I said, "Don't you—!" He said, "Oh, you go hell!" He don't catch him, he try to catch him and he go down underneath the step. That is all. 30

Q. Which way did he come from? A. I go downstairs; I run away.

The Court: You were afraid?

The Witness: Yes.

Q. Which way did he come from, from Jefferson Street or Monroe Street? A. Yes, Jefferson Street. 40

Peter Paulito—Cross.

Q. Jefferson Street. When he tried to get on the train, was the train moving then? A. Sure, he moving about after ten fifteen feet and stopped it.

Mr. Selser: That is all; take the witness.

10 *Cross-examination by Mr. Weinberger:*

Q. Now, let's see, what is your job in the Erie Railroad, in English? What is your job? A. My job?

Q. Yes. A. Clean up the station.

Q. You are around the station? A. Yes.

Q. How many years worked for the Erie Railroad? A. Twenty-nine years, but I have got nine passes to the old country.

20 Q. You got nine passes, for nothing? A. No, I paid for them.

Q. Oh, you paid for them? A. Yes.

Q. Let's see, your name is what? A. Paul Peter.

Q. What time was this? A. Huh?

Q. What time? A. I don't know.

Q. Six o'clock in the morning? A. No, 2:13.

Q. Is that train time? A. Huh-huh.

Q. 2:13? A. Yes, sir.

30 Q. Now, were you in uniform or plain clothes? Do you know what uniform means? Do you wear a uniform? A. I have got my basket, too, for the pick up the papers, to pick them up, cigarettes, pick up everything.

Q. Oh, you pick up the cigarettes, papers, on the platform? A. Yes.

Q. You were working that time? A. Only I stopped when the accident, I cannot work when the train, you know, the people they come down
40 with the people going up in the train.

Peter Paulito—Cross.

Q. You stopped working? A. Sure, I say, you have got to stop.

Q. You saw a man walking from Jefferson Street? A. Yes, he come around the engine.

Q. Wait a minute. You saw a man walking from Jefferson Street where like these tracks is and where the policeman was standing; is that right? A. No, the policeman, he is far away, about seventy-five feet, he is, on the left. 10

Q. Where did you see this man come from, Mr. Paulito? A. In Jefferson Street he is coming from, in front of the engine, you know; he make this way.

Q. You saw this man coming from Jefferson Street, in front of the engine, and he was walking very fast, was he not? A. (No audible response). 20

Q. Yes? You shake your head. A. The engine she started.

Q. I didn't ask you that; you are too anxious. A. Oh!

Q. He was walking right from Jefferson Street; he went underneath the gates, didn't he; didn't you see that? A. I didn't see, because he come from Jefferson Street; he is gone in front of the engine and then this side.

Q. You were this side, you saw the man walk in front of the engine? A. Yes, sir. 30

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

Q. Then he walked on the station platform? A. Huh-huh.

Q. Sorry. Is that right? You shake your head. A. (Interrupting).

Q. Wait a minute, Mr. Paulito. Just look this way, if you will, so these people can hear you and see you. You saw this man walking in front of the 40

Peter Paulito—Cross.

engine, is that right? A. Well, I wasn't over there, but when I see him, he come off Jefferson Street in front of the engine, and come on this side.

Q. All right. A. (Continuing) Then the train started and he wanted to jump. I say, "Don't you jump!" "You go hell," he said, and as I said, 10 "Don't you jump!" he tried to jump and he fell down, that is all, and I didn't talk no more.

Q. Now, Mr. Paulito, you saw this man walking from Jefferson Street, in front of the engine; is that right? A. Yes, sir.

Q. Where were you standing; right by the engine? A. Who? Me?

Q. Yes. A. No, sir.

Q. Where? A. I stand on the platform.

Q. Where, on the platform, by the engine; by 20 the gate, or where? A. Oh, no, no, I don't ferstag.

Q. Oh, you understand very good what you want to understand. A. No, if you will talk Italian, I will tell you.

The Court: The question is: Where were you standing? On the platform, you say.

The Witness: Yes, on the platform.

The Court: Now, whereabouts on the platform? How near from the engine?

30 The Witness: Oh, about twenty.

The Court: Twenty feet back from the engine?

The Witness: Yes.

The Court: All right.

Q. Which way, toward New York? A. No, this way.

Q. All right; now, then, which way were you 40

Peter Paulito—Cross.

looking, toward the engine? A. I don't look to nobody.

Q. You didn't look to nobody? A. No, I am afraid for the man that got hurt, that is all.

Q. Were you looking at your basket? A. I was going away.

Q. Listen. Were you looking at your basket— 10
if you will, please. Were you looking at your basket? A. I don't look; I leave.

Q. Were you looking at the ground? A. No.

Q. What were you looking at? A. I was go away.

By the Court:

Q. No, before the accident, what were you looking at, before the accident, before the man got hurt? A. Well, I pick the paper up, that is all, 20
sure.

Q. No, what were you looking at just before the accident? A. Oh, I was looking for the papers.

Q. For the papers? A. Yes, sir.

By Mr. Weinberger:

Q. So you were looking on the ground? A. Yes, on the tracks.

Q. In the tracks? A. Picking up papers. 30

Q. Picking up papers? A. Yes.

Q. Now, the man you saw walking up the platform who wanted to get on the train, did he have a red sweater on? A. I can't tell you.

Q. Did he have a black sweater on? A. I can't tell you because I don't see much.

Q. You can't see much? A. Oh, I have got hurt by the train too, engine—train—cut my head like this.

Q. Engine cut your head and your arm; is that 40

Peter Paulito—Cross.

one of the Erie trains? A. (Witness makes unintelligible response).

Q. Is that why you got a job with the Erie because the train hit you, and they kept you on the payroll too? A. They give me something too.

Q. Gave you something too? A. Yes.

10 Q. Now, let's see, Mr. Paulito; you don't know how this man was dressed, whether he had a cap on, soft hat or derby, or an overcoat or a sweater, or nothing on? A. I see that he is dressed, red shoes, that is all, red shoes.

Q. Red shoes he had on, this man had red shoes on? A. (Witness makes unintelligible response).

Q. Maybe it was red, maybe blood? A. No, he don't put that much blood after I clean them.

20 Q. Now, let's see, Paul; did you see the policeman—time you were around there, did you see the policeman? A. Policeman?

Q. After the accident, you saw a policeman. Before the accident— A. (Witness interrupts).

Q. Will you listen to the question?

The Court: I think you are doing very well.

30 Q. Listen; did you speak Italian to the man? A. Sure.

Q. You spoke Italian to him? A. I spoke to him, I told him German.

By the Court:

Q. You spoke to this man when he was running to the train? A. Who?

40 Q. The man that got hurt, you spoke to him, and you told him not to go on the train, didn't you? A. Yes. * * * He said, "Oh, never mind," because every day that he do it.

Peter Paulito—Cross.

Q. That man does it every day? A. Every day.

Q. You saw him before? A. I saw him but I don't know the name.

Q. Did you speak to him in Italian or English?

A. No, he is Polack, he don't know Italian.

Q. What did you talk to him when you told him not to go on, in English or Italian? A. I say, 10
"Don't you go on!" that is all.

Q. Just like that? A. That is all.

The Court: All right.

By Mr. Weinberger:

Q. You said to him, "Don't you go up"? A. But then he go on.

Q. What time did you go to work? A. Who? Me? 20

Q. You. A. In the morning.

Q. Yes? A. Half past five.

Q. This man, you say, took the 2:13 train every day? A. No, not every day; I say every day come down in the——.

Q. I mean, that man? A. I don't know.

Q. Two-thirteen, about, in the afternoon? A. That time.

Q. You saw him every day? A. I see him every day—he comes at other times. 30

Q. Wait a minute—2:13? A. That day I see 2:13.

Q. Now, I am asking you—you understand what I am asking you—you saw him every day taking the 2:13 train, did you? A. No, I can't tell him that.

Q. What? A. No, I can't tell him that.

Q. Why did you tell the Judge then, this man jumps on the train every day? 40

Peter Paulito—Redirect.

Peter Paulito—Recross.

The Court: He didn't say that.

Mr. Selser: He said, people jump on every day, I don't know their names. That was the answer.

10 Q. You say what? A. I don't say that every day; I say I see a lot of them every day, the man, that is all.

Q. This same man? This man? A. Huh-huh.

Q. This man every day? A. Huh-huh.

Mr. Weinberger: That is all.

Redirect-examination by Mr. Selser:

20 Q. Mr. Paulito, do you see this same man every day in the afternoon or other times of the day? A. At some time in the noon, sometimes afternoon.

Q. How early in the morning did you sometimes see him? A. Oh, I can't tell him.

Mr. Selser: That is all.

Recross-examination by Mr. Weinberger:

30 Q. Don't you know that this man goes to work at six o'clock in the morning? A. I can't tell you because I started at half past five in the morning myself, five o'clock too, sometimes; I will see everybody in the platform.

Q. You will see everybody? A. Sure.

Q. You have got good eyesight? A. I can't see with this.

Q. You can't see out of one eye, but you can out of the other? A. (No audible response).

Q. What was the number of that engine? A. Huh?

Q. The number? A. 25 and 27.

40 Q. 25 and 27? A. (No answer).

John A. Parson—Direct.

JOHN A. PARSON, sworn.

Direct-examination by Mr. Selser:

Q. Mr. Parson, you are employed by the Erie Railroad Company as baggagemaster? A. I was, at that time.

Q. What is your employment at the present time? A. Brakeman. 10

Q. You were baggage master—

The Court: On the Erie?

The Witness: On the Erie.

Q. —on the train which arrived at the Passaic station at 2:15 P. M., July 27, 1925? A. Yes, sir.

Q. Were you stationed upon the platform? A. No, the baggage car.

Q. That is where? A. Head end of the train, next to the engine. 20

Q. That was immediately next to the engine? A. Yes, sir.

Q. Then the rest of the coach being the smoker? A. Smoking car.

Q. Now, when the train came to a stop at the Passaic station, its regular station stop, where was your coach with respect to the Jefferson Street crossing? A. Well, it was about probably seventy-five or eighty feet from the crossing. 30

Q. Where was it with respect to the little waiting room that is at the side of the tracks? A. Well, about that much from the waiting room, I should judge.

Q. Now, where were you actually standing in your coach, in your baggage compartment, at the time the train started in motion? A. I was standing inside of the door.

Q. Right or left? A. Right. 40

John A. Parson—Direct.

Q. To the right; was your door open or closed?

A. Open.

10 Q. Open. Now, just tell us what you saw and heard and did from that point on. A. Well, when we pulled into the station there, I looked for baggage and mail on the opposite side, as the baggage mostly comes on that side, if he didn't have no heavy pieces to put on my car. From there I went over and looked for a signal from the conductor to start the train. When he gave me the signal, I gave the engineer two whistles to start.

Q. Now, as he gave you the signal, Mr. Parson, were you looking toward the rear of the train? A. Toward the rear of the train; yes, sir.

Q. Did you then observe whether or not the station platform was clear? A. It was.

20 Q. Then you say he gave you the signal; that is an arm signal, is it? A. Arm signal; yes, sir.

Q. You gave two whistles to the engineer? A. Yes, sir.

Q. Did your train then start in motion immediately? A. Started in motion immediately.

30 Q. Just describe the manner in which it started, as to whether or not it jerked at all? A. No, it did not; it made an easy, smooth start, no jerking whatever.

Q. Then, what next happened, as you observed? A. While I was standing inside of the baggage car, as we passed over the Jefferson Street crossing, I noticed a the traffic officer looking toward the center of the train, and I looked to see what he was looking at; just as I looked out this man made a grab for the grab handle down the train and fall down partly to the wheels.

40 Q. You say you looked back toward the rear of the train when you saw the officer looking in

John A. Parson—Direct.

that direction? A. Yes, sir.

Q. Did he or not get hold on the grab handle?

A. He got ahold of it, yes.

Q. Where was he with respect to the various coaches on the train? A. He was, I should judge, between the second and third car on the train.

Q. When he made his grab for the grab handle and got ahold of it, did he get his foot up on the steps of the train—of the car? A. I don't think that they were up on the steps. 10

Q. Did you see him drag at all? A. A little bit, not very far.

Q. Did you, or not, see him running or walking? A. I didn't see him running, no, because I gave the engineer the signal and he stopped immediately. 20

Q. I see, as soon as you saw that, you pulled the cord, did you? A. I did.

Q. Where did your coach come to a stop? A. Well, the baggage compartment was a little east of the Jefferson Street crossing.

Q. How far east, would you say? A. Oh, probably twenty feet, twenty-five feet.

Q. Did you get off your compartment— A. I did.

Q. —and go back? A. I got off and went back. The officer asked for a rope and I went in the baggage car and got a small rope that I had. 30

Q. Was the man conscious at that time? A. I could not say; I just went to talk to the officer and get the rope.

Mr. Selser: That is all. Take the witness.

*John A. Parson—Cross.**Cross-examination by Mr. Weinberger:*

Q. What part of the train were you on? A. In the baggage compartment.

Q. Where is that? A. Head car, next to the engine.

10 Q. That is the first car in back of the engine?
A. Yes, sir.

Q. Are you the man who gave the signal to put the train in motion? A. Yes, sir.

Q. When you give the signal, you are facing Jersey City, are you not? A. Well, I am looking out of the baggage car.

Q. You were facing Paterson? A. I look at the conductor, because I get the signal from him.

20 Q. After you get the signal, you turned around to pull the bell, don't you? A. Yes, sir.

Q. Facing the engineer? A. Well, I wouldn't necessarily; sometimes I have to step inside of the car to get the rope.

Q. You shut the door, don't you? A. No, sir.

Q. Well, the minute you pull the bell, you are through? A. Yes.

Q. What made you on this particular day look again? A. I was standing inside of the door.

30 Q. When you looked again, this policeman that you saw looking up the street was right alongside of the baggage car, was he? A. Well, he was at the crossing there.

Q. He was at the crossing? A. Yes, sir.

Q. The policeman was at the crossing? A. Yes, sir.

Q. On which part of this crossing did you see the policeman? A. At the gate.

Q. On which part of it? A. Back of the gate.

40 Q. Which side of Main Avenue? A. On this

John A. Parson—Cross.

side of Main Avenue, right by the gate.

Q. Which side of Main Avenue? What gate are you talking about? A. Well, the Jefferson Street gate.

Q. Well, there are two sides,—one on the Leggett's Drug Store side and one on the side where the banks are; which one did you see the policeman by? A. On the right hand side of the train. 10

Q. Going toward New York? A. Yes, sir.

Q. You saw a policeman standing by the gate? A. Yes, sir.

Q. Middle of the gate? A. No, it was at the back of the gate, near the end of the gate.

Q. What policeman was that? A. I don't know his name; I think it was Evansky. I understood that his name was Evansky afterwards. 20

Q. As I get it, your attention was attracted to seeing him looking up? A. Looking toward the rear of the train.

Q. You were standing still, weren't you? A. The train was moving because I was passing over the crossing then.

Q. How far did the train go before it stopped? A. Second stop, you mean?

Q. Yes. A. Oh, perhaps from the time it started, it may have been around two hundred feet. 30

Q. Well, the first thing that attracted your attention was the policeman was looking; is that your story? A. Yes, sir; looking back. That is why I looked back.

Q. You don't know whether that man was on the step, before this thing happened, or not, do you, of your own knowledge? A. If he had one foot up, I didn't see him on it before.

Q. I didn't ask you that. You don't know whether he was on the step of that train, or not, of 40

John A. Parson—Redirect.

your own knowledge? A. I don't know—

Q. You don't know whether he was thrown off—

A. He wasn't thrown—

Q. I say, you don't know that? A. No.

Q. Well, your train had traveled two hundred feet before you looked up—

10 Mr. Weinberger: Strike that out, if your Honor please.

Q. Before you turned around and noticed anything abnormal, the train had traveled about two hundred feet?

Mr. Selser: I object; the witness didn't say anything like that, if your Honor please.

20 The Court: How far, ask him, it had traveled.

Q. How far had this train traveled before there was anything abnormal called to your attention?

A. Oh, well, perhaps seventy-five or eighty feet; I don't know exactly.

Q. During that seventy-five or eighty feet, you don't know whether that man was on that step or thrown off, do you? A. No.

30 Mr. Weinberger: That is all.

Redirect-examination by Mr. Selser:

Q. At the time your train started from the station, after making its regular station stop, was there at that time, at the instant that you got in motion, was there anybody hanging on them steps?

A. No, sir.

40 Q. When you did look back, was there this man whom you saw grabbing for the grab hold? A.

John A. Parson—Recross.

Just grabbing for it when I looked out.

Q. Just grabbing for it then? A. Yes.

Mr. Selser: That is all.

Recross-examination by Mr. Weinberger:

Q. Which grab hold, which hand, do you know? 10

A. I couldn't say which hand.

Q. You couldn't say whether he was trying to grab with his right hand or his left hand? You couldn't say? A. I couldn't say.

Q. And your duties were to watch for signals; is that right? A. Not all of my duties.

Q. Is it your duty to look at people getting on and off the train? A. Well, I do that.

Q. Is it your duty? A. Yes.

Q. Or is it your duty to take care of the mail and baggage? A. Yes, that is my duty too. 20

Q. To get the signal, if, in their judgment, it is all right, to pull the rope? A. Yes, sir.

Q. You are at the head of the train? A. Yes, sir.

Q. Next to the engine? A. Yes, sir.

Q. You don't know what happens at the back end of the train? A. If I see anybody there, I don't pull the rope, trying to get on. 30

Q. Don't you depend on the other crew? A. Oh, I depend on them, but if I see anybody trying to get on, I wouldn't start the train until they were on.

Q. Did you see this man walk by you? A. No, sir.

Q. You are sure of that? A. I am.

Q. You didn't see him running up the platform by you? A. I did not. 40

John A. Parson—Recross.

Q. You were standing there, waiting for the signal to pull that rope; am I right? A. Yes, sir.

Q. No man walked by you who got on that train? A. Not while we stood there.

10 Mr. Selser: I object to that, whether anybody did or did not; it was just what he saw.

Q. You are sure that you were looking all of the time? A. Yes, sir.

Q. Nobody run in front of the engine, as far as you know, was there, who passed you and attempted to board that train? A. I didn't see anybody.

20 Q. You were looking forward all of the time? A. Not up toward the engine, I was looking back toward the conductor.

Q. I see, that is where you were looking. A. He could have passed me after I stepped inside of the baggage car.

Q. You were not near the man when he was getting on the train; is that right? A. I wasn't outside of the car.

Q. You were looking out? A. I was looking out.

Mr. Weinberger: That is all.

30 Mr. Selser: That is our case.

(Defendants Rest)

PLAINTIFF'S REBUTTAL.

JAMES J. BURNS, recalled.

Direct-examination by Mr. Weinberger:

40 Q. Mr. Burns, did Mr. Nogrady, the man who

James J. Burns—Rebuttal—Direct.

was injured, run up alongside of the station platform, alongside of the train, and a lot of cops before boarding that train? A. No, sir; he did not.

Q. Did Mr. Nogrady run alongside of the iron fence, on the asphalt street, or cross in front of the engine, before he boarded that train, or run across from Jefferson Street? A. I didn't see him in front of the engine. 10

Q. Where did you see him coming out? A. I saw him first at the subway, when the man boarded the train.

Q. And he boarded it where? A. Right across.

Q. Right at the subway entrance? A. Yes, right at the subway entrance.

Q. When this train started, Mr. Burns, will you tell us how it started? Did it or did it not start with a terrific jerk? 20

Mr. Selser: I object to that.

Mr. Weinberger: I think it is proper rebuttal.

Mr. Selser: You can't characterize the jerk.

Q. Describe the manner in which it started?

The Court: All right. 30

A. Why, it just made a little jump right up, just like releasing the brakes.

The Court: As it always does?

The Witness: Well, mostly, as all trains do.

The Court: All right.

Q. Was there anything abnormal about that? 40

James J. Burns—Rebuttal—Direct.

A. Why, it wasn't no more than some trains do; some trains start very easy and some trains don't.

Q. Was this easy or was it— A. It was just like letting loose on the brakes that had been tightened up too tight.

10 Q. Was it a normal jerk or a terrific jerk, or what kind of a jerk was it?

Mr. Selser: I object to that.

The Court: I will allow it.

A. It was just a sudden jerk.

Q. Did you see his hands then? A. I seen the one hand, I know; the other hand he was trying to grab the other end.

Q. When he boarded this train, was it standing still, Mr. Burns? A. It certainly was.

20 Q. At the station platform? A. At the station platform.

Q. Right where the subway is? A. Right by the subway.

Mr. Weinberger: That is all.

Cross-examination by Mr. Selser:

30 Q. Mr. Burns, in your direct testimony, you said that you were walking out of the tunnel, looking at the headlines? A. When I come up the stairs, I said, I put my paper away.

Q. Up to that time you were looking at the headlines; is that correct? A. After I come up the stairs; yes, sir.

Q. You were then intending to walk to the little waiting room that you may be able to read your newspaper?

40

James J. Burns—Rebuttal—Cross.

Mr. Weinberger: That is not proper rebuttal cross-examination.

The Court: Oh, I think so.

Q. And you were intending to walk to this little waiting room to digest your lunch? A. Yes, sir.

10

Q. And finish your reading? A. Yes, sir.

Q. Now, you didn't see Nogrady before he got aboard that train, did you? A. I seen him just when he got on the train.

Q. Just hopping on? A. Just hopping on the train.

Q. When you testified here that he did not run up from Jefferson Street and he did not run in front of the train, you don't know whether that is true or not? A. He didn't run; no, sir.

20

Q. You didn't see him; you don't know how he got there? A. Sure, I couldn't say how he got from Jefferson Street or the opposite side, toward the furniture store.

Q. Which is true, Mr. Burns, that you did see him before he got on the train, before he actually had his hand on the grab handle, or you saw him before that time? Which is correct? A. I saw him just as he was getting on the train.

30

Q. You hadn't seen him before that at all? A. No, sir.

Q. So you do not know how he came to be there, whether he came from Jefferson Street, dropped out of the sky, came up out of the ground, or what he did? A. I know he had to come up this way.

Q. You knew he had to come up this way, and you therefore assumed he walked in the ordinary manner? A. Yes, sir.

Q. That is so, isn't it? A. Yes, sir.

40

James J. Burns—Rebuttal—Cross.

10 Q. At the time you saw him he was grabbing for the grab handle, and had hold of it with one hand, was he grabbing with the other to reach it? A. At the time I saw him, he just had his left foot on the train, and just as he went to lift his right foot up, the train pulled out, and he tried to grab and he couldn't grab it, couldn't seem to grab the handle.

Q. And then he went down? A. He went down under; yes, sir.

Q. Did you notice what coach he boarded? A. I told you yesterday it was either between the second and third, I couldn't say.

Q. Second or third and directly opposite the outlet of the tunnel? A. Yes, sir.

20 Q. Which opens toward Paterson from the waiting room? A. Yes, sir.

Q. Did you notice where the engine of the train was as it was stopped in the station? A. Well, it stopped away down, quite away down.

Q. Was it over the crossing, or not? A. I could not say.

Q. But you are sure it was either the second or third coach that he got aboard? A. Yes, sir.

30 Q. And that was directly opposite the subway west of the waiting room of the station? A. Yes, sir.

Mr. Selser: That is all.

ELIZABETH NOGRADY, recalled.

Direct-examination by Mr. Weinberger:

40 Q. Mrs. Nogrady, did your husband have red

Elizabeth Nogrady—Rebuttal—Direct.

Elizabeth Nogrady—Rebuttal—Cross.

shoes on the day he was killed? A. He had a black pair of shoes on.

Q. What train did your husband make every morning? A. He used to take every morning six o'clock train, or 6:15, something like that.

Q. All right; that is all. A. Monday was the only day he was supposed to take the 2:15. 10

Mr. Weinberger: That is all.

Cross-examination by Mr. Selser:

Q. Do you know how he got to the station from your home? A. What do you mean?

Q. From your home to the station, rather? A. He goes there on a bus, I suppose.

Q. Possibly on a bus? A. I suppose. 20

Q. What do you mean, Mrs. Nogrady? A. I couldn't tell you, because there are two lines that he could go.

Q. There are two lines? A. One called the Garfield bus and he could go the Passaic bus, and ————Avenue,—three buses.

Q. They run from Garfield to Passaic? A. Yes, sir.

By Mr. Weinberger: 30

Q. Trolley cars run there, too? A. Yes.

Q. From Passaic to Garfield, too? A. Yes.

Q. Takes you right to the Main Line station, Passaic? A. Yes.

Mr. Weinberger: That is all.

Mr. Weinberger: We rest.

(Plaintiff Rests)

(Both sides rest) 40

DEFENDANTS' MOTION FOR DIRECTED
VERDICT.

10 Mr. Selser: If your Honor please, I move
for a directed verdict as to both defendants,
on the ground, first that the complaint al-
leges merely that the defendant failed to al-
low reasonable opportunity for this decedent
to board the train, and negligently started it
with such a violent jerk as to cause him to
lose his balance and fall beneath the wheels.
The testimony and only testimony, in the
case, at this time, is that the train stopped at
the station, the passengers boarded and
alighted from the train; there was a period
of time following that of the train platform
being clear, so far as intending passengers
were concerned, when the engine started in
20 motion and the train proceeded. The only
dispute in the case is—and this is testified by
the plaintiff's witnesses—that at some period
of time following the passengers boarding
this train, this man attempted to board it, to
that extent, that he got one foot up, there be-
ing no trainmen upon the platform, because
they say they saw none, and the testimony in
the case being that they boarded after they
gave the go signal, by passing the signal from
30 the rear end to the engineer, so that the only
inference now is that that after the signal
had been given these trainmen boarded the
train, and that then this man attempted to
board the train as it was proceeding in the
usual way, without any negligence whatso-
ever on the part of any person of the train
crew. For those reasons I maintain they
have not borne out the allegations of their
40 complaint in any respect. They do not claim

Charge of the Court.

defective equipment; they do not claim defects in anything at all, except operation, and by their own witnesses they have failed to establish any evidence of negligence or defect in operation.

The Court: I will deny the motion. I think it is a question of fact for the jury.

10

Mr. Selser: Your Honor will allow me an exception.

The Court: You may have an exception.

Counsel for the respective parties thereupon summed the case to the jury.

CHARGE OF THE COURT.

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Thereupon, the court charged the jury as follows:

Ladies and Gentlemen of the Jury:

On July 26, 1925, Michael Nogrady met his death as the result of being run over by a train of the Erie Railroad Company, in the City of Passaic. I think he died two days later than the accident. His widow, Elizabeth Nogrady, as administratrix ad prosequendum, brings the suit here under what is known as the "Death Act", to recover the pecuniary damages that his next of kin have suffered by reason of his premature death, on the theory that there was negligence on the part of the defendant Railway Company and its servant, Walter Hunt.

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She has sued both the Railroad Company and the engineer, Walter Hunt, and if there should be negligence on the part of Walter Hunt and no negligence on the part of the deceased which contri-

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Charge of the Court.

10 buted to the accident, there should be a verdict in favor of the plaintiff, and the judgment should be against both the engineer and the company, because if there was negligence on the part of the engineer which was the proximate cause of the injury and no contributory negligence on the part of the deceased, the company is responsible for the negligent act of its servant, and he, himself, being the negligent person, if you so find, would also be personally responsible to respond in damages for his wrongful act.

20 Now, the facts in the case have been very thoroughly summarized by counsel, and it is unnecessary, perhaps, for me to say very much about them. It is admitted that the deceased came by his death as a result of injuries that he received in this accident. It seems that he was on his way to New York at the time. Two witnesses are produced by the plaintiff, Mr. Burns and Mr. Heller, who were eyewitnesses and who said that he attempted to board the train before it had started in motion. Neither of them, however, I think, testified that they at that time saw anyone else getting on or any of the trainmen on the station platform; but both say that as he attempted to board the train the train started, that he lost his balance and was precipitated under the wheels of the train; and therefore the plaintiff says that the train was improperly run, that it started with a sufficiently severe jerk as to have occasioned this man to lose his balance, and that that is the proximate cause of his having received the injuries which resulted in his death.

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40 On the other hand, the defense is that the train was not started in an unusual manner, but in a

Charge of the Court.

proper one and without jerks, that it was started smoothly. That is testified to by several witnesses. Now, with respect to the accident having actually been witnessed by the different witnesses, according to my recollection, Officer DeVries saw the accident and told you about it, and Dr. Katzin also saw it. Then, in addition to those two, there is Officer Delaney who was on the corner, who did not see the accident but saw the deceased go around the front of the engine and that almost immediately thereafter the accident occurred. Now, that is important perhaps with respect to whether or not the train was in motion when the deceased got on, because, after all, that is the real question in the matter, the question of fact for you to determine being one of negligence. Did this man get on the train, or start to get on, when the train was stopped, or did he start to get on when the train was in motion? Now, both Officer DeVries and Dr. Katzin say he got on when the train was in motion, or had grabbed the handles, trying to get on. Officer Delaney said he did not see that, but that it happened so quickly after the man went around the front of the engine, that you could infer, according to the defendants' theory of the case, that the train was in motion when he attempted to board it.

Then, in addition to those men, there was Mr. Parson, who was the baggage master on the train, who saw Officer Ervansky, who was standing at the crossing looking back, and that attracted his attention. He was standing near the open door of his baggage car, and he looked back. The train was then in motion. The train was then going over the crossing. It had stopped, he says, before the crossing, and his baggage car

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Charge of the Court.

10 which was behind the engine was then traversing the crossing, when he saw the officer looking back, and he then turned and saw this man grabbing the handle, starting to get on, and the train was then in motion, and he therefore signalled the engineer to stop the train and the train did stop, and he has told you where the train was when it stopped thereby telling you how far it had gone from the time it started out of the station until after the accident when it was brought to a stop, according to his recollection.

20 Then, there is Mr. Wynne, the collector, and Brakeman Daley, who were members of the train crew, and who testified with respect to the duties that they performed at that time, that they were the conductor and brakeman respectively of the train, and that it was their duty to see that the passengers got off the train properly and safely and that the other passengers who were starting their journey got on safely and properly, and that, beginning with the man at the back of the train, signals were given after everybody had gotten off and everybody had gotten on, that they so signalled with their hand, that it was time to go, that things were safe, that everyone was on that
30 was getting on and everyone was off that was getting off. So the man at the end of the train tells you that he signalled and that that signal was relayed by the next man Daley to the conductor and the conductor who signalled it to the baggage master, who pulled the cord giving the signal to the engineer, who proceeded to put the train in motion. Now, the flagman at the back and the trainman, Mr. Daley, next toward the end of the train, neither one observed conditions after they gave
40 the signal, as I recall it. They observed that

Charge of the Court.

everybody was on that was getting on, that the station platform was clear of intending passengers or people that were intending to be passengers, that they gave the signal and then the train started, and they both got on when the train was going, but they did not make any observations apparently, as I recall it, from the time that they made their observations and gave the signal and went on the train. But, as I recall it, the conductor did. He testified that he got the signal that all was clear, that he in turn signalled it to the baggage master to signal the engineer, and that he remained on the ground and again observed conditions, and that no one was getting on or getting off, and the train started, and then he got on. 10

Now, that is their testimony, as I understand it. The flagman, after the train came to a stop, got off and went back, as was his duty to do, to flag any other trains coming, and he saw no person injured, and he did not tell you very much about that, as I recall it, but I think he did testify as to whether or not the train was started with a jerk. 20

I think the only testimony that we have that it was started with a jerk is the testimony of Mr. Burns, and he testified that it was as though the brakes had been released at once, I think was his expression. The other witnesses that were asked, as I recall it, all testify that the train did not start with a jerk or with any unusual motion but, rather, started smoothly. That is the act of negligence that the plaintiff relies upon, that this train was improperly run by its servants and agents, that Mr. Hunt did not start that engine as a reasonably prudent man would, that he started it with a jerk, and that that is the proximate cause of this man's being hurt and then dying. 30 40

Charge of the Court.

10 On the other hand, the testimony of the defendant's witnesses is that it was not started that way, that he ran and got on while the train was in motion, that the proximate cause of this man's death was his own fault, that there was no fault on the part of the railroad, that there was no fault on the part of its agents or servants, but, on the other hand, the fault was that of the deceased himself, who was negligent.

20 Negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing something which a reasonably prudent man would not do. The standard is not that of a particular man, but of the average prudent man. The failure to observe for the protection of the interests of another person that degree of care, precaution and vigilance which the circumstances justly demand whereby such other person suffers injury. Negligence in its civil relation is such an inadvertent imperfection by a responsible human agent in the discharge of a legal duty as immediately produces in an ordinary and natural sequence a damage to another. The standard by which to determine
30 whether a person has been guilty of negligence is the conduct of the prudent, or careful, or diligent man. It is the result of a failure to perform a duty. The same definition applies with respect to contributory negligence.

Did the Erie Railroad Company, or its servants, act as reasonably prudent persons would act? Did the deceased act as a reasonably prudent person would act?

40 To disentitle the plaintiff's intestate to recover

Charge of the Court.

damages, it must not only appear that he was negligent but that his negligence proximately contributed to the defendant's negligence that caused his injury. In other words, if there should be negligence on the part of the Railroad Company, or its servants, and there was also negligence on the part of the deceased, there can be no recovery. There can only be a recovery in this case, if there was no negligence on the part of the deceased and there was negligence on the part of the Railroad Company's servants. 10

Now, you are the sole judges of the facts, and it is being submitted to you because it is a fact question. The court decides all questions of law, but you decide all questions of fact; and it is because, in the opinion of the Court, there was a fact question here that the motions for a non-suit and for a directed verdict were denied, and for no other reason, and the denial of those motions must not be taken into consideration by you as being of any significance at all in this case otherwise. Those motions were denied because it was not the court's duty to decide questions of fact, but rather your duty; and in the court's opinion there were questions of fact in dispute here which made necessary the submission of the case to you for your determination. 20 30

You are the sole judges of the weight that is to be given to the testimony that has been adduced. Just because the witnesses do not agree in all details does not necessarily mean that anyone has testified falsely intentionally or otherwise. Two or more people, of course, viewing the same thing do not always remember having seen the same thing. They do not see the same thing, and there is not 40

Charge of the Court.

10 registered in their minds the same thing. And, of course, when you come to the estimates of distances, which the witnesses were asked particularly about in this case, there is a great variety of estimates given. So just because there is not a complete accord between witnesses with respect to the occurrence does not mean that anyone is deliberately falsifying. But if you should believe that any witness did deliberately falsify on a material point for the purpose of deceiving you, you have a right to disregard everything that such a witness may have told you.

20 You will reconstruct this scene out of the mouths of these witnesses in order that you may find the facts. You take into consideration the likelihood of what the witnesses say took place as being true or not true. You take into consideration the infirmities of the human mind. You take into consideration the interest that the witnesses may have in the outcome of this suit with respect to what they may have testified here. You give the weight to the different witnesses' testimony that weight which you, in your judgment, think it is entitled to, and when you have done that you will find the facts.

30 Your verdict must, of course, be based upon your finding on the facts, and must not be based upon any other consideration. You must have no prejudice against the Railroad Company and no sympathy for the heirs-at-law of this deceased person. Your duty, under your oath of office, is to sift the evidence under the considerations that I have laid down, to apply the principles of law which I have given to you, to fearlessly find the facts, and when you have found the facts, under

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Charge of the Court.

the court's instructions, of course your duty will then be clear as to what your verdict will be.

You must keep in mind that the burden of proof is cast by the law upon the plaintiffs in this case to satisfy you that what they contend for is true, viz., that this accident was the proximate result of the negligence of the servants of the defendant company. That burden must be established by them by the clear weight of the evidence. The evidence must preponderate to that effect. That does not mean the number of witnesses necessarily, but means the quality rather than the quantity of the testimony. That is true, likewise, with respect to the contention of the defendants that the proximate cause of this accident was the negligence of the deceased, Mr. Nogrady.

Now, if there should be a verdict for the plaintiffs in this case, then your next duty will be to fix the amount. Under the common law of this State an action of this kind did not survive the death of the person who might have had an action, had he lived; but under our "Death Act" such a right of action survives him, to his next of kin, but it is based entirely upon the pecuniary loss that his premature death entailed upon his next of kin and nothing else. Funeral expenses, for instance, are not to be considered, because they would have to have been paid anyway had he died in any other way. The question is: To what extent have his heirs been impoverished? How much poorer are they, in dollars and cents, than they would have been had he lived? It is the reasonable expectation of pecuniary benefit of which the persons, in whose interest this action is brought, have been deprived that is recoverable in an action of this

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Charge of the Court.

character. Deprivation of the services of the father, in the way of counsel, cannot be measured in dollars and cents; the anguish and heart aches of the widow and children cannot be measured in dollars and cents, and is not a measure of damage in this case, but only pecuniary loss that they have suffered.

10 They are entitled to recover a capital fund, so to speak, which will represent the present value of all of the pecuniary loss which will fall upon them by the premature taking off of the intestate. It has been referred to by one of our greatest jurists, Chief Justice Beasley, in this language:

20 "A deprivation of a reasonable expectation of a pecuniary advantage which would have resulted by a continuation of the life of the deceased."

That is the measure of damages, and that only. In that connection, you must take into consideration the condition of health of this deceased, the age at which he met his death, the age of his dependents, his earning power at the time of his death, the position in life in which he was. These are the only elements from which you can, with any degree of intelligence, find a verdict for damages.

30 Of course, he might have died the next day or the next week; his children or his wife might have died; he might have lost his job, and he might have suffered pecuniary losses, and, on the other hand, he might have become more prosperous. No one can tell what might have happened in the ordinary course of events, if this occurrence had not occurred.

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Charge of the Court.

You have heard from the testimony which counsel agreed upon that the mortality table, gotten out by the insurance company actuaries, gives a man in good health and a woman in good health at the ages of the deceased and of the widow in this case, as to their life expectancies. These tables are made up from the experiences of the insurance companies, and these tables are recognized by the courts as being the best guide we can have as to the expectancy of life of persons of certain ages and under certain conditions of life. I have forgotten just what the testimony was in that respect, but it seems to me it was something like twenty-nine and a fraction years for both of them. I think they were both about the same age. 10

Mr. Weinberger: 29.68, is that right? 20

The Court: I think they were both of the same age, were they not?

Mr. Selser: Thirty-four and thirty-seven.

Mr. Weinberger: Both thirty-four.

The Court: At the time of the accident, I mean.

Mr. Weinberger: Two weeks apart.

Mr. Selser: At thirty-four, the expectancy is 31.68. 30

(Continuing) Well, you will recall what the testimony was, and if the court has misstated the testimony in any particular, or if I have failed to mention some testimony that you think I should have or wonder why I did not, there is no significance in my not having mentioned it. It did not occur to me to mention any other bits of the testimony than I did. But, if in mentioning it, I have misstated, you will disregard anything that I may 40

Plaintiff's Exceptions to Charge.

have said that is not in accordance with your own recollections, because this case must be decided by you on your own recollection of what the testimony was and on no one's else.

You may now retire.

(The Jury retired)

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PLAINTIFF'S EXCEPTIONS TO CHARGE.

Mr. Weinberger: I take exception to that part of his Honor's charge, wherein he states that the only act of negligence alleged, according to the evidence, is that the train started with a sudden jerk. I maintain, as a matter of law, and that is stated in the complaint, that if they started this train when he was in such position that they ought to have reasonably known of the great danger of it, that it was negligence for them to start and put the train in operation at that time.

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Mr. Selser: That is not charged in the complaint.

Mr. Weinberger: Who says so? Count Ten, of the complaint, says as follows (quoting from complaint) In other words, that the negligence consisted of two things, we claim.

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The Court: I will call them back, if you want me to.

Mr. Selser: If you do, I am going to take an exception to it, because there is no proof to substantiate any such allegation.

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The Court: I think what I said was about as I understood the testimony, that the only negligence that you claim, meaning not what you claim in your papers but what you claim by the testimony, was the sudden jerking of this train.

Defendants' Exceptions to Charge.

Mr. Weinberger: The law is well settled that if a man is on the station platform, and he is boarding a train, it is their duty to give him time, I think, to get on and off the train.

The Court: I will let it stand as it is.

Mr. Weinberger: Allow me an exception.

The Court: Certainly.

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DEFENDANTS' EXCEPTIONS TO CHARGE.

Mr. Selser: I except to what your Honor stated, as your Honor defined negligence in the abstract, first, and said that if the railroad company or its servants or agents failed to do what reasonably prudent men under the circumstances, following the definition in the abstract, would do, or did something that reasonably prudent men would not do, then the company is negligent,—then they may determine that the company is negligent, and then they would consider further the question of contributory negligence, my disagreement with that is that it is too broad and not limited to the allegations of negligence contained in the complaint; in other words, the jury may infer from that, that there were many things that the company could have done and did not do.

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Then, to that part of your Honor's charge wherein your Honor said that if there be a verdict, it must be against the Railroad Company and the engineer; my thought is that there may have been negligence which was not the negligence of the engineer.

The Court: All right, you may have your exceptions.

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Grounds of Appeal.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	ELIZABETH NOGRADY, adminis- tratrix <i>ad prosequendum</i> of the Estate of MICHAEL NO- GRADY, deceased,	}	On Appeal from New Jersey Su- preme Court.
	Plaintiff,		
	vs.		
20	The ERIE RAILROAD COMPANY, a corporation, and WALTER HUNT,	}	
	Defendants.		

The following are the plaintiff's Grounds of Appeal in the above entitled cause:

1. Because the Court in its charge to the jury misconceived the extent and nature of the complaint upon which this cause of action was brought.
- 30 2. Because the Court erred when it charged the jury as follows:

40 "The other witnesses that were asked, as I recall it, all testify that the train did not start with a jerk or with any unusual motion but, rather, started smoothly. That is the act of negligence that the plaintiff relies upon that this train was improperly run by its servants and agents, that Mr. Hunt did not start that engine as a reasonably prudent man would, that he started it

Grounds of Appeal.

with a jerk, and that is the proximate cause of this man's being hurt and then dying."

Which charge was erroneous in law in that it limited the negligence of the defendants to the single act of starting the train with a jerk.

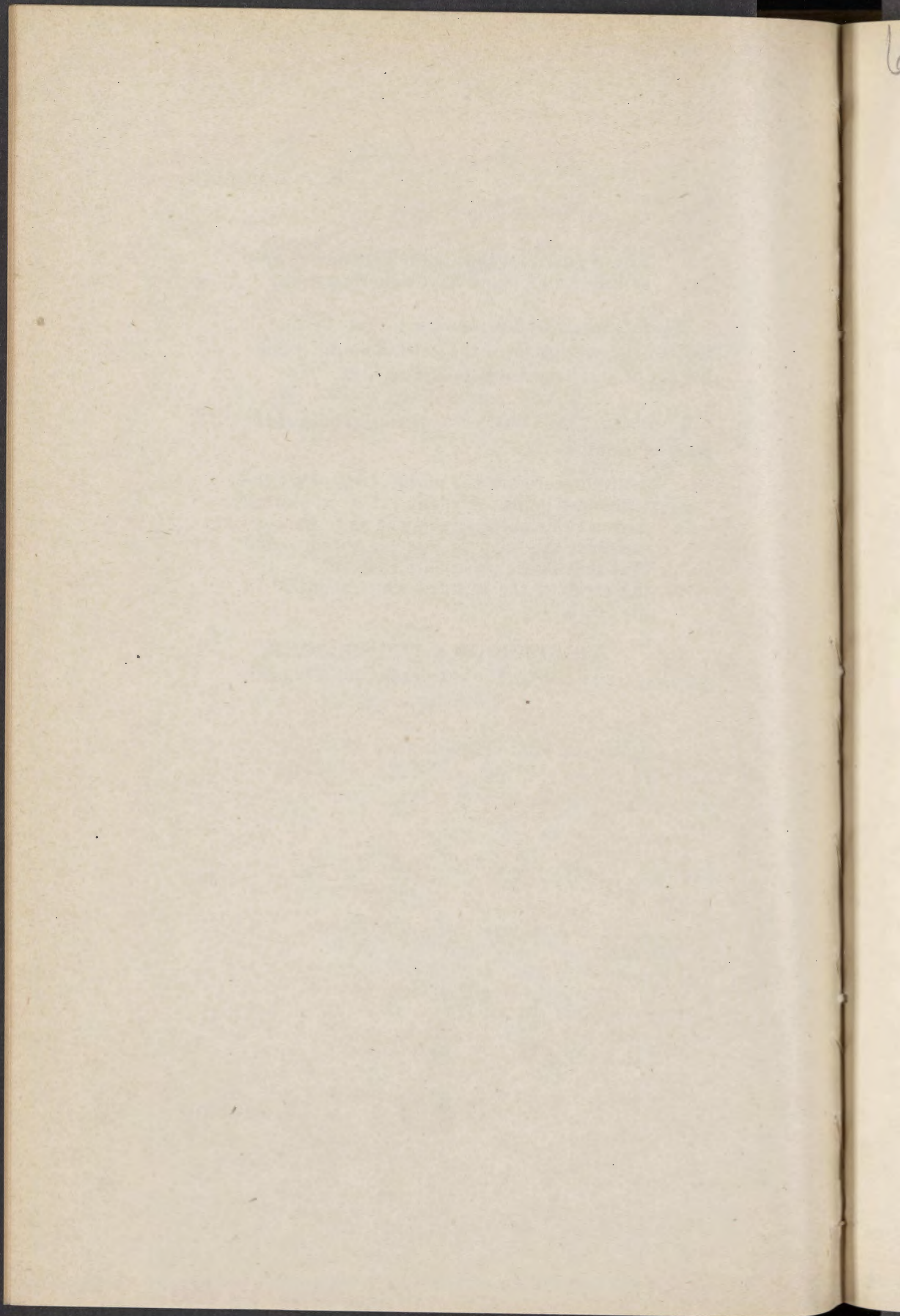
3. Because the Court erred when it charged the jury as follows: 10

"And therefore the plaintiff says that the train was improperly run, that it started with a sufficiently severe jerk as to have occasioned this man to lose his balance, and that that is the proximate cause of his having received the injuries which resulted in his death."

WEINBERGER & WEINBERGER, 20
Attorneys for Plaintiff.

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OCT. 1. 1928

NEW JERSEY COURT OF ERRORS AND APPEALS

ELIZABETH NOGRADY, administratrix *ad prosequendum* of the Estate of Michael Nogrady,

Plaintiff-Appellant,

vs.

THE ERIE RAILROAD COMPANY, a corporation, and WALTER HUNT,

Defendants-Appellees.

On Appeal From New Jersey Supreme Court.

BRIEF FOR PLAINTIFF-APPELLANT.

Statement of Facts.

This is an appeal by the plaintiff from a judgment entered upon a verdict in favor of the defendants. The case was tried at the Passaic County Circuit of the New Jersey Supreme Court before Honorable Newton H. Porter, and a jury. Suit was instituted by Elizabeth Nogrady, as the administratrix *ad prosequendum* of the Estate of Michael Nogrady, against the Erie Railroad Company, a corporation, and Walter Hunt, in order to recover damages for the death of her husband, Michael Nogrady, who was struck by and thrown under the wheels of an Erie Railroad train, sustaining injuries as a result of which he died. Walter

Hunt was made a party defendant because he was the engineer in charge of this train. The complaint alleged the wrongful act, neglect and default of the defendants in the operation of this train.

The material allegations of the several acts of negligence alleged in the complaint are as follows:

“9. That the said train had stopped while the said plaintiff's intestate, Michael Nogrady, was in the act of boarding the said train at the said station at Passaic, New Jersey, as he had a lawful right to do, the said defendants, the Erie Railroad Company, a corporation, its agents and servants, and Walter Hunt, suddenly set the train in motion causing the same to start with an unusual jerk and forcibly throwing the said plaintiff's intestate from the steps of the said train and under the wheels of one of the cars thereof, and running over both legs, severing them at the ankles and seriously injuring the said intestate, Michael Nogrady, as a result of which the said plaintiff's intestate died a few days later on.

“10. By reason of the said careless, negligent and improper operation of said train, and the carelessness and negligence of the defendant's agents and servants and Walter Hunt to properly ascertain whether all the passengers were in a safe position on said train, and because of their failure to allow the said plaintiff's intestate reasonable time to board said train properly, and because of their failure to give any signal or warning of the starting of said train, and because of the negligence of the defendant, its agents and servants and Walter Hunt, who

were operating said train, the plaintiff's intestate suffered the loss of both of his legs and underwent great pain and suffering as a result of which the plaintiff, Elizabeth Nogrady was obliged to expend money for medicines, nurses and physicians; as a result of the premises aforesaid plaintiff's intestate died."

The deceased left surviving him, his wife, Elizabeth Nogrady, aged thirty-two, and two children, a boy of sixteen years and a baby of fourteen months, who were all dependent upon him for support.

We cannot agree with the charge of the Court in this case because he limited the negligence of the defendant to the single act of starting the train with a jerk, whereas the complaint alleged and the testimony disclosed that the defendants were guilty of a series of negligent acts. Therefore, we respectfully submit that the charge was highly misleading and erroneous in law, for the following reasons:

POINT I.

The Court erred when it charged the jury as follows:

"That is the act of negligence that the plaintiff relies upon, that this train was improperly run by its servants and agents, that Mr. Hunt did not start that engine as a reasonably prudent man would, that he started it with a jerk, and that that is the proximate cause of this man's being hurt and then dying."

This portion of the charge was excepted to by the plaintiff, which exception can be found on page 162 of the State of the Case.

The Court, in its charge to the jury, in our opinion, entirely misconceived the extent and nature of the complaint upon which this cause of action was brought. *The effect of the charge was to limit the negligence of the defendants to the single act of starting the train with a jerk.* A careful perusal of the complaint *and the testimony* will disclose that the negligence of the defendants consisted not only in starting the train with a jerk, *but that it constituted negligence upon the part of the defendants to merely move the train whether by an ordinary and usual, or an unusual and unnecessary jerk while the plaintiff was on the train steps and before he had a reasonable opportunity to reach a place of safety.* The complaint also charged that the defendants were negligent in that those in charge of the train did not ascertain whether all the passengers were in a safe position on the train. Furthermore, that it constituted negligence upon the part of the defendants in that the train did not stop a reasonable length of time in order to afford the plaintiff's intestate a reasonable opportunity to board the train with safety. The complaint also charged the defendants with negligence in that they failed to give any signal or warning of the starting of the train. All these allegations, as we shall show, were supported by the testimony in the case, and each, independent of the other, we submit, makes the attempt of the Court in its charge to limit the negligence of the defendants to the single act of starting the train with a jerk, improper and erroneous in law.

A. THE DEFENDANTS WERE NEGLIGENT IN THAT THOSE IN CHARGE OF THE TRAIN DID NOT ASCERTAIN WHETHER ALL THE PASSENGERS WERE IN A SAFE POSITION ON THE TRAIN.

In *Speer v. West Jersey & Seashore Railroad Co.*, 74 N. J. L. 282, Mr. Justice Garretson, speaking for the Court of Errors and Appeals, said on page 285:

“It is negligence in the conductor of a trolley car which has come to a stop at a street corner for the purpose of taking on passengers to start it until he has exercised due care to ascertain that all persons there waiting to take it have safely boarded the car.”

Though ample time has been allowed for getting on the train, it is negligence to start it when one is seen attempting to get on.

St. Louis Railway Co. v. Cannon, 81 S. W. (Tex. App.) 778.

The testimony at the time of the trial distinctly showed that the plaintiff's intestate, Michael Nogrady, was an intending passenger, and while attempting to board one of the coaches of the train, it suddenly started with a jerk, and threw him underneath the wheels, severely injuring him and causing his death. We record the testimony of James J. Burns, a totally impartial and disinterested witness:

“Q. Did you observe a man by the name of Mr. Nogrady? A. Oh, I didn't know what his name was; I know it now.

“Q. Was the train standing or moving when you saw him? A. The train was standing.

“Q. Did you see this man get on the train? A. Yes, sir.

“Q. Tell us in your own words, out loud, what you saw him do. What happened? A. Just as soon as the man, he stepped his left foot on the train, and his left hand on the bar, just then the train began to go and jerked him off, and he tried to grab for the bar or handle.

“Q. Was the train standing still when he put his left foot on the first step of the train? A. Yes, sir; then he went to lift up his other foot.

“Q. Was his left hand on the bar when the train was standing still? A. Left hand was, yes.

“Q. What happened when he was getting on the train, with his left foot on the first step and his left hand on this rail or bar? A. The train gave a sudden jerk and pulled him off his balance” (State of the Case, page 25 to page 26, line 20).

To the same effect, was the testimony of another totally disinterested witness, Thomas Heller, who has been a resident of the City of Passaic for thirty-five years. *He testified that he was standing at Main Avenue and Jefferson Street and that he saw the late Michael Nogrady attempting to board the Erie train, and that when he had placed one foot upon the train steps, it suddenly started off with a jerk. We quote his testimony upon this point:*

“Q. A little louder. A. As I went across the street, the train pulled in. I stopped there and waited for the train to cross over. I seen the people coming on and coming off out of the train. Then that man he come in and all of a sudden that man steps on it—

“Q. Was the train standing still? A. The train was standing still, so he got hold by the car, and before he could get his left foot up, the train jumped, and he pulled back again, swung back, and he tried to put the other foot on and catch the stair, but he couldn't do it.

“Q. You say you saw his left foot on the platform? A. He put him up on the stair.

“Q. On the stair of the train? A. And then he hold the bar with the handle; just as soon as he got by the handle, then the train jump back again; then he swung himself back again” (State of the Case, page 36, lines 14 to 32).

We submit that it was the conductor's duty to see one attempting to get on the train if it could have been done. *The testimony of the witnesses discloses that the man was attempting to get on the train, while he was on the platform of the railroad station and under these circumstances, it was the conductor's duty not to signal the train to start until the intending passenger was in a safe position on the train.*

Foster v. Seattle Railway Co., 35 Wash. 177, 76 Pac. 995.

It is negligence to start the car when one has taken hold of the handles. The testimony in this case discloses that Michael Nogrady had taken hold of the handles when the train suddenly started.

Birmingham Co. v. Lee, 45 So. 292.

4 Ruling Case Law 1237 is authority for the following proposition of law:

“Before starting he must see that no passenger is in the act of alighting, or

in a position that will be perilous if the train starts."

In 10 C. J., 924 there appears the following passage of law:

"The carrier is bound to exercise care in securing the safety of the passenger while boarding and alighting from its cars or other conveyances, and the degree of care required in the discharge of this duty is the highest care, or the care which a very prudent person would use under the circumstances, that is, that high degree of care which is required with reference to the transportation of passengers."

Although the defendants attempted to interpose the usual stock defense that the plaintiff was attempting to board a moving train, it is expressly admitted by counsel for the defendant, the Erie Railroad Company, that the plaintiff was an intending passenger (State of the Case, page 21, lines 28 and 29). Inasmuch as Michael Nogrady was admitted to be an intending passenger, it was the duty of the defendant's agents to ascertain whether or not he was in a safe position before starting the train.

We submit that the servants of the defendant company in charge of this train which was responsible for the death of Michael Nogrady, did not use that degree of care which the law calls for in ascertaining whether an intending passenger was in a safe position on the train. The failure to so determine constituted negligence upon the part of the defendant. This negligence was alleged in the plaintiff's complaint and was supported by the testimony in the case. It is therefore respectfully submitted that the Court's attempt to limit the negligence

of the defendants to the single act of starting the train with a jerk, was improper.

It has been held in our State that where a Court undertakes to charge with reference to the right for recovery, it is incumbent that the rules of law be clearly enunciated so as to make the issue before the jury clear, distinct and understandable. The limitation by the Court of the defendants' negligence was insufficient to properly present the issues in this case to the jury. The judgment for the defendants, we respectfully submit, should therefore be reversed and a new trial granted.

B. THE DEFENDANTS WERE NEGLIGENT IN THAT THE TRAIN DID NOT STOP A REASONABLE LENGTH OF TIME IN ORDER TO AFFORD THE PLAINTIFF'S INTESTATE A REASONABLE OPPORTUNITY TO BOARD THE TRAIN SAFELY.

There is a duty upon a railroad company to allow passengers a reasonable time in which to get on board the train.

1. *Hickenbottom v. Delaware Ry. Co.*, 122 N. Y. 91, 25 N. E. 279.
2. *Walters v. Phila. Traction Co.*, 161 Pa. St. 36, 28 Atl. 941.
3. *Steeg v. St. Paul City R. Co.*, 50 Minn. 149, 52 N. W. 393.
4. *Norfolk Terminal Co. v. Morris' Admr.*, 101 Va. 422, 44 S. E. 719.
5. *Normile v. Wheeler Trac. Co.*, 57 W. Va. 132, 49 S. E. 1030.
6. *Poole v. Georgia R. Co.*, 89 Ga. 320, 15 S. E. 32.
7. *Mobile Ry. Co. v. Reeves*, 25 Ky. L. Reports 2236, 80 S. W. 471.

In 4 *Ruling Case Law* 1237, under the topic "Carriers," the following statement appears:

"As has already been seen, it is the duty of a carrier of passengers under its contract of carriage to stop to receive passengers at proper places, and to discharge them safely at their destination, and if necessarily implied from such duties that the carrier shall afford sufficient time and opportunity to passengers to board and leave its vehicles. In the case of a railroad company it is the generally accepted rule that it must exercise the utmost care, allow a 'reasonable' or, as it is sometimes stated, a 'sufficient' time after stopping its train to permit passengers using reasonable diligence and care to board its cars or alight therefrom safely, and that having done this its duty is performed, unless it is charged with knowledge of facts or circumstances which render it negligence to set its train in motion" (cases cited).

In *Speer v. West Jersey R. R. Co.*, 74 N. J. L. 282, Mr. Justice Garretson says, on page 284:

"Where the conductor gives the signal for a trolley car to start, in the presence of a passenger who is boarding the car, and before the passenger has had opportunity to get fully upon the car, and the passenger is thrown off and injured, there can be no doubt that the defendant's negligence is established.

"It is the duty of the conductor to give every person desiring to board a standing car an opportunity to do so. He cannot fully perform that duty unless he can see the persons attempting to board the car, or in some way receive reliable information as to their movements. He has

no right to conclude that because the car has been stopped for what he considers sufficient time for all persons desiring to become passengers at that point that all such persons have safely boarded the car, and with that knowledge only start the car. He ought to ascertain before he starts the car that all persons so desiring have gotten upon the car, otherwise for injury that ensues to any passenger the defendant is guilty of negligence."

The testimony in this case discloses quite convincingly, we submit, that the defendant's train did not stop for a reasonable time in order to permit the plaintiff's intestate to board the train properly, and we record the testimony of Mr. Burns upon this point:

"Q. How much time elapsed, Mr. Burns, from the time you saw Nogrady with his one foot on the step and left hand on, holding the handle, before this train gave this jerk and started up? A. How long—

"Q. Did you understand my question? A. No.

"Mr. Weinberger just read it:

"Q. (Repeated by stenographer.) A. Why, he just had his foot on. It wasn't no more than a second or three or four seconds, I wouldn't say.

"The Court Before he could get his other foot on, in other words?

"The Witness: Yes. Just as soon as he got his one foot on it pulled out.

"Q. You are sure that when he boarded this train, it was standing absolutely still? A. Yes, sir." (State of the case, page 34, lines 1 to 24.)

And again:

"Q. Now how long, approximately, did that train stay in the station, Mr. Burns?

A. Oh, about a minute or so; maybe not that." (State of the case, page 26, lines 29 to 31.)

The complaint alleged that the defendant's train did not stop for a sufficient length of time to permit Michael Nogrady to board the train. The testimony supported this allegation of negligence upon the part of the defendants. Under these circumstances, we respectfully submit, it was error for the Trial Court to limit the negligence of the defendants to the single act of starting the train with a jerk.

In *Ploeser v. Central R. R. Co. of N. J.*, 92 N. J. L. 490, Mr. Justice Black, speaking for the Court of Errors and Appeals, says on page 492:

"The trial judge's charge on the duty of the defendant company to allow a reasonable time and opportunity at the station to get on board of the train before putting the train in motion, was a correct statement of law, supported by many cases. The acceptable rule on this point is tersely stated thus: *A steam railroad company must exercise the utmost care to allow a reasonable time and opportunity after stopping its train at a station to permit intending passengers, using reasonable diligence and care, to board its cars safely; having done this, its duty is performed, unless it is charged with knowledge of facts or circumstances which rendered it negligent to set its train again in motion.* *McDonard v. Long Island Railroad Co.*, 116 N. Y. 546; *Carr v. Eel River Railroad Co.*, 98 Cal. 366; *Baltimore Railroad Co. v. Mullen*, 217 Ill. 203; 3 Am. Cas. 1015; 2 L. R. A. (N. S.) 115. For a list of cases, see 4 Ell. Rail. (2nd ed.), paragraph 1628, 1628b; 4 R. C. L.

1236 p. 655; 6 *Cyc.*, 612; 2 *Moore Car.* (2nd ed.) 1236 p. 50; *Shear & Redf. Neg.* (5th ed.) 508." (Italics ours.)

Under these circumstances, the Court was not warranted in limiting the negligence of the defendants to the single act of starting the train with a jerk.

C. THE MERE ACT OF MOVING A TRAIN BEFORE THE PASSENGER HAS HAD A REASONABLE OPPORTUNITY TO REACH A PLACE OF SAFETY THEREIN IS NEGLIGENCE, RENDERING THE CARRIER LIABLE TO ONE INJURED THEREBY, WHETHER SUCH MOVEMENT BE UNUSUAL AND UNNECESSARY OR NOT.

In 10 *C. J.*, on page 934, the following proposition of law is stated:

"A carrier owes a duty to boarding passengers to stop its train at the platforms and to allow them time to get on board with reasonable care and expedition, and if without allowing such reasonable time the train is *started or otherwise moved* while a passenger is attempting to board it whereby he is injured the carrier is liable."

1. *Midland Valley R. Co. v. Page*, 182 Fed. 125.
2. *Chicago R. Co. v. Drake*, 33 Ill. A. 114.
3. *Gannon v. Chicago R. Co.*, 141 Iowa 37, 117 N. W. 966.
4. *Keating v. N. Y. Central R. Co.*, 49 N. Y. 673.
5. *Lee v. Manhattan R. Co.*, 53 N. Y. Super 260.
6. *Cook v. Long Island R. Co.*, 19 N. Y. S. 648.

7. *Giovanelli v. Erie R. Co.*, 228 Pa., 76 Atl. 424.
8. *Chesapeake R. Co. v. Borders*, 140 Ky. 548, 131 S. W. 388.
9. 4 *Ruling Case Law* 1245.

In *Chesapeake Ry Co. v. Borders*, *supra*, the Court held that

“the mere moving of the train whether by an ordinary and usual or an unusual and unnecessary jerk, while the passenger is on the car steps and before he has had a reasonable opportunity to reach a place of safety, whereby the passenger is injured is negligence.”

It is thus apparent that *the mere moving of a train whether by an ordinary and usual or an unusual and unnecessary jerk* while the plaintiff's intestate was on the train steps, and before he has had a reasonable opportunity to reach a place of safety, constituted negligence, and such negligence was the proximate cause of the injuries. The testimony disclosed that the train started to go when Michael Nogrady had one foot on the train steps and had taken hold of the handles. *It was not the starting of the train with a jerk as the Court charged, but the mere moving of the train even in the usual and ordinary manner while the plaintiff's intestate was attempting to board it that, constituted the actionable negligence of this case upon which the plaintiffs relied.* It was therefore harmful and prejudicial error upon the part of the Trial Court in limiting the defendants' liability to the single act of starting the train with a jerk, when the testimony disclosed that the plaintiff's intestate was thrown beneath the train before he had a reasonable opportunity to seek a place of safety on the train.

We respectfully submit that the charge of the Court had a tendency to confuse the jury as to the real issues which the case presented, and that therefore a new trial should be granted.

“That the verdict of the jury may have resulted, to some extent, from their attempt to give effect in their finding to this erroneous instruction, we think, is equally clear, for it was their duty to be governed in their finding by the legal rules which the Court instructed them were applicable to the case they were to consider. *Where an erroneous principle of law is laid down by a trial court, a verdict, which may have been the result of the erroneous instruction, cannot be supported, and this, we think, is equally true where a principle of law which has no bearing upon the issues involved in a litigation is stated by the trial court to the jury as a rule which should govern them in their consideration of the cause.*” *Martha Lambert v. Trenton and Mercer County Traction Corporation*, 3 N. J. Misc. 237, 238.

Conclusion.

Thus it distinctly and clearly appears that the testimony contained proof of a series of negligent acts upon the part of the defendants. We respectfully submit, therefore, that it was error for the Trial Court to limit the negligence of the defendants to the single act of starting the train with a jerk when the evidence disclosed that the plaintiff's intestate was not afforded a reasonable opportunity to board the train safely, and further, because the testimony revealed that the defendants had not ascertained whether all the passengers were safely on the

train. The Court's limitation of the defendant's negligence, under these circumstances, was harmful error and highly prejudicial to the rights of the plaintiff. We, therefore, respectfully submit that the judgment below be reversed, and a *venire de novo* be granted.

Respectfully submitted,

WEINBERGER & WEINBERGER,
Counsel for Plaintiff-Appellant.

JOSEPH J. WEINBERGER,
Of Counsel.

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54 OCT. 7. 1928

NEW JERSEY

Court of Errors and Appeals

ELIZABETH NOGRADY, Adminis-
tratrix ad prosequendum of the
estate of Michael Nogrady, de-
ceased,

Plaintiff-Appellant,

vs.

THE ERIE RAILROAD Co., a cor-
poration, and WALTER HUNT,
Defendants-Appellees.

BRIEF FOR DEFENDANTS-APPELLEES.

(1)

Statement of the Case.

The "statement of facts" in the brief for plaintiff-appellant being inaccurate and incomplete in certain respects, we submit the following statement of the case in behalf of the defendants-appellees:

The plaintiff-appellant (hereinafter called the plaintiff) brought suit against the Erie Railroad Company, one of the defendants-appellees (hereinafter called the defendant) and against one Walter Hunt, the other defendant-appellee (hereinafter referred to as the engineer), to recover damages alleged to have been sustained by the plaintiff as the widow of the decedent and by his children as next of kin, on account of the death of the plaintiff's intestate at the main station of the defendant at

the City of Passaic, N. J., on July 27, 1925, while the plaintiff's intestate was in the act of boarding an eastbound passenger train.

Plaintiff's intestate went to the station for the purpose of boarding an eastbound passenger train for New York City. The train had pulled into the station *before* the plaintiff reached the station platform and several passengers had alighted from the train and others had boarded it. There were six cars with the usual crew of engineer, fireman, conductor, two brakemen and a baggage-master. When the train pulled into the station the engineer and the fireman were at their usual post on the engine. The other members of the train crew, placing them in the order in which they were located either in the train or on the station platform, were as follows:

The first car next to the engine was the baggage car. Baggage-Master Parson was standing inside of the door of that car on the right-hand or station side with the door open (p. 137, line 35, to p. 138, line 15).

Conductor Wynne had alighted from the train and was standing on the platform between the first and second cars from the engine (p. 105, line 10).

Brakeman Daly had also alighted from the train and was standing on the platform between the third and fourth cars from the engine (p. 109, line 10).

Brakeman Lewis had also alighted from the train and was standing between the fifth and sixth cars (p. 118, line 5).

Several passengers got on and off the train before the plaintiff's intestate arrived at the station platform. After all persons who desired to board or leave the train had done so, Brakeman Lewis, from a point near the rear of the train, passed the O.K. signal to the man ahead of him (p. 118, lines

10-20); and the latter in turn, when he received the signal from Lewis, passed it to the conductor (p. 109, line 15); the conductor, after receiving the signal, passed it on to the baggage-master and the latter then blew the starting signal to the engineer (p. 105, line 15); and thereupon Engineer Hunt started the train (p. 80, line 25).

At the time the starting signal was given, there were no passengers on the platform who were apparently intending or attempting to board the train.

The testimony of the train crew and other witnesses on this point is undisputed—in fact, it is corroborated by plaintiff's witnesses Burns and Heller (p. 33, line 25; p. 36, line 40).

According to plaintiff's witness Burns, the train was standing and the decedent "stepped his left foot on the train" with his left hand on the bar and the train started just as he was about to lift up his other foot, and the decedent fell "sideways" and he was injured so that he afterwards died (p. 26, lines 1-35).

According to plaintiff's witness Heller, the train was standing still, and "all of a sudden" the decedent stepped on it and before he could get his "left foot up" the train "jumped" and he tried to put on his other foot, but couldn't do it; he swung back and tried to hold with the other hand and then "falled right on the curb" p. 36, lines 10-35).

Numerous witnesses called in behalf of the defendant testified that the train had moved a distance of at least 90 feet before the decedent attempted to board it (p. 63, line 3; p. 82, line 10).

The trial judge denied motions for nonsuit and for direction of verdict and submitted to the jury the question of negligence on the part of both defendants in a charge which accurately defined the meaning of the term "negligence" and carefully

summarized the material points of the testimony of both parties, stating to jury, however, that they were the sole judges of the facts.

The jury found a verdict in favor of both defendants and judgment was entered accordingly.

The plaintiff's counsel submitted no requests to charge, but at the close of the charge took an exception to that part thereof which discussed the time and manner in which the train started, and thereupon the trial judge offered to call the jury back if plaintiff's counsel so desired. Counsel declined the offer and thereupon the court said he would let his charge stand as it was (p. 162, line 10, to p. 163, line 10).

(2)

Grounds of Appeal.

The brief of plaintiff fails to state the grounds of appeal relied upon. For the convenience of the court, we quote same as follows:

"1. Because the Court in its charge to the jury misconceived the extent and nature of the complaint upon which this cause of action was brought.

2. Because the Court erred when it charged the jury as follows:

'The other witnesses that were asked, as I recall it, all testify that the train did not start with a jerk or with any unusual motion, but, rather, started smoothly. That is the act of negligence that the plaintiff relies upon that this train was improperly run by its servants and agents, that Mr. Hunt did not start that engine as a reasonably prudent man would, that he started it with a jerk, and that is the proximate cause of this man's being hurt and then dying.'

Which charge was erroneous in law in that it limited the negligence of the defendants to the single act of starting the train with a jerk.

3. Because the Court erred when it charged the jury as follows:

‘And therefore the plaintiff says that the train was improperly run, that it started with a sufficiently severe jerk as to have occasioned this man to lose his balance, and that that is the proximate cause of his having received the injuries which resulted in his death’ ” (pp. 164, 165).

(3)

Brief of the Argument.

POINT I.

The plaintiff was not entitled to have the trial judge submit to the jury the question of negligence to which the plaintiff's exception to the charge refers because:

(a) Plaintiff's counsel declined the offer of the trial judge to call the jury back for the purpose of charging them on the subject; and

(b) No request to charge on the subject was submitted to the trial judge.

(a)

The record shows that after the trial judge had completed his charge the following colloquy took place:

“Mr. Weinberger: I take exception to that part of his Honor's charge, wherein he states that the only act of negligence alleged, according to the evidence, is that the train started with a sudden jerk. I main-

tain, as a matter of law, and that is stated in the complaint, that if they started this train when he was in such position that they ought to have reasonably known of the great danger of it, that it was negligence for them to start and put the train in operation at that time.

Mr. Selser: That is not charged in the complaint.

Mr. Weinberger: Who says so? Count Ten, of the complaint, says as follows (quoting from complaint). In other words, that the negligence consisted of two things, we claim.

The Court: I will call them back, if you want me to.

Mr. Selser: If you do, I am going to take an exception to it, because there is no proof to substantiate any such allegation.

The Court: I think what I said was about as I understood the testimony, that the only negligence that you claim, meaning not what you claim in your papers, but what you claim by the testimony, was the sudden jerking of this train.

Mr. Weinberger: The law is well settled that if a man is on the station platform, and he is boarding a train, it is their duty to give him time, I think, to get on and off the train.

The Court: I will let it stand as it is.

Mr. Weinberger: Allow me an exception.

The Court: Certainly" (p. 162, line 10, to p. 163, line 10).

This shows that the trial judge offered to recall the jury for the purpose of charging them in the manner suggested by counsel for plaintiff (even though no written request on the point had been submitted and even though the oral request was not presented until after the jury had retired).

But counsel for plaintiff apparently preferred to gamble with his chances before the jury on the

questions as submitted in the original charge, as the record shows that the offer of the trial judge was not accepted.

Having gambled and lost, counsel now seeks to avail himself of an alleged error which (if it was error) could have been cured by merely indicating his acceptance of the trial judge's offer to call the jury back for a further charge. We submit that on this record plaintiff is now estopped from urging such alleged error.

(b)

The record shows that counsel for plaintiff submitted no request to charge, either on the point which is now the subject of plaintiff's complaint or on any other point.

The colloquy above quoted does not amount even to an *oral* request—even if the trial judge was obliged to consider an oral request after the jury had retired.

It is well settled that, if counsel think that a pertinent proposition of law should be charged or if they think such a proposition has been omitted from the charge, it is their duty to submit a request for an instruction on the particular point; otherwise the omission to charge on such point is not a ground for reversal. *Lange v. N. Y. S. & W. R. R.*, 89 N. J. L. 604; *Geyer v. Public Service Ry. Co.*, 98 N. J. L. 470; *Leiferant v. Progressive Agency*, 98 N. J. L. 526, and cases cited; *Jackson v. Weyl*, 140 Atl. 422.

We quote from the opinion in the *Leiferant* case:

“We think the true rule is stated by Chief Justice Green in the case of *Cole v. Taylor*, 22 N. J. L. 59. The omission to state any legal principle which may be pertinent or applicable to the case, or the omission to

give any charge whatever, when no charge is requested, affords in itself no ground for a new trial, much less for reversal upon a writ of error or appeal."

So here, if counsel conceive that the legal principle suggested in the colloquy was applicable to the case, a request to charge embodying such principle should have been submitted to the trial judge, and in the absence of such request the failure of the trial judge to charge on that subject does not afford a ground for reversal.

POINT II.

Assuming that the plaintiff was entitled to have the trial judge submit to the jury the question of negligence to which plaintiff's exception refers, the charge, considered as a whole, was not prejudicial to the plaintiff, and the alleged misdirection (if there was any) did not injuriously affect the substantial rights of the plaintiff.

Section 27 of the Practice Act of 1912 provides that no judgment shall be reversed on the ground of misdirection, unless after examination of the whole case it shall appear that the error injuriously affected the substantial rights of a party (P. L. 1912, p. 382).

The principle of this rule has been frequently applied to the review of cases where claims have been advanced of error in the charge of the trial judge, and in considering whether there is reversible error it is well settled that the court will look at the charge as a whole rather than isolated extracts therefrom. See, for example, the decision of the Supreme Court in the case of *Levine v. Ackenbout*, 4 N. J. Misc. 210, 140 Atl. 437—affirmed

by this court on the opinion below on October 15, 1928.

Hence, if the subject to which the plaintiff's exception refers was substantially charged or if the charge considered as a whole did not injuriously affect the rights of the plaintiff, then the judgment must be affirmed, even if the court concludes that the point can be considered in the absence of a request to charge.

We accordingly look at the charge, and by reference thereto we find that the trial judge instructed the jury fully and accurately on the general principles of negligence and proximate cause (p. 156, line 15, to p. 157, line 15).

The extracts from the charge which are cited in the grounds of appeal (and which are the only points of which complaint is now made) are found at page 152, lines 30 to 38 (ground of appeal No. 3), and at page 155, lines 30 to 40 (ground of appeal No. 2).

The first extract omits entirely the summary given by the trial judge of the testimony produced by the plaintiff as to the circumstances of the accident. This was an accurate summary of the testimony of the witnesses Burns and Heller, and clearly presented to the jury the plaintiff's claim that the decedent attempted to board the train *before* it had started and that the train started as he attempted to board it; after summarizing the testimony the trial judge then proceeded to say:

"Therefore the plaintiff says that the train was improperly run, that it started with a sufficiently severe jerk," etc. (see p. 152, lines 15 to 38).

The above part of the summary of the evidence related to the claim of the plaintiff, and clearly indicated to the jury that one of the plaintiff's

claims was that the train was "improperly run" in that it started while the decedent was attempting to board it. If the plaintiff was entitled to have the question submitted to the jury at all (which we discuss later), then we urge that in this part of the charge the trial judge did all that the plaintiff could possibly ask him to do.

Later in the charge, in discussing the testimony of the defendant as to the circumstances of the accident, the trial judge called attention to the claim of the plaintiff that the train had started with a jerk. We do not concede that there was any evidence to go to the jury on this point, because, as we shall later attempt to show, there was no testimony that the jerk was *unusual*, but certainly the plaintiff is in no position to complain if the trial judge gives the plaintiff the benefit of the doubt by submitting a question to the jury as one of fact, which should have been decided as one of law. But assuming that it was a question of fact, the comment of the trial judge that the "jerk" was "the act of negligence that the plaintiff relies upon" must, of course, be read in connection with the previous part of the charge as to the plaintiff's claim that the train was "improperly run," and must also be read in connection with the general definition of negligence (which is given accurately and at length), and must also be read in connection with the context of the extracts from the charge in question.

The charge, considered as a whole, was more favorable to the plaintiff than the plaintiff was entitled to under the testimony, but, in any event, the legal principle urged by counsel in the colloquy with the trial judge after the jury had retired, namely, that if a man is boarding a train it is the duty of the railroad to give him time to get on (p. 163, lines 1 to 5), was substantially charged

by the trial judge in his summary of the plaintiff's claim.

Finally, even if there is any basis for the grounds of appeal, in the absence of requests to charge the "pertinent propositions" which counsel for plaintiff deemed relevant to the case, the further answer is that the quotations from the charge as set forth in the grounds of appeal are merely summaries of and comments upon the evidence. Such summary and such comment cannot afford ground for reversal—unless, of course, the material facts are inaccurately stated—but counsel did not claim at the trial and does not now claim that the statement of the evidence was in any respect inaccurate.

To summarize: the extracts from the charge as quoted in the grounds of appeal do not quote all of the charge on the subject; the charge as a whole presented to the jury for consideration all questions of fact (and more) which the plaintiff was entitled to have considered by the jury; at the most, the extracts complained of are merely comments upon the evidence and there is no claim that the evidence was misstated; and in any event counsel did not present in the form of a request the pertinent legal proposition which he deemed to be applicable to the facts of the case, and, therefore, is not now in a position to complain of the refusal of the trial judge to charge such proposition.

POINT III.

The evidence failed to show that the defendant was negligent in that its servants failed to take reasonable care to allow the plaintiff's intestate a reasonable time to board the train, and, hence, plaintiff was not entitled to have this theory of negligence submitted to the jury as a possible ground of liability, even if a request to charge to that effect had been submitted in behalf of the plaintiff.

The principal complaint of the charge by counsel for plaintiff was the alleged omission to charge that under the law when a passenger is boarding a train it is the duty of the railroad to give him time to get on (p. 163, lines 1-10).

According to this statement of counsel, the railroad company is in effect an insurer of its passengers and is under an obligation to see that at all events and under all circumstances, they have sufficient time in which to board the train. Of course, this is not the law; the duty of a railroad to its passengers is to exercise reasonable care. In some cases reasonable care may be a high degree of care, but in no case is the company an insurer of the safety of passengers.

Rivers v. Pennsylvania, 83 N. J. L. 513.

As applied to the specific matter of the allowance of a reasonably sufficient time to board a train, this question has been before the courts so often that there is no room for further debate.

The principles have been succinctly stated in *V Elliott on Railroads* (3rd ed.), Section 2471, page 181, as follows:

“Railroad companies are bound, when they stop their trains at stations for the purpose

of receiving and discharging passengers, to give them a reasonable opportunity to get on and off, and it has been held that the fact that the conductor is induced by the conduct and conversation of a person on the station platform to believe that he does not intend to take passage will not relieve the company from liability for injuries received by him without his fault, in consequence of the train being started without giving him a reasonable time to get on, if the conductor actually sees him attempting to get on when he gives the order to start, and that, even if the conductor does not see a passenger attempting to board the train, he is guilty of negligence for which the company is liable if he starts it without warning and without allowing a reasonable length of time for passengers to get on.

* * * * *

After the conductor has waited a reasonable length of time at a regular station for passengers to get on and off the train he may then give the proper signal and start it, unless he sees some one in the act of getting on or off, or otherwise in a perilous position."

It was alleged in the complaint that the defendant's servants failed to allow the plaintiff's intestate "reasonable time to board" the train (p. 5, line 38, to p. 6, line 3).

Presumably, it was this part of the complaint to which counsel referred when he stated to the trial judge that it was the defendant's duty to give a passenger "time" to board the train.

The difficulty with counsel's argument, as applied to the facts of the present case, is that the evidence fails to show that there was any lack of a reasonable time for passengers to board the train. Plaintiff's own evidence shows that there was

abundant time for passengers to get on and off the train in question.

Mr. Burns, one of plaintiff's principal witnesses, said that he walked through the subway and up the steps to the side of the station known as the New York side and was walking up the steps reading a newspaper just as the train pulled in (p. 25, line 35). Prior to the accident, he observed people getting on and off and when asked how long the train remained in the station, he replied, "About a minute or so; maybe not that" (p. 26, lines 20-35).

On cross-examination he gave further details as to his own movements and said that, after he came through the tunnel and observed the train standing at the station and discharging and taking on passengers (p. 28, lines 1-15), he walked along the station platform for the purpose of going into the waiting room to read his newspaper, glancing at the head lines as he walked along (p. 30, lines 5-25); this waiting room was about 35 feet from the point where he came out of the mouth of the subway (p. 28, line 18; p. 29, lines 1-5). When he reached the waiting room he put the paper down for a moment and up to that time the train had not started to leave; he was at the waiting room when it started (p. 30, lines 20-35). He estimated that from the time he came out of the subway until the time of the accident it was about a half-minute or 45 seconds—"something like that" (p. 31, lines 30-40).

Plaintiff's other principal witness, one Heller, was "coming down" Jefferson Street when he saw the train come in (p. 36, line 10). (Note: Jefferson Street crosses the railroad tracks at right angles at a point adjacent to the easterly end of the station platform.)

He said that as he went across the street the train pulled in and he stopped and waited for the

train to cross and saw people coming on and off (p. 36, line 18). He then described what he saw of the accident and, in answer to the question whether he (plaintiff's intestate) was knocked under the train, he replied, "And a minute after the train started to go a little" (p. 36, line 35).

He further said that at the time of the accident there were no people getting on or off (p. 36, line 40).

On cross-examination he fixed the place where he was standing when he saw the accident as at the bank building across the street from West Main Avenue (p. 37, lines 30-40). (Note: This is on the same side of the railroad tracks as the east-bound station platform.)

After observing people getting on and off, he then testified:

"Q. After all of the people got on, did the conductors then get on the train? A. I didn't notice them.

Q. You didn't notice them. Then, you say you saw this man? A. Then I seen a little while I seen a man was stepping on the train to go on.

Q. That was a little while later, after all of the other people got on? A. *A few minutes later, I suppose.*

Q. Then you saw a man step on up? A. Step on up.

Q. Then the train started? A. Train started and he swings back again" (p. 39, lines 29-38).

This evidence of the plaintiff clearly shows that ample time was allowed for passengers to get on and off the train; and it also shows that the decedent was the only person who was attempting to get on the train when it started.

The testimony of numerous witnesses called in behalf of the defendant corroborates the fact that ample time was allowed for all passengers to get on and off.

Thus:

De Vries, police officer of the City of Passaic. The train came to a stop. Passengers got on and the conductors went out on the platform until everything was clear. "The conductor gave the men the signal, everything was all right, and they got on. The platform was clear" (p. 46, lines 30-40). The train was pulling out and he saw a man running up the platform whom he afterwards identified as the decedent (p. 47, lines 1-20). On cross-examination he said that he saw four or five people get on the train (p. 55, line 20).

The testimony of the train crew on this point is as follows:

Hunt, engineer. Train came to a stop at Passaic Station with the engine just "west" of the crossing, that is, in the direction of Paterson, remained there "just a short time" and he got the signal to start and he started (p. 80, lines 1-25).

Blauvelt, fireman. Train was standing in the station "I should judge, about a minute or so" (p. 121, line 30).

Wynne, conductor. On the arrival of the train at Passaic he got off and stood on the platform and after the passengers were discharged, he made ready to load passengers and after they were loaded and the platform was clear he received a signal that "they were all right" and passed it to the baggage-master, who gave it to the engineer by whistle to proceed, then he stepped back inside the train,

boarding the train just as it started to move (p. 105, lines 10-35). He had been standing on the platform between the first and second cars (p. 105, line 10). After the train started, he walked to the head end and proceeded to collect transportation and then a passenger said somebody was trying to board the train and the whistle was pulled (p. 106, lines 15-25, to p. 107, lines 1-10).

“Q. How long were you standing at the station taking on passengers and discharging passengers? A. Well, I wouldn't say over a minute or a minute and a half, or so” (p. 107, line 30).

Daly, brakeman. After train came into the station he got off and helped people off and after everybody was on and the platform was clear, he gave the all-right signal (p. 109, line 10). When train started, he got on and started to collect transportation (p. 109, line 35).

Lewis, brakeman. Train made its regular stop, passengers were taken on and off and the train proceeded after the signal was given (p. 118, lines 1-10). When that signal was given, all of the passengers were off and on (p. 118, line 28).

Parson, baggage-master. Stood at the door of the baggage car (p. 137, lines 30-40). Received signal from conductor and gave the engineer two whistles to start (p. 138, line 15). At the time the train started there was nobody hanging on the steps (p. 142, line 38).

It will be observed that the witnesses who gave an estimate of the actual time the train remained in the station, fixed it at from 45 seconds to a minute and a half. It will also be observed that all the witnesses agree that while the train was at the station passengers got on and off, and that the

train crew did not board the train or give the signal to start until after all passengers who apparently wanted to board the train had done so.

There was no pretense that the stop was less than the usual length of time, and the case is utterly barren of evidence to sustain the allegation that passengers were not allowed a reasonable time to board the train. It is obvious that a train cannot be kept standing at a station indefinitely—simply for the accommodation of some passenger who may be late; and if a plaintiff claims he did not have reasonable time to board the train, he must establish such fact by proof; and certainly that fact does not appear when there is no evidence to show that the train stopped for less than the usual length of time—and particularly in a case like the present, when all persons who wanted to get on and off had actually done so before the train started. On this point there was no disputed question of fact for the jury, and, hence, plaintiff was not entitled to have this theory of negligence submitted to the jury, even if a request to that effect had been submitted.

POINT IV.

The evidence failed to show that there was any negligence on the part of the defendant in failing to take reasonable care to ascertain whether plaintiff's intestate was in a safe position at the time the train started, and, hence, plaintiff was not entitled to have this theory of negligence submitted to the jury as a possible ground of liability, even if a request to charge to that effect had been submitted in behalf of the plaintiff.

Counsel claimed at the trial that the trial judge should have submitted to the jury the question whether it was negligent for the defendant to start the train in operation when the plaintiff's intestate "was in such position" that the defendant's servants should have known of the danger (p. 162, line 20).

This assumes that the defendant's servants either actually knew, or should have known, that the plaintiff's intestate was in a dangerous position at the time the train started.

But here, again, the case is utterly barren of proof either of actual or implied knowledge of such fact on the part of the defendant's servants.

No one claims that any of the crew saw the plaintiff's intestate attempt to board the train *while it was standing*. Some of the crew saw him as he was being dragged along *after the train started*. But there is no proof whatever to show that any of the crew saw the plaintiff's intestate in the act of boarding the train when the signal was given to proceed.

We may, therefore, eliminate from further consideration any question of actual knowledge of the danger in which the decedent found himself.

But it is claimed that the defendant's servants *should* have known of the danger. Here, again, we have the question whether there is any duty on the part of a railroad to hold its train at a station indefinitely, regardless of schedule, to await the convenience of late would-be passengers. Of course, we do not claim that the company's servants would have the right deliberately to give a starting signal if they actually saw a person in the act of boarding a train; under such circumstances, a question might be involved under the doctrine of the last clear chance. No such claim is pleaded or urged in the present case.

We, therefore, again look at the testimony to see if it would have justified the trial judge in leaving to the jury the question whether defendant's servants were chargeable with knowledge of the decedent's danger.

The only witnesses called for the plaintiff on this point were the Messrs. Burns and Heller.

Burns was asked whether he observed any "station" men on the ground when Nogrady was getting on the train, and replied, "No, I didn't; I don't recall" (p. 27, line 10).

On cross-examination he testified:

"Q. The trainmen themselves were not on the platform, were they? A. *I didn't see nobody there at all.*

Q. Did you see the trainmen at any time? A. No, sir; I didn't take notice" (p. 33, lines 25-33).

Heller said that when the accident happened there were no people getting on and off the train (p. 36, lines 38-40).

He did not notice if any trainmen or brakemen were there while Nogrady was getting on (p. 37, line 12; p. 39, lines 20-30).

Officer DeVries said the conductors went out on the platform "until everything was clear." The conductor gave the signal "and they got on. The platform was clear" (p. 46, lines 30-40).

Conductor Wynne said that after passengers had been discharged and loaded he passed the signal to the baggage-master to give to the engineer to proceed and he then "stepped inside of the car" (p. 105, lines 15-20); before giving the signal he looked up and down the train to observe whether the platform was clear and did not observe any person then attempting to board the train, and he thereupon got on just as the train was starting to move (p. 105, line 30, to p. 106, line 18).

Brakeman Daly gave the all-right signal to his conductor after everybody was on and the station platform was clear (p. 109, line 10). When the train started he saw that everything was clear.

"Q. What did you do on this occasion that you seen everything was clear? A. I looked up and down the platform, took the signal from the rear man, which I passed to the conductor, and he passed it to the baggage-master, and the train started and I got aboard" (p. 109, line 35, to p. 110, line 3).

Brakeman Lewis said that after the passengers were taken on and off the signal was given and the train proceeded. When he gave his signal all passengers were "off and on."

"Q. Did you see anyone on the platform at that time, other than the trainmen? A. Not making any attempt to board the train" (p. 118, lines 20-30).

Baggage-Master Parson received the signal from the conductor to start the train; at that time he was looking towards the rear; *the platform was clear* (p. 138, lines 15-20).

When the train started there was nobody hanging on the steps (p. 142, lines 30-40).

It, therefore, appears, without dispute, that at the time the train crew gave the signal to start, the platform was clear and no one was *then* attempting to board the train; several passengers had got on and off, the platform was clear and the various members of the crew who were standing on the platform passed the all-right signal one to the other, which in turn was received by the engineer through the baggage-master and the train started. There was nothing improper or unusual about the operation of the train; all passengers who desired to board it had done so before the signal was given. Even on the plaintiff's own testimony, there were no *other* passengers on the platform who were trying to board the train when it started, and the members of the crew who *had been* on the platform when the train was standing, had resumed their proper positions on the train, as it started.

Under these circumstances, we submit that there was no question of fact to submit to the jury whether there was negligence in failing to observe the alleged dangerous position of the plaintiff's intestate; the undisputed fact is that the train crew *did* observe, by looking up and down the platform to see if it was clear of passengers before giving the signal to start; and it was not until they observed that the platform was clear that the starting signal was given.

As the evidence failed to show that the defendant's employees either actually knew, or were chargeable with the knowledge of, the alleged fact that the plaintiff's intestate was in a position of danger when the signal was given to start the train, the plaintiff was not entitled to have the question of defendant's negligence in that regard submitted to the jury.

POINT V.

Even if the plaintiff was entitled to go to the jury on the theory of negligence claimed by the plaintiff, the judgment should nevertheless be sustained because there was evidence from which the jury were justified in concluding that the train was in motion at the time the plaintiff's intestate attempted to board same; and, under the charge of the trial judge, if the jury so found, they were obliged to render a verdict in favor of the defendant, regardless of negligence, if there was any, on the part of the defendant.

The trial judge properly charged the jury that there could be no recovery if there was negligence on the part of the deceased which proximately contributed to the accident (p. 157, lines 1-15).

For all that appears, the jury may have based their verdict in favor of the defendant on the ground that there was such negligence on the part of the deceased. We, therefore, look at the record to see if there was evidence from which the jury might reasonably have reached such conclusion; and we urge, in this connection, that the evidence is overwhelming that the accident was due to the decedent's own negligence in attempting to board the train *after it had started*; if such was the fact, then, of course, the plaintiff was not entitled to recover, even if there was negligence on the part of the defendant's servants.

Following is a summary of the evidence which we contend demonstrates that the accident was due to the decedent's own negligence:

Officer DeVries. After the conductor had given the signal to start, he said he looked up and down

"to see if everything was clear"; at that time the train was pulling out; he saw a man running up the platform from Jefferson Street; the officer ran towards him, but he was too late.

"He jumped on this train, or attempted to jump on it, and I noticed he didn't get on. He held his grip on the handle of the train, but his legs kept dangling around * * *. I watched him holding his grip until he could, as long as he could hold it, and the man fell" (p. 47, lines 10-30).

On cross-examination he said that when he saw this man running up the platform the train was "going at a fairly good rate of speed," and was "partly out" of the station (p. 57, lines 30-35).

The witness ran towards him to try to stop him from attempting to jump on the train and went about 30 feet, but still had about 30 feet more to go (p. 58, lines 10-20).

The man attempted to get on the rear end of the third coach (p. 60, line 20; p. 61, line 38); this rear end was about at the end of the waiting room while the train was standing (p. 62, line 5); it moved about 90 feet to the point where the decedent attempted to get on the train (p. 63, lines 1-5).

Officer Evansky. Was on duty as traffic officer at the corner of Jefferson Street and Main Avenue, on the west side of Main Avenue outside of the railroad gates (p. 68, lines 10-20). The train had stopped; the officer had his back to it; there were two women with baby carriages near the crossing gate and one of them screamed as the train was pulling out.

"I saw this man falling off the train, off the right side of the train, and I run to him and tried to help him" (p. 69, lines 25-32).

At that time the train was passing over the crossing (p. 70, line 28).

Did not see decedent until one of the women shouted and attracted his attention. He then turned and saw a man falling off the train. Does not know whether he boarded the train while it was standing still (p. 71, lines 20-30).

Officer Delaney. Was directing traffic at East Main Avenue and Jefferson Street, on the west-bound side of the railroad tracks (p. 113, lines 10-25); train stopped with the engine just north of the Jefferson Street crossing (p. 113, line 35). A man got off a bus and a man "darted across the street." He went in front of the engine and ran up the platform. The train came to a sudden stop (p. 114, lines 1-25).

At the time this man ran in front of the engine it was "just starting to roll" (p. 114, line 38). At the time the man ran in front of the engine it was not then moving, but it moved just as he went around it (p. 117, lines 20-25).

Dr. Katzin. Boarded the train at Passaic, being one of the last passengers to enter the smoker; took a seat near the front end of the car towards the engine and opened the window and looked out. Saw people running from busses.

Saw a man grab the front handle of either the second or third car back. "The train was, at that time, in motion and he tried to get on" (p. 89, lines 10-20).

Witness watched him to see if he was going to proceed and a moment after saw him sliding under the wheel and the witness hollered to stop the train (p. 89, lines 25-30).

On cross-examination he said that he was curious to see whether the man did get on the train and he leaned out of the window and turned around to look (p. 93, lines 20-30).

In answer to a question by the court, witness said he was "sure" that the train was in motion

and the man was running alongside of it before he grabbed the handle (p. 101, lines 1-15).

Burhorn, flagman at the Jefferson Street crossing. Was standing in the middle of the westbound track when the 215 eastbound train came into the station (p. 73, lines 20-40). A man ran around in front of the engine; at that time the engine had just started (p. 74, lines 1-15).

"The engine started up after he run around" (p. 77, line 38).

This man was the man that was in the accident because he saw the ambulance afterwards (p. 79, line 15). Did not see him trying to get on or fall off (p. 79, line 20).

Paulito, trackman. Duty was to clean the platform at Passaic (p. 129, lines 1-20). He described what he saw of the accident as follows:

"Train comes and I stopped, and the people that was in the train is come down and the rest of the people is gone. After the train started come one man this side, and I said, 'Don't you—!' He said, 'Oh, you go hell!' He don't catch him, he try to catch him and he go down underneath the step. That is all" (p. 129, lines 25-30).

This man came from Jefferson Street in front of the engine (p. 131, lines 10-20).

Then the train started and he wanted to jump. Witness said, "Don't you jump," to which the man replied, "You go hell"; he tried to jump and fell down (p. 132, lines 1-10).

The engineer was observing the signal ahead of him, as his train stood at the station, and knew nothing of the accident until he received the stop signal (p. 80, lines 20-30); he saw two or three men "run across" in front of the engine and also saw "loads of them" run towards the station, but he did not know where they were going (p. 83,

lines 30-40; p. 84, lines 10-30). His duty was to start when he received the signal, and he accordingly did not turn to watch the people on the station platform (p. 85, lines 30-40).

Fireman Blauvelt did not see the accident (p. 124, lines 30-40).

Conductor Wynne knew nothing of the decedent's attempt to board the train until one of the passengers raised the window and "watched" and beckoned to him and said somebody was trying to board the train; thereupon the conductor reached up to pull the whistle, and it was pulled by the baggage-master and the train stopped (p. 106, line 15, to p. 107, line 15). The man at the car window who called the conductor's attention to the decedent's attempt to board the train was Dr. Katzin (p. 108, lines 1-10).

Brakeman Daly knew nothing of the accident until after the train stopped, and he then got out and saw that the decedent was under the wheels of the third coach from the head of the train (p. 111, lines 1-20).

Brakeman Lewis knew nothing of the accident until the train came to a stop after it had proceeded two car-lengths. He then got out and saw the police officer helping a man who was under the wheels (p. 119, lines 20-30).

Baggage-Master Parson was looking towards the rear of the train when he received the signal from the conductor to start the train; he then gave the engineer two whistles, and the train started immediately (p. 138, lines 1-25).

His testimony continued as follows:

“Q. Then, what next happened, as you observed? A. While I was standing inside of the baggage car, as we passed over the Jefferson Street crossing, I noticed the traffic officer looking toward the center of the train, and I looked to see what he was looking at; just as I looked out this man made a grab for the grab handle down the train and fall down partly to the wheels.

Q. You say you looked back toward the rear of the train when you saw the officer looking in that direction? A. Yes, sir.

Q. Did he or not get hold on the grab handle? A. He got a hold of it, yes.

Q. Where was he with respect to the various coaches on the train? A. He was, I should judge, between the second and third car on the train.

Q. When he made his grab for the grab handle and got a hold of it, did he get his foot up on the steps of the train—of the car? A. I don't think that they were up on the steps.

Q. Did you see him drag at all? A. A little bit, not very far.

Q. Did you, or not, see him running or walking? A. I didn't see him running, no, because I gave the engineer the signal and he stopped immediately” (p. 138, line 30, to p. 139, line 20).

On cross-examination he said the train had traveled about 75 or 80 feet before he observed the decedent (p. 142, lines 5-30).

He did not see anybody run in front of the engine as he was looking back towards the conductor as the train stood at the station (p. 144, lines 1-30).

The testimony of plaintiff's witnesses Burns and Heller was to the effect that at the time the decedent attempted to board the train it was then standing (p. 25, line 40; p. 36, line 20).

There was, however, abundant testimony from which the jury might well have found that the decedent did not attempt to board the train until after it had started, and if such was the fact, then the plaintiff was barred of recovery. This was one of the questions submitted to the jury by the trial judge and as there was evidence to sustain the conclusion that the accident was caused by the contributory negligence of the decedent in attempting to board the train while it was in motion, it may well be that the jury based their verdict in favor of the defendant on that ground, and, hence, the error, if there was any, in refusing to submit to the jury certain questions of negligence on the part of the defendant, did not affect the substantial rights of the plaintiff.

POINT VI.

Verdict should have been directed in favor of the defendant, and, hence, the error, if there was any, on the part of the trial judge in his charge to the jury, did not injuriously affect the substantial rights of the plaintiff.

We have shown under Points III and IV that the evidence was insufficient to require the trial judge to submit to the jury as question of fact the theories of negligence which are the subject of complaint on this appeal.

We now go a step further and say that in any event the plaintiff was not harmed, for the reason that the defendant was entitled to have a verdict directed in its favor.

The remaining question which was submitted to the jury was whether there was negligence on the part of the defendant as to the manner in which

the train started. The trial judge took the view that the jury had a right to consider whether the defendant was negligent merely by reason of the fact that the train may have started with a "severe" jerk, so as to cause the defendant to lose his balance (p. 152, lines 30-40; p. 155, lines 30-40).

But it is well settled that a railroad company is not responsible for the jerks that are ordinarily incident to careful operation, and that there is no fact question on this subject unless the evidence shows that the jerk was unusual.

A recent decision of the United States Supreme Court in which this question has been considered is *Gulf, etc., R. Co. v. Wells*, 5 U. S. Adv. Ops. (Jan. 16, 1928), p. 152.

In that case it was held that the jury should have been instructed to find for the defendant, on the ground that the contention that the injury was caused by the negligence of the engineer in starting the train was "without any substantial support." This conclusion was reached notwithstanding the fact that the plaintiff (who was employed as a brakeman) testified that the train started with a "severe jerk" such as he had never before experienced.

In the present case there was no pretense that the train started in any other than the usual manner—which necessarily involves *some kind of a jerk*.

The jerk theory was interjected into the case by the rebuttal testimony of the witness Burns. Counsel for plaintiff presented the question in this way: Did not train start "with a terrific jerk" (p. 145, line 20). After objection the question was then asked: "Describe the manner in which it started?" to which the witness replied, "Why, it just made a little jump right up, just like releasing the brakes" (p. 145, line 32).

And immediately after the answer the testimony continued as follows:

“The Court: As it always does?”

The Witness: Well, mostly, as all trains do.

The Court: All right.

Q. Was there anything abnormal about that? A. Why, it wasn't no more than some trains do; some trains start very easy and some trains don't.

Q. Was this easy or was it— A. It was just like letting loose on the brakes that had been tightened up too tight.

Q. Was it a normal jerk or a terrific jerk, or what kind of a jerk was it?

Mr. Selser: I object to that.

The Court: I will allow it.

A. It was just a sudden jerk” (p. 145, line 33, to p. 146, line 18).

If this were the only evidence in the case on this point, we submit the trial judge should not have submitted to the jury whether there was any negligence in the starting of the train, as if the brakes were being released—“mostly, as all trains do.”

There was, however, other evidence which shows conclusively (if there was any doubt about the point) that the train started smoothly and in the usual way.

Engineer Hunt said:

“It (the train) started very easily, without a jerk; there was no jerk at all, went out of there very easily; I was going at the rate of about six miles an hour when I got the whistle to stop” (p. 81, lines 12-18).

Fireman Blauvelt testified:

"By the Court.

Q. How did your engine start after the stop in the station, just before you got the final bell to stop? A. It started the same as all engines started, just natural.

Q. Tell us how that is. A. Just naturally, moved out just slowly.

Q. Was there any jerking about it? A. No, sir; none whatever" (p. 123, lines 10-20).

Mr. DeWolf, who was employed by the defendant as a hostler, and who was riding in the train as a passenger, said:

"Q. Just describe, if you please, the manner in which it started out of the station, as to whether or not it jerked or jolted. A. The train did not jerk; when it pulled out of the station it moved out very smoothly and it moved possibly two or two and a half car lengths when it came to a sudden stop" (p. 126, lines 1-10).

Under this evidence, there was no question of fact for the jury with respect to the manner in which the train was started from the station.

In *Rochat, admr. v. North Hudson County Ry. Co.*, 49 N. J. L. 445, the Court of Errors and Appeals held that there was no negligence on the part of a driver of a horse car, it appearing that he whipped a pair of his horses when about to start a car full of passengers, for it did not appear that there was anything unusual in the manner in which the horses were whipped or in the starting of the car.

In *Corkhill v. The Camden & Suburban Ry. Co.*, 69 N. J. L. 97, that rule was applied to the operation of a street railway car.

In *Raeuber v. Public Service Ry. Co.*, 89 N. J. L. 366, at p. 367, the Court of Errors and Appeals said:

“We think this judgment cannot be sustained. There is no proof that the jerk of which plaintiff complains was abnormal, or anything more than was merely incidental to the proper operation of the car. Consequently, no negligence was shown which rendered the defendant company responsible for plaintiff's injury.”

The plaintiff, therefore, is not in any position to complain of the verdict in favor of the defendant. As was said in the case of *Jordan v. Teaneck*, 5 Misc. 556:

“This being true we think the question presented in the court below became one of law and not of fact, and that under the law, as we find it, it was the duty of the trial judge to have directed a verdict for the defendant. If, instead of doing so, he submitted the case to the jury for its determination, and the jury found as the judge would have been obliged to do, the error becomes harmless, and of the result the plaintiff has no right to complain.”

CONCLUSION.

For the above reasons, the judgment in favor of the defendants should be sustained.

HOBART & MINARD,
Attorneys for Defendants-Appellees.

GEORGE S. HOBART,
JOHN E. SELSER,
of Counsel.

